

----- MGB RESIDUAL PROCEDURE RULES -----
(FOR MATTERS RELATING TO SUBSECTIONS 488(1)(D, E, G AND H))

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PREFACE

These *Residual Procedure Rules* were established under section 523 of the *Municipal Government Act*. They apply to all matters filed or still open on or after January 1, 2013, that are not covered by the Board's other procedure rules. They replace the Board's "*Procedure Guide*", dated January 2000.

For further enquiries, readers may contact the Board's office at 780-427-4864 (outside Edmonton call 310-0000 to be connected toll free) or by email mgbmail@gov.ab.ca

Purpose of the *Rules*

The purpose of these *Rules* is to

- Provide information about the steps required to pursue matters not covered by other procedure rules.
- Ensure a fair, open and accessible process in accordance with the principles of natural justice.
- Increase the timeliness and efficiency of 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 “**Board**” means the Municipal Government Board and includes any panel of the Municipal Government Board.
 - 1.3 “**Board administration**” means staff engaged to assist the Board and Chair carry out their duties.
 - 1.4 “**Board member**” means a member of the Board appointed by the Lieutenant Governor in Council pursuant to section 486 of the *Act*.
 - 1.5 “**Case manager**” means a board member or member of the board administration designated by the Chair as such.
 - 1.6 “**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*.
 - 1.7 “**Days**” means calendar days.
 - 1.8 “**Matter**” means any matter under the Board’s jurisdiction listed in section 2.1 of these *Rules*.
 - 1.9 “**Panel**” means a panel selected pursuant to section 487 of the *Act*.
 - 1.10 “**Party**” means any person who files, responds to or is involved in a Matter under these *Rules*, but does not include the Minister of Municipal Affairs or the Lieutenant Governor in Council for a Matter they have referred to the Board for enquiry under section 514 of the *Act*.
 - 1.11 “**Person**” includes a natural person, government agency, corporate or other legal entity.
 - 1.12 “**Rules**” means these *Residual Procedure Rules*.
2. **Application of These Rules**
 - 2.1 Subject to Rules 2.2 and 2.3, these *Rules* apply to matters under the Board’s jurisdiction pursuant to sections 488(d), (e), (g) and (h) of the *Act*, as follows:
 - (a) Deciding disputes involving a management body referred to the Board by the Minister under the *Alberta Housing*

Act,

- (b) Inquiring into and making recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister, under section 514 of the Act,
- (c) Resolving disputes under section 602.15 of the Act, being
 - (i) A dispute between regional services commissions or a municipal authority and a regional services commission that is not under the jurisdiction of another board; or
 - (ii) A dispute between a regional services commission and a municipal authority (other than an improvement district or special area) in respect of an expropriation that requires the municipal authority's consent.
- (d) Hearing appeals pursuant to section 619 of the Act, involving situations where a municipality does not amend a statutory plan or land use bylaw under sections 619(2) or 619(3) of the Act.

2.2 These *Rules* apply to the extent they are consistent with the *Act* and regulations made under the *Act*.

2.3 The Board may give specific procedural directions which, to the extent of those directions, waive or modify the *Rules* for any given case.

**3. Effect of
Non-compliance**

3.1 If a person 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 or give it less weight, where the person has disregarded a Rule or Board decision concerning the exchange of evidence or argument,
- (b) Order the non-complying person to reimburse another person for costs incurred as a result of 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 case management meeting, communications with the Board about specific ongoing proceedings must be made through the Board administration.
- 4.2 Board administration may copy correspondence received by the Board from one party to other parties.
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 or the Board Administration's request, any person who acts for another person must provide
- (a) Proof of authorization to act for the other person, and
 - (b) An address for service
- by the date requested by the Board or the Board Administration.

Part C – Applications under these Rules

6. **Putting a Matter before the MGB**
- 6.1 A matter may be put before the Board by filing with the Board a letter addressed to the Chair.
- 6.2 A letter filed under this Rule must describe the matter that is to be dealt with by the Board and must be accompanied by the materials (if any) that are required by legislation.
- 6.3 After receiving a letter filed under this Rule, the Chair may take any action he or she deems necessary, including
- (a) Directing the person who filed the letter to provide any further information.
 - (b) Directing a case manager to contact the parties or to undertake further steps as may seem appropriate under the circumstances.
 - (c) Scheduling a hearing or preliminary hearing.

Part D – Case Management and Preliminary Hearings

7. Case Management

- 7.1 A case manager may do one or more of the following:
- (a) Direct the parties to
 - (i) Clarify or focus the issues in dispute.
 - (ii) Identify any relevant agreed facts.
 - (iii) Identify any witnesses to be called and provide a summary of the evidence intended to be introduced through those witnesses.
 - (b) Provide the parties with copies of correspondence received, decisions, authorities and other information relevant to the matter filed with the Board.
 - (c) Direct disclosure of further material or information from the parties to facilitate a fair, orderly and timely process or to promote compliance with these *Rules*.
 - (d) Direct that communication with the Board or disclosure of some or all material or information be made or remade in approved electronic format or in hard copy, or any combination of both.
 - (e) Direct that evidence be submitted to the Board by affidavit by a particular date.
 - (f) Establish or reschedule dates for hearings, disclosure or exchanges of information.
 - (g) Hold meetings or discussions with the parties to facilitate any of the above.
 - (h) Refer any matter to a panel for a preliminary hearing.
- 7.2 A party who disagrees with a case manager's directive may request a preliminary hearing.
- 7.3 A Board member who has acted as a case manager in respect of a matter will not participate in any subsequent hearing concerning the same matter unless all affected participants consent.

