

# Development Appeals Board Guide



2018

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## Preface

Under *The Planning and Development Act, 2007 (PDA)*, any municipality or district with an approved Zoning Bylaw (ZB) must establish a Development Appeals Board (DAB) within 90 days after the bylaw comes into effect.

This guide provides direction to local municipalities, districts and appellants on the:

- guiding principles of a DAB;
- the organization and administration of a DAB;
- processes for initiating an appeal;
- processes for holding hearings; and
- preparing a decision.

A DAB is a quasi-judicial board, appointed by council and consists of a minimum of three members responsible for hearing appeals and making decisions in a formal manner similar to a court. A DAB is considered to be an administrative tribunal, created by government to provide the public with an accessible, independent and competent forum for a review of decisions in matters that affect the public's economic, cultural and personal interests.

The function of the DAB is to hear appeals on developments which council approved or rejected under the PDA. In its role as an adjudicator, a DAB, like a court, is expected to be fair and impartial. Examples of appeals include minor variances, demolition control districts, misapplication of the ZB or refusal to issue a development permit that contravenes the ZB, and requests for variances to the standards of the ZB.

As it applies to the application of the ZB, the DAB has responsibility to ensure:

- proper procedures are followed in decision-making;
- discretionary municipal planning powers are exercised fairly and based on legally adopted planning policy and zoning controls;
- planning decisions made in error are corrected within a reasonable timeframe;
- the consideration of special or unusual circumstances; and
- the granting of a variance to a ZB is consistent with the objectives of the bylaw and with the policies of the Official Community Plan (OCP).

A DAB enhances local and regional planning and development by providing an opportunity for independent review of planning decisions.

## 1.0 Guiding principles

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Basic principles guide the intent and processes of boards created by government to assist in carrying out their decision-making responsibilities. Like other administrative boards, a DAB is expected to be fair and impartial in the application of the policies of an OCP, the rules of the ZB and specific building standards under *The Municipalities Act*, and *The Northern Municipalities Act*. A DAB is intended to provide a faster, less formal, flexible and more specialized decision-making process than the court system and is based on the following principles.

### 1.1 Administrative law

Administrative law is a basic area of public law dealing with the relationship between government and its citizens. The purpose of administrative law is to ensure that the activities of government are administered in a fair and reasonable manner. Based on that purpose, government action must be legal. Officials must have effective remedies to maintain the acceptance of public administration when citizens are affected by unlawful acts of government. Boards, such as the DAB, are designed to protect the rights of citizens and to provide flexibility to achieve fairness in unique cases.

### 1.2 Duty of fairness

The duty of fairness is a legal concept describing a set of minimum requirements to observe in hearing and making decisions. A DAB is responsible to ensure there is no perception of bias in its conduct during a hearing. It must hear and decide appeals independent of other municipal issues.

At a minimum, acting fairly means:

- providing adequate notice of a hearing;
- providing an opportunity for all interests to be heard;
- decision-makers are unbiased and act in good faith;
- decisions are only made by those who heard all the evidence and arguments in the case;
- treating all parties fairly and providing an opportunity for each party to ask questions of the other; and
- making decisions based on relevant facts, evidence and extenuating circumstances.

It is necessary for each board member to have personal knowledge of all evidence presented at the hearing in order to participate and vote on the decision. Participation by an absentee member in a vote will invalidate the decision.

Decisions of a DAB involve interpreting the issues, facts and law presented during a hearing. The board must provide a written explanation for making its decisions. Providing reasons for decisions ensures a DAB is accountable to the public and ensures the fairness of the hearing process. Decisions made by a DAB have important implications and their significance should not be underestimated. Long after the implications of decisions, the reasons may continue to be cited as precedents to similar cases, though the board is not bound by any formal precedent. The decisions are also important to the Saskatchewan Municipal Board (SMB), as all decisions may be appealed to the SMB.

### 1.3 Rules of evidence

Rules of evidence were developed in part to ensure fairness. The more you stray from basic principles of evidence, the more likely you will run into issues of fairness. Evidence deals with proof – it is the information used by parties to prove or disprove a case. The purpose is to be fair to both parties, without allowing the introduction of irrelevant information which is not founded in fact.

As a general guide, evidence should be:

- adequate to support the appeal;
- relevant to the grounds of the appeal;
- reliable; and
- admissible and not subject to any rules of exclusion.

## 2.0 Establishing a development appeals board

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The PDA provides for the right of appeal on land development decisions. According to subsection 214(2) of the PDA, a municipal council must appoint a DAB within 90 days after the municipality's ZB comes into effect. The DAB is responsible to ensure fairness in the application of the policies of an OCP, the rules of the ZB and certain property rules under *The Municipalities Act* and *The Northern Municipalities Act*.

As a quasi-judicial board, the DAB communicates only through its written decisions. Board members cannot be contacted by any individual regarding current, future or past hearings. Contact may result in that member being disqualified from that specific hearing. If a person appearing before the board perceives that a board member may be biased, they should state their objection and reasons for the objection at the start of the hearing. The board member in question will then respond to the objection, and the chairperson will determine if the member should remove him/herself from the hearing.

### 2.1 Membership

A local DAB is appointed by resolution of the municipal council. Pursuant to subsection 214(1) of the PDA, council shall appoint a minimum of three members to the Board.

The following persons are **NOT** eligible to be appointed or continue as members of the board (subsection 215(1) of the PDA):

- \*council members;
- municipal employees; and
- members or employees of a planning commission of which the municipality is a member.

However, subsection 215(2) of the PDA permits a district DAB to include a combination of members of council and other persons, but only if the councillors from a single municipality do not form the majority of the board.

\*Note: Council members who are members of a district DAB cannot hear an appeal respecting their municipality.

Ideally, members will have some experience related to land use development or community planning. These might include former municipal administrators or councillors, architects, engineers, developers, surveyors or retired community planners. Although members are often appointed for their knowledge and expertise in various planning and development roles, other individuals who do not possess related technical expertise should also be considered, as they often bring valuable perspectives.

The following characteristics should be considered when selecting DAB members:

- demonstrated integrity;
- the respect of the community;
- a keen interest and knowledge of the community;
- good analytical and reasoning skills;
- an appreciation of the interests of property owners, developers and the public;
- knowledge of local development processes; and
- a willingness to donate time.

#### *Terms and vacancies*

Part of council's resolution according to subsection 216(1) of the PDA will include the term of office for each member and the manner in which vacancies are to be filled. Many councils establish two- or three-year terms and define the number of times a member may be reappointed. Terms may also be staggered to reduce the possibility of a full

board turnover at one time. Existing vacancies may be filled by applications from interested or experienced applicants.

### ***Remuneration and expenses***

Council will also determine the remuneration and expenses, if any, payable to each member. Council may choose to establish rates for such things as attendance at various meetings, viewing properties, or each decision written by a member.

Subject to council approval and subsection 216(4) of the PDA, the board may appoint consultants to assist with some responsibilities. Council is responsible for the costs incurred from these appointments. The chairperson will recommend legal counsel or other consultants required and have the recommendation ratified by the board members.

## **2.2 Officers**

### ***Chairperson***

Pursuant to subsection 216(2) of the PDA, the board must elect one of its members as chairperson. If the chairperson is absent, the board must choose another member to act as chairperson temporarily. When deciding which member to appoint as chairperson, consider the member's:

- knowledge of relevant processes and procedures;
- ability to control proceedings and keep the hearing on track; and
- ability to effectively manage potentially difficult participants and deal with challenges from parties and their representatives.

The chairperson is responsible for:

- meeting with board members to determine if the DAB has jurisdiction to hear the appeal;
- advising the secretary to call a meeting or hearing if the appeal can be heard;
- providing leadership and attend to all matters necessary for the operation of the board, ensuring that the municipality's obligations are met in accordance with the legislative requirements of the PDA;
- ensuring legal counsel is provided if required;
- ensuring board members receive training/orientation on holding, preparing for and participating in hearings, rules of evidence, decision-making and decision-writing;
- ensuring board members receive and understand information relevant to the hearing;
- ensuring board members follow directives, policies and appropriate rules of conduct;
- being familiar with the case and any special circumstances which may affect the hearing;
- leading hearings or meetings of the board (with attention to the pace and agenda);
- administering oaths or affirmations at the hearing;
- maintaining order and ensuring a business-like and fair atmosphere;
- managing questions from parties or their representatives during the hearing;
- leading the decision-making process;
- preparing, or directing another member to prepare, the draft decision;
- reviewing and signing the decisions of the board; and
- ensuring the accuracy of the final written decision typed by the secretary.

## *Members*

Members are responsible for assisting the chairperson in the conduct of the hearing. It is important for members to review the issues in the case and any information that has been filed prior to the start of the hearing.

Members assist the chairperson at the hearing by:

- paying attention to the interactions between parties;
- keeping track of information or evidence given;
- asking questions when things are not clear; and
- assisting the chairperson with administrative tasks such as administering affirmations, marking any exhibits and operating recording equipment.

