SUBDIVISION AND DEVELOPMENT APPEAL BOARD (SDAB)

2014 TRAINING MANUAL

(UPDATED MARCH 2015)

Alberta Government

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Material for this course came from a number of sources provided to Alberta Municipal Affairs. These materials have been updated from previous training materials and papers prepared by many stakeholders. We thank and acknowledge the many people who have contributed to the preparation of the current, **sixth edition**, of these training materials.

Previous editions of the manual:

- Manual First Edition, 2001
- Manual Second Edition, 2003
- Manual Third Edition, 2006
- Manual Fourth Edition, 2009
- Manual Fifth Edition, 2011

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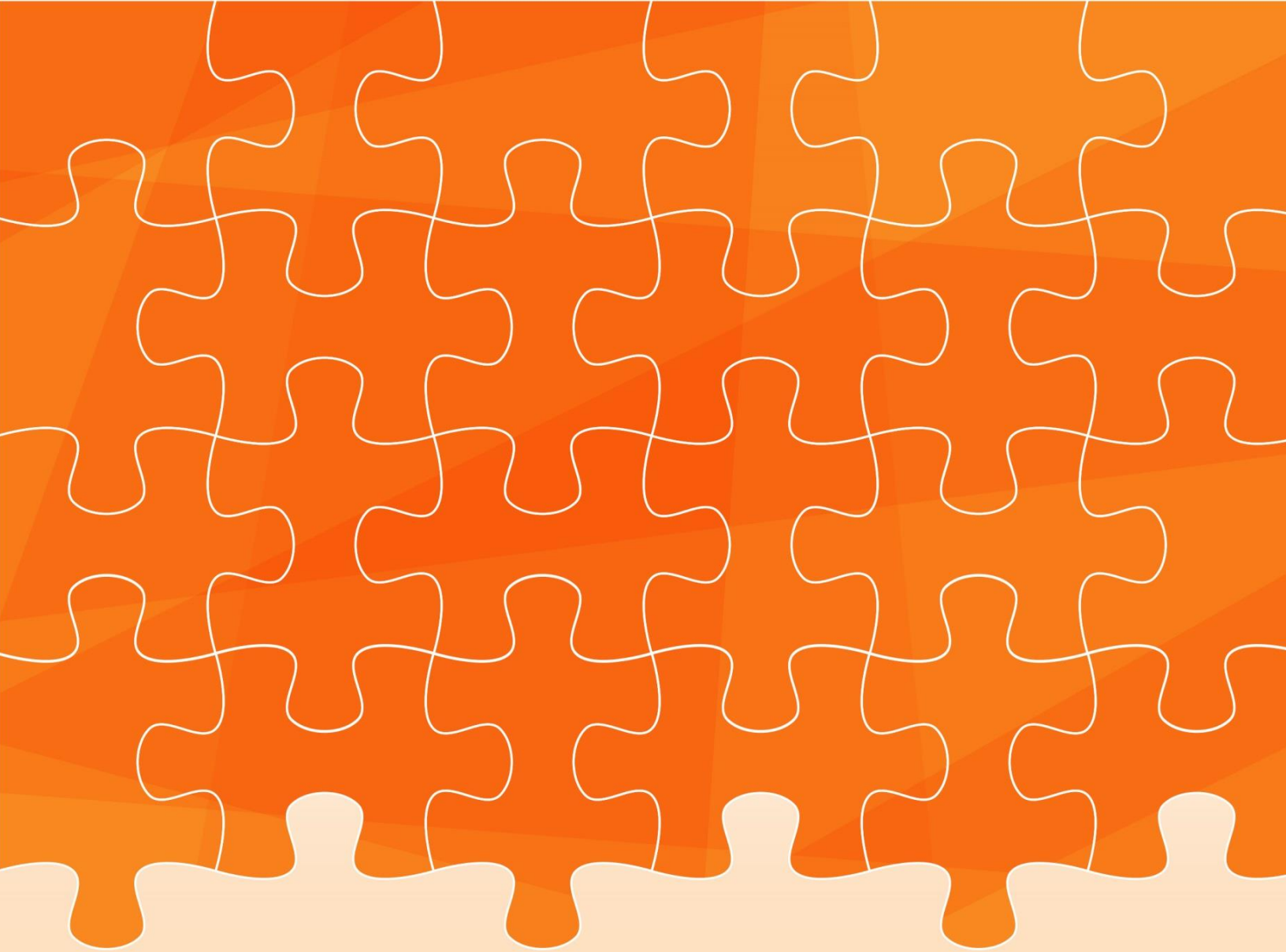


1.0 Introduction

1. INTRODUCTION

Subdivision and Development Appeal Boards (SDAB) hear appeals from municipal subdivision and development authorities. By hearing appeals and making decisions on land use in Alberta, a SDAB fulfills a vital function in achieving the goals of orderly, beneficial and economic development set out in Part 17 of the *Municipal Government Act* (*MGA*). SDAB decisions shape the community and affect the lives of developers, neighbours, citizens, and businesses.

