

----- **MGB SUBDIVISION APPEAL PROCEDURE RULES** -----

TABLE OF CONTENTS

PREFACE	3
Operating Principles	3
Purpose of the Rules	3
Part A – Interpretation and Application of these Rules	4
1. Definitions	4
2. Application of These Rules	5
3. Effect of Non-compliance	5
Part B – Communication with and Representation Before the Board	5
4. Communication with the Board	5
5. Representation	5
Part C – Procedures to Facilitate Appeal Applications	6
6. Commencement of Appeals	6
7. Late or Incomplete Notices of Appeal	6
Part D – Case Management and Preliminary Hearings	6
8. Case Management	6
9. Preliminary Hearings	7
Part E – Prehearing Submissions and Disclosure	8
10. Subdivision Authority Submissions	8
11. Other Submissions	9
12. Form of Documents	10

Part F – Orders for Disclosure or to Protect Confidential Information	10
13. Orders for Disclosure	10
14. Disclosure of Confidential Information	11
Part G – Withdrawals, Recommendations and Postponements	12
15. Withdrawals	12
16. Recommendations	12
17. Postponements	12
Part H – Hearing Procedures	13
18. Location of Hearings	13
19. Mode of Hearings	14
20. Intervenors	14
21. Notice of submissions	14
22. Consolidation and Severance	14
23. Recording of Proceedings	15
Part I – Recusal of Panel Members	16
24. Withdrawal of Panel Members owing to apprehension of bias	16
Part J – Post Hearing Procedures	17
25. Costs	17
26. Rehearings/ Reviews	17
27. Access to Board Records	19
APPENDIX "A"	20
NOTICE OF SUBDIVISION APPEAL FORM	20

PREFACE

These Subdivision Procedure Rules were established under section 523 of the *Municipal Government Act*. They replace the Municipal Government Board's "Procedure Guide", dated January 2000, for the purposes of all MGB subdivision appeals.

Informal bulletins explaining MGB subdivision hearings and the subject matter they deal with can be found on the Municipal Government Board website:

<http://www.mgb.alberta.ca>

You can also contact the Municipal Government Board office at 780-427-4864 (Outside Edmonton call 310-0000 to be connected toll free) or by email mgbmail@gov.ab.ca for further enquiries.

Purpose of the Rules

The purpose of the Subdivision Procedure Rules is to:

- Inform parties of the steps required to pursue subdivision appeals before the MGB.
- Ensure a fair, open and accessible process in accordance with the principles of natural justice.
- Increase the efficiency and timeliness of appeal proceedings.

Operating Principles

These Rules recognize the following principles:

- Parties must have a fair opportunity to be heard and to understand and respond to one another's positions.
- Procedures should be accessible and easy to follow.
- Parties are encouraged to resolve as many issues as possible through informal discussions before the hearing.

Part A – Interpretation and Application of these Rules

1. *Definitions*
- 1.1 “**Act**” means the *Alberta Municipal Government Act*, RSA 2000, c. M-26, as amended from time to time.
- 1.2 “**Applicant**” means the person who filed a subdivision application with the subdivision authority whose decision is under appeal.
- 1.3 “**Board**” means the Municipal Government Board established by section 486 of the *Act*.
- 1.4 “**Board administration**” means staff engaged to assist the Board in the execution of its duties.
- 1.5 “**Board member**” means a member of the Board appointed by the Lieutenant Governor in Council pursuant to section 486 of the *Act*.
- 1.6 “**Case manager**” means a board member or member of the Board administration designated by the Chair as such.
- 1.7 “**Chair**”, for the purposes of these Rules, means the person to whom the powers of the Administrator have been delegated under section 486(4) of the *Act*.
- 1.8 “**Intervenor**” means:
- (a) A municipality when it is participating as an intervenor pursuant to these Rules or section 508 of the *Act*; or
 - (b) A person who has an interest that may be affected by an appeal but is not a party and whom the Board permits to participate in its proceedings to the extent of that interest.
- 1.9 “**Panel**” means a panel selected pursuant to section 487 of the *Act*.
- 1.10 “**Party**” means a person entitled to notice under section 679 of the *Act*.
- 1.11 “**Person**” includes a natural person, government agency, corporate or other legal entity.

