Development Appeals Board Guide

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Saskatchewan

How to Apply the Development Appeals Board Guide

The Development Appeals Board Guide is a tool to assist municipal elected and administration officials, development permit applicants, professional planners and development appeal board members throughout the development appeals process.

This guide is intended to provide direction and information to local municipalities, planning districts and appellants on:

- The role and principles of a development appeals board;
- How to establish a development appeals board;
- Opportunities for appeal under *The Planning and Development Act, 2007*;
- Suggested procedural practices; and
- Templates to assist development appeals boards through the appeal application, hearing and decision-making process.

Unless specifically stated otherwise in this guide, all legislative references are to *The Planning and Development Act, 2007* (Act). This guide is not meant to replace legislation.

Unless specifically stated otherwise in this guide, all information applicable to a development appeals board can also be applied to a district development appeals board. Clarity on the difference between local and district development appeals boards can be found in section 2.1.

Please contact the Ministry of Government Relations' Community Planning branch with any questions about the Act, appeals or this guide.

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Introduction

Under *The Planning and Development Act, 2007* (Act), any municipality or district with an approved zoning bylaw must establish a development appeals board within 90 days after the zoning bylaw comes into effect.

A development appeals board enhances local and regional planning and development by providing an opportunity for independent review of planning decisions. A development appeals board is a quasi-judicial board, appointed by council which consists of a minimum of three members responsible for hearing appeals and making decisions in a formal manner, similar to a court. A development appeals board 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 a development appeals board is to hear appeals where an appellant disagrees with certain development-related decisions made by a municipality. In its role as an adjudicator, a development appeals board is expected to be fair and impartial. Examples of appeals include requests for minor variances to the standards of the zoning bylaw, misapplication of the zoning bylaw, and wrongful refusal of a development permit.

In fulfilling its role, the development appeals board has responsibility to ensure:

- Proper procedures are followed in decision-making;
- Discretionary municipal planning powers are exercised fairly and based on legally adopted official community plan policies and zoning bylaw controls;
- Planning decisions made in error are corrected within a reasonable timeframe;
- Consideration of special or unusual circumstances; and
- Granting of variance to a zoning bylaw is consistent with the objectives of the zoning bylaw and with the official community plan policies.

Guiding Principles

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 development appeals board is expected to be fair and impartial in the application of official community plan policies, the rules of a zoning bylaw, and maintenance standards under *The Northern Municipalities Act*. A development appeals board is intended to provide a faster, less formal, flexible and more specialized decision-making process than the court system. Development appeals boards are based on the following principles:

- Administrative law;
- Duty of fairness; and
- Rules of evidence.

Administrative Law

Administrative law is an area of public law dealing with the relationships between government and the people it serves. The purpose of administrative law is to ensure that the activities of government are administered in a fair, legal, and reasonable manner. Officials must have effective remedies to maintain the acceptance of public administration when residents are affected by allegedly unlawful acts of government. Boards, such as development appeals boards, are designed to protect the rights of residents and to provide flexibility to achieve fairness in unique cases.

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 development appeals board is responsible to ensure there is no perception of bias in its conduct during a hearing. A board 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;
- Ensuring decision-makers are unbiased, free from conflict of interest, 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 allowing each party to ask questions of other parties; 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 would invalidate a board's decision.

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

Rules of Evidence

Rules of evidence were developed in part to ensure fairness. The more a development appeals board strays from basic principles of evidence, the more likely the development appeals board is to 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*.

* Note: A development appeals board is a tribunal, not a court of law. Development appeals boards are not expected to have legal expertise and are designed to be a cheaper, more efficient substitute for a court of law. Therefore, it has wide latitude to accept evidence, including evidence which, after deliberation by a judge, may not be admissible in court. This approach ensures that all points and information relevant to the hearing can be considered by a board in a timely manner.

Establishing a Development Appeals Board

The Act provides a right of appeal on land development decisions made by municipalities. A development appeals board is responsible to ensure fair application of municipal policies and rules by a body wholly separate from council. This chapter provides guidance on the establishment, membership and operation of a development appeals board.

Development Appeals Board vs. District Development Appeals Board

According to subsection 214(2) of the Act, any municipality with a zoning bylaw is required to have a development appeals board to resolve disagreements. Municipalities have two general options for how they can meet this requirement:

1. Development appeals board; or
2. District development appeals board.

District Development Appeals Board Advantages

There are several advantages to a district development appeals board, including:

- Capacity and knowledge

  Like many things, the development appeals process becomes smoother for those involved the more often they do it. However, local development appeal boards can go several months or even years between appeals. This can make it challenging to retain the know-how to efficiently function. Representing multiple municipalities, district development appeals boards operate more frequently and therefore have more opportunities to establish capacity and knowledge about the appeal process.

- Board member eligibility

  Unlike local development appeals boards, members of council are eligible to be members of district development appeals boards (see section 2.2 below for more information on eligibility of board members).

- Cost efficiency

  District development appeals boards can pool their resources on things like meeting space, per diems and training which offers the potential for cost efficiencies.

- Fairness and impartiality

  Development appeals can significantly affect a number of people in the community. A district development appeals board may be perceived as more fair and less biased than a local development appeals board where there is greater possibility of personal connections between the board and the parties involved.

A district development appeals board is an appeals board jointly established by two of more municipalities to hear appeals from all member municipalities who comprise it.

Key differences between district development appeals boards and development appeals boards:

- District development appeals boards must be comprised of 3 members.
- District development appeals boards can include municipal councilors, development appeals boards cannot.
- District development appeals boards most often provide a wider spectrum of expertise than Development Appeals Boards.
- District development appeals boards are less likely to be local.
- No council may hold a majority.

Key similarities between district development appeals boards and development appeals boards:

- Both are appointed by Council.
- Municipal employees cannot sit on either district development appeals boards or development appeals boards of any municipality in which they are affiliated.
- Both satisfy provincial requirements for an appeal body.

Establishing a District Development Appeals Board

To establish a district development appeals board, two or more municipalities enter into an agreement – see Appendix A for Sample District Development Appeals Board Agreement. Typically, the communities are neighbours but it is not required that they border each other. The agreement would cover all matters related to the board's organization (as outlined in section 216 of the Act and in this chapter) as well as joint matters such as cost-sharing. Except where noted, all requirements and best practices respecting development appeals boards outlined in this guide also apply to a district development appeals board.

Municipalities wishing to know more about establishing a district development appeals board are encouraged to contact the Community Planning branch for more information.

Membership

A development appeals board is appointed by resolution of a municipal council. Pursuant to subsection 214(1) of the Act, council shall appoint a minimum of three members to the development appeals board. Some municipalities have appointed for-profit, third parties to serve as their development appeals board. Though this is allowable, having a board or being a member of a district development appeals board is the most cost-effective manner for municipalities to have a development appeals board. Additional information on appointing members can be found in the terms and vacancies section beginning on the next page.

Though three members on a board is permissible, having more than this has a number of advantages. For example, having more members ensures a development appeals board is better able to handle the transfer of knowledge to new members as well as a number of issues that could threaten the ability of the board to establish quorum for a board hearing including scheduling conflicts, illness, conflicts of interest that may prevent board members from hearing a case and board vacancies.

Under subsection 215(1) of the Act, the following people are **NOT** eligible to be appointed or continue as members of a development appeals board:

- Members of the municipality's council;
- Municipal employees; and
- Members or employees of a planning district (district planning commission, district planning authority or regional planning authority) of which the municipality is a member.

District Development Appeals Board Membership

Notwithstanding the above restrictions on a local development appeals board, subsection 215(2) of the Act permits a district development appeals board to contain members of council from a member municipality provided the following two conditions are met:

1. Any members of council from a single municipality cannot form the majority of members of a district development appeals board [subsection 215(2)]; and
2. Council members cannot hear an appeal respecting a decision made by the member's municipality [subsection 215(3)].

Ideally, board members will have some experience related to land use, development, or community planning. Board members may include former municipal administrators, municipal councillors, community planners, surveyors, developers, engineers, or architects. 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 development appeals board members:

- Demonstrated integrity.
- Respected by members of the community.
- A keen interest in and knowledge of the community.
- Good analytical, critical thinking, and reasoning skills.
- An appreciation of the interests of property owners, developers, and the public.
- Knowledge of local development process.
- Willingness to volunteer their time.

Terms and Vacancies

Council's resolution, according to subsection 216(1) of the Act, will include the term of office for each board member and the way 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 once. Vacancies may be filled by applications from interested or experienced people.

Remuneration and Expenses

Under clause 216(1)(c) of the Act, council will also determine any remuneration and expenses payable to each board member. Council may choose to establish rates for such things as attendance at hearings and meetings, viewing properties, or each decision written by a board member.

The cost of appointing a for-profit, third party to serve as the development appeals board shall be at the expense of the municipality.

Subsection 216(4) of the Act, and subject to the approval of council, the board may appoint legal counsel or other consultants to assist with some board responsibilities. A recommendation from the chair should be ratified by the board. All decisions regarding incurred costs are subject to council's approval unless those matters have been previously dealt with. Council is responsible for all costs incurred by the board, consultants or otherwise.

The chair may recommend legal counsel or other consultants and have the recommendation ratified by the board members.

Officers

Chair

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

- Knowledge of relevant processes and procedures;
- Ability to control proceedings and keep hearings and meetings on track; and
- Ability to effectively manage potentially difficult participants and deal with challenges from parties and their representatives.

