

## **BOARD PROCEDURES**

### **INTRODUCTION**

The Subdivision and Development Appeal Board (“the Board”) is an independent quasi-judicial tribunal that hears appeals from people who agree or disagree with the development, subdivision or stop order decision made by the Development or Subdivision Authority.

Within the mandate of the Municipal Government Act and the Lac La Biche County Subdivision and Development Appeal Board Bylaw (Bylaw 20-029), the Board controls its own process and procedures.

**Matters before the Board are public.** The Board conducts its hearings in a manner that may resemble court proceedings. The Board tries to keep the process informal, however procedures are set out to promote fairness for all parties.

Under the authority of Bylaw 20-029, the Chair of the Board is authorized to establish procedures and policies for the Administration of the Board. However, a panel of the Board may modify, waive or supplement any procedures approved by the Chair for a hearing, provided the procedures comply with the applicable legislation and uphold procedural fairness.

If these Procedures contradict any statute or bylaw, the statute or bylaw will prevail.

**These Procedures should not be construed as legal advice. Parties affected by a matter before the Board should consult the actual legislation or may choose to seek legal assistance.**

### **BEFORE THE HEARING OPENS**

#### **Commencing Appeals**

1. An appeal is commenced by filing a written appeal, including reasons and paying the applicable appeal fee (\$200). A Notice of Appeal is not considered complete without payment of the appeal fee.
2. The Municipal Government Act establishes strict timelines for starting an appeal. Appellants are encouraged to consult the legislation and file as soon as possible within the appeal period.
3. Once an appeal has been started, other people may have the opportunity to participate in the hearing and make submissions to the Board. If the appeal is withdrawn, they will lose that opportunity. Therefore, parties who wish to appeal a decision are encouraged to file their own appeals rather than relying on the appeals filed by others.

#### **Scheduling a Hearing**

4. Once an appeal has been commenced, a hearing will be scheduled to begin within 30 days, and a notice of hearing will be issued with the hearing details.

5. The Municipal Government Act and the County's Land Use Bylaw identify who must be sent notice of a hearing.

### **Agents and Lawyers**

6. A person can file an appeal on their own behalf or can authorize an agent, lawyer or other representative to do so on their behalf. Written authorization may be requested by the Board.

## **MATERIALS AND EVIDENCE**

### **Evidence**

7. The Board may, while carrying out its powers, duties and responsibilities, accept any oral or written evidence that it considers proper, whether admissible in a court of law or not, and is not bound by the laws of evidence applicable to judicial proceedings.
8. The Board relies on the evidence submitted by the parties. Each party is responsible for assembling and presenting evidence to support that party's case.
9. If a party wants the Board to consider evidence, it must be raised during the hearing. The Board can accept any evidence it thinks is proper, but there are limits. If the evidence is relevant to proper planning, the Board will consider it. If it is irrelevant to proper planning, it should not be considered by the Board.

### **Submission Package**

10. Parties are encouraged to submit written materials to the Board prior to the hearing, by the date indicated on the notice of hearing. This helps ensure that the appeal proceeds as efficiently as possible. Although submissions may be accepted at the hearing, failure to provide advance information and materials could result in a hearing being adjourned.
11. As required by the Municipal Government Act, all relevant documents respecting an appeal will be made available for public inspection prior to the commencement of the Hearing. All submissions provided to the Board will become part of the Board record, will be made public, and will not be returned.
12. All materials submitted to the Board will be included in a document called the "Submission Package". The Submission Package will be updated with new materials when they are received.
13. The Submission Package will be posted to the Board's page on the Lac La Biche County website, following the submission deadline identified in the notice of hearing and prior to the hearing date. Parties should review the Submission Package carefully before the hearing. Once the hearing is finished, the Submission Package will be removed from the website. The official version of the Submission Package can also be viewed at the Lac La Biche County McArthur Place Office.

14. If a party intends to refer to materials which were not provided to the Board prior to the deadline in the notice of the hearing, the materials should still be provided as soon as possible and copies of the materials must be brought to the hearing.

## **THE HEARING**

### **The Panel**

15. The Board hears appeals in groups of 3 to 5 Board members called “panels”. A decision of the panel is a decision of the Board.
16. Panels of the Board are scheduled on a rotational basis, based upon member availability.
17. Any concern about the makeup of a panel for a particular appeal must be raised at the beginning of the hearing or as soon as possible.
18. Once a panel starts hearing the merits of an appeal, that panel will remain the same throughout the hearing.
19. If for any reason a member of the panel cannot continue to participate in a hearing, the hearing may proceed without that member but only if enough other members are present to still achieve quorum. If not, the hearing will be adjourned and may be re-heard by a new panel.

### **Participating in a Hearing**

20. The *usual* order of presentation in a hearing when a development permit or subdivision decision is being appealed is:
  - (a) introduction by the Board and procedural matters;
  - (b) preliminary matters (if any);
  - (c) reading of the notice of appeal;
  - (d) presentation by the Development or Subdivision Authority;
  - (e) presentation by the appellant;
  - (f) presentations in favour of the appeal;
  - (g) presentations against the appeal;
  - (h) summary by the Development or Subdivision Authority; and
  - (i) summaries/rebuttals by the parties.
21. The *usual* order of presentation in a hearing when an order is being appealed is:
  - (a) introduction by the Board and procedural matters;
  - (b) preliminary matters (if any);
  - (c) reading of the appeal letter;
  - (c) presentation by the Development Authority;
  - (d) presentations in favour of the order (against the appeal);
  - (e) presentations in favour of the appeal (against the order);
  - (f) response by the Development Authority; and
  - (g) summaries/rebuttals by the parties.
22. Board members may ask questions of the parties at any time during the hearing.