- 1.12 “**Regulation**” means the *Subdivision and Development Regulation*, as amended from time to time.
- 1.13 “**Rules**” means these Subdivision Procedure Rules.
2. **Application of These Rules**
- 2.1 Subject to Rules 2.2 and 2.3, these Rules apply to subdivision appeals filed with the Board in accordance with section 678 of the Act.
- 2.2 These Rules apply only to the extent they are consistent with the Act, *Regulation*, or other governing legislation.
- 2.3 The Board may, in any case, give specific procedural directions which, to the extent of those directions, waive or modify the rules for that case.
3. **Effect of Non-compliance**
- 3.1 If a party fails to comply with the Rules or with an order of the Board, a panel may:
- (a) Limit or bar the presentation of evidence or argument where a party has disregarded a Rule or Board decision concerning the exchange of evidence or argument,
 - (b) Order the non-complying party to pay all or part of the costs of another party resulting from the non-compliance, or
 - (c) Take any other action it deems appropriate.

Part B – Communication with and Representation Before the Board

4. **Communication with the Board**
- 4.1 Unless made during a hearing, preliminary hearing, or prehearing conference, communications with the Board about its proceedings must be made through the Board administration.
5. **Representation**
- 5.1 Persons entitled to participate in Board proceedings may represent themselves or be represented by another person.
- 5.2 Upon the Board’s request, a person who represents another person must provide:
- (a) Proof of authorization, and
 - (b) An address for service.

Part C – Procedures to Facilitate Appeal Applications

6. **Commencement of Appeals**
- See s. 678(4) - contents of notice of appeal*
- 6.1 A notice of appeal on a subdivision matter is to be filed with the Board in the Notice of Subdivision Appeal Form attached to these Rules as Appendix “A”.
- 6.2 If a notice of appeal is filed with the Board and the Board administration determines that it should have been filed with the local Subdivision and Development Appeal Board, the Board administration will notify the parties before referring the matter to the Subdivision Development Appeal Board. Any party who disagrees with the proposed referral may request a panel of the Board to decide the jurisdictional question finally.
7. **Late or Incomplete Notices of Appeal**
- 7.1 The Board administration may notify persons who have filed late appeals that their appeals will not be processed, subject to Board direction under Rule 7.3.
- 7.2 The Board administration may direct a person who has filed an incomplete application to:
- (a) File a completed *Notice of Subdivision Appeal* form, or
 - (b) Provide any information necessary to complete the appeal form
- within the appeal period prescribed under the Act.
- 7.3 A person who has received a notice or direction under Rules 7.1 or 7.2 may request a preliminary hearing to determine the question of lateness or incompleteness and its effect on the appeal.

Part D – Case Management and Preliminary Hearings

8. **Case Management**
- 8.1 A case manager may do one or more of the following:
- (a) Direct parties or intervenors to:
 - (i) Clarify or focus the issues in dispute.
 - (ii) Identify any relevant facts upon which they agree.

(iii) Identify any witnesses they intend to call and to provide a summary of the evidence for those witnesses.

(b) Provide parties or intervenors with information, relevant decisions, or other authorities related to the matters in dispute.

(c) Request disclosure of further material or information from any party or intervenor to facilitate a fair, orderly and timely process.

(d) Establish dates for hearings or exchanges.

(e) Hold meetings or discussions with parties or intervenors to facilitate any of the above.

(f) Refer any matter to a panel for a preliminary hearing.

8.2 A party who disagrees with a case manager's directive may request a preliminary hearing.

9. Preliminary Hearings

9.1 At a preliminary hearing, a panel may do one or more of the following:

(a) Direct the parties to pursue discussions on their own, with a case manager, or with another independent facilitator by specified dates, and monitor the progress of such discussions.

(b) Establish dates for hearings or exchanges.

(c) Determine whether further disclosure is required and direct parties or intervenors to provide particulars, evidence summaries, legal analyses, authorities, or any other documents or relevant material.