The chair is responsible for:

- Meeting with board members to determine if the development appeals board has jurisdiction to hear the appeal and if so, to determine how questions will be handled during hearings.
- In accordance with section 217 of the Act, advising the secretary to call a meeting or hearing if the appeal can be heard.
- Providing leadership and attending to all matters necessary for the operation of the board;
- Ensuring the municipality's obligations are met in accordance with the legislative requirements of the Act.
- Ensuring legal counsel is provided, if required.
- Ensuring board members receive training and orientation on holding, preparing for and participating in hearings, rules of evidence, and decision-making and decision-writing.
- Ensuring board members receive and understand information relevant to hearings.
- Ensuring board members follow directives, policies, and appropriate rules of conduct.
- Declaring any conflicts of interest on upcoming appeals to the secretary well in advance of hearings.
- Being familiar with cases and any special circumstances which may affect hearings.
- Leading hearings or meetings of the board, with attention to the pace and agenda.
- Determining the order of speaking and opportunity for questions at hearings.
- Administering oaths or affirmations at hearings.
- Maintaining order and ensuring a business-like and fair atmosphere at hearings and meetings.
- Managing questions from board members, parties or representatives during hearings.
- Leading the decision-making process.
- Preparing, or directing another member to prepare, draft decisions.
- Ensuring the accuracy of final written decisions, including reasons.
- Signing decisions of the board within 30 days of the conclusion of the hearing in accordance with subsections 225(1) and 225(4) of the Act.

Board Members

Board members are responsible for assisting the chair in the conduct of the hearing. Members assist the chair at the hearing by:

- Paying attention to the interactions between parties;
- Keeping track of information or evidence given; and
- Asking questions when things are not clear.

Board members are responsible for:

- Attending meetings with other board members to determine if the development appeals board has jurisdiction to hear the appeal and if so, how questions will be handled during hearings.
- Maintaining impartiality by not engaging in any discussion with individuals prior to or following hearings or after a decision is issued.
- Familiarizing themselves with hearing procedures.
- Reviewing hearing documents prior to the start of hearings.
- Before hearings, determining what has to be proven, as this will assist in making decisions on what evidence is relevant and therefore admissible.
- Attending hearings and meetings.
- Advising the secretary if they are unable to attend or anticipate arriving late to hearings and meetings.
- Declaring any conflicts of interest on upcoming appeals to the secretary well in advance of hearings.
- Listening carefully to the information presented, taking notes of evidence presented, and any unanswered questions at hearings.
- Asking questions of the parties for clarification or information relevant to the appeal in accordance with established procedures.
- Treating all participants in hearings with respect and fairness.
- Using plain language because people appearing in front of the board or attending hearings may not be familiar with planning, development and/or board processes.
- Asking questions and participating in board discussion, deliberation and decision-making.
- Meeting with other board members following the hearing to discuss the findings on which a decision will be made.
- Rendering a decision in writing, together with reasons, within 30 days after the hearing.
- Reviewing written decisions, for which the board member was present during hearings, prior to signature by the chair.
- Supporting the decision made by the board after it is made.

Secretary

In compliance with subsection 216(3) of the Act, council must appoint a secretary for the development appeals board and prescribe the secretary's term of office, remuneration and duties. The secretary is the administrator or executive director of the board, and is responsible for ensuring all administrative and operational matters of the board are undertaken in compliance with the Act. The secretary has duties to perform before, during and after hearings, which are outlined below.

Before the hearing, the secretary's responsibilities are:

- Working with the board to establish administrative and operational policies and procedures, including any forms for use by the board.
- Receiving the application for appeal, fees and related material, and ensuring these items comply with established board policies and procedures.
- Ensuring all relevant documents are available for public inspection prior to hearings.
- In accordance with subsection 222(3) of the Act, no later than 10 days before the hearing date, providing notice of hearing to the appellant, the owner of the property (if different from the appellant), the council and each assessed owner of adjacent property or property within a 75 metre radius of the subject property.
    - 222(3) states that this notice is to be given by either personal service, registered mail, or ordinary mail.
- In accordance with subsection 222(5), submitting a statutory declaration to the board stating the notice of hearing was mailed with correct addresses and postage, including the mailing date.
- Preparing hearing documents for each appeal to the board.
    - This information may consist of maps, plans, drawings, photos, facts, applications, letters, development officer report, surveyor's certificates or any other relevant material pertaining to the appeal.
    - Pursuant to section 223, parties have until five days prior to the hearing to file materials with the secretary related to an upcoming appeal. Once this has been submitted, the secretary should prepare all the hearing documents for board members and make that same information available for public inspection in accordance with subsection 223(3).
- Determining the order of appeals based on their complexity.
- Providing a docket outlining the order of appeals to the board as well as posting the docket on the door of the meeting room for in-person hearings or on screen for virtual hearings.
- Making contact with members before hearings to ensure quorum.
- Compiling and distributing to the board copies of relevant law and previous judicial and board decisions.
- Ensuring any necessary equipment and materials are set up, such as operating recording equipment, virtual meeting software, or teleconference equipment.

During the hearing, the secretary's responsibilities are:

- Announcing each appeal;
- Taking attendance and noting absences of board members;
- Recording the names of speakers;
- Documenting any exhibits;
- Recording motions; and
- Taking detailed minutes for the entire hearing.
    - Note: what is given in evidence and argument has relevance to the written decision and possibly to further appeals.

After the hearing, the secretary's responsibilities are:

- Finalizing the minutes;
- Assisting in the preparation of the written decision of the board;
- Ensuring the board's decision is legally signed in accordance with subsection 225(4);
    - If the chair is present, the chair signs the decision.
    - In the event the chair is absent, the decision is to be co-signed by any other board member and the secretary.
- In accordance with subsection 225(5), sending the notice of decision by personal service or registered mail to the appellant, the municipality, the Director of Community Planning and all people who made representations at the hearing, and include instructions regarding further appeals;
- If the Minister of Government Relations, the Director of Community Planning, the council, the appellant, or any other affected person appeals the board's decision, the secretary, in accordance with subsection 227(2), shall within ten days of receiving a notice of appeal, send a certified copy of the board's records to the secretary of the Saskatchewan Municipal Board.

Administration

Forms

Board members and the secretary need to work together to prepare and adopt forms to assist in the administration of the appeals process. Forms should include:

- Application for Appeal (see Appendix D for sample);
- Notice of Hearing (see Appendix E for sample);
- Statutory Declaration (see Appendix F for sample); and
- Notice of Decision (see Appendix G for sample).

Procedures

Pursuant to subsection 216(5) of the Act, a development appeals board may adopt rules of procedure to govern its operations and function. These may include items that apply to how meetings will be undertaken (in-person or virtual, and the circumstances that may factor into this decision), hearing conduct, order of operations of hearings and the use of any of the aforementioned forms.

See chapter 4.0 – Appeals Procedure for more information.

Hearing Documents

Hearing documents are prepared by the secretary and should be distributed to board members prior to the hearing date. It is best practice to provide board members with as much time as possible to review them in advance of a hearing. The documents will include:

- The application for appeal to the development appeals board.
- The notice of hearing for the development appeals board.
- The development permit application or enforcement order from the municipality. A sample enforcement order has been provided as Appendix H.
- Either:
    - Reports from the development officer – the municipal official, usually the administrator or Chief Administrative Officer, appointed by council to administer the municipality's zoning bylaw – related to the development permit application; or
    - Reports from the bylaw officer related to the enforcement order.

- Either:
    - The decision from the council or development officer approving, approving with conditions or denying the development permit application; or
    - The enforcement order from the bylaw officer.
- Relevant maps, plans, surveyor's certificate, drawings, photos and/or letters.
- Evidence from the appellant, municipality or neighbouring property owner.
- Any other relevant material.

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 at a hearing or meeting, the board members should appoint a temporary secretary to carry out the secretary's duties.

In addition to the hearing documents, development appeals boards records must include:

- All correspondence associated with the appeal application;
- Attendees, absentees, submissions, evidence, and minutes of the hearing;
- The notice of decision; and
- Subsequent appeals to the Saskatchewan Municipal Board and Court of Appeal, if applicable.

As a best practice, development appeals board records should be kept separate from other municipal records in the municipal office. Accurate records are needed because a development appeals board's records are public documents that are open to inspection and may be required to be submitted to the Saskatchewan Municipal Board and the Court of Appeal on further appeal.

Fees
The board may establish a fee to be included in the application for appeal to help cover expenses relating to the appeal. Pursuant to subsection 220(1) of the Act, the fee cannot exceed $300.

If the board does not set a fee, a fee cannot be imposed at the time of application.

Basis for an Appeal

Opportunities for Appeal

The development appeals board provides an opportunity for independent review where a decision made by the council or development officer is questioned. The Act sets out the following situations when an appeal may be sought:

1. **The zoning bylaw is allegedly misapplied in the issuance of a development permit [clause 219(1)(a)].**
   In this case, council or the development officer has issued a development permit. An affected person alleges that the zoning bylaw 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 zoning bylaw.

Misapplication of the zoning bylaw is fairly broad and can include the meaning and intent of terms in the zoning bylaw or the process the municipality followed in issuing the permit. For example, an applicant could initiate an appeal under this clause if they believed the municipality overstepped their authority in the issuance of a development permit or in applying certain conditions attached to a permitted use. The appeal of conditions attached to the approval of a discretionary use is covered under item three, below.