The duties and responsibilities of the members are to:

- meet with board members to determine if the DAB has jurisdiction to hear the appeal;
- maintain impartiality by not engaging in any discussion with individuals prior to or following a hearing or decision;
- familiarize themselves with hearing procedures;
- review the hearing documents prior to the hearing;
- before a hearing, clearly determine 'what has to be proven', as this will assist in making decisions on what evidence is relevant and therefore admissible;
- attend hearings;
- advise the secretary if they are unable to attend or anticipate arriving late;
- declare any conflict of interest on upcoming appeals to the secretary of the board well in advance of the hearing;
- prepare for the hearing in advance and meet with the board to decide on how questions will be handled during the hearing;
- listen carefully to the information presented (take notes of evidence presented, or unanswered questions);
- contribute at the hearing, ask questions of the parties for clarification or information relevant to the appeal in accordance with established procedures (the chairperson will manage the order of speaking and opportunity for questions);
- treat all participants in a hearing with respect and fairness;
- use plain language as persons appearing in front of the board or attending the hearing may not be familiar with planning and development or board processes;
- ask questions and participate in discussion/deliberation and decision-making;
- meet with the other board members immediately following the hearing to discuss the findings of fact (those things on which to base a decision) and render a decision in writing, together with reasons, within 30 days of the conclusion of the hearing (a board member must have taken part in the entire hearing to participate with decision-making);
- review the written decision prior to signature by the chairperson; and
- support the decision made by the board after it is made.

## *Secretary*

In compliance with subsection 216(3) of the PDA, council must appoint a secretary for the board and prescribe the term of office, remuneration and duties. The secretary is responsible for all administrative and operational matters of the board to ensure compliance with the PDA. The secretary plays the role of an administrator or executive director to the board and has duties to perform before, during and after the hearing.

### Pre-hearing responsibilities:

- receive and ensure the application for appeal, fees and related material are properly filed;
- ensure all relevant documents and materials are available for public inspection;
- inform the appellant, the owner of the property (if different), the council and each assessed owner of adjacent property or property within a 75 metre radius of the subject property no later than ten days before the hearing, a notice of hearing notifying them on the appeal and the date and time of the hearing;
- submit a statutory declaration to the board that the notices were mailed with correct addresses and postage, including the mailing date;
- prepare a report for each appeal consisting of maps, plans, drawings, photos, facts, applications, letters, development officer report, surveyor's certificate, and any other relevant material to the board at least five days prior to the hearing;
- determine the order of hearings based on their complexity and provide a docket outlining the order of hearings to the board as well as on the door of the meeting room prior to the start of the hearings;
- advise the board of relevant law, and previous judicial and board decisions;
- make contact with members to ensure quorum; and
- set up any necessary equipment/materials.

### Hearing responsibilities:

- announce the appeal;
- take attendance and note absences;
- record the names of speakers;
- document any exhibits;
- record motions; and
- take detailed minutes on the entire hearing: what is given in evidence and argument not only has relevance to the written decision, but also to any further appeals.

### Post-hearing responsibilities:

- finalize the minutes;
- assist in the preparation of the written decision of the board;
- ensure the board's decision is signed and co-signing the notice of decision where the chairperson is absent;
- within ten days of the date on which the decision is made, send out the notice of decision to the appellant, the municipality, the Director of Community Planning and all persons who made representations at the public hearing, by registered mail, and include instructions regarding further appeals; and
- if the minister, the council, the appellant, or any other affected person appeals the board's decision, the board shall within ten days of receiving a notice of appeal, send a certified copy of the board's records to the secretary of the SMB.

### ***Hearing documents***

Hearing documents will be prepared for each board member by the secretary and distributed prior to the hearing date. The documents will include the letter from the development officer denying a development permit, order to remedy contravention or the council report. The application for appeal, notice of hearing, as well as any additional evidence submitted by the appellant, the municipality or any neighbouring property owners will also be included (maps, plans, drawings, photos, facts, applications, letters, surveyor's certificate, and any other relevant material). The hearing documents will be provided to the board members, the municipal council and the appellant. The secretary will keep all originals on file.

All documents will be stamped "For Identification Only" followed by an "A" (appellant), "R" (respondent) or "B" (board) designation and a consecutive number.

## **2.3 Administration**

### ***Fees***

Pursuant to subsection 220(1) of the PDA, the board may establish an appeal fee to be included in the application for appeal, which cannot exceed \$300, to help cover expenses relating to the appeal. If the board does not set a fee, a fee cannot be imposed at the time of application.

### ***Forms***

As part of the administrative procedure, the secretary should work with the board to adopt forms to assist in the administration of the appeals process. Sample forms have been included in the appendices and should include:

- Application for Appeal;
- Notice of Hearing;
- Statutory Declaration; and
- Notice of Decision.

### ***Records***

The secretary is responsible for ensuring that records resulting from a development appeals process are accurate and fully reflect what has taken place. If the secretary is not present to record notes, the board member should appoint a temporary secretary to carry out the duties. The following points relate to record keeping:

- Records are public documents that are open to inspection and may be submitted to the SMB on further appeal;
- Records must be kept separate from other municipal records in the municipal office, or if applicable, in the office of the secretary;
- Records must include: the application for appeal; any correspondence; the notice of hearing; attendees and absentees; submissions; evidence; minutes; the notice of decision; and, any further appeals; and
- Records of the board's proceeding may be in the form of a summary of the evidence presented to it at the hearing.

## 3.0 Basis for an appeal

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### 3.1 Opportunities for appeal

The board provides an opportunity for independent review where a decision made by the council or municipal staff is questioned. The PDA sets out the following grounds for an appeal:

**1. *The ZB has been misapplied in the issuance of a development permit. [PDA, clause 219(1)(a)]***

In this case, a development permit has been issued. An affected person alleges that the ZB has been misapplied in the issuance of the development permit. An affected person is someone who has been impacted by this decision, which could include a close neighbour or nearby resident. The affected person feels that the permit was issued in error as a result of an incorrect interpretation of the provisions of the ZB. Misapplication of the ZB is fairly broad and can include the meaning and intent placed on terms in the ZB or the process that was followed in issuing the permit.

**2. *A development permit has been wrongfully refused. [PDA, clause 219(1)(b)]***

In this case, the development permit application has been refused due to a contravention of the ZB, or council may have failed to issue a permit within the required time. An applicant or affected person alleges that the development permit does not contravene the ZB or should have been issued within the required time. This situation is similar to the first in that there has been a misinterpretation of the ZB. Many appeals relating to the ZB will fall into this category and generally relate to problems such as building setbacks.

**3. *The applicant is requesting a variance to specific standards of the bylaw to allow development to proceed. [PDA, clause 219(1)(b)]***

In this case the individual contends that due to special circumstances strict compliance with the standards in the ZB will create an unnecessary hardship for his or her development and that the development will be consistent with the objectives of the zone in which it is located. It is important to show that the variance will not create a hardship for any neighbours that might be affected. In these cases, the council or development officer are required to refuse the development permit because the proposal contravenes the ZB. However, the DAB acts as a variance board relieving the applicant from compliance with the standards in the bylaw as long as the rules of decision-making are followed.

**4. *The development standards prescribed in the approval of a discretionary use application are above and beyond those necessary to achieve the objectives of the ZB. [PDA, subsection 58(1)]***

In this case, a discretionary use application has been approved and subsequently the development permit has been issued, subject to development standards or conditions. An applicant alleges that the development standards or conditions prescribed exceed those necessary to secure the objectives of the ZB. Standards attached to discretionary uses are intended to address specific objectives and must align with the ZB. The PDA outlines the considerations council must address in establishing development standards.

**5. Council has refused to amend a ZB to remove the holding symbol, or has failed to make a decision within the required time. [PDA, subsection 71(5)]**

In this case, the applicant can appeal either council's refusal to remove the holding symbol or their failure to do so within 60 days after the date on which the application is received.

**6. Under an Interim Development Control Bylaw (IDCB), an application has been approved subject to terms or development standards, refused or not dealt with within the prescribed period and the applicant is aggrieved by the action or inaction. [PDA, subsection 86(1)]**

An IDCB provides council with broad discretionary powers over development while a ZB is being prepared or a study is being undertaken to consider existing zoning. Where no ZB and therefore no land use has been established, any decision of council may be appealed. Where a ZB exists, the existing requirements continue and no development that is contrary to an OCP or ZB shall be permitted.

In this case, the application has not been fully approved under the IDCB. An applicant alleges that either the terms or development standards are not correct, that the application should have been approved, or that the decision was not made within 60 days. Where a municipality does not have a DAB, the appeal is made directly to the SMB.

**7. Council has refused, failed to make a decision within the prescribed period of time or has not entered into a development agreement for development in a direct control district. [PDA, subsection 67(1)]**

Where council considers it desirable to have control over the use and development of land or buildings within a specific area of the municipality, it may establish a direct control district. In order to establish a direct control district, the municipality must have policies and guidelines for the district in the OCP.

An applicant may appeal if council fails to approve the plans within 60 days of the application being submitted to the municipality, or within 90 days of a development agreement not being signed.