(d) Set directions for exchanges, including: the timing for the production of the material, the persons to whom the material must be produced, measures to protect confidential information, and any further directions deemed necessary.

(e) Determine whether procedures or disclosure requirements established by legislation or the Board have been met.

- (f) Determine whether a person may participate in a proceeding as an intervenor and the extent of that participation.
- (g) Make any order it deems appropriate to establish procedures by which the subdivision appeal hearing may proceed.

Part E – Prehearing Submissions and Disclosure

10. Subdivision Authority Submissions

*The MGB
circulates
material
forwarded to it
to prevent
surprises and
unnecessary
delays*

10.1 A subdivision authority whose decision has been appealed must provide the Board with the following upon receipt of a copy of the *Notice of Subdivision Appeal* form:

- (a) All information submitted with the original subdivision application.
- (b) The subdivision authority's letter comprising its decision on the subdivision application, together with:
 - (i) Recommendations and reports to the subdivision authority including comments from municipal administrations.
 - (ii) Minutes of the meeting where the subdivision authority considered the application for subdivision.
 - (iii) Any other reports considered by the subdivision authority to make its decision.
- (c) Possible conditions to be applied upon approval.
- (d) Time extension agreements, where applicable.

Regulation s.5 lists referral agencies

The Subdivision Authority's representative should bring complete copies of the LUB and relevant statutory plans to the hearing

- (e) Copies of all letters from referral agencies and area and adjacent landowners.
- (f) List of adjacent landowners and contact information.
- (g) Relevant excerpts from the Land Use Bylaw, Municipal Development Plan, Area Structure Plan or any other statutory plan, including all provisions relating to a relevant district. Applicable excerpts include, but are not limited to, purpose provisions, discretionary and permitted uses, standards, and policies.
- (h) Any applicable excerpts of plans under the *Alberta Land Stewardship Act* or other regional plans.
- (i) An accurate area map or maps showing land uses, together with aerial and site photographs that give a detailed graphic explanation of the improvements and the physical conditions of the lands that are the subject of the appeal and surrounding lands including easements and rights-of-way registered on the property.
- (j) If any transportation requirements are at issue, any relevant municipal master plan or policy directive addressing:
 - (i) Access
 - (ii) Road widening
 - (iii) Service roads
 - (iv) Road alignments
 - (v) Any other relevant issue.
- (k) If public reserves are at issue, any relevant policy documents concerning environmental, municipal, or other reserves.
- (l) Any other information requested by a panel or a case manager that is necessary to expedite the appeal.

11. Other Submissions

11.1 A Board will allow relevant written material to be filed in addition to that forwarded by the Subdivision Authority under these Rules.

Notice of submissions prevents unfair surprises and

11.2 A person intending to file additional material must provide the Board with reasonable notice of its intent. Where the material includes legal briefs, technical reports, or other complex documents, the notice must be sufficient to allow the Board to

delays

arrange for circulation of the material before the hearing so that the affected parties may review and respond to it.

11.3 If a panel finds that a party has not had a fair opportunity to review and respond to material submitted to the Board, it may grant an adjournment or make any other order it deems appropriate to ensure a fair and expedient resolution of the appeal.

11.4 The Board will not consider material filed after it has adjourned a hearing following oral submissions. Notwithstanding this rule, the Board may provide special permission or directions to file such material in circumstances it deems appropriate.

12. Form of Documents

12.1 The format of written submissions must be clear and understandable. All pages must be numbered consecutively, throughout the entire text and graphic content, even if there are dividers or tabs.

12.2 Unless otherwise directed by a Case Manager or the Board, parties must file five (5) hard copies of their additional material with the Board.

12.3 Documents may be filed electronically with the permission of the Board or the Board administration.

Part F – Orders for Disclosure or to Protect Confidential Information

13. Orders for Disclosure

Sharing information before the hearing prevents surprise, encourages resolution through discussion, and facilitates efficient presentations to the Board

13.1 A party may request, in writing, an order for disclosure. Such a request must:

- (a) Identify as precisely as possible the information or material required and the issue(s) to which it relates,
- (b) Provide details explaining how the disclosure requested may be relevant to the issue(s) before the Board, and
- (c) Identify the person who will be required to disclose the information.