2. **A refusal to issue a development permit because it would contravene the zoning bylaw [clause 219(1)(b)].**
   Similar to the above item, the clause granting this opportunity for appeal is broad. It is best considered as two sub-categories:

   i. An applicant alleges a development permit has been wrongfully refused
   In this case, a development permit was refused by an applicant who alleges that the municipality was wrong to do so. This can also include situations where council or the development officer refused to issue a development permit within any required timeframe (and thus the development permit is deemed to be refused).

   This situation is similar to the alleged misapplication of a zoning bylaw above, the difference being this appeal is regarding the wrongful refusal of a development permit. For example, an applicant claims a development permit does not contravene the zoning bylaw or that it should have been issued within the required time.

   ii. An applicant is requesting a variance to specific standards of the bylaw to allow development to proceed

   In this case, council or the development officer has refused to issue a development permit because, in their opinion, the proposal contravenes the zoning bylaw. The applicant contends that, due to special circumstances, strict compliance with the standards in the zoning bylaw will create an unnecessary hardship for their development and that the development will be consistent with the objectives of the zone in which it is located. It is important for the applicant to demonstrate that the variance will not create a hardship for any neighbours that might be affected to meet subclause 221(d)(iii) of the Act. The development appeals board may relieve the applicant from compliance with the standards in the bylaw as long as the rules of decision-making outlined in section 221 of the Act are followed.

3. **The development standards or conditions prescribed in the approval of a development permit are above and beyond those necessary to achieve the objectives of the zoning bylaw [subsections 58(1) and 219(3)].**
   Standards or conditions attached to a development permit for permitted or discretionary uses are intended to address specific objectives and must align with the zoning bylaw. Subsections 52(2), 56(2) and 56(3) of the Act outline the considerations for council to address in establishing development standards or conditions for permitted and discretionary uses.

With this opportunity for appeal, a development permit application has been approved by council subject to development standards or conditions, which are to be fulfilled by the applicant. If the applicant alleges that the standards or conditions prescribed exceed those necessary to secure the objectives of the zoning bylaw, they may appeal those standards or conditions to the development appeals board.

4. **Council has refused to amend a zoning bylaw to remove the holding symbol, or has failed to make a decision within the required time [subsection 71(5)].**
   Under subsection 71(1) of the Act, council may designate land within the municipality with a holding symbol to specify the intended future land use.

   Subsection 71(5) of the Act allows an applicant to appeal either council's refusal to remove the holding symbol or their failure to make a decision within 60 days after the date on which the application is received by the municipality.

5. **Under an interim development control bylaw, 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 [subsection 86(1)].**
   An interim development control bylaw provides council with broad, temporary discretionary powers over development. Under Division 2 (sections 80 to 87) of the Act, council may pass an interim development control bylaw for a specific area while a new official community plan or zoning bylaw is being prepared, an amendment to an official community plan or zoning bylaw is being prepared, or a land use planning study is being undertaken.

   In this case, if an application subject to an interim development control bylaw has been approved subject to terms and development standards, has been refused, or not dealt with within 60 days after the application was received, the applicant may appeal.

   There are two additional matters to consider with these potential appeals:

   1. If the municipality has an existing official community plan or zoning bylaw, development in the area subject to an interim development control bylaw must still conform to these bylaws.

   2. If the municipality does not have an existing zoning bylaw, and therefore no development appeals board, the applicant's appeal would be made to the Saskatchewan Municipal Board.

6. **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 [subsection 67(1)].**

   Where council considers it desirable to exercise particular control over the use and development of land or buildings within a specific area of the municipality, it may establish a direct control district. Direct control districts work by letting the municipality specifically outline where buildings and facilities are to locate. This can include their use, size, design and/or architectural detail. Typically, municipalities require a concept plan to be prepared establishing the policies for this defined area. To establish a direct control district, the municipality must have policies and guidelines on these in their official community plan.

In this case, an applicant may appeal if council fails to approve the plans within 60 days after the date on which the application is received by the municipality or within 90 days of a development agreement not being signed.

Note: If the municipality has been declared an approving authority pursuant to section 13 of the Act*, any appeal related to this item is to be made to their development appeals board. If the municipality is not an approving authority, the appeal would be made directly to the Saskatchewan Municipal Board.

* The cities of Estevan, Lloydminster, Moose Jaw, North Battleford, Prince Albert, Regina, Saskatoon, Swift Current, Weyburn and Yorkton have been granted approving authority status.

7. **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 [subsection 72(7)].**
   Where council wishes to manage the removal of residential buildings, it may designate areas of the municipality as a demolition control district. Demolition control districts function as an overlay district and by requiring landowners to apply for a development permit to demolish residential buildings. To establish a demolition control district, the municipality must have policies and guidelines on these in their official community plan.

   In this case, an applicant may appeal if the application for a development permit to demolish a residential building is refused, approved with terms or conditions, or a decision is not made within 30 days after the date on which the application is received by the municipality.

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 in an Architectural Control District [subsection 73(5)].**
   Where a municipality wants to maintain the theme or character of an area, council may designate the area as an architectural control district. Architectural control districts work by allowing the municipality to establish standards for things like architectural detail, colour, texture and type of material. To establish an architectural control district, the municipality must have policies and guidelines for them in their official community plan.

   In this case, an applicant may appeal their application for a development permit if the application is refused, approved with terms or conditions or a decision is not made within 30 days.

9. **A minor variance application has been revoked, refused or approved with terms and conditions [subsection 60(10)].**
   The Act allows municipalities to allow council or the development officer to grant variances to building setbacks from property lines and from other buildings. Unless a municipality has been declared an approving authority pursuant to section 13 of the Act, variances cannot exceed 10 per cent. On receipt of a minor variance application, the municipality may approve the minor variance, approve it with terms and conditions, or issue a refusal.

   If a minor variance is approved (with or without terms and conditions), the municipality must provide notice to adjoining landowners. These adjoining landowners have the ability to object to the variance and if they do, the municipality must revoke it.

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

10. An enforcement order has been issued [section 242].

Section 242 of the Act establishes the process for how a municipality can pursue enforcement to ensure development does not contravene the Act, its regulations, or any land use planning bylaws in effect. Enforcement orders are the mechanism by which the municipality seeks to bring the development into conformity with the applicable land use controls. An order can direct an owner, operator or occupant to do any or all of the following:

- Discontinue the use;
- Alter the development to remove the contravention (including demolition, removal, replacement or alteration of a building or structure);
- Restore the land, building or premises to its condition immediately before undertaking the development in question; and
- Complete all necessary work to comply with the zoning bylaw.

If the municipality issues an enforcement order, the owner, operator or affected person may appeal it to the development appeals board. A sample enforcement order has been provided as Appendix H.

11. An approving authority has prescribed site plan controls in the form of conditions and/or performance standards on a specific commercial, industrial, institutional or mixed-use development [subsection 19(5)].

The Act allows a municipality that has been declared an approving authority under section 13* to adopt policies in its official community plan regarding site plan control for commercial, industrial, institutional or mixed-use development. If adopted in its official community plan, conditions and performance standards may then be placed on development via the zoning bylaw. Site plan controls can address any or all of the following:

- Traffic operations and access to public streets to and from the site;
- Circulation of traffic within the site;
- Placement of buildings and other structures within the site; and
- Placement of landscaping within the site.

If a municipality prescribes site plan controls, the applicant may appeal any or all of the conditions or performance standards imposed to the development appeals board.

* The cities of Estevan, Lloydminster, Moose Jaw, North Battleford, Prince Albert, Regina, Saskatoon, Swift Current, Weyburn and Yorkton have been granted approving authority status.

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

A non-conforming building is one that, when created, met the requirements of the zoning bylaw (if one was effect) but now no longer complies with the current land use planning bylaws. One common example is a building that is built too close to a property line. Often, non-conforming buildings are older buildings that were built in a community before zoning existed.

Any non-conforming building may continue to be used. Structural repairs, alterations or additions may be made, but the element of non-conformity cannot be increased by those repairs, alterations or additions.

If an application for structural repairs, alterations or additions is refused because it would increase the non-conformity (e.g. further projection into a yard setback), an applicant may appeal the decision to the development appeals board.

13. **Appeals related to servicing agreements and development levy agreements [section 176].**

Servicing agreements and development levy agreements are legal contracts between municipalities and landowners entered into at the time of subdivision or development permit application, as the case may be. Agreements are meant to outline the roles and responsibilities of the municipality and the developer throughout the development process. By using these tools, a municipality ensures it will not incur all the costs of servicing a subdivision or a development and that the services installed will be done to municipal specifications and standards.

Servicing agreements and development levy agreements commonly include the payment of fees from the developer to the municipality for the provision, alteration, expansion or upgrading of certain necessary municipal infrastructure. These fees can only be collected for the capital costs associated with this infrastructure and must be directly or indirectly related to the subdivision or development.

There are several situations related to these agreements where an applicant has the right of appeal, including:

i. That the capital work or project related to the fee/levy does not directly or indirectly serve the proposed subdivision or development [clause 176(2)(a)].
ii. That the development levy is not for capital costs [clause 176(2)(b)].
iii. That the calculation of the development levy is incorrect [clause 176(2)(c)].
iv. That the levy or its equivalent has already been paid [clause 176(2)(d)].
v. Whether or not the servicing agreement or development levy agreement is necessary [clause 176(4)(a)].
vi. The proposed terms and conditions of the servicing agreement or development levy agreement [clause 176(4)(b)].
vii. Whether or not the application for the proposed subdivision or development permit is incomplete [clause 176(4)(c)].