**8. Council has refused, failed to make a decision within the prescribed period of time or has imposed terms and conditions on a development permit to demolish a residential building in a Demolition Control District (DCD). [PDA, subsection 72(7)]**

Where council wishes to limit removal of residential buildings, it may designate areas of the municipality as a DCD. In order to establish a DCD, the municipality must have policies and guidelines for the district in the OCP.

An applicant may appeal if the application is refused, approved with terms or conditions or a decision is not made within 30 days.

**9. Council has refused, failed to make a decision within the prescribed period of time or has imposed terms and conditions on a development permit in an Architectural Control District. [PDA, subsection 73(5)]**

Where a municipality wants to maintain the theme or character of an area, council may designate architectural control districts. In order to establish an architectural control district, the municipality must have policies and guidelines for the district in the OCP.

An applicant may appeal if the application is refused, approved with terms or conditions or a decision is not made within 30 days.

**10. A minor variance application has been revoked, refused or approved with terms and conditions. [PDA, subsection 60(10)]**

If a ZB contains provisions for making and processing applications for minor variances, council or the development officer may allow minor variances (not to exceed ten percent) regarding building setbacks from property lines and other buildings.

If adjoining landowners object to the variance, in writing to the municipality within 20 days of receiving the notice of approval by personal service or 23 days of receiving the notice of approval by registered mail, council must refuse or revoke the variance.

An applicant may appeal if the application for a minor variance is revoked, refused or approved with terms and conditions.

**11. An enforcement order has been issued. (PDA, section 242)**

Enforcement orders may be issued by a municipality to ensure that development complies with the ZB. The order will contain requirements to bring the development of the property into conformance with applicable land use controls. An enforcement order may require the owner/operator/occupant to demolish, remove, replace or alter a building or structure or cease use.

An owner, operator, occupant or affected person may appeal an enforcement order.

**12. A decision made prescribing site plan control conditions or performance standards for specific industrial or commercial development. [PDA, subsection 19(5)]**

Policies respecting site plan control for commercial or industrial development may be adopted in the OCP. Conditions and performance standards may then be placed on development in the ZB with respect to: traffic operations and access to public streets to and from the site; the circulation of traffic within the site; the placement of buildings and other structures within the site; and, the placement of landscaping within the site.

The applicant may appeal any or all of the conditions or performance standards imposed through site plan control.

**13. An application for structural repairs, alterations or additions to a non-conforming building is refused. [PDA, subsection 91(2)]**

Any non-conforming building on a conforming or non-conforming site may continue to be used and any structural repairs, alterations and additions that conform to the requirements of the ZB may be made; however, the element of non-conformity must not be increased by those repairs, alterations or additions.

If an application is refused on this basis, the applicant may appeal the decision.

**14. Council has requested payment for development levies or servicing agreement fees, or council has failed to sign a development levy or servicing agreement. [PDA, subsections 176(1) & (2)]**

If a council has adopted an OCP, it may establish development levies to recover the capital costs of services and facilities.

An applicant may appeal the application or factors considered in the calculation of development levies and servicing agreement fees within 30 days after council's request for payment. They may also appeal if a development levy or servicing agreement has not been signed within 90 days of the application for a development permit.

**15. Council has ordered the owner of a building to bring it up to standards specified in a Building Maintenance Bylaw. (The Municipalities Act/The Northern Municipalities Act)**

This applies solely under a Building Maintenance Bylaw. Under a Building Maintenance Bylaw, council may order the owner of a building to bring it up to the standards specified in the bylaw.

The owner served with the order may appeal.

**16. Subdivision appeals [PDA, subsection 228(1)]:**

- a. refusal of an application for a proposed subdivision;**
- b. approval in part of an application for a proposed subdivision;**
- c. approval of an application for a proposed subdivision subject to specific development standards;**
- d. revocation of approval of an application for a proposed subdivision;**
- e. failure to enter into a servicing agreement, as outlined in the PDA;**
- f. applicant objects to producing any information requested by an approving authority, other than information required by *The Subdivision Regulations, 2014* to accompany the application; or**
- g. the terms and conditions of the servicing agreement.**

An applicant may subdivide land that will result in the creation of a surface parcel, or the rearrangement of the boundaries or limits of a surface parcel in accordance with the provisions and regulations set out in the municipality's OCP and ZB.

Only if a council has been declared an approving authority, pursuant to section 13 of the PDA, may the applicant appeal to the DAB for the above noted reasons. If the council has not been declared an approving authority, the applicant may appeal to the SMB.

## 3.2 No opportunity for appeal

### *No appeal may be granted by a DAB when:*

1. the proposed use is not permitted or the intensity of use if not permitted in the ZB [PDA, clause 219(2)(a)];
2. the proposed use is a discretionary use or a discretionary intensity of use that has not been approved by resolution of council [PDA, clause 219(2)(b)];
3. the proposed use is a prohibited use [PDA, clause 219(2)(c)];
4. council has refused to rezone the person's land [PDA, clause 219(5)(a)];
5. the appeal, if granted, would be incompatible with provisions of an OCP in force; or
6. council has rejected an application for approval of a discretionary use [PDA, clause 219(5)(b)].

## 3.3 Who can appeal

Under the PDA, the right of appeal is limited to certain circumstances. These circumstances determine who may be eligible to appeal.

### *Affected persons*

An affected person is someone who has been impacted by a decision of council when applying the ZB to development permit applications and enforcing the ZB on existing development, which could include a close neighbour or nearby resident. Affected persons may appeal to the board if:

- the ZB has been misapplied in the issuance of a development permit;
- a development permit has been wrongfully refused; or
- an enforcement order has been issued.

### *Applicant*

An applicant is the person applying to the development officer with the intention of subdividing and/or developing land, requesting a minor variance in development, removing holding zone provisions, or requesting a demolition permit. An applicant for a permit may appeal to the board if:

- a development permit has been wrongfully refused;
- a variance to the ZB standards can be justified by special circumstances;
- the development standards prescribed in a development permit for a discretionary use are above and beyond those necessary to achieve the objectives of the ZB;
- council has refused to amend a ZB to remove the holding symbol, or has failed to make a decision within the required time;
- council has refused, failed to make a decision within the prescribed period of time or has imposed terms and conditions on a development permit for application under an IDCB, in a direct control district, or Architectural Control District;
- a minor variance application has been revoked, refused or approved with terms and conditions;
- a decision made prescribing site plan control conditions or performance standards for specific industrial or commercial development;
- an application for structural repairs, alterations or additions to a non-conforming building is refused; or
- for the specific subdivision appeals mentioned above.

### ***Building owner or occupant***

This is the person who owns or occupies a specific building affected by a decision from council enforcing a ZB or Building Maintenance Bylaw. The owner or occupant may appeal to the board if:

- an enforcement order has been issued; or
- council has ordered the owner of a building to bring it up to standards specified in a Building Maintenance Bylaw.

### ***Agents***

An appellant (affected person, applicant, building owner or occupant) may be represented by an agent. However, the agent cannot be an appellant. An agent should have written authorization from the property owner(s) for that appeal to act on his or her behalf. Without authorization, the agent has no interest in the property and cannot appeal. Before contacting an agent, a property owner (appellant) is encouraged to contact the municipality. While legal or expert advice may not be necessary for a straightforward appeal, it may be advisable to seek the assistance of an agent to represent an appellant in a complex situation.

## 4.0 Appeals procedure

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### 4.1 Application procedures

#### *Timelines for an appeal*

Anyone applying for an appeal must send a written notice of appeal to the municipality and complete an application for appeal within:

- 15 days of receiving an order issued under *The Municipalities Act* [subsection 365(1)] or *The Northern Municipalities Act* [subsection 385(1)];
- 30 days of the issuance of a municipality's decision [PDA, subsection 219(4)];
- 30 days of a refusal or revocation of a minor variance [PDA, subsection 60(10)];
- 30 days of the failure of a council to make a decision;
- 30 days of receiving a permit with terms and conditions [PDA, subsection 58(1)];
- 30 days of receiving an order to repair or correct contraventions [PDA, subsection 219(4)]; or
- 30 days of receiving a request for development levies or servicing agreement fees [PDA, subsection 176(1)].

The board determines whether the application for appeal has been received from the appellant within the legislated appeal timeframe. There is no provision to extend the deadlines for a late notice of appeal. **Appendix A: Appeals Process Flow Chart** outlines the entire DAB process and timeframe.

#### *Submission of an appeal*

An appeal can be made by completing an application for appeal form (**Appendix B: Application for Appeal**) provided by the municipality, or by written request. Where no application form is available, the application should include:

- addresses and legal description of the subject property;
- contact information of the appellant (name, address);
- contact information of the property owner (if different from appellant);
- a description of the development;
- the reason(s) for the appeal;
- a summary of the supporting facts for each reason;
- any additional information relevant to the appeal;
- the expectations of the appeal; and
- any applicable fees.

The secretary reviews the application for appeal for compliance with the PDA. An application for appeal must include all the required information and fees to be considered complete. Where the fees have not been included, the secretary of the board shall communicate in writing to the appellant(s) advising that the fees must be received prior to the appeal deadline. If an appellant does not provide complete information the secretary may return the application to the applicant for completion before taking the application forward to the board.