13.2 When entertaining a request made under this rule, the Board will consider whether:

- (a) The material requested should have been disclosed under these Rules, a preliminary hearing decision, or other legal requirement; or
- (b) The material requested is
 - (i) Within the control of another person,
 - (ii) Not readily available from another source,
 - (iii) Potentially relevant to the proceedings before the Board, and
 - (iv) Reasonably required by the person requesting the information to make their own submissions.

13.3 After considering a request under this Rule, a panel may:

- (a) Order disclosure within a specific time of all or some of the material requested by the other party, with or without conditions, including conditions to protect any confidential information.
- (b) Refuse to order disclosure of the information requested.
- (c) Give any other direction it deems to be appropriate.

14. Disclosure of Confidential Information

14.1 Upon a party's request, the Board may make any order it deems appropriate to help protect the confidential nature of information contained in documents filed with it.

Sealing Orders

14.2 An order under Rule 14.1 may include a sealing order restricting public access to certain Board records (or parts thereof), subject to any legal requirement to disclose them.

Confidentiality on Production of Documents (See also Rule 27)

14.3 Where the Board determines that information in documents containing confidential or sensitive material must be disclosed to another party, the Board may, if it deems it appropriate:

- (a) Order the first party to make and disclose a non-sensitive summary or extract of the original.
- (b) Order the material to be provided to the other party subject to a signed undertaking satisfactory to the panel.
- (c) Order restrictions on the use of information by observers to a hearing where confidential information is presented.

- (d) Make any other arrangement suitable in the context of an open hearing to allow access to the information without unnecessarily compromising its sensitive nature.

Part G – Withdrawals, Recommendations and Postponements

- 15. Withdrawals**
- 15.1 A party may request to withdraw an appeal that it initiated before the Board.
 - 15.2 Withdrawal requests are to be submitted to the Board in writing at least 14 calendar days in advance of the scheduled hearing.
 - 15.3 The Board may accept or reject a withdrawal or ask for supporting information.
 - 15.4 Subject to a waiver from the Board or Board administration, a party who submits a withdrawal less than 14 calendar days in advance of the hearing shall appear on the hearing date scheduled to explain the reason for the late withdrawal.
- 16. Recommendations**
- 16.1 Where two or more parties reach an agreement concerning an issue before the Board, they may provide the Board with a joint recommendation.
 - 16.2 Recommendations are to be submitted to the Board in writing.
 - 16.3 The Board may accept or reject a recommendation, or ask for supporting information.
 - 16.4 Subject to a waiver from the Board or Board administration, parties must be prepared to proceed at the hearing date scheduled to explain the recommendation and to provide other submissions as may be required.
- 17. Postponements**
- 17.1 A request to postpone a scheduled hearing must:
 - (a) Subject to 18.1(d), be delivered to the Board and other parties in writing at least 14 calendar days before the hearing is scheduled to begin,
 - (b) Include reasons for the postponement, and
 - (c) Suggest suitable replacement dates for the hearing.

*Late
Postponement
Requests*

- (d) If the need for a postponement arises less than 14 days before a scheduled hearing, the person requesting the adjournment must notify the Board as soon as the need arises.
- 17.2 The Board will consider the following factors as relevant to deciding postponement requests:
- (a) The degree and likelihood of inconvenience, prejudice or cost to **other persons** if the request is **granted**,
 - (b) The degree and likelihood of inconvenience, prejudice or cost to **the applicant**, if the request is **denied**,
 - (c) The number of persons affected by the delay,
 - (d) The likelihood of unreasonable disruption to the Board's schedule,
 - (e) Where the request is based on relevant pending Board or Court decisions:
 - (i) Whether the decisions are expected within 30 days, and
 - (ii) Whether the relevant proceedings have been pursued expeditiously,
 - (f) Legislated timelines for hearings and decisions, and
 - (g) Any other factor the Board deems relevant.
- 17.3 The Board may accept or reject a request for a postponement.
- 17.4 Subject to a waiver from the Board or Board administration, all parties must be prepared to proceed at the hearing date scheduled in case the request is not granted.