To utilize development levy agreements, a municipality must have an official community plan with policies authorizing the use of development levies and have adopted a development levy bylaw. Some of the above items are also captured in item 14 pertaining to subdivision appeals, below.

Note: if the municipality has been declared an approving authority pursuant to section 13 of the Act*, any appeal related to the servicing agreements or development levy agreements is to be made to the development appeals board. If the municipality is not an approving authority, the appeal would be made directly to the Saskatchewan Municipal Board.

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14. Subdivision appeals [subsection 228(1)].

Subdivision is the division of land that results in the creation of a surface parcel or the rearrangement of the boundaries of a surface parcel. It also includes the removal of a parcel tie linking two or more parcels together. An applicant may apply to subdivide land in accordance with provincial legislation and the provisions set out in the municipality's official community plan and zoning bylaw.

Subsection 228(1) of the Act states a subdivision applicant may appeal all of the following items associated with a subdivision application:

i. Refusal of an application for a proposed subdivision.
ii. Approval in part of an application for a proposed subdivision.
iii. Approval of an application for a proposed subdivision subject to specific development standards.
iv. Revocation of approval of an application for a proposed subdivision.
v. Failure to enter into a servicing agreement within the specified time limit.
vi. The request by the approving authority to produce additional information for the review of a subdivision application beyond what is required by *The Subdivision Regulations, 2014*.
vii. The terms and conditions of the servicing agreement.

Some of the items above could also be appealed under section 176 of the Act, as outlined in item 13, above.

Note: if the municipality has been declared an approving authority pursuant to section 13 of the Act*, any appeal related to the subdivision of land is to be made to the development appeals board. If the municipality is not an approving authority, the appeal would be made directly to the Saskatchewan Municipal Board.

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15. Council has ordered the owner of a building to bring it up to standards specified in a building maintenance bylaw [section 61 of *The Northern Municipalities Act, 2010*]

The Northern Municipalities Act, 2010 (NMA) allows a northern municipality to adopt a building maintenance bylaw. If they do, section 61 of the NMA allows the municipality to serve the owner with an order to remedy a building if they believe it does not conform to the standards established by the building maintenance bylaw. The mechanism to appeal this order is the municipality's development appeals board. Applications for appeal must be submitted within 90 days of the order being served. In absence of a development appeals board, the appeal is made directly to the Saskatchewan Municipal Board.

No Opportunity for Appeal

The Act also clarifies when there is no ability to appeal:

1. The proposed use is not permitted or the intensity of use if not permitted [clause 219(2)(a)];
2. The proposed use is a discretionary use or a discretionary intensity of use that has not been approved by council [clause 219(2)(b)];
3. The proposed use is prohibited [clause 219(2)(c)];
4. Council refuses to rezone a person's land [clause 219(5)(a)]; and
5. Council refuses a discretionary use application [clause 219(5)(b)].

The board is also bound by a number of rules when it is making its decision on an appeal. These are detailed in 4.4 – Post Hearing Procedures & Making a Decision.

Who Can Appeal

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

Affected Persons

An affected person is someone who has been impacted by a decision of council through applying the zoning bylaw. Situations can include development permit applications and enforcement of the zoning bylaw on existing development. As an example, an affected person could include a close neighbour or nearby resident. Affected persons may appeal to the board if or if they allege:

- The zoning bylaw 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 or if they allege:

- A development permit has been wrongfully refused.
- The municipality's zoning bylaw was misapplied (e.g. in the issuance of a development permit).
- An enforcement order has been issued.
- Variance to standards in the municipality's zoning bylaw can be justified by special circumstances.
- Development standards and/or conditions prescribed in a development permit or associated with site plan control are excessive.
- A minor variance application has been approved with terms and conditions, refused or revoked.
- Council has failed to make a decision within the prescribed time period or has imposed terms and conditions on a development permit under an interim development control bylaw, in a direct control district, or in an architectural control district.
- Council has failed to amend its zoning bylaw to remove a holding symbol, or has failed to make a decision non removing a holding symbol within the prescribed time period.
- An application for structural repairs, alterations or additions to a non-conforming building is refused.

In addition, matters related to a subdivision and the terms of a servicing agreement or development levy agreement can also be appealed. If the municipality has been declared a subdivision approving authority pursuant to section 13 of the Act*, appeals are made to the development appeals board. If it is any other municipality, appeals on these matters are made directly to the Saskatchewan Municipal Board.

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Building Owner or Occupant
This is the person who owns or occupies a specific building affected by a decision from council enforcing a zoning bylaw or maintenance bylaw adopted under *The Northern Municipalities Act, 2010*. The owner or occupant may appeal to the board if an order has been issued.

Agents
An appellant (affected person, applicant, building owner or occupant) may be represented at an appeal by an agent. An agent should have written authorization from the property owner(s) to act on their behalf. Without authorization, an agent has no interest in the property and cannot appeal.

Before contacting an agent, an 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.

Appeals Procedure

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 30 days of:

- The issuance of development permit [subsection 219(4)].
- A municipality's refusal to issue a development permit [subsection 219(4)].
- The issuance of an enforcement order to repair or correct contraventions [subsection 219(4)].
- The refusal, revocation or approval with conditions of a minor variance [subsection 60(10)].
- The effective date of a permit with terms and conditions [subsections 58(1), 219(3)].
- Receiving a request for servicing agreement fees or development levies [subsection 176(2].
- Receiving a copy of the approving authority's decision on a subdivision application [subsection 228(2)].

Anyone applying for an appeal of an order issued under a maintenance bylaw in accordance with Section 61(4) of *The Northern Municipalities Act, 2010,* must send written notice of appeal to the municipality and complete an application for appeal with 90 days of the order being served.

After receipt of an application, the board determines whether the application for appeal has been received from the appellant within the legislated appeal timeframe. In certain situations, the Act allows for timelines to be extended by mutual consent. For example, subsection 176(5) allows for a municipality and an applicant or owner of land to agree to expend the period for making appeals on servicing agreements or development levies. If a timeline for a decision has been extended, this information should be included by the applicant as part of their application for appeal.

Appendix B: Appeals Process Flow Chart and Appendix C: Appeal Process Checklist outline the entire development appeals board process including timeframes.

There is no provision to extend the deadlines for a late notice of appeal.

Submission of an Appeal
An appeal can be made by completing an application for appeal form 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) as well as their interest in the property (owner, tenant, neighbour, etc.).
- 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.
- Any applicable fees.

Upon receipt, the secretary reviews the application for compliance with the Act. 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.

Appendix D: Application for Appeal outlines a template a development appeals board can utilize.

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 Act 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.

If an application is rejected, the board instructs the secretary to advise the appellant the appeal cannot be heard. Minutes must be taken at this meeting of the board. If the appellant challenges the ruling to the Saskatchewan Municipal Board or to the courts, the board's decision to reject needs to be documented with reasons.

Pre-Hearing Procedures

The Hearing Date

In accordance with subsection 222(1) of the Act, 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.

Virtual Hearings

The Board may prescribe procedures allowing for virtual hearings within their rules of procedure, adopted in accordance with section 216(5) of the Act. Virtual meetings allow flexibility where an in-person meeting may not be viable or timely based on proximity or safety factors, such as COVID-19. The

secretary should ensure the board members, appellant and respondent are all in agreement with a virtual meeting instead of in-person. All other procedures and requirements relating to in-person meetings shall similarly apply to virtual meetings.

Notice of Hearing

Subject to subsection 222(3) of the Act, the board must give notice of the hearing at least ten days prior to the hearing. Notice must be provided by personal service, ordinary mail or registered mail to:

- The appellant.
- The owner (if the owner is not the appellant).
- The affected council.
- The assessed owners of property within a 75 metres of the boundary of the subject property.
- Other property owners required to be notified pursuant to the municipality's zoning bylaw.

See Appendix E: Notice of Hearing for a template. 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(s) for the appeal.
- The parties and issues involved.
- The types of decisions that may be made (e.g. confirming, revoking, or varying the decision by the municipality).
- The potential consequences or outcomes, including potential for further appeal.
- The time and place where materials will be available for public inspection.
- The opportunity for the hearing to be recorded.

Though the Act does not specifically address recording a hearing, any party may request that a hearing or part of a hearing be recorded and a transcript be prepared. This request should be made to the secretary at least two full working days before the hearing. If such a request is made, the chairperson should issue a written order that the recording be made by an official court reporter at the cost of the requesting party.

According to subsection 222(4) of the Act, a notice sent by ordinary mail is considered received three days from mailing if delivery is within the municipality, or four days from mailing if delivery is outside the municipality. If the notice is sent by registered mail, it should be 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 should include a copy of section 221 of the Act, which outlines the determination of the appeal, as well as information 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 (see Appendix E: 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.

There is no requirement for the general public to be notified of the hearing. However, the board has the ability to adopt procedures which would provide for a wider distribution of an appeal notice, should they wish.

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. If 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. This can be done by either cancelling an upcoming scheduled hearing or, if need be, 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 Act, 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 supporting documentation in support of or related to the appeal. This may include maps, plans, drawings, video, photos and written material.

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.

To ensure fairness, the secretary should forward a copy of any material received to the appellant(s) and respondent(s) as soon after receipt as possible.

Review of Materials

In accordance with subsection 223(3) of the Act, the public must be given an opportunity to examine any materials relating to an 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. If this occurs, the secretary should 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 must 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 board 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.