#### *Rejection of an application*

The board may reject an appeal without holding a hearing if the appeal does not fit within the scenarios discussed in **Section 3.1 Opportunities for Appeal**, or if the appeal deadline has passed. The board may also deny an appeal if it determines that the person appealing is not entitled to appeal based on the provisions of the PDA and outlined in **Section 3.3 Who Can Appeal**. For example, only an applicant for the discretionary use may appeal the development standards attached to an approved discretionary use. The board will instruct the secretary to advise the

appellant if the appeal cannot be heard. Minutes must be taken at this meeting of the board. If the appellant challenges the ruling before the courts, the decision needs to be documented with reasons.

## 4.2 Pre-hearing procedures

### *The hearing date*

In accordance with subsection 222(1) of the PDA, the board must hold a public hearing on the appeal within 30 days of receiving the application for appeal, unless the board holds regularly scheduled meetings, in which case, a hearing may be set for the first or second meeting after the receipt of the application for appeal. The secretary will schedule all appeals with due consideration for the board members, the administration and the appellant(s).

Depending on the complexity of the appeals, the board may wish to hear anywhere from one to six appeals at a meeting.

### *Notice of hearing*

Subject to subsection 222(3) of the PDA, at least ten days prior to the hearing date, the board must give notice of the hearing (**Appendix C: Notice of Hearing**) by personal service, ordinary mail or registered mail to:

- the appellant;
- the owner (if the owner is not the appellant);
- the affected council;
- each assessed owner of adjacent property or property within a 75 metre radius of the subject property; and
- other owners of property required to be notified or considered affected according to the municipality's ZB.

Where there is no prescribed form for giving notice, the following information should be included:

- the date, time and location of the appeal;
- the legal description and address of the property subject to the appeal;
- the reason for the appeal;
- the parties and issues involved;
- the types of decisions that may be made;
- the potential consequences or outcomes;
- the time and place where materials will be available for public inspection; and
- the opportunity for the hearing to be recorded.

A party may request that a hearing or part of a hearing be recorded and a transcript be prepared. Where such a request is made to the secretary at least two full working days before the hearing, the chairperson shall issue a written order that the recording be made by an official court reporter at the cost of the requesting party.

There is no requirement for the general public to be notified of the hearing. However, the board could adopt procedures to provide for a wider distribution of notice if necessary.

According to subsection 222(4) of the PDA, a notice sent by ordinary mail is considered received three days from mailing within the municipality, or four days from mailing outside the municipality. If the notice is sent by registered mail, it is considered received five days from mailing.

Therefore, notices sent by ordinary mail within the municipality must be sent at least 13 days prior to the hearing date, notices outside the municipality must be sent at least 14 days prior to the hearing and registered mail must be sent at least 15 days prior to the hearing. Notices to appellants must include a copy of section 221 of the PDA, which

outlines the determination of the appeal, as well as an information sheet outlining their rights and the procedures of the hearing.

Once the notice of hearing has been sent out to all affected parties, the secretary, in accordance with subsection 222(5), shall file with the board a statutory declaration (**Appendix D: Statutory Declaration**) stating that the letter or envelope containing the notices was properly addressed and mailed with the postage paid and the date on which the notice was mailed.

### ***Failure to provide proper notice***

Failure to provide the mandatory notice may delay the hearing until proper notice can be given. Notice is considered incomplete when not properly provided to all persons entitled to be at a hearing. When it is discovered that proper notice has not been given, the board must immediately cancel the hearing and provide proper notice for a new hearing, either by cancelling an upcoming hearing or stopping a hearing already in progress. When the hearing recommences, it must start again from the beginning.

If a hearing was completed and it is discovered a person who should have received notice was excluded, the hearing is deemed null and void, and must be rescheduled and repeated. All parties to the appeal must be served with a notice of the new hearing date. If a new hearing does not occur, the results of the board's decision may be challenged on appeal to the SMB or Court of Appeal.

### ***Submission of materials***

Pursuant to section 223 of the PDA, at least five days prior to the hearing date, the appellant, council or anyone acting on behalf of council must file with the secretary all maps, plans, drawings, video, photos and written material he or she intends to submit in support of or related to the appeal.

The secretary will also accept written materials from neighbouring property owners any time prior to the hearing. Although the board is not obligated to accept or consider this material, if there is no objection from either the appellant or the respondent, the board may enter the material as evidence. If there is an objection by either party of the appeal, the board will consider the reasons for the objection before deciding whether or not to accept the information as evidence.

The secretary shall forward a copy of any additional material received from the appellant, the municipality or neighbouring property owners to the other party as soon after receipt as possible.

### ***Review of materials***

In accordance with subsection 223(3) of the PDA, the public must be given an opportunity to examine any materials relating to the appeal prior to the hearing. Materials are typically made available for review at the municipal office. Copies of the material may also be provided to the public. The board has the discretion to decide if they wish to provide any copies and at what cost. The cost charged for copies must not exceed the cost of delivering this service.

### ***Attendance***

Generally, it is expected that the appellant will attend the scheduled hearing. There may be some instances where the appellant does not wish to attend and provides the board with the authority to proceed in their absence. The secretary will be required to relay this message to the board prior to or at the hearing.

If an appellant is not present for the hearing, the board will typically move the appeal to the end of the agenda. If an appellant is still not in attendance at the end of the hearing, the board will make a decision on whether to proceed in the appellant's absence or to postpone the hearing. If a hearing has been adjourned and rescheduled to a later date, it is suggested the board proceed with the hearing on the rescheduled date whether the appellant is in attendance or not, unless they have been made aware of special circumstances.

Requests for postponements may be considered. Such requests are generally granted unless they are unreasonable or seen as an effort to stall the process. A request for a postponement received prior to the distribution of the notice of hearing is more easily accommodated. A request for postponement received after distribution of the notice of hearing requires a decision by the board for consideration of and distribution of a new notice of hearing.

Any person claiming to be affected by the appeal is allowed to attend and make a presentation. The board must hear any presentation. Hearings conducted by the DAB are public. Anyone may sit in the “gallery” and listen to the proceedings and those interested can purchase copies of decisions or other documents subject to fees as set by council. Hearings should also be held in a comfortable location with adequate seating for the board, appellants and the public.

## 4.3 Hearing procedures

### *Board conduct during the hearing*

Governing the DAB process are the principles of administrative law, duty of fairness and rules of evidence as described in **Section 1.0 Guiding Principles**. The board must give all parties a fair hearing and consider all submissions in an impartial manner. These principles should ensure equity and transparency during the hearing and decision-making stages.

Subject to subsection 224(1) of the PDA, DAB hearings are open to the public. The board must hear any person who is sent a notice of hearing, or any other person affected by the appeal who wishes to be heard in favour of or against the appeal.

The board should be mindful that their conduct during the hearing can influence the behaviour of the parties, their perception of the fairness of the proceedings as well as the way the hearing unfolds. Important items to consider:

- be punctual;
- wear appropriate attire for the formality of the process;
- be friendly, but firm with the parties at all times;
- avoid small-talk with the parties; this can give rise to the perception of bias;
- be mindful of body language; it must be perceived that the board is open to all arguments;
- give your full and undivided attention; and
- do not meet with one party in the absence of the other.

If a member of the board has a conflict of interest, he or she should leave the hearing. This member should not discuss the case with any other member. Information about pecuniary conflict of interests is obtained by visiting [www.saskatchewan.ca](http://www.saskatchewan.ca).

### *Jurisdictional challenges*

Occasionally, a DAB may be challenged regarding its jurisdiction. Challenges would be issued in a motion, outlining the reason and the resolution requested. A person may challenge a DAB’s jurisdiction for the following reasons:

- inadequate or insufficient notice of the hearing;
- failure to comply with any applicable legislation;
- failure to comply with any procedural order;
- alleged bias;
- the appeal is beyond the powers of a DAB to decide; or
- a party has applied to a court to stop the proceedings.