Planning in Alberta is a collection of generally accepted practices which is supported in some cases by legislation and in other cases by professional practice. The *MGA* is the main piece of legislation that governs the powers and functions of a SDAB. However it is not the only source of information available to an appeal board such as the SDAB on the rules governing planning and development in Alberta. Legislation that relates to land and land use appears in many other pieces of legislation, regulations and policies in Alberta. A SDAB is also guided by principles that have been established by the common law, which is a body of law that has built up over time through various court decisions.

The goal of this training manual is to provide individuals with enough information to be able to identify potential issues that may arise during a SDAB appeal hearing. This training manual will support a SDAB in conducting effective hearings, making and writing legally binding decisions, and acting within the scope of its authority. Below are the learning outcomes for each of the chapters:

Chapter 1: Introduction

- Understand generally what a SDAB is and what it does.

Chapter 2: SDABs

- Recognize the membership and composition of the Board.
- Understand the scope of a SDABs powers and the types of appeals that it hears.
- Know the types of appeals that go to the Municipal Government Board (MGB).
- Be able to identify questions of jurisdiction and the process for making decisions on these questions.

Chapter 3: Legislative and Planning Considerations

- Recognize the land use planning and development framework in Alberta.
- Be able to identify the purpose of Part 17 of the *MGA.*
- Determine the applicability of the Provincial Land Use Policies or a regional plan adopted under *Alberta Land Stewardship Act.*
- Understand the difference between a statutory plan and a land use bylaw and being able to recognize how to apply both in decision-making.

Chapter 4: Overview of the Planning and Development Process

- Recognize the types of appeals to a SDAB and the municipal process for making a decision on these applications or issuing an order.

Chapter 5: Appeals to the SDAB

- Understand the requirements for a valid appeal to be filed with the Board.
- Recognize the Board's responsibilities in hearing the appeal.

Chapter 6: Common Law Substantive Limitations

- Identify the factors that may not influence a SDAB's decision.
- Recognize that a SDAB has the discretion to decide each appeal and that it must not delegate this decision-making to another entity.

Chapter 7: Procedural Constraints and the Rules of Natural Justice

- Understand what processes are required to ensure a fair hearing.

Chapter 8: The Appeal Process

- Distinguish the roles of various participants in the SDAB hearing process, including board members.

Chapter 9: Handling Difficult Situations

- Tools to diffuse difficult situations and maintain order during a hearing.

Chapter 10: Hearing Evidence

- Understand that participants ask questions to gather evidence.
- Recognize how to gather oral and written evidence.

Chapter 11: Communication Skills

- Understand how to communicate with participants during a hearing, including setting an appropriate tone, asking questions and reflecting content.

Chapter 12: Making and Communicating Decisions

- Be comfortable identifying issues, evaluating evidence, and applying facts to legislation and policy.

The intended audience for these training materials is SDAB members and the board's support staff. However, the information is useful to anyone looking to better understand the SDAB process in Alberta. The training manual provides an overview of the planning and development process and general information relevant to the conduct of a SDAB hearing.

New Topics

The training material has been updated from previous versions. New topics and additional discussion in this version includes:

- Updated figures and diagrams
- Recent case law
- Current status of the *Alberta Land Stewardship Act*
- The abandoned well setbacks

2.0 Subdivision and Development Appeal Boards (SDAB)

2. SUBDIVISION AND DEVELOPMENT APPEAL BOARDS

2.1 BACKGROUND

SDABs replaced the functions of the Development Appeal Board with respect to development matters and the Alberta Planning Board with respect to subdivision matters. SDABs were created when Part 17 of the *Municipal Government Act* (referred to in this training manual as the *MGA*) came into force on September 1, 1995. In addition to SDABs, the Municipal Government Board (MGB) hears appeals on some subdivision applications.

A SDAB hears appeals regarding decisions made by a municipality's subdivision and development authorities. Its decisions are based on the evidence presented to it during a public hearing. Briefly, the function of a SDAB is to provide a mechanism for interested parties to challenge:

- A decision of a development authority on a development application (*MGA* s. 685(1)(a) and (b));
- A decision of a subdivision authority on a subdivision application where the Municipal Government Board does not have jurisdiction as outlined below (*MGA* s. 678(2) and S&D Reg. s. 22);
- The issuance of a stop order issued pursuant to section 645 of the *MGA* (*MGA* s. 685(1)(c)).

If an interested person disagrees with a decision on a development application, a decision on certain subdivision applications or the issuance of a stop order, he or she may file a notice of appeal with the appropriate board (SDAB/MGB). This notice triggers a hearing before the appropriate board.