23. “Rebuttal” is the opportunity to respond to new issues which came up during the hearing and which could not have been reasonably anticipated. It is not an opportunity to raise new issues or repeat evidence and arguments that have already been made.
24. There are limits on who is entitled to participate in a Board hearing. Persons who want to participate in an appeal on the basis that they are affected by its outcome must be prepared to explain why they are affected, including providing their physical address.
25. Appeals to the Board are “hearings de novo”. This means that the Board can consider new evidence and arguments the Development Authority or Subdivision Authority did not consider in reaching its decision.
26. Parties are encouraged to be prepared to speak to all aspects of the proposed development or subdivision or other matter before the Board, not just those aspects identified in the Notice of Appeal.
27. The Board’s hearings are public. The location of the hearing may vary depending on the nature of the appeal.
28. The Board’s hearings are conducted in English. The Board does not provide interpreters. Parties may provide their own interpreters at their own expense.
29. If a person fails to attend a scheduled hearing, the Board may proceed and decide the appeal in that person’s absence.
30. Any concerns about the Board’s hearing processes should be drawn to the Board’s attention as soon as possible.
31. Only one person should speak at a time during the Board’s hearing. The Board will provide directions about the order of the speakers or presenters.
32. The Board may give other directions to parties presenting during the hearing to facilitate the hearing process. These directions may include advising parties that their submissions or arguments are outside of the scope of the things the Board can consider in the appeal.

### **Procedural Directions**

33. If necessary, the Chair or the Presiding Officer, in consultation with the Clerk, may provide direction on filing deadlines in advance of the commencement of the hearing, without convening the Board or a panel.
34. The Board may dedicate a time at the beginning of the hearing to determine procedural matters. This is typically a short process.
35. The Board can give procedural directions to help the appeal proceed smoothly and efficiently. Examples of procedural directions include:
  - (a) Setting a date to continue the hearing based on the anticipated length of time required;
  - (c) Deciding whether to grant procedural requests by the parties such as requests for adjournments; and

(d) Any other direction the Board deems appropriate.

36. The Board may give procedural directions at any time during the hearing.

### **Jurisdictional Issues**

37. The Board may consider whether it has the authority to hear an appeal (“jurisdictional issues”). Examples of jurisdictional issues include:

- (a) whether the appeal was started in time; and
- (b) whether the person who filed the appeal was entitled to do so.

38. The Board may dedicate a time at the beginning of the hearing to determine jurisdictional issues.

39. The Board may decide jurisdictional issues at any time during the appeal.

### **Communications with the Board**

40. A member of the Board will be the Presiding Officer for each hearing. All submissions and other communications with the Board during the hearing should be directed through the Presiding Officer.

41. The Board does not communicate with the parties regarding the merits of an appeal outside of the hearing.

42. After the hearing closes, the Board does not accept any further submissions.

43. Parties must not attempt to contact Board members to discuss an appeal outside of the hearing. Parties shall not approach Board members before, during, or after a hearing and should instead direct all inquiries to the Board staff. Any response provided by the Board staff is informational only, is not a decision of the Board, and is not legal or other advice.

### **Adjournments**

44. The Board can adjourn (suspend) hearings to continue on a later date. This may be on the Board’s own initiative or in response to a request by a party.

45. Requests for adjournments are not always granted. It is important to attend the hearing in case the request is denied and the hearing proceeds.

46. If a party is requesting an adjournment, that request must be made at the earliest opportunity and reasons must be provided. If the request is made before the hearing begins, it should be in writing.

47. If a party is opposing an adjournment request, reasons must be provided.

48. Adjournments are discretionary. When considering whether to grant an adjournment request, the Board can consider a number of factors, including the reason for the request and the impact an adjournment might have on any of the parties involved in the appeal.

### **Withdrawing an Appeal**

49. An appellant may withdraw an appeal at any time before the Board issues its decision. A withdrawal of an appeal must be explicit and unconditional.
50. An appellant may withdraw an appeal verbally at the hearing. If the appellant withdraws the appeal before the hearing begins or after the close of the hearing but before the Board issues its decision, the withdrawal must be in writing.

### **The Public Nature of the Hearing**

51. The Board's hearings are open to the public.
52. The Board's hearings may be recorded by the Board Staff.
53. No one is permitted to record, videotape, photograph or otherwise record the Board's hearings or the Board's hearing room without the prior permission of the Board.
54. At the end of the parties' submissions, and at any time during the hearing, the Board may meet privately to discuss the appeal. The Board's discussions or deliberations regarding the outcome of the appeal are done during a private meeting.

## **AFTER THE HEARING**

### **Decisions of the Board**

55. The Board's role is to review decisions of the Development Authority or Subdivision Authority by way of a hearing de novo. It may uphold these decisions, reverse these decisions, or change these decisions in part.
56. The Board's written decision, including reasons, will be issued as soon as possible after the hearing is over. The Municipal Government Act states within 15 days after concluding the hearing.
57. The Board's decision is final when it is in writing, signed, and issued. Once this has happened, the Board has no more authority over the subject matter of the appeal.

### **Distribution of Board Decisions**

58. Once the Board makes its decision in writing, it will be provided to the parties in accordance with the Municipal Government Act.

### **Appeal of Board Decisions**

59. The Board's decisions may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction.

Original Signed \_\_\_\_\_

January 22, 2021

Board Chair

Date