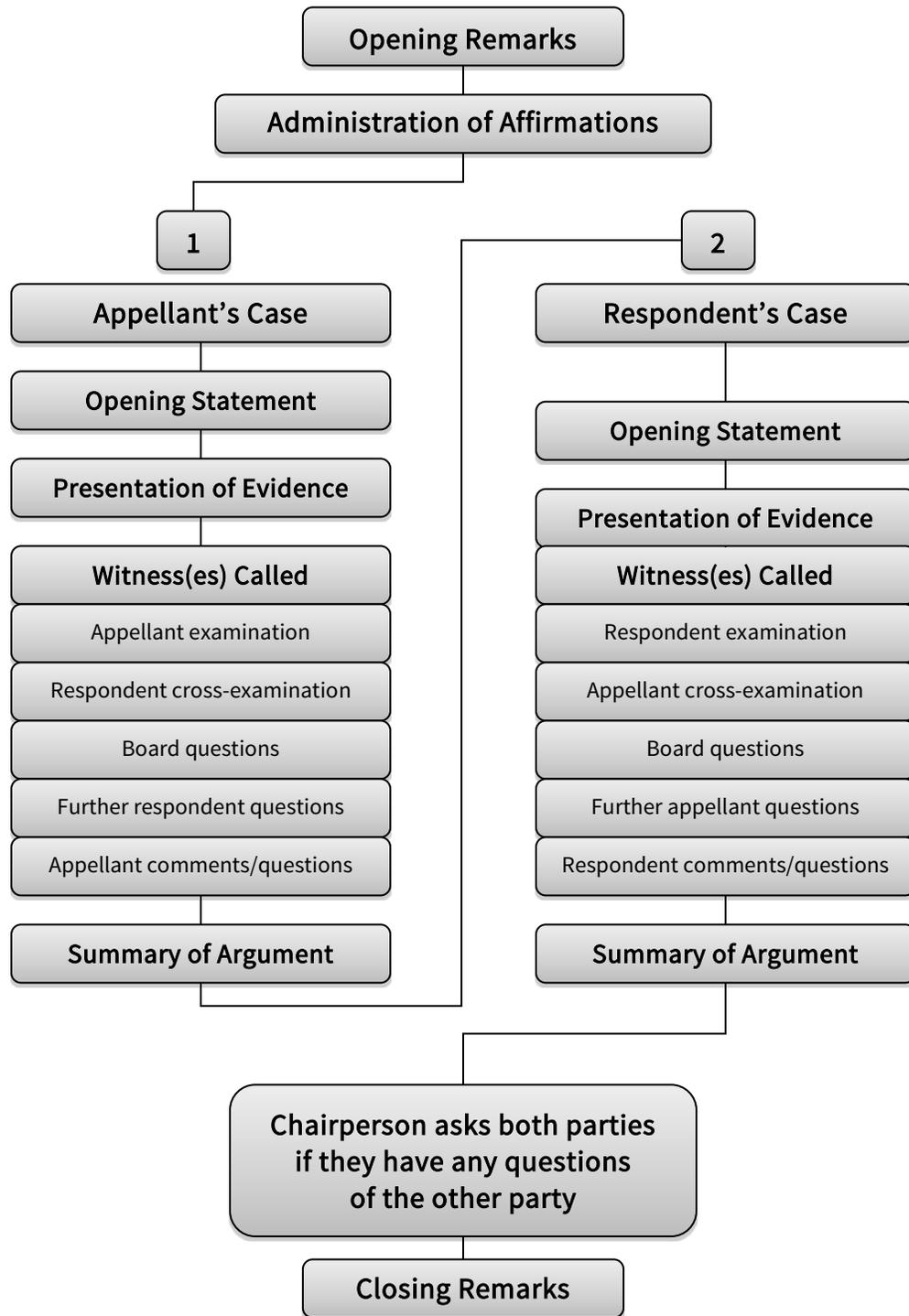
A motion presented to the board should be dealt with as quickly as possible. The board may approach the motion in one of two ways:

1. they may immediately excuse themselves, discuss the matter and draft a decision to be read into the record. A decision must include the reasoning of the board. Reference to a decision without reasons or with reasons to follow is not acceptable; and
2. a board may reserve its decision and proceed with the hearing. This permits full consideration of the motion and careful preparation of the decision. However, it may not be practical for a board to reserve its decision in all cases, especially where the issue of the motion is central to the appeal.

### ***Outline of the hearing***

A DAB hearing is a formal process. A hearing which is structured, orderly and fair provides participants with confidence in the process. The chairperson is in charge of the hearing, is responsible to maintain order and sets the tone for the hearing. The hearing begins when the chairperson calls the hearing to order and reads the opening statement (**Figure 1**).

Figure 1: DAB hearing procedure



### ***Opening remarks***

The opening statement is performed by the chairperson and should set a tone of formality at the beginning of the hearing. The chairperson can explain that some degree of formality is necessary to ensure the matter is heard in an orderly and coherent manner. A more formal setting ensures the parties receive a fair hearing.

The opening statement should be brief, familiarize and engage the participants in the process and include the following:

- introduce the chairperson and board members;
- introduce the subject of the hearing and the relief being sought;
- note the statutory authority under which the chairperson operates (subsection 216(2) & 224(2) of the PDA);
- set out the rules, purpose and procedures of the DAB;
- ask the municipality's representative to introduce him or herself and any other representatives of the municipality who are present;
- call the appellant forward to state their name for the record and introduce any other representatives present on their behalf; and
- review the documents received to date; if there are no objections from either party, the documents will be marked as official exhibits.

At the opening of the hearing, the chairperson should also ask if there are concerns respecting the adequacy of the notice period. This should be done as early as possible in the proceedings in case a problem with notice may necessitate rescheduling the hearing.

Setting out basic rules for the conduct of the hearing can provide the parties with guidance on what is expected of them. These rules may include:

- addressing the panel rather than other parties;
- minimizing interruptions by letting one person speak at a time, unless other parties have objections to raise with the panel;
- turning off cell phones and pagers;
- avoiding distracting conduct, such as talking or texting;
- using respectful language; and
- returning promptly from breaks.

### ***Administration of affirmations***

Following the introduction of all representatives and appellants, the chairperson will ask the appellant and respondent to take the affirmation [PDA, subsection 224(2)].

The procedure for affirming a party or witness is relatively simple. Have the person raise his or her right hand and ask the question:

*'Do you solemnly affirm that the evidence you are about to give in this matter is the whole truth and nothing but the truth?'*

Municipal representatives only need to affirm once, even if they are participating in more than one appeal.

### ***Opening statements – appellant/respondent***

Upon completion of the affirmation, the appellant presents his or her case beginning with an opening statement to introduce the board to their position. This sets the stage for their evidence and any witnesses they will call. Once the appellant has presented their evidence, questioned any witnesses and made their closing argument, the respondent will then proceed with his or her case, following the same procedures as the appellant and beginning with an opening statement.

A short discussion with the parties at the beginning of a hearing may be warranted if the issues are not clearly stated. A thorough understanding of the evidence and issues is important for the board members in preparing a decision.

### ***Presentation of evidence***

After the appellant or respondents opening statement, they may proceed with presenting their evidence in support of their position. Evidence may include:

- documents, such as contracts, maps, policies, regulations and written submissions;
- photographs, videotapes, audio recordings; or
- expert opinions in the form of a testimony or report.

All evidence presented at a hearing must be relevant to the appeal. All witnesses, questions and arguments must support or refute the reason for the appeal.

The DAB has the authority to decide the admissibility, relevance and weight of any evidence. Evidence is either admissible or inadmissible, there is no middle ground. Information becomes evidence (admissible) if it is:

- relevant – it relates to the appeal being heard;
- not excluded by some other principle of evidence; and
- submitted to the board through the proper channels.

Before a hearing, the board should clearly determine ‘what has to be proven’. This will assist in making decisions on what evidence is relevant and therefore admissible. As a general guide, evidence should be:

- adequate or sufficient to support the appeal;
- relevant to the grounds of the appeal;
- reliable; and
- admissible and not subject to any rules of exclusion.

The rules of exclusion eliminate relevant information on the basis of a competing and overriding interest which lawmakers have decided must be protected, even when the information might have been useful information. Evidence is deemed to be inadmissible if it:

- compromises the protection of confidential relationships;
- is illegally obtained;
- involves settlement discussions or off-the-record discussions;
- is a state secret;
- compromises a statutory privilege;
- is based on hearsay; or
- is an opinion.

While you can determine whether evidence is admissible or inadmissible, you also have a duty to be fair. The above rules were developed in part to ensure fairness. The more the board strays from these rules, the more likely you will run into fairness issues.

Opinion evidence is based on what an appellant or witness thinks, believes or infers from the facts in the appeal. It is not usually evidence the witness saw firsthand, and is generally considered unreliable and therefore inadmissible.

Only information that is admissible can be used to make a decision. Using inadmissible evidence as the basis of a decision may lead to a further appeal of the decision. The principles of evidence are sets of rules designed to ensure decision-makers base their decisions on relevant and reliable information. They:

- establish a sound factual basis for decisions;
- ensure a proper balance between the harm in accepting evidence and the value in doing so; and
- maintain a fair and effective process.

It is not unusual for the chairperson or board member to ask questions during the presentation of evidence. This is particularly true if parties to the hearing are unrepresented, inexperienced or do not fully understand what is expected of them.

### ***Expert witnesses***

Where an appellant, the municipality's representative or a property owner served with a notice wishes to call an expert witness, they will need to qualify the expert before the board will grant the person expert witness status. This qualification occurs at the beginning of that witness' testimony. The party calling the witness will ask the witness to testify about his or her area of expertise and then ask the board to accept the witness "as an expert in the field of expertise". The other party will then have an opportunity to cross-examine the witness on his or her expertise. Once that cross-examination is complete, the board asks if any objections remain; if there are none, the witness is accepted as an expert.

If objections are raised, the chairperson will outline the objections and provide an opportunity for both parties to give arguments. The board must then decide whether or not to accept the witness as an expert.

The expert witness will be questioned by the respective party by which they were called, and generally give opinion or factual evidence. If providing an opinion, the expert is given a hypothetical question stating all or some of the assumptions necessary for the expert to give the opinion. The answer to the hypothetical question can then be applied to the facts of the case. The board must give weight to the opinion evidence given by an expert witness within the scope of their expertise when applying the evidence to its decision-making. Factual evidence may also be given based on the expert's knowledge of the facts and their opinion on how they affect or influence the appeal.