The MGB hears subdivision appeals where the land (current title area including both the proposed lot(s) and the remnant land) that is the subject of the application is located:

- in the Green Area, as classified by the Minister responsible for the administration of the *Public Lands Act;*
- Not in a city and located within 800 metres of the centre line of a highway where the speed limit is 80km/h or greater;
- Adjacent to or contains, wholly or partially, the bed and shore of a river, stream, watercourse, lake or other body of water;
- Within 300 metres of the working area of wastewater treatment plant;
- Within 450 metres of the working area of an operating landfill;
- Within 300 metres of the disposal area of any operating or non-operating landfill;
- Within 450 metres of the disposal area of a non-operating hazardous waste management facility; or
- Within 300 metres of the working area of an operating storage site.

The overview of appeals from decisions by the development authority or the subdivision authority looks like this:

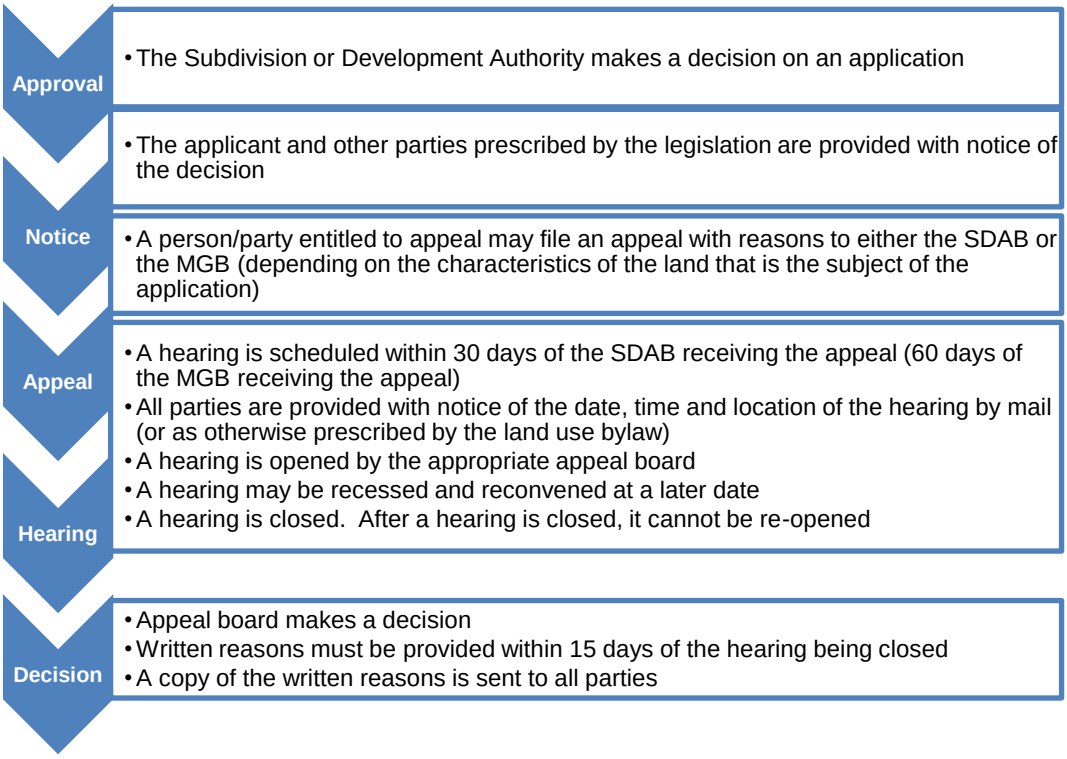


Figure 1 - Overview of the Appeal Process

2.2 SDAB BYLAW

Section 627 of the *MGA* requires every municipality to, by bylaw, create a SDAB or authorize the municipality to enter into an agreement with one or more municipalities to establish an intermunicipal SDAB. An intermunicipal SDAB allows several communities to establish one SDAB for convenience and efficiency. Where council has authorized the municipality to enter into an agreement for an intermunicipal SDAB, the intermunicipal SDAB has the same powers and responsibilities as the SDAB for a single municipality.

The SDAB Bylaw must establish the procedures and conduct of the SDAB, as well as its functions and duties. The bylaw may set out:

- How council appoints members of the SDAB (including how many members are appointed, how many councillors may be appointed, how many public members may be appointed, that councillors must not form a majority of the members or panel hearing the appeal);
- The SDAB members' term of office and compensation (including remuneration and per diem payments);
- How the Chairperson and Vice-Chairperson are determined;

- Who is the Secretary of the SDAB or otherwise provides support to the Board;
- Quorum and the appointment of alternate members;
- The use of legal counsel and experts;
- The functions and duties of the SDAB; and
- Other matters at the discretion of council.