Contact with Board

As a quasi-judicial board, a development appeals board communicates only through written means (e.g. notices, decisions). Board members cannot be contacted by any individual regarding current, future, or past hearings. Contact can jeopardize the fairness, or the perception of fairness of any decision the board makes. Contact may result in that member being disqualified from that specific hearing to ensure a fair hearing for all parties involved.

Hearing Procedures

Board Conduct During the Hearing

Governing the development appeals board 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 Act, development appeals board hearings are open to the public to attend, either in-person or virtually, as the case may be. Furthermore, 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 include:

- Be punctual.
- Wear appropriate attire in line with the formality of the process.
- Be friendly but professional with the parties at all times.
- Avoid small-talk with the parties as this can give rise to the perception of bias.
- Be mindful of body language as it must be perceived that the board is open to all arguments.
- Give your full and undivided attention.
- Do not meet with one party in the absence of the other.

If a person appearing before the development appeals 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 chair will determine if the member should remove themselves from the hearing.

As per section 218 of the Act, no board member may hear or vote on any decision that relates to an item which they have a conflict of interest or a financial interest in. If a member of the board has a conflict of interest, they should declare it and leave the hearing. This member should not discuss the case with any other member. Further information about conflicts of interest can be obtained from saskatchewan.ca.

Jurisdictional Challenges

Occasionally, a development appeals board may be challenged regarding its jurisdiction. Typically, challenges would be issued in a motion outlining the reason and the resolution requested. A person may challenge a board'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 development appeals board to decide; and
- 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:

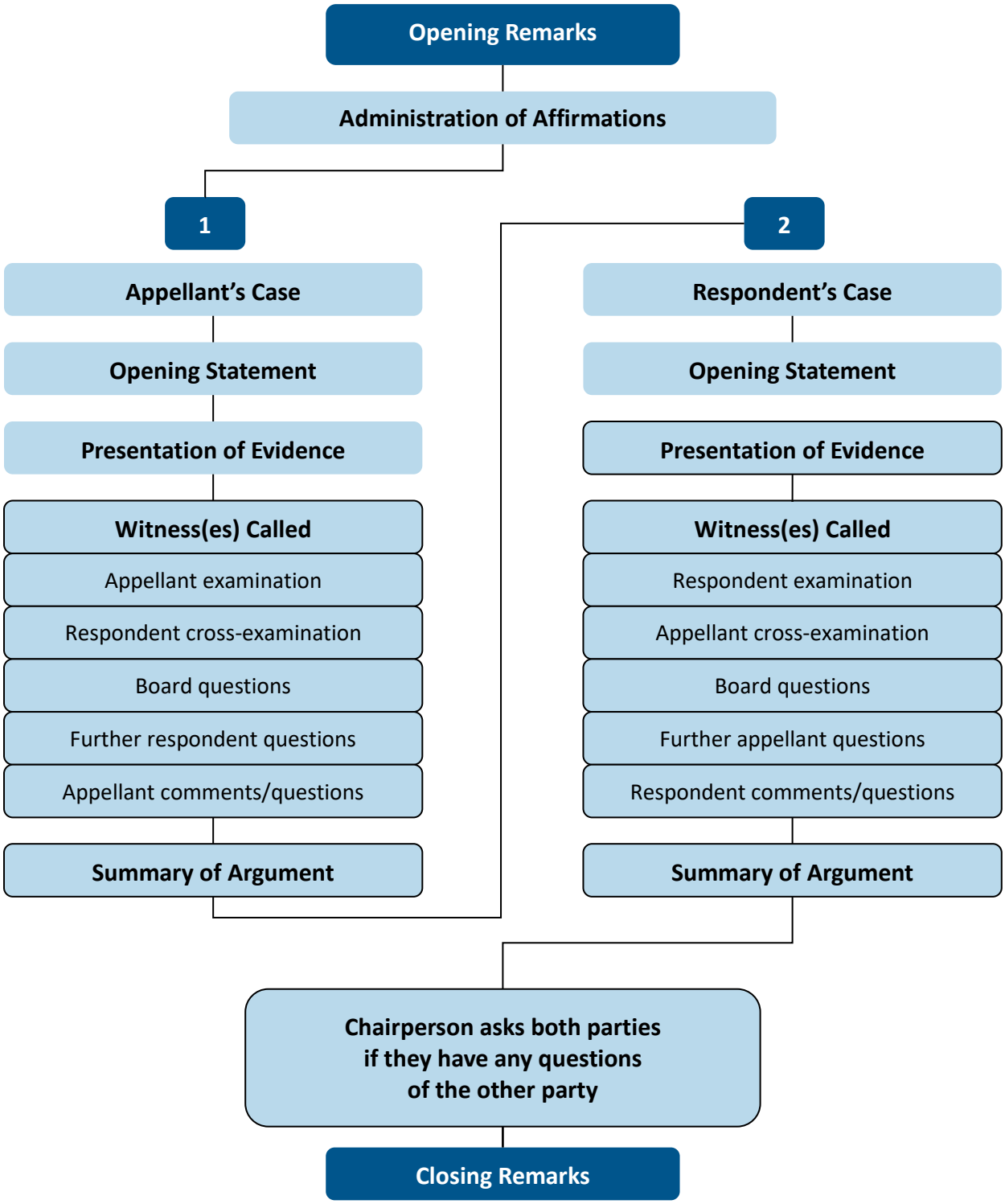
1. They may immediately excuse themselves, discuss the matter and draft a decision to be read into the record. A decision must include the reasoning of the board. Reference to a decision without reasons or with reasons to follow is not acceptable.
2. A board may reserve its decision and proceed with 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.

The easiest way to prevent any challenges is to have a full understanding of the rules, procedures and jurisdiction of a development appeals board.

Outline of the Hearing

A development appeals board hearing is a formal process. A hearing which is structured, orderly and fair provides participants with confidence in the process. The chairperson in charge of the hearing is responsible to maintain order and set 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: Development Appeals Board 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. In addition, 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 themselves 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 Act).
- Set out the rules, purpose and procedures of the board (note that pursuant to subsection 216(5) of the Act and section 2.4 of this guide, the board may adopt rules of procedure affecting its operations and functions).
- Ask the municipality's representative to introduce themselves 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.
- 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 [subsection 224(2)].

The procedure for affirming a party or witness can be simple. For example, have the person raise their 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?"*

If a party is participating in more than one appeal (e.g. a municipal representative), they need only affirm once.

Opening statements – appellant/respondent
Upon completion of the affirmation, the appellant presents their 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 their 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 the issue(s) to be decided is important for board members to establish in preparing for a decision.

Presentation of evidence
After the statement of an appellant or respondent, 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; and
- Expert opinions in the form of testimony or a report.

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

The board 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 should be deemed 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.
- Is an opinion.

While a board can determine whether evidence is admissible or inadmissible, it also has a duty to be fair. The above criteria exist partly to ensure fairness. The more the board strays from these, the more likely it will run into issues about the fairness of the appeal.

Opinion evidence is based on what an appellant or witness thinks, believes or infers from the facts in the appeal. Often, it is not evidence the person saw firsthand, is generally considered unreliable and is 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 can 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 their area of expertise and then ask the board to accept the witness as an expert in their field of expertise. Before the board decides, the other party has an opportunity to cross-examine the witness on their field of expertise. Once that cross-examination is complete, the board asks if any objections remain. If there are none and the board is satisfied, the witness is accepted as an expert.

If objections are raised, the chairperson will outline the objection(s) and provide an opportunity for all parties to give arguments. The board is then responsible for deciding whether or not to accept the witness as an expert. Note: the acceptance of one person as an expert in a particular field does not preclude another party from introducing and having the board potentially accept another person as an expert in the same field. All board decisions should be made on the merits of each situation.

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. However, there may be situations when there is evidence beyond the common knowledge of the parties involved that the introduction of expert evidence is beneficial.

Summary of arguments
When all evidence has been presented, that party will provide the board with a summary of their evidence. The appellant presents a summary after their case, followed by the respondent providing a summary after their case. Typically, 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 asks both parties if they have any final questions of the other. If there are 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. The chairperson should inform participants of how and when they will be informed of the board's written decision.

Adjournment
The board has the ability to adjourn any hearing if it considers it necessary to do so. Adjournments should be used sparingly but may be needed to obtain additional information or consult with other parties as a result of any submission 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.

If the hearing is to be reconvened at a later time, the participants at the hearing must be advised of the new date and time.

Post-Hearing Procedures & Making a Decision

After the hearing, the most important role of the board begins – making a decision on the appeal and writing the reasons for its decision. Conducting a fair hearing establishes the framework for completing this critical task. Decision-making is a process that begins at the outset of the hearing with clarification of the issue(s) to be decided. It continues through the hearing, with fact-finding, assessment of 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 appropriate for the audience. They should be well-organized and easy to understand, provide sufficient information to explain the result and as concise as possible.

As soon as possible after the hearing, the board should meet to outline the facts, issues, statutory considerations and any items it deems as precedent (note: the board can consider precedent from previous cases, but it is not bound by them). 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 outlined in section 1.2 of this guide. In addition, section 221 of the Act states that in determining an appeal, the board:

- Is bound by any official community plan the municipality has adopted;
- Must ensure that its decisions are consistent with the uses of land, intensity of use and density of development in the municipality's zoning bylaw; 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.