Once the appellant or respondent has completed their examination, the chairperson will ask the other party if they have questions to cross-examine the witness. This party will ask the board to clarify any items with the witness. After both parties have had an opportunity to ask the witness questions, the board will then take a turn asking questions or clarifying any issues. When the board has completed asking questions the chairperson will ask both parties if they have any remaining questions. If there are no additional questions, the party that called the witness will then continue to present their evidence, call additional witnesses or move on to the summary of their argument.

Development Appeal Boards do not typically require expert opinion. There may be situations, when there is evidence beyond the common knowledge of the board, that the introduction of expert evidence is beneficial.

### ***Summary of arguments***

When all evidence has been presented, that party will provide the DAB with a summary of their evidence. The appellant presents a summary after their case, followed by the respondent providing a summary after their case. The appellant may only present a rebuttal summary if the respondent has raised an issue not previously mentioned by the appellant.

Following the summary of arguments, the chairperson will ask both parties if they have any final questions of the other party. If both parties have no questions, the chairperson will provide some closing remarks.

### ***Closing remarks***

Before concluding the hearing, the chairperson should thank all parties for their participation and inform them of the next steps. If no decision is given at the hearing, the chairperson should inform participants of when and how they will be informed of the board's written decision.

### ***Adjournment***

The board may adjourn any hearing it considers necessary. If the hearing is to be reconvened later, the participants at the hearing must be advised of the new date and time.

An adjournment may be needed to obtain additional information or consult with other parties as a result of submissions made at the hearing. If additional information becomes available, it should only be considered when the hearing reconvenes. Evidence should not be accepted or considered after the conclusion of the hearing.

## **4.4 Post-hearing procedures**

After the hearing, the most important role of the board begins – making a decision on the appeal and writing the reasons for the decision. Conducting a fair hearing forms the framework for the completion of this critical task. Decision-making is a process that begins at the outset of the hearing with clarification of the issues. It continues through the hearing, with fact finding and assessing evidence, and is not completed until the board has determined and applied the relevant rules to the facts of the case.

Decisions should be written for the appropriate audience, as concise as possible while providing sufficient information to explain the result and be well-organized and easy to understand.

As soon as possible after the hearing, the board should meet to outline the facts, issues, statutory considerations and any precedents. It is important at this stage in the decision-making process to record all ideas. The structure and organization of the formal decision can come later.

### ***Rules***

In making its decision, the board must apply the Duty of Fairness and the board:

- is bound by any OCP the municipality has adopted;
- must ensure that its decisions are consistent with the uses, intensity and density of development in the municipality's ZB; and
- must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest.

Based on the above, the board's decision may confirm or revoke the decision made by the municipality.

As mentioned earlier, the DAB also acts as a variance board. As a variance board the DAB may vary the approval, decision, any development standard or conditions, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in the opinion, the action would not:

- grant to the applicant a special privilege over neighbouring properties in the same zoning district;
- amount to a relaxation that would defeat the intent of the ZB; or
- negatively affect the neighbouring properties.

A decision or variance must pass this set of criteria in order for it to be granted.

Pursuant to subsection 225(3) of the PDA, a decision of the majority of the members of the board present and constituting a quorum is a decision of the board, but in the case of a tie vote, the vote is deemed to be a negative vote.

### ***Writing a decision***

To help in writing a decision, the board should summarize the facts and clearly state the issue. When summarizing the facts list:

- the arguments, materials and presentation according to the appellant;
- the arguments, materials and presentation according to the respondent; and
- the facts found to be relevant by the DAB.

Listing these items according to each party provides evidence that the DAB was listening to each party and noting the relevant information. Evidence not relevant to the appeal may be noted, but not considered in the decision.

Subsection 225(1) of the PDA requires the board to provide a decision in writing, together with the reasons, within 30 days of the conclusion of the hearing. A copy of this notice of decision is forwarded by the secretary by personal service or registered mail to the appellant, municipality, Director of Community Planning and all persons who made representations at the public hearing within ten days of the date of the decision [PDA, subsection 225(5)]. The decision will be accompanied by information regarding the right of further appeal to the SMB.

To ensure clear communication on the hearing, the board should finalize its decision as soon as possible after the hearing is completed.

A single member may volunteer or be tasked with writing a decision, or this may be divided between members of the board. It is generally more efficient for one person to draft straightforward decisions dealing with simple issues. If a decision is likely to be lengthy and deal with numerous complex matters, the drafting process can be split up. If more than one person is writing the decision, it is important to ensure the final version reads as a cohesive document.

The board cannot delegate its writing and decision making to a person not appointed as a DAB member, and who did not witness the entire appeal.

Once a decision is drafted, all board members should receive a copy for their comments. Following agreement on a final draft, the secretary will:

- review notes, written exhibits and motions to ensure all significant information is included;
- review the decision for clerical, spelling or grammatical errors;
- comment on the presentation and appropriateness of and need for any additional information; and
- check the accuracy of legal citations.

When the secretary has completed this review, the decision is returned to the board to consider and approve the proposed revisions and make any additional corrections. When the decision is final, subsection 225(4) of the PDA requires the decision to be signed by the chairperson or in the chairperson's absence, any other board member and the secretary.

### ***Drafting tips***

- Keep decisions short and simple.
- Decide only what is necessary.
- If granting an appeal, be precise as to what development is being allowed.
- Avoid criticism, sarcasm and humour.
- Avoid sensitive facts.
- Use everyday words.
- Ensure consistent language and terminology.

- Use positive and assertive language.
- Avoid repetition and unnecessary formality.
- Organize your text.
- Make the document easy to read.

### ***Document organization***

A sample Notice of Decision has been provided in **Appendix E: Notice of Decision**. A well-organized document should include the following:

#### ***1. Introduction***

The introduction is an opportunity to provide a brief overview of the case. This includes identifying who the parties are, who was in attendance, what the dispute involves, what relief the parties are seeking and the rules governing the decision-making.

#### ***2. Issues***

The issues are the questions that need to be answered in the case. Setting out the issues at the beginning of the decision provides some direction for the end result. Generally, all issues raised by the parties should be included. Listing the issues raised will also let the parties know they have been heard and the board has not forgotten anything.

#### ***3. Facts***

The facts are the findings made based on the evidence given by the parties. All facts should be based on relevant evidence that support the facts. If evidence given is not contradicted and there is no reason to question its reliability, it can be accepted as relevant.

Facts should be organized to make sense to the reader. Each issue should have its own section of facts. As a general rule, only relevant facts should be included. The exception to the rule is where irrelevant facts were relied upon heavily by one of the parties. In this case, they should be mentioned briefly and noted that they are not relevant. If they are not included, it may give the party the impression that the board missed those facts and the decision might have had a different result if those facts had been considered.

Accuracy is a key to writing facts. Confidence in the decision may be lost if facts are incorrectly stated. Significant prejudice can also be caused if these inaccuracies cannot be corrected on further appeal. The ability to correct facts after a decision is made is very limited; therefore, the board must be careful to get it right the first time.

Paraphrasing should be used instead of lengthy quotations. It may also be helpful to define any technical or complex terms to facilitate general understanding. Where contradictory evidence occurs, it should be described in full, followed by the evidence the board preferred and why.

#### ***4. Arguments of the parties***

Setting out the submissions or arguments of the parties is an effective way to lead into the analysis section. Summarize each party's argument(s) in one or two paragraphs. All arguments must be recorded to validate the parties and recognize that the arguments were brought forward. Any meritless arguments can be dismissed in the analysis section with a short statement on why they were not valid for the decision.

#### ***5. Analysis***

The analysis section of the decision shows the board's line of reasoning. It typically includes a review of the legal framework and the application of the bylaw to the facts. The reader should not read the analysis section and then be surprised by the conclusion. The conclusion should be apparent from the line of reasoning presented in the analysis.

## ***6. Conclusion***

The conclusion should be concise and give the reader some incentive to read the entire presentation of facts and arguments. A clear and concise statement of the decision, in which it is clear what actions are to be taken by the appellant and the municipality, shall also be provided. The reader should be able to clearly understand why the board came to its decision. In longer, more complex decisions, this may also include a brief summary of the analysis.

## ***7. Rights to further appeal***

It should be noted in the decision that, if the decision is not appealed, it comes into effect after the expiry of 30 days from the date of the decision [PDA, subsection 225(6)]. It should also be noted that according to subsection 226(1) of the PDA, an appeal against the decision can be made to the SMB within 30 days after the date the decision is received by the parties.

## 5.0 Further rights of appeal

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### 5.1 Saskatchewan Municipal Board

The decision of the DAB may be appealed to the SMB, whose mandate is to hear and determine appeals at the provincial level arising from decisions of DABs. If a party to the appeal is not satisfied with the decision of the DAB, it may appeal the decision to the SMB.

The following persons have the right of such an appeal:

- the Ministry of Government Relations;
- municipal council;
- appellant; or
- any affected person.