8. Preliminary Hearings

8.1 At a preliminary hearing, the Board 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.
- (c) Determine whether further disclosure is required and direct one or more of the parties to provide or expand particulars, evidence summaries, legal analyses, authorities, or any other relevant documents or material.
- (d) Give directions for disclosure or exchange of material, including the timing for production of material, the persons to whom the material must be produced, measures to protect confidential information, and any further directions it deems necessary.
- (e) Determine whether procedures, filing or disclosure requirements established by legislation or the Board have been met and determine the effects of any defects.
- (f) Determine whether a person is affected by the matter and extent to which that person is entitled to participate in the proceeding.
- (g) Determine whether the matter is properly before the Board or whether one or more grounds of complaint should be struck out as frivolous or not reasonably supportable.
- (h) Determine requests for postponements, withdrawals, or joint recommendations.
- (i) Make any order it deems appropriate to establish procedures by which a hearing may proceed in a fair and expeditious manner.

8.2 Board members who have heard or participated in a panel for a preliminary hearing may also hear or participate in panels for any subsequent hearings concerning the same proceeding if so scheduled by the Chair.

Part E – Submissions, Disclosure and Confidential Information

- 9. Form of Documents**
- 9.1 Material filed 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.
- 9.2 Unless otherwise directed by a case manager or the Board, parties must file five (5) hard copies of their material with the Board.
- 9.3 Documents may be filed electronically with the permission of the Board or the Board administration.
- 9.4 Parties may use the form of cover page included in Appendix “A”, completed as applicable, as the cover page of each document submitted to the Board.
- 10. Party Submissions**
- 10.1 Material must be disclosed in accordance with the Board’s directions and should be accompanied by the following unless otherwise ordered:
- (a) Argument, identifying detailed particulars for each specific issue to be argued, together with supporting reasons, legislation, case law or other authorities, and a summary of the facts;
 - (b) All documentary evidence to be relied upon and a cross referenced list identifying the source of each document;
 - (c) A list of witnesses who will appear before the Board and an estimate of the amount of time required for direct questioning of each witness;
 - (d) A signed statement for each witness identifying the subject areas of the anticipated testimony, the key facts within each subject area that the testimony is intended to establish, and the relevant qualifications of the witness;
 - (e) Where opinion evidence is contemplated, a detailed signed statement or expert report including a clear indication of
 - (i) The opinion(s),

- (ii) The premises or assumed facts upon which the opinion(s) are based, and the source of those premises or assumed facts,
- (iii) The rationale supporting the opinion(s), and
- (iv) A curriculum vitae or résumé indicating the relevant qualifications and experience of the witness;
- (f) Any other information as directed by the Board or Board administration.

11. Disclosure of Confidential Information 11.1 Upon 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 11.2 An order under Rule 11.1 may include a sealing order restricting public access to certain Board records (or parts thereof), subject to any overriding legal requirement to disclose them.

Confidentiality on Production of Documents 11.3 Where the Board determines that information in documents containing confidential or sensitive material must be disclosed to another person, the Board may, if it deems it appropriate

- (a) Order the first person to make and disclose a non-sensitive summary or extract of the original.
- (b) Order the material to be provided to the other person 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 F – Postponements

12. Postponements 12.1 A request to postpone a scheduled hearing must

- (a) Be made to the Board as soon as the need arises,
- (b) Include reasons for the postponement request, and

- (c) Suggest suitable replacement dates for the hearing.
- 12.2 The party seeking the postponement should notify the other parties of the postponement request, and seek the other parties' positions on the request and in regards to suitable replacement dates for the hearing.
- 12.3 The Board may consider the following factors as relevant to deciding postponement requests:
- (a) The reason for the request.
 - (b) The degree and likelihood of prejudice or cost to other persons, if the request is granted and to the person seeking the postponement, if the request is denied.
 - (c) The number of persons affected by the delay and whether they have consented to the postponement.
 - (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 decision(s) is expected within 30 days, and
 - (ii) Whether the relevant proceedings have been pursued expeditiously.
 - (f) Legislated timelines for hearings and decisions.
 - (g) Any other factor the Board deems relevant.
- 12.4 The Board may accept or reject a request for a postponement.
- 12.5 Subject to 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 G – Hearing Procedures and Directions

- 13. Location of Hearings**
- 13.1 Hearings will take place in either Edmonton or Calgary, whichever is closest to the address of the person who filed the letter under Rule 6 to put the matter before the Board.
- 13.2 Notwithstanding Rule 13.1, the Board or Board administration may choose a different location having consideration for convenience and cost to those attending the hearing and to the Board.
- 14. Mode of Hearings**
- 14.1 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.
- 15. Cost of Participation**
- 15.1 Subject to an award for costs under Part J, persons who participate in Board proceedings do so at their own expense.
- 16. Identification of Participants and Notice of Oral Submissions**
- 16.1 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.
- 17. Matters Heard at the Same Time or One After Another**
- 17.1 The Board may order that two or more matters be heard at the same time or one after the other.
- 17.2 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.
- 18. Severance**
- 18.1 The Board may sever a single proceeding into two or more separate hearings dealing with separate participants or separate issues.
- 18.2 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.