A development appeals board also acts as a variance board. This means the board may vary or delay the approval, decision, any development standard or condition, or order imposed by an approving authority, the council or 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:

- Grant to the applicant a special privilege over neighbouring lands and buildings in the same zoning district or within an area defined in the maintenance bylaw;
- Amount to a relaxation that would defeat the intent of the zoning bylaw or maintenance bylaw; or
- Injuriously affect the neighbouring lands and buildings.

Any decision or variance of the board must meet these criteria in order for it to be granted.

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

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

By organizing the arguments by each party, the board provides evidence that it 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.

To ensure clear communication on the hearing, the board should finalize its decision as soon as possible after the hearing is completed. Subsection 225(1) of the Act requires the board to provide a decision in writing, including reasons for its decision, within 30 days of the conclusion of the hearing. A copy of the board's decision is forwarded by the secretary by personal service or registered mail to the appellant, municipality, the Director of Community Planning* and all persons who made representations at the public hearing within ten days of the date of the decision [subsection 225(5)]. The decision will be accompanied by information regarding the right of further appeal to the Saskatchewan Municipal Board.

> * Note: If a board is unsure of which Community Planning office to send copy of its decision to, please contact either of the offices listed on page 2 for guidance.

A single member may volunteer or be tasked with writing a decision, or this may be divided between multiple 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 writing of a decision must be done by a board member who witnessed the entire appeal. It cannot be delegated to someone who is not on the board nor to someone who was not in attendance.

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 has been included;
- Review the decision for clerical, spelling or grammatical errors;
- Comment on the presentation and appropriateness of and need for any additional information, if necessary; and
- Verify the accuracy of any legal citations.

Once the secretary has completed this review, the decision is returned to the board for its consideration. It can then approve any proposed revisions or make any additional edits. Subsection 225(4) of the Act requires a final 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 is being allowed by the decision.
- 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 G: 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 can include identifying who the parties are, who was in attendance, what the appeal involves, what relief was being sought and the rules governing the decision-making

2. **Issues**
The issues are the questions that need to be answered in the appeal. Setting out the issues at the beginning of the decision provides some direction for the end result and contributes to a simple, coherent document. 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 omitted anything from their decision.

3. **Facts**
The facts are the findings made based on the evidence provided by the parties. All facts should be based on relevant evidence that supports 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 in a way that makes sense to the reader. Each issue should have its own section of facts. As a general rule, only relevant facts should be included. One exception would be if one of the parties relied heavily on facts deemed to be irrelevant or inadmissible. If this is the 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. This can increase the potential that one of the parties appeals the board's decision to the Saskatchewan Municipal Board.

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 take care to get it right the first time.

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

4. **Arguments of the parties**
Summarizing the arguments of the parties is important for two reasons. One, it demonstrates the board was listening to the cases presented to it and validates the parties. two, it can be an effective way to lead into the analysis section. All arguments brought forward should be included in this section, with one or two paragraphs devoted to each party. If these include any meritless arguments, these 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 relevant bylaws within the context of the facts. For

example, this section could include listing and describing relevant policies from *The Planning and Development Act*, *The Subdivision Regulations, 2014* and *The Statements of Provincial Interest Regulations*.

Following a review of the legal framework, the decision should apply the goals, objectives and policies of the official community plan and zoning bylaw to all facts. The line of reasoning presented in the analysis should clearly connect to the decision's conclusion.

6. Conclusion

The conclusion should be a clear and concise statement of the decision. This should include what actions are to be taken by the appellant and the municipality, as appropriate. The reader should be able to clearly understand why the board arrived at its decision. In longer, more complex decisions, this may also include a brief summary of the analysis.

7. Rights to further appeal

There are two final items that a decision should contain. The first is the information that the minister, the municipal council, the appellant or any other person has the right to appeal any decision made by a development appeals board to the Saskatchewan Municipal Board within 30 days [subsection 226(1)]. The second is that the board's decision does not come into effect until 30 days after the date of decision [subsection 225(6)]. More information on further rights of appeal is detailed in the following section.

Further rights of appeal

Saskatchewan Municipal Board

Every decision of a development appeals board may be appealed to the Saskatchewan Municipal Board, Planning Appeals Committee. The mandate of the Planning Appeals Committee is to hear and determine appeals at the provincial level arising from decisions of development appeals boards.

The following persons have the right to appeal to the Saskatchewan Municipal Board if they are not satisfied with the decision of a development appeals board:

- The Ministry of Government Relations;
- The municipality;
- The appellant; or
- Any affected person.

Eligible Appeals

Section 3.1 of this guide provides detailed information on what can be appealed to a development appeals board. As mentioned above, every development appeals board decision can be appealed to the Saskatchewan Municipal Board. In addition, the following items are appealed directly to the Saskatchewan Municipal Board:

- Direct control district [subsection 67(1)].
    - Council has refused, failed to make a decision within the prescribed period of time, or has not entered into a development agreement and the municipality is not an approving authority.
- Interim development control bylaw [subsection 86(1)].
    - An application has been approved subject to terms or development standards, refused, or not dealt with within the prescribed period, the applicant is aggrieved by the action or inaction and the municipality does not have an existing zoning bylaw.
- Servicing agreements or development levy agreements [section 176].
    - The Act allows multiple opportunities to appeal matters related to servicing agreements and development levy agreements. If the municipality is not an approving authority, these appeals are made directly to the Saskatchewan Municipal Board.
- Subdivisions [subsection 228(1)].
    - The Act allows multiple opportunities to appeal matters related to subdivisions. If the municipality is not an approving authority, these appeals are made directly to the Saskatchewan Municipal Board.
- Intermunicipal planning disputes [sections 106, 106.1 and 233].
    - The Act provides the Saskatchewan Municipal Board certain authority to settle disputes between municipalities in a planning district or those experiencing land use planning issues or subdivision matters. These sections of the Act should be consulted for further information.

Procedure

An appeal to the Saskatchewan Municipal Board must be made in writing within 30 days of receiving a copy of the board's decision [subsection 226(1)]. The form and manner of this appeal is established by the Saskatchewan Municipal Board. Further information on submitting this appeal can be found on saskatchewan.ca.

After receipt of the appeal, the secretary of the Saskatchewan Municipal Board sends a copy of the appeal to the development appeals board and every other party involved in the original appeal. Within 10 days of receiving the notice of appeal from the Saskatchewan Municipal Board, the secretary of the development appeals board must forward all of the board's records pertaining to the case to the secretary of the Saskatchewan Municipal Board [subsection 227(2)].

It is important to include:

- The notice of appeal to the development appeal board;
- Materials filed to the board before the hearing;
- Evidence provided at the hearing;
- Minutes of the development appeal board;
- A copy of the written decision; and
- A transcript, if available, of the development appeal board hearing.

Role
The Saskatchewan Municipal Board has an appellate role for appeals resulting from a development appeals board. That is, the Saskatchewan Municipal Board does not re-hear the matter that was before the development appeals board. Rather, it reviews the original decision for error, based on the evidence, documents (the development appeals board's record) and arguments made at the original hearing. If the Saskatchewan Municipal Board finds that the development appeals board erred, it must then do what the original board ought to have done. This is another reason for development appeal boards to keep good records; they will come under scrutiny if an appeal is made to the Saskatchewan Municipal Board. Development appeals board members should review and learn from Saskatchewan Municipal Board decisions to prevent similar errors in the future.

New Evidence
Generally, the Saskatchewan Municipal Board will not allow any party to submit new or additional evidence at an appeal hearing [section 227.1) unless:

- Through no fault of the person seeking to call the new evidence, there is a lack of supporting material and/or written record of the original appeal is incomplete, unclear or does not exist;
- The board omitted, neglected or refused to hear or decide an appeal; or
- The person seeking to call the new evidence has established that relevant information has come to attention and that the information was not obtainable or discoverable by the person using due diligence at the time of the board's hearing.

In the event the Saskatchewan Municipal Board accepts new evidence to be submitted, it has the ability under *The Municipal Board Act* to seek and obtain any further information it deems necessary.

Court of Appeal

The Court of Appeal 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.

Any person affected by an order, decision or determination of the Saskatchewan Municipal Board may appeal to the Court of Appeal against the order, decision or determination on a question of law or a question concerning the jurisdiction of the board within 30 days of an order, decision or determination issued by the Saskatchewan Municipal Board. The Court may dismiss an appeal or allow an appeal and change the order of the lower tribunal.

Section 33.1 of *The Municipal Board Act* provides the authority for a Saskatchewan Municipal Board decision to go before the Court of Appeal. An appellant must apply under section 33.2 of *The Municipal Board Act* for leave to appeal to the Court. If a judge grants leave and determines 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 Saskatchewan Municipal Board, the Court of Appeal has an appellate role (i.e. it reviews the board's decision for error rather than re-hearing the matter in its entirety). Court of Appeal decisions are final.

Appendix A: Sample District Development Appeals Board Agreement

DISTRICT DEVELOPMENT APPEALS BOARD AGREEMENT

Pursuant to Section 214(3) of *The Planning and Development Act, 2007*.

MADE THIS ___ DAY OF _____, 20___.