The appeal must be made to the Planning Appeals Committee in writing within 30 days of receiving a copy of the DAB decision. This can be done in person or by ordinary or registered mail and must include a \$50 filing fee payable to the Minister of Finance.

A copy of the appeal must also be sent to the DAB. Pursuant to section 227 of the PDA, within 10 days of receiving the notice of appeal, the secretary of the DAB must send a certified copy of the board's records pertaining to the case to the secretary of the Planning Appeals Committee.

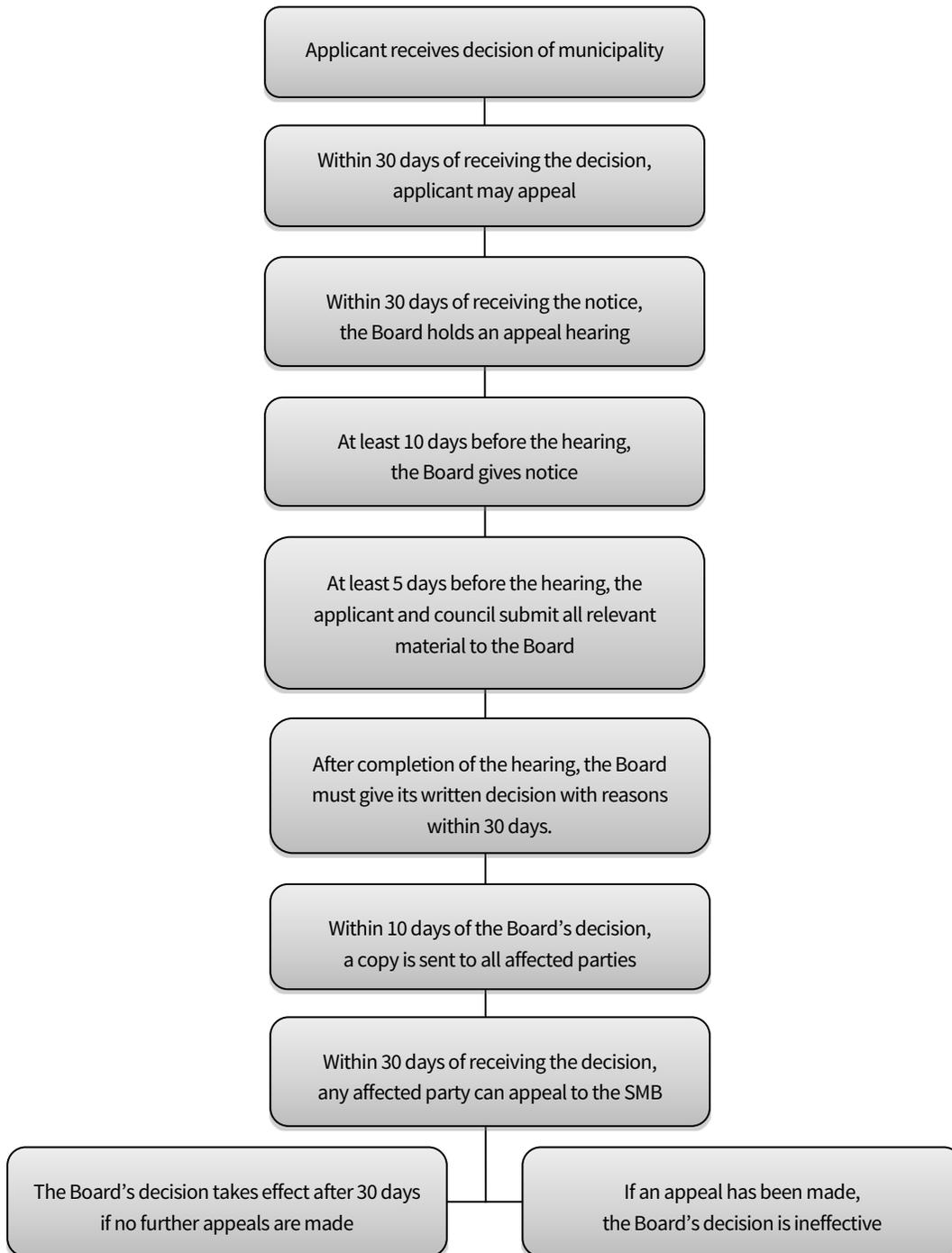
### 5.2 Court of Appeal

Any person affected by an order, decision or determination of the SMB may appeal to the Court of Appeal against the order, decision or determination on a questions of law or a question concerning the jurisdiction of the board within 30 days of an order, decision or determination being issued.

This Court is the highest appeals court in Saskatchewan. The role of the Court of Appeal is to review trials conducted in Queen's Bench Provincial Court and quasi-judicial commissions to determine if the judge, adjudicator or board made errors of law or jurisdiction. The Court may dismiss an appeal or allow an appeal and change the order of the lower tribunal.

While section 33.1 of *The Municipal Board Act* (MBA) provides the authority for an SMB decision to go to the Court of Appeal, leave to appeal to the Court must first be granted by a single Court of Appeal judge. An appellant must make an application under section 33.2 of the MBA for leave to appeal. If a judge decides that the application has merit, the matter goes to a panel of judges for determination. If no merit is found, the application for leave is denied and the matter is at an end. Like the SMB, the Court of Appeal has an appellate role, i.e. it reviews the SMB's decision for error rather than re-hearing the matter.

## Appendix A: Appeals process flow chart



# Appendix B: Application for appeal

(Municipality) Development Appeals Board

**1. Applicant Information**  
Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Municipality: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
Phone Number: Home ( ) \_\_\_\_\_ Work: ( ) \_\_\_\_\_  
Cell: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

**2. Subject Property**  
Civic Address: \_\_\_\_\_  
\_\_\_\_\_ ¼ Section \_\_\_\_\_ Twp. \_\_\_\_\_ Range \_\_\_\_\_ West of \_\_\_\_\_ Meridian  
Lot(s) \_\_\_\_\_ Block(s) \_\_\_\_\_ Plan/Parcel No. \_\_\_\_\_

**3. Applicants Interest in Property**

<input type="checkbox"/> Registered Owner	<input type="checkbox"/> Agent of Owner
<input type="checkbox"/> Tenant	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Neighbour	

**4. Property owner** (if different from Applicant)  
Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Municipality: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
Phone Number: Home ( ) \_\_\_\_\_ Work: ( ) \_\_\_\_\_  
Cell: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

**5. Description of proposed development** (be specific, attach copies of application and decision)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**6. Reason For Appeal**

<input type="checkbox"/> Misapplication of zoning bylaw in issuance of permit	<input type="checkbox"/> Enforcement order has been issued
<input type="checkbox"/> Development permit wrongfully refused	<input type="checkbox"/> Permit for architectural or demolition control district refused or decision not made within 30 days
<input type="checkbox"/> Request variance to specific development standards	<input type="checkbox"/> Site plan control conditions on development
<input type="checkbox"/> Development standards for DU are excessive	<input type="checkbox"/> Alterations to non-conforming building refused
<input type="checkbox"/> Failure to remove holding symbol	<input type="checkbox"/> Failure to enter development / servicing
<input type="checkbox"/> IDCB; refused or development standards placed upon agreement	

<input type="checkbox"/> DCD decision refused or not made within 60 days	<input type="checkbox"/> Building maintenance order
<input type="checkbox"/> Minor variance revoked, refused or conditions	<input type="checkbox"/> Subdivision appeal

**7. Summary of supporting facts** (explain in detail the grounds the appeal is being made, identify sections of the official community plan and zoning bylaw that apply to this appeal, etc.)

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**8. Any additional information** (provide any additional information that may support the appeal)

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**9. Expectation of the appeal** (indicate action requested of the Board)

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**10. Other requirements**

1. This application must include a basic fee of \$XX (up to \$300), to help cover expenses relating to the appeal.
2. An agent must have written authorization if they are to act on the applicants' behalf at the appeal hearing.
3. Applicants must submit all evidence and materials in support of the related appeal to the secretary at least five days prior to the hearing. All evidence and support material provided to the secretary less than five days before the hearing will be dismissed by the board.
4. Until the hearing is complete and a decision has been issued, no binding contracts for the land should be made and no construction or site preparation should be started.

**11. Authorization**

I hereby swear that the information given on this form is full and complete and that all statements contained within this application are true.

_____ Signature	_____ Date
_____ Name	_____ Address

## Appendix C: Notice of hearing

(Municipality) Development Appeals Board

<b>DATE:</b>	<b>Tuesday January 21, 20XX</b>	<b>TIME: 2:30 p.m.</b>
<b>PLACE:</b>	<b>RM of Scott No. 98 Council Chambers, Box 210 YELLOW GRASS SK S0G 5J0</b>	
<b>RE:</b>	<b>Refusal to Issue Development Permit Proposed Multiple Family Residential Building Parcel B, NE ¼ 3-23-10 W2M (CR Zoning District) 99999999 Sask. Ltd. (Appeal No. 1-20XX)</b>	

NOTICE IS HEREBY GIVEN that 99999999 Sask. Ltd. has filed an appeal under clause 219(1)(b) of *The Planning and Development Act, 2007*, in relation to the RM of Scott's refusal to issue a Development Permit to construct a multiple family residential building on Parcel B, NE ¼ 3-23-10 W2M, which is located in the CR Zoning District.