- 19. Admission of Evidence from Other Proceedings**
- 19.1 The Board may admit evidence that was previously heard by a tribunal, Court or another panel of the Board if the Board finds that doing so does not significantly affect the fairness of the proceeding.
- 19.2 When making an order under this Rule, the Board may consider, without limitation, whether the matters, parties, and counsel involved in the other proceeding are the same, and whether testimony given in the other proceeding was subject to cross examination.
- 20. Recording of Proceedings**
- 20.1 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.
- 20.2 If the Board permits a party to make a verbatim record of the proceedings, the Board is to receive paper and electronic copies of the record and the Board may apply one or more of the following conditions:
- (a) The costs of transcription, including expedited transcription, if requested by the Board, and copies for the Board are to be borne by the person who requested the record, unless others agree to share the costs.
 - (b) Other persons specified by the Board are to receive additional copies of any transcription or recording, provided they cover the cost of the copies they receive.
 - (c) The process of recording or transcription will not interrupt the orderly conduct of Board proceedings.
 - (d) The recording or transcription proposed will be, in the view of the panel, of sufficient accuracy.
 - (e) Any other condition the Board finds appropriate.
- 20.3 The Board may provide for the recording of its own proceedings where
- (a) A transcript may be requested by the Court of Queen's Bench under Section 506 of the Act, or
 - (b) The Board otherwise deems it necessary to do so.
- 20.4 The Board will not provide access to recordings or transcripts

made under Rule 20.3(a) except as necessary to fulfill its responsibility under Section 506 of the Act or other legal requirement including freedom of information and protection of privacy legislation.

Part H – Recusal of Panel Members

21. Withdrawal of Panel Members Owing to Apprehension of Bias

- 21.1 Where a panel member becomes aware of circumstances that he or she believes may raise a reasonable apprehension of bias, that member will
- (a) Disclose the circumstances 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 or should not withdraw.
- 21.2 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.
- 21.3 Where a member has been asked to withdraw, the panel will provide the parties an opportunity to address the question of whether the circumstances raise a reasonable apprehension of bias.
- 21.4 The decision to grant or dismiss a request to withdraw must be made by the member in question.
- 21.5 A Board member may confer with other panel members before deciding whether or not to withdraw.
- 21.6 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) Reschedule a matter so that it may be heard by a full panel.

See section 489 – Quorum

Part I – Post Decision Procedures

22. Costs

*See
section 501*

- 22.1 A request for costs must
- (a) Specify the total sum sought for costs together with a description of how the amount has been calculated and an itemized list of any expenses sought to be recovered.
 - (b) Specify the reasons why an award of costs is appropriate in the circumstances.
- 22.2 When determining whether a person's action(s) or omission(s) related to a Matter justify an award of costs, the Board may consider whether that person has
- (a) Acted contrary to an agreed-upon or Board-directed process.
 - (b) Caused unreasonable delays, postponements or expense.
 - (c) Acted unreasonably or engaged in conduct worthy of an order to reimburse another person for costs and expenses incurred as a result of that conduct.

23. Rehearings/ Reviews

- 23.1 Subject to Rule 23.2, a party may request the Board to rehear, review, vary or rescind any decision under the discretionary power granted by section 504 of the Act.
- 23.2 The Board will only reconsider a recommendation to the Minister or the Lieutenant Governor in Council if the matter is referred back to the Board by the Minister or Lieutenant Governor in Council.

Application Process

- 23.3 Requests under this Rule must be made no later than 30 days following the date of the decision.
- 23.4 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) Identification of the Matter that is affected by the request, and
- (iii) Board decision number.

23.5 The Board Administration will send a copy of the request to those parties who may be affected by the request.

23.6 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*

23.7 The Board may exercise its power under section 504 of the Act in the following circumstances:

- (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.

23.8 The following are generally not sufficient grounds to grant a rehearing or 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.

24. Access to Board

24.1 The Board may publish its decisions or have them published in

Decisions

any form, including posting them on the Internet.

24.2 Despite this Rule, the Board will not publish or release a recommendation prepared under section 514 of the Act unless authorized to do so by the Minister or Lieutenant Governor in Council.

25. Access to other Board Records

25.1 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"

COVER PAGE

MGB File No.: _____

In the Matter of:

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Name of the Party Filing this Document:

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Name of Representative (if any):

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Mailing Address

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| <i>(Street, PO Box, RR)</i> | <i>(Suite, Apartment)</i> |
| <i>(City, Town, Village)</i> | <i>(Province)</i> <i>(Postal Code)</i> |

Contacts:

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| <i>Telephone No.</i> | <i>Email</i> |
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Name of Document

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