BETWEEN:

The Urban Municipality of _____
Saskatchewan, hereinafter called the "Town of _____"

OF THE FIRST PART;

-and-

The Urban Municipality of _____
Saskatchewan, hereinafter called the "Village of_____"

OF THE SECOND PART;

-and-

The Rural Municipality of _____
Saskatchewan, hereinafter called the "RM of _____"

OF THE THIRD PART;

(hereinafter referred to in the aggregate as the "municipalities")

WHEREAS the municipalities deem it beneficial to enter into an agreement for the purpose of exercising the powers conferred upon them by Section 214(3) of *The Planning and Development Act, 2007* and creating and managing a District Development Appeals Board; and

WHEREAS the municipalities intend to establish an organization of the type contemplated in Section 214(3) of *The Planning and Development Act, 2007*.

NOW, THEREFORE, this agreement witnesses that:

1. The parties agree to joint action for development appeals through formation of a District Development Appeals Board. This board shall be known as the _____ Development Appeals Board, sometimes referred to in this agreement as "the Board."

2. The parties agree that the Board shall consist of one representative from within the boundaries of each municipality. The representative shall be appointed annually by resolution of the Council of each of the municipalities. Each party to this agreement shall notify the board Secretary in writing of their appointment on or before _____ _____of each year.

3. The parties agree that the members of the Board, once chosen, shall appoint a Chairperson from among themselves. No more than _____ (_) persons appointed to the Board shall sit at any one time to hear appeals.

4. The Administrator from the RM of _____ No. ___ shall sit as Secretary to the Board when appeals from the Town of _____ are being heard.

   The Administrator from the Town of _____ shall sit as Secretary to the Board when appeals from the Village of _____ are being heard.

   The Administrator from the Village of _____ shall sit as Secretary to the Board when appeals from the RM of _____ No. ___ are being heard.

   OR IF MUNICIPALITIES ARE ALSO MEMBERS FORMING A PLANNING DISTRICT COMMISSION:
   The Secretary appointed to the _____ District Planning Commission at the first _____ _____ District Planning Commission meeting of the year, shall act as the Secretary for the Board. In the event that the _____ District Planning Commission Secretary can not serve as the Secretary for the board, an administrator from one of the partner municipalities (which is NOT a respondent municipality in any part of the specific hearing) including in this agreement shall serve as Secretary for the board.
5. The parties agree that appeals shall be heard at the office of the municipality in which the property that is affected is located, except in either event of "a" or "b" described below, the secretary shall seek the written permission of the appellant who will not have their hearing at the office of the municipality in which the property that is affected is located.

   a. If there is already a hearing being held by the District Appeals Board that can entertain the appeal in the prescribed time limits; or
   b. If there is more than one appeal with the ability to be heard by the District Appeals Board at the same time.

6. The cost of the Board and Secretary to sit to hear appeals and for the Secretary to process and serve the necessary documents involved with an appeal or involved with general operation of the Board shall be proportionally shared by each party to this agreement based on the amount of time spent by the Secretary and the Board to deal with all appeals of the respective municipality. Rate of renumeration shall be in accordance with the following.
   Rates of Renumeration:
   a. Hourly renumeration of $__.__ per hour;
   b. Meal allowance of $__.__ per meal; and
   c. Travel allowance of $__.__ per kilometer travelled.

   The rate of renumeration shall be adjusted from time to time based on an average rate of renumeration for Council members of the participating municipalities.

7. The parties agree that training for Board members should be made available for each newly appointed member of the Board, and that the costs of training and mileage for each member shall be the responsibility of their respective municipality.

8. The parties agree that training for the Board Secretary shall be made available every two years, and that the cost of training and mileage for the Secretary shall be the responsibility of the _____ _____ Board according to the rates of renumeration described in clause 6.

9. The Board may appoint any consultants that may be necessary to assist in the discharge of its responsibilities, and the applicable municipality is responsible for any costs incurred by the Board with respect to those appointments.

10. The Board shall act within the authority of *The Planning and Development Act, 2007.*

11. Subject to other provisions of *The Planning and Development Act, 2007*, the Board may adopt rules and procedure to be followed in carrying out its function.

12. The Board shall comply with any rules of procedure prescribed by the Lieutenant Governor in Council pursuant to subsection (b) of Section 245 of *The Planning and Development Act, 2007*.

13. The Board shall conduct itself in a fair and impartial manner.

14. No member of the Board may hear or vote on any decision that relates to a matter with respect to which the member has a pecuniary interest as described in section 2(2) of *The Planning and Development Act, 2007*.

15. The Board shall hear appeals, as far as possible, in the order in which the appeals stand in the list, but the Board may adjourn or expedite the hearing of any appeal where the Board considers it appropriate to do so.

16. The Board shall render its decision in writing, together with reason for the decision, within 30 days after the conclusion of the hearing.

17. This agreement shall come into force and be effective upon the signing and sealing of the municipalities to this agreement and shall be continuous.

18. Any party to the agreement may withdraw from the agreement by giving written notice to each party of the agreement by _____ _____ of any year.

19. All parties to the agreement will have a prescribed Development Appeals Board form available and will attach their Municipalities' prescribed form to this bylaw as Form "A".

The parties hereby affixed their corporate seals, duly attested by the hands of their respective officers, the day and year first above written.

TOWN OF _____

_____	_____
Mayor	Administrator

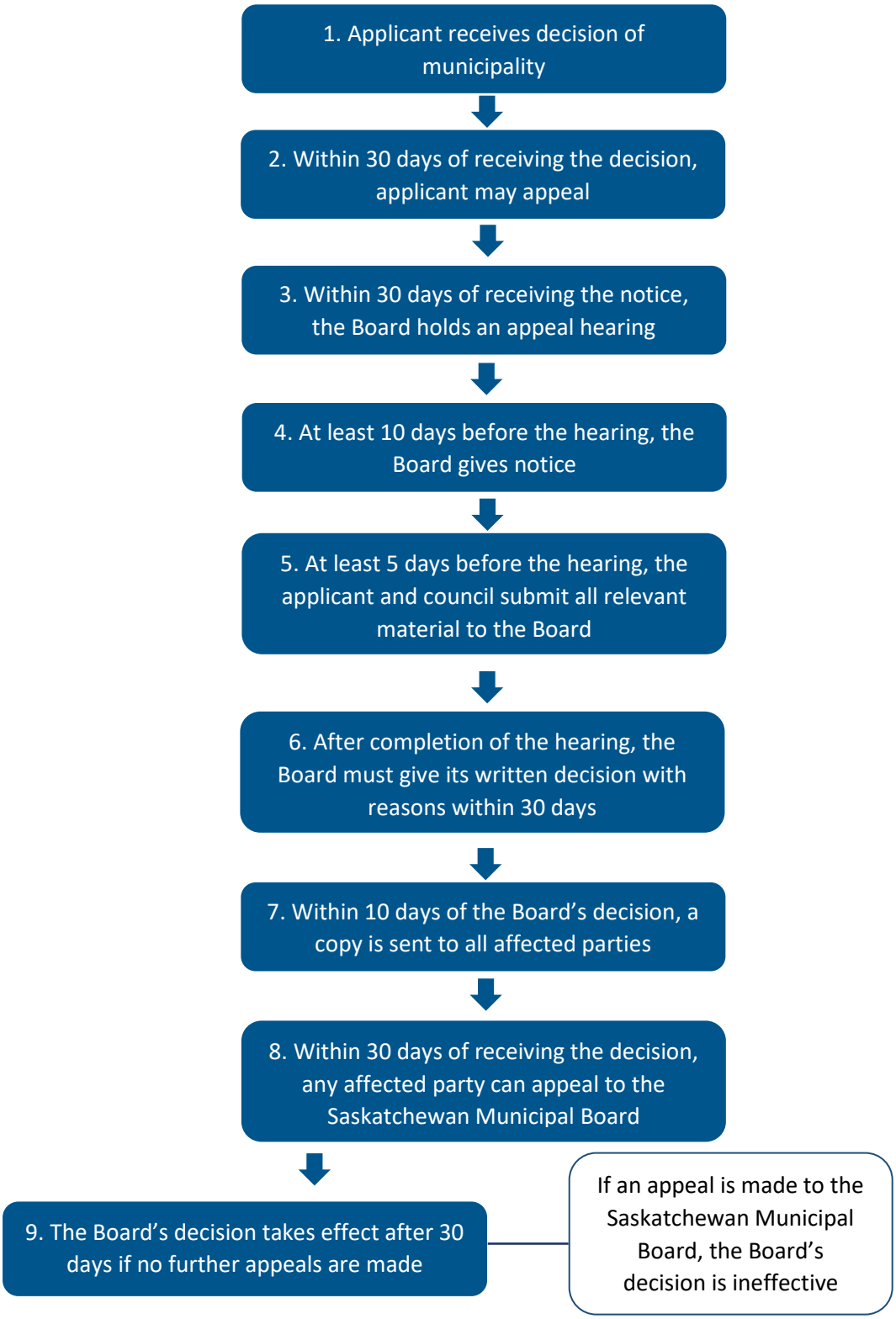
VILLAGE OF _____

_____	_____
Mayor	Administrator

RURAL MUNICIPALITY OF _____

_____	_____
Reeve	Administrator

Appendix B: Appeal Process Flow Chart



Appendix C: Appeal Process Checklist

Development Appeal Board Activity Checklist

1. **Getting Started**

☐Secretary and board members are required to sign Oath of Office.

☐Secretary consults with board members to set date, time and location for meeting.

Board members meet to:

- ☐Choose a member to be chair;
- ☐Discuss potential hearing dates, along with other particulars (time, location);
- ☐Agree on hearing process and application fee; and
- ☐Discuss training requirements.

2. **Appeal Process**

☐Secretary receives appeal.