**The Appellant is seeking the Board's approval of the Development Permit based on a misapplication of the Zoning Bylaw.**

The Development Appeals Board may confirm, revoke or vary the decision made by the municipality. The Board's decision does not take effect until 30 days from the date on which the decision is made. The Board is required by law to provide a copy of this Notice to Council, the appellant, the owner of land if different from the appellant, and each assessed owner of property within 75 metres of the boundary of the subject property. Anyone wishing to provide comments either for or against this appeal can do so by writing to the **Secretary, Development Appeals Board, RM of Scott No. 98, Box 210 YELLOW GRASS SK, S0G 5J0**, or making a presentation at the hearing. Anyone wishing to obtain further information or view the file in this matter may do so at the RM of Scott No. 98 office between 8:00 a.m. and 4:00 p.m. Monday to Friday excluding statutory holidays. Copies are available at cost.

Both parties may request the hearing be recorded and that a transcript prepared at the cost of the requesting party at least two full working days before hearing.

Dated at YELLOW GRASS, SASKATCHEWAN, this 7<sup>th</sup> day of January 20XX.

\_\_\_\_\_  
Secretary, Development Appeals Board

## Appendix D: Statutory declaration

### CANADA

#### Province of Saskatchewan

In the matter of *The Planning and Development Act, 2007*  
and a Development Appeals Board hearing in the Rural  
Municipality of Scott No. 98

I, Joe Smith, of the Rural Municipality of Scott No. 98, Saskatchewan, do solemnly swear:

1. That I am the Secretary, Development Appeals Board of the RM of Scott No. 98, Saskatchewan and as such, have personal knowledge of the matters herein.
2. That attached hereto as Exhibit "A" is a copy of the Notice of Hearing for Appeal No. 1-20XX.
3. That attached hereto as Exhibit "B" is a list of all affected person(s) who received a copy of the Notice of Hearing.
4. That the Notice of Hearing was properly addressed to all affected person(s) and mailed with the postage paid on January 7, 20XX.

And I make this solemn declaration conscientiously believing it to be true knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the Town of  
Yellow Grass, in the Province of  
Saskatchewan, this 8<sup>th</sup> day of January, 20XX.

\_\_\_\_\_  
A Commissioner of Oaths in and for  
the Province of Saskatchewan.

\_\_\_\_\_  
Secretary, Development Appeals Board

My Commission expires \_\_\_\_\_

# Appendix E: Notice of decision

(Municipality) Development Appeals Board

## 1. Introduction

IN THE MATTER OF AN APPEAL under section 219 of *The Planning and Development Act, 2007*, to the (municipality) Development Appeals Board (DAB) by:

Appellant: 99999999 Sask. Ltd.  
Respondent: Rural Municipality of Scott No. 98

Appeal Number: 1-20XX  
Date of Hearing: Tuesday January 21, 20XX  
Time: 2:30 p.m.  
Place: RM of Scott No. 98 Council Chambers, Box 210 YELLOW GRASS SK S0G 5J0

Reason: Refusal to Issue Development Permit (PDA, s. 291(1)(b))  
Proposed Multiple Family Residential Building  
Parcel B, NE ¼ 3-23-10-W2M (CR Zoning District)

Relief Sought: **The Appellant is seeking the Board’s approval of the Development Permit on a misapplication of the Zoning Bylaw.**

In Attendance: Board: \_\_\_\_\_  
Appellant: \_\_\_\_\_  
Respondent: \_\_\_\_\_

Rules: The DAB is guided by principles expressed in section 221 of *The Planning and Development Act, 2007*, which reads as follows:

**“Determining an appeal**

221 In determining an appeal, the board hearing the appeal:

- (a) is bound by any official community plan in effect;
- (b) must ensure that its decisions conform to the uses of land,
- (c) intensity of use and density of development in the zoning bylaw;
- (d) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and
- (e) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or conditions, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in the opinion, the action would not:

- (i) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;
- (ii) amount to a relaxation so as to defeat the intent of the zoning bylaw; or
- (iii) injuriously affect the neighbouring properties.”

**2. Issues**

(identify and list all issues that are raised by both the appellant and the respondent)

Issue 1: \_\_\_\_\_

Issue 2: \_\_\_\_\_

Issue 3: \_\_\_\_\_

**3. Facts**

(all facts should be based on relevant evidence; facts should be organized under each issue)

Issue 1: \_\_\_\_\_

Facts: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Issue 2: \_\_\_\_\_

Facts: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Issue 3: \_\_\_\_\_

Facts: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The following evidence was considered to be irrelevant and was not considered by the Board when making a decision:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### 4. Arguments

(summarize each party's argument in one or two paragraphs)

Appellant Argument:

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Respondent Argument:

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#### 5. Analysis

Review of Legal Framework:

(list and describe any policies from *The Planning and Development Act, 2007*, *The Subdivision Regulations, 2014*, *The Municipalities Act* and *The Northern Municipalities Act, 2010* that relate to this Development Appeals Board hearing; e.g. policies giving the Board its authority and policies related to development)

*The Planning and Development Act, 2007*

Subsection 214(3) "A council shall appoint a board within 90 days after the zoning bylaw comes into effect."

Clause 219(1)(b) "In addition to any other right of appeal provided by this or any other Act, a person affected may appeal to the board if there is a refusal to issue a development permit because it would contravene the zoning bylaw."

Section 221 "In determining an appeal, the board hearing the appeal:

- (a) is bound by any official community plan in effect;
- (b) must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;
- (c) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and
- (d) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:
  - (i) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;
  - (ii) amount to a relaxation so as to defeat the intent of the zoning bylaw; or
  - (iii) injuriously affect the neighbouring properties."

Subsection 225(1) "The board shall render its decision in writing, together with reasons for the decision within 30 days after the conclusion of the hearing."

Subsection 225(6) "Subject to section 226, a decision of the board does not take effect until the expiration of 30 days from the date on which the decision is made."

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Application of Bylaws to Facts:  
(apply the goals, objectives and policies of the Official Community Plan and Zoning Bylaw to all facts)

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**6. Conclusion**

After consideration of all the presentations at the hearing, and review of the material submitted, the board, by majority, votes that the appeal be \_\_\_\_\_ (granted, refused).

**The Rural Municipality of Scott No. 98 has \_\_\_\_\_ (insert decision here),** and that the \_\_\_\_\_ (insert whether a development permit is to be issued or if original decision stands).

Reasons:

(based on the analysis of the facts provide the reasons for the decision)

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## 7. Rights to Further Appeal

The Minister, the municipal council, the appellant or any other person may, within 30 days after the receipt of a copy of the Notice of Decision, may appeal a decision of the board, by written notice to:

**Planning Appeals Committee  
Saskatchewan Municipal Board  
480 - 2151 Scarth Street  
REGINA SK S4P 2H8**

If no such appeal is made, this decision becomes effective after \_\_\_\_\_ (insert 30<sup>th</sup> day after decision).

Dated this \_\_\_\_ day of \_\_\_\_\_ 20XX

\_\_\_\_\_  
Chairperson, Development Appeals Board

## Appendix F: Enforcement order

TO:

FROM:

IN ACCORDANCE with Bylaw No. \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ and section 241 and section 242 of *The Planning and Development Act, 2007*.

NOTICE IS HEREBY GIVEN that development [INSERT LEGAL LAND LOCATION] on Lot \_\_\_\_\_, Block \_\_\_\_\_, Parcel \_\_\_\_\_, Plan \_\_\_\_\_ in the \_\_\_\_\_ ¼ Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, West of the \_\_\_\_\_ Meridian is to [DISCONTINUE/BE ALTERED/RESTORE THE LAND/COMPLETE ALL WORK] immediately. [INSERT REASON]

PART \_\_\_\_\_, Section \_\_\_\_\_, of Bylaw No. \_\_\_\_\_ of this municipality states that [INSERT SECTION THAT DEVELOPMENT MUST COMPLY WITH].

PART \_\_\_\_\_, Section \_\_\_\_\_, of Bylaw No. \_\_\_\_\_ of this municipality states that [INSERT SECTION THAT DEVELOPMENT MUST COMPLY WITH].

PART \_\_\_\_\_, Section \_\_\_\_\_, of Bylaw No. \_\_\_\_\_ of this municipality states that [INSERT SECTION THAT DEVELOPMENT MUST COMPLY WITH].

Under *The Planning and Development Act, 2007* an appeal can be made to the Development Appeals Board with respect to this order. You have until \_\_\_\_\_, to comply with Part \_\_\_\_\_, Section \_\_\_\_\_ of our Zoning Bylaw or to appeal this order. Unless steps are taken by the date indicated, further action may be taken and penalties may apply.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Administrator

Note: An Order must be sent by registered mail or delivered personally to be effective. See section 241 of *The Planning and Development Act, 2007*.

The Compliance period can be less than 30 days, but since there is a maximum 30 day appeal period allowed by section 219, we suggest strongly that the compliance period also be 30 days.

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