Part H – Hearing Procedures

18. Location of Hearings

- 18.1 Hearings will be scheduled in Edmonton or Calgary. Alternative locations in Alberta may also be considered having regard for the convenience and cost to the parties, witnesses, intervenors, and the Board.

- 19. Mode of Hearings**
- 19.1 At the discretion of the Board, hearings may be conducted by way of:
- (a) An in-person hearing.
 - (b) A telephone or other form of electronic conference.
 - (c) Written materials and submissions delivered to the Board.
 - (d) Any combination of (a), (b) or (c) or any other means a panel or case manager deems appropriate.
- 19.2 Persons attending a hearing do so at their own expense (subject to any costs awarded under section 506 of the Act)
- 20. Intervenor**
- 20.1 In addition to persons entitled to notice under section 679 of the Act, the Board may also hear from persons who can demonstrate to the Board's satisfaction that they are affected by the subdivision application.
- 21. Notice of submissions**
- 21.1 All persons intending to make oral submissions at a hearing must give reasonable notice to the Board of their intent.
- Notice prevents surprises and delays*
- 21.2 A panel or case manager may make any arrangements they deem necessary to identify all participants at a hearing and ensure an orderly hearing process.
- 22. Consolidation and Severance**
- 22.1 When the Board considers that two or more matters are related to each other by common facts, issues, questions of law or for any other reason, the Board may order that the matters be:
- (a) Consolidated,
 - (b) Heard at the same time, or
 - (c) Heard one after the other.
- 22.2 The Board may sever a single proceeding into two or more separate hearings dealing with separate participants or separate issues.
- 22.3 The Board will consider representations by the parties before issuing an order for severance or consolidation.
- Effect of Consolidating Proceedings*
- 22.4 When two or more matters are consolidated:
- (a) Findings and final determination of the issues before the

Board may be applied to all the participants in the consolidated hearing,

- (b) Parties and intervenors to each of the original separate proceedings are parties and intervenors to the consolidated proceeding, and
- (c) Evidence presented in each of the separate proceedings is evidence in the consolidated proceeding.

22.5 Where two or more matters are heard at the same time or one after the other, the Board may order that the same evidence be admitted for more than one proceeding, to the extent that doing so does not cause unfairness.

*Effect of
Severing
Proceedings*

22.6 Where a proceeding is severed, evidence and submissions already made may be applied to the separate hearings that ensue, unless otherwise ordered by a panel.

**23. Recording of
Proceedings**

23.1 No person shall make an audio, video, photographic or other electronic record of Board proceedings or a verbatim record without obtaining permission from the Board prior to the hearing.

23.2 The Board may apply one or more of the following conditions if it permits a party to make a verbatim record of the proceedings:

- (a) The cost is to be covered by one or more of the parties or intervenors.
- (b) The Board is to receive a copy of any recording and sufficient copies of any transcription for the Board's use.
- (c) The parties and intervenors are to receive a copy of any transcription, or of any recording if no transcription is made.
- (d) The process of recording or transcription will not interrupt the orderly conduct of the Board's business.
- (e) The recording or transcription proposed will be, in the view of the panel, of sufficient accuracy.
- (f) Any other condition the Board finds appropriate.

23.3 The Board may provide for the recording of its own

proceedings where:

- (a) A transcript may be requested by the Court of Appeal under section 688 of the Act, or
- (b) The Board otherwise deems it necessary to do so.

23.4 The Board will not provide access to recordings or transcripts made under Rule 23.3(a) except as necessary to fulfill its responsibility under section 688 of the Act or other legal requirement including freedom of information and protection of privacy legislation.