- ☐Review appeal for completeness;
- ☐Request additional information, if needed;
- ☐Ensure fee has been paid; and
- ☐Identify deadlines- review legislation and manual. Note deadlines on calendar.

☐Secretary sets date, time and location for board hearing.

- ☐Confirm with board members; and

☐No later than 10 days before hearing, provide notice to appellant, owner, council, assessed owners of property within 75 metres and owners of property required to be notified pursuant to the zoning bylaw of the municipality.

3. **Before the Hearing**

☐Secretary receives evidence, responses from other parties and written explanation regarding decision from municipality (if applicable) no later than five days before the hearing.

☐Secretary copies and makes available for public inspection the information provided.

☐The information is transmitted to all board members, appellant and respondent.

☐Agenda is prepared.

☐Ensure no conflict of interest for board members.

☐Chair receives request for all or part of a hearing to be recorded (in some cases).

- ☐Chair orders recording as requested.

4. **Hearing Process – Full Board/Panel**

☐Chair introduces attendees and outlines process.

☐Chair administers oaths and affirmations.

☐Board members listen to evidence, ask questions to clarify matters and take notes.

☐Excuse parties before deciding the appeal. In the case of a tie vote, the vote is deemed to be a negative vote.

5. **Board Decision**

☐Draft a written decision, including reasons.

☐Finalize and have chair sign the decision within 30 days after the conclusion of the hearing.

☐Secretary serves decision to all parties within 10 days of decision date. Include information regarding the ability to appeal to the Saskatchewan Municipal Board.

6. End Activities

☐Secretary to store records in accordance with board policies.

☐If the board does not have a policy, the secretary can use municipal policies.

☐A policy to transfer records when there is a change of secretaries is also important.

☐If a further appeal is applied for, the secretary sends records to the Saskatchewan Municipal Board within 10 days of a request being received, possibly including a written transcript.

Appendix D: 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

☐ Registered Owner ☐ Agent

☐ Tenant ☐ Other: _____

☐ 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 / situation (be specific, attach copies of application and decision)

6. Reason for Appeal

☐ Development permit has been wrongfully refused

☐ Zoning bylaw was misapplied (e.g. issuance of a development permit)

☐ Enforcement order under *The Planning and Development Act, 2007* has been issued

☐ Request of variance to development standards and/or conditions in a development permit

☐ Interim development control bylaw decision refused or conditions placed on agreement

☐ Direct control district decision refused or decision not made within prescribed time

☐ Demolition control district decision refused, conditions placed on agreement or decision not made within prescribed time

☐ Failure to remove holding symbol

☐ Refusal of repairs, alterations or additions to non-conforming building

☐ Minor variance application approved, refused or revoked

☐ Site plan control conditions on development

☐ Servicing agreement or development levy agreement

☐ Subdivision appeal

☐ Architectural control district decision refused, conditions placed on agreement or decision not made within prescribed time

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

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

_____

_____

_____

_____

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

_____

_____

_____

_____

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.

_____ _____

Name Address

_____ _____

Signature Date

Appendix E: Notice of Hearing

(Municipality) Development Appeals Board
NOTICE OF HEARING

RE:	_____ (matter being appealed)
	_____ (address)
	_____ (appellant)

A notice of appeal has been filed under clause 228(1)___ of *The Planning and Development Act, 2007*, in relation to _____.

NOTICE IS HEREBY GIVEN that pursuant to subsection 222(1) of *The Planning and Development Act, 2007*, the Development Appeals Board will hold a hearing.

DATE:
TIME:
LOCATION:

The appellant is requesting _____ (i.e. a variance to specific standards of the zoning bylaw) and is seeking the board's approval to allow development to proceed. 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 obtain further information or view the file in this matter may do so at the RM office between 8:00 a.m. and 4:00 p.m. Monday to Friday excluding statutory holidays. Copies are available at cost.

Anyone wishing to provide comments either for or against this appeal can do so in writing. Additionally, the hearing is open to the public and the board will hear any person affected by the appeal who wishes to be heard. Please contact the Secretary at _____ (address), or_____(email) to submit written comments and/or arrange attendance at the hearing. All written submissions must be received before _____, 20____, (at least 5 days before the hearing date).

Any party 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.

The board shall render its decision in writing, together with reasons for the decision, within 30 days after the conclusion of the hearing. A copy of the decision will be provided to all parties.

Dated at the _____, Saskatchewan, this ___ day of _____, 20____.
(Municipality)

_____
Secretary, Development Appeals Board

Appendix F: Statutory Declaration

Statutory Declaration

CANADA

Province of Saskatchewan

In the matter of *The Planning and Development Act, 2007* and a development appeals board hearing in the _____.

I_____ _____, of the _____ in the Province of Saskatchewan, do solemnly declare:

1. That I am the secretary of the development appeals board in the _____ 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. _-20__.
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 sent by **PERSONAL DELIVERY/CERTIFIED MAIL/OTHER** on _____ __, 20__.

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*.

_____
(Secretary)

Declared before me at _____ in the Province of Saskatchewan this _____ , 20__.

_____
A Commissioner of Oaths in and for the Province of Saskatchewan.
My Commission expires _____ __ , 20__.

Appendix G: 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 by:

Appellant: _____
Respondent: RM of _____ No. ___

Appeal Number: __-20__
Date of hearing: _____ _____ , 20___
Time: _____ am/pm
Place: _____Council Chambers, ADDRESS, POSTAL CODE

Reason: Refusal to issue development permit (clause 219(1)(b) of the Act)
Proposed Multiple Family Residential Building
Parcel _, NE ¼ _-_-_ W_M (_ Zoning District)

Relief sought: The appellant is requesting a variance to specific standards of the zoning bylaw and is seeking the board's approval to allow development to proceed.

In attendance:

Board: _____

Appellant: _____

Respondent: _____

Other party(s): _____

Rules: The development appeals board 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, 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 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 raised during the appeal)

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 its decision:

_____

_____

_____

_____

4. Arguments

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

Appellant argument:

_____

_____

_____

Respondent argument:

_____

_____

_____

5. Analysis

Review of legal framework:

(List and describe any provisions from legislation or regulation that relate to this development appeals board hearing, for example *The Planning and Development Act, 2007* and/or *The Subdivision Regulations, 2014*. Examples would be provisions 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."

_____

_____

_____

Application of bylaws to facts:

(Apply the goals, objectives and policies of any land use planning bylaws in effect to all facts)

_____

_____

_____

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, granted with certain conditions, refused).

(The next portion of the conclusion speaks to the actions to be undertaken by the appellant and the respondent, as appropriate)

Example statement 1: **The Rural Municipality of _____No. __ shall issue a development permit to the appellant in accordance with this decision.**

Example statement 2: **The Rural Municipality of _____ No. __ shall issue a development permit to the appellant in accordance with this decision subject to the following conditions:**

a) **(specify terms/conditions/standards);**
b) **(specify terms/conditions/standards); and**
c) **(specify terms/conditions/standards).**

Example statement 3: **The original decision on _____ (date) by the Rural Municipality of ___ ___ No. __ to refuse the aforementioned development permit stands.**

The reasons for the above decision are as follows:

(Base the reasons on the analysis of the facts provided)

_____

_____

_____

_____

_____

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 this notice of decision, may appeal a decision of the board to:

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

For more information, please contact the Saskatchewan Municipal Board at 306-787-6221 or info@smb.gov.sk.ca.

If no such appeal is made, this decision will take effect on _____ (insert day that is the day after the expiration of 30 days from the date the notice of decision is made).

Dated this ___ day of _____, 20XX

_____
Chairperson, Development Appeals Board

Appendix H: Enforcement Order

Enforcement Order

TO: (Owner, operator or occupant)

FROM: Municipality of _____

Notice is hereby given that development on Lot _____, Block _____, Parcel _____, Plan _____ in the _____ ¼ Section _____, Township _____, Range _____, West of the _____ Meridian is in contravention with the following:

- Section _____ of *The Planning and Development Act, 2007* which requires/prohibits (insert requirement/prohibition from legislation/regulation/bylaw)
- Part _____, section _____ of the Municipality of _____'s official community plan which requires/prohibits (insert requirement/prohibition from legislation/regulation/bylaw)
- Part _____, section _____ of the Municipality of _____'s zoning bylaw which requires/prohibits (insert requirement/prohibition from legislation/regulation/bylaw)

Therefore, it is hereby ordered that development at the above-noted property [DISCONTINUE/BE ALTERED/RESTORE THE LAND/COMPLETE ALL WORK] immediately.

This notice is provided in accordance with Bylaw No. _____ of the (municipality name) and sections 241 and 242 of *The Planning and Development Act, 2007*. You have until **month, day, year*** to comply with the aforementioned provisions of the legislation/regulation/bylaws. Unless steps are taken by the date indicated, further action may be taken and penalties may apply.

Pursuant to section 242 of *The Planning and Development Act, 2007*, an appeal can be made to the development appeals board with respect to this order. You have until **month, day, year*** to appeal this order.

Dated at MUNICIPALITY NAME, this ____ day of _____, 20__.

_____
Administrator

* Note: A municipality has flexibility to choose how long it wants to give the owner/operator/affected person to comply with the terms of the enforcement order. Since an owner/operator/affected person has 30 days to appeal an enforcement order [subsection 219(4)], it is recommended to provide a compliance period not less than 30 days.

An enforcement order must be sent by registered mail or delivered personally to be effective. See section 241 and subsection 242(6) of the Act for more information.