Part I – Recusal of Panel Members

24. *Withdrawal of Panel Members owing to apprehension of bias*

24.1 Where a panel member becomes aware of circumstances that he or she believes may raise a reasonable apprehension of bias, that member will:

- (a) Declare that an apprehension of bias exists and withdraw from the panel, or
- (b) Disclose the circumstances and give the affected parties an opportunity to either:
 - (i) Waive any objection to the member sitting on the panel, or
 - (ii) Give reasons as to why the panel member should withdraw.

24.2 A party may ask a panel member to withdraw because of a reasonable apprehension of bias. A party who makes such a request must do so as soon as the circumstances giving rise to it become known and must provide reasons for the request.

24.3 Where a member has been asked to withdraw, the panel will give the parties an opportunity to address the question of whether the circumstances raise a reasonable apprehension of bias.

24.4 The decision to grant or dismiss a request to withdraw must be made by the member in question.

24.5 A Board member may confer with other panel members before deciding whether or not to withdraw.

*See
section 489 –
Quorum*

- 24.6 A panel from which one or more members has withdrawn may:
- (a) Proceed to hear the matters before it, subject to the existence of a quorum, or
 - (b) Make arrangements to reschedule a matter so that it may be heard by a full panel.

Part J – Post Hearing Procedures

25. Costs

*See
section 501*

25.1 When determining whether to award costs, the Board will consider whether the person(s) against whom they are to be awarded:

- (a) Has abused the Board's process,
- (b) Has acted contrary to an agreed-upon or Board-directed process,
- (c) Has caused unreasonable delays or postponements, or
- (d) Has acted frivolously or engaged in other conduct worthy of an order to reimburse another person for costs and expenses incurred as a result of that conduct.

25.2 Where the Board does not otherwise direct, a request for costs must:

- (a) Be filed with the Board no later than 30 days after the date the Board notifies the parties of the final written Order.
- (b) Specify the sum sought for costs including an itemized list of any disbursements sought to be recovered and a description of how the amount is calculated.
- (c) Specify the reasons why an award of costs is appropriate in the circumstances.

26. Rehearings/ Reviews

*Application
Process*

26.1 A party or intervenor may request the Board to rehear, review, vary or rescind any matter or decision under the discretionary power granted by section 504 of the Act.

26.2 A request under this rule must include:

- (a) A detailed statement explaining how the request meets the grounds for a rehearing or review listed under this rule; and
- (b) The following background information:
 - (i) Name of the applicant.
 - (ii) Name of municipality in which the property is located.
 - (iii) Names of parties and intervenors to the appeal or complaint.
 - (iv) Board decision number.
 - (v) Address, phone number and contact persons for all parties and intervenors at the earlier hearing.
 - (vi) Proof that a copy of the request has been sent to the other parties and intervenors.

26.3 Requests following the decision must be made within 30 days of the date of the decision.

26.4 After a request is filed pursuant to this Rule, the Chair may:

- (a) Refer the matter to a case manager for case management,
- (b) Refer the request to the panel that originally heard the matter for further directions, final determination, or both, or
- (c) Refer the request to a new panel for further directions, final determination, or both.

*Grounds for
a Rehearing or
review*

26.5 The Board will not exercise its power under section 504 of the Act in the absence of:

- (a) New facts, evidence or case-law that was not reasonably available at the time of the hearing, and that could reasonably have affected the decision's outcome had it been available,

- (b) A procedural defect during the hearing which caused prejudice to one or more of the parties,
- (c) Other material errors that could reasonably have changed the outcome of the decision, or
- (d) Any other circumstance the Board considers reasonable and substantive.

26.6 The following are generally not sufficient grounds to grant a review:

- (a) Disagreement with a decision.
- (b) A party's failure to provide evidence or related authorities that were reasonably available at the time of the hearing.

**27. Access to Board
Records**

*(See also
Rule 15.2)*

27.1 Records filed with the Board will be made available for public viewing upon appointment at the Board's offices in Edmonton during the Board's regular office hours subject to:

- (a) Restrictions imposed by Board orders, freedom of information and protection of privacy legislation or other legal requirements, and
- (b) Payment of any prescribed fee.

APPENDIX "A"

NOTICE OF SUBDIVISION APPEAL FORM

DRAFT