The bylaw can include helpful information for SDAB members to understand the composition of the board and the terms of reference for how the SDAB operates.

2.3 MEMBERSHIP

Council determines who is appointed to a SDAB subject to the limitations outlined in the *MGA*. Councillors may not form the majority of the SDAB, or of the panel hearing the appeal. A SDAB member cannot be an employee of the municipality, a person who carries out subdivision and development functions on behalf of the municipality, or a member of the municipal planning commission.

In the case of an intermunicipal SDAB, council members from any one municipality must not form the majority of the panel hearing an appeal.

Some SDABs consist solely of members of the public while others draw membership from council and the public. Councils generally appoint members to the SDAB at their annual organizational meeting held no later than the two weeks following the third Monday in October (*MGA* s. 192(1)). The following are examples of desirable qualifications for SDAB members:

- demonstrate integrity;
- be perceived as fair and impartial;
- regard for the interests of property owners, developers and other parties most affected by development;
- involvement in community activities and/or knowledge in development-related areas such as architecture, engineering/construction, law or land use planning;
- knowledge about subdivision and development processes;
- understanding of the quasi-judicial function of a tribunal and of the principles of administrative law and natural justice;
- ability to understand, organize and apply complex plans, relevant legislation, statutory documents, and case law;
- good analytical and reasoning skills; and
- a willingness to devote the necessary time to prepare for, attend and participate in the hearings together with the additional time required to draft and review the decision.

Each appeal must be handled within strict time limits and it is critical that members be available to meet the timelines.

SDAB members are often appointed for their knowledge and expertise on various planning and development-related topics. Any SDAB member holding other positions in the community, including that of municipal council member, must keep their role in those positions separate from their role as a SDAB member. A SDAB member's expert knowledge can be used in the evaluation of evidence submitted but cannot be used as evidence in the case. This distinction will be discussed further in the section on hearing evidence at the appeal.

2.4 SDAB POWERS

2.4.1 GENERAL

The *MGA* establishes a framework for municipal planning and development that is supported by provincial legislation, municipal statutory plans and bylaws. The SDAB evaluates each case before it with reference to the provincial planning framework, statutory plans, and bylaws. In making the decision on an appeal case, the SDAB must consider, among other things, the provincial and municipal legislative and planning framework of any application. Hearings are scheduled so that both sides affected by a decision can be present. Presenting arguments in this type of forum allows all the arguments and evidence to be heard. The law also places limits on what a SDAB can do. A SDAB must:

- stay within the limits of the legislation;
- act fairly and reasonably within the limits imposed by administrative law and the principles of natural justice;
- act in accordance with its enabling bylaw; and
- apply the applicable planning framework to the appeal before it.

The courts, from time to time, interpret legislation while deciding cases. Where the courts have interpreted the provisions in Part 17 of the *MGA*, the resulting case law also gives guidance to the SDAB.

2.4.2 PRECEDENT

> *Precedent is a doctrine whereby a previously decided case (issued by a supervising court) is recognized as authority for the disposition of future cases.*

The SDAB is not bound to follow its previous decisions. In other words, a SDAB decision in one hearing does not require the SDAB to make the same decision in future hearings. However, fairness dictates that parties in similar situations should be treated similarly. The SDAB may want to consider, as part of its reasons for decision, outlining the facts in the particular situation which are unique or different from any previous decisions so as to clearly establish why a different decision may have been made in this particular appeal.

2.4.3 SUBDIVISION APPEALS

✓ *ss. 678 to 680 of the MGA*

Subdivision appeals are split between the Municipal Government Board (MGB) and the SDAB. The MGB hears appeals of subdivision decisions where the lands that are the subject of the application are located within the Green Area; are adjacent to or contain a body of water; or are within a certain distance to a highway, landfill or wastewater treatment facility (S&D Reg. s. 22). The subdivision authority must identify whether an appeal is to be heard by the SDAB or the MGB, but the appeal board should analyze the application to ensure that the appeal is being heard by the proper board (see Figure 2). If the appeal is sent to the incorrect board, the *MGA* allows the appeal to be forwarded to the proper board without prejudicing the appellant's timelines for filing an appeal (*MGA* s. 678(5)).

In making a decision on a subdivision appeal, the SDAB:

- Must act in accordance with any applicable *Alberta Land Stewardship Act (ALSA)* regional plan;
- Must be consistent with the Provincial Land Use Policies, if it is not subject to a regional plan under *ALSA*;
- Must conform with the uses of land referred to in a land use bylaw;
- Must have regard to any statutory plan;
- Must have regard to, but is not bound by, the Subdivision and Development Regulation;
- May confirm or revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own; and
- May exercise the same power as a subdivision authority is permitted to exercise pursuant to *MGA* Part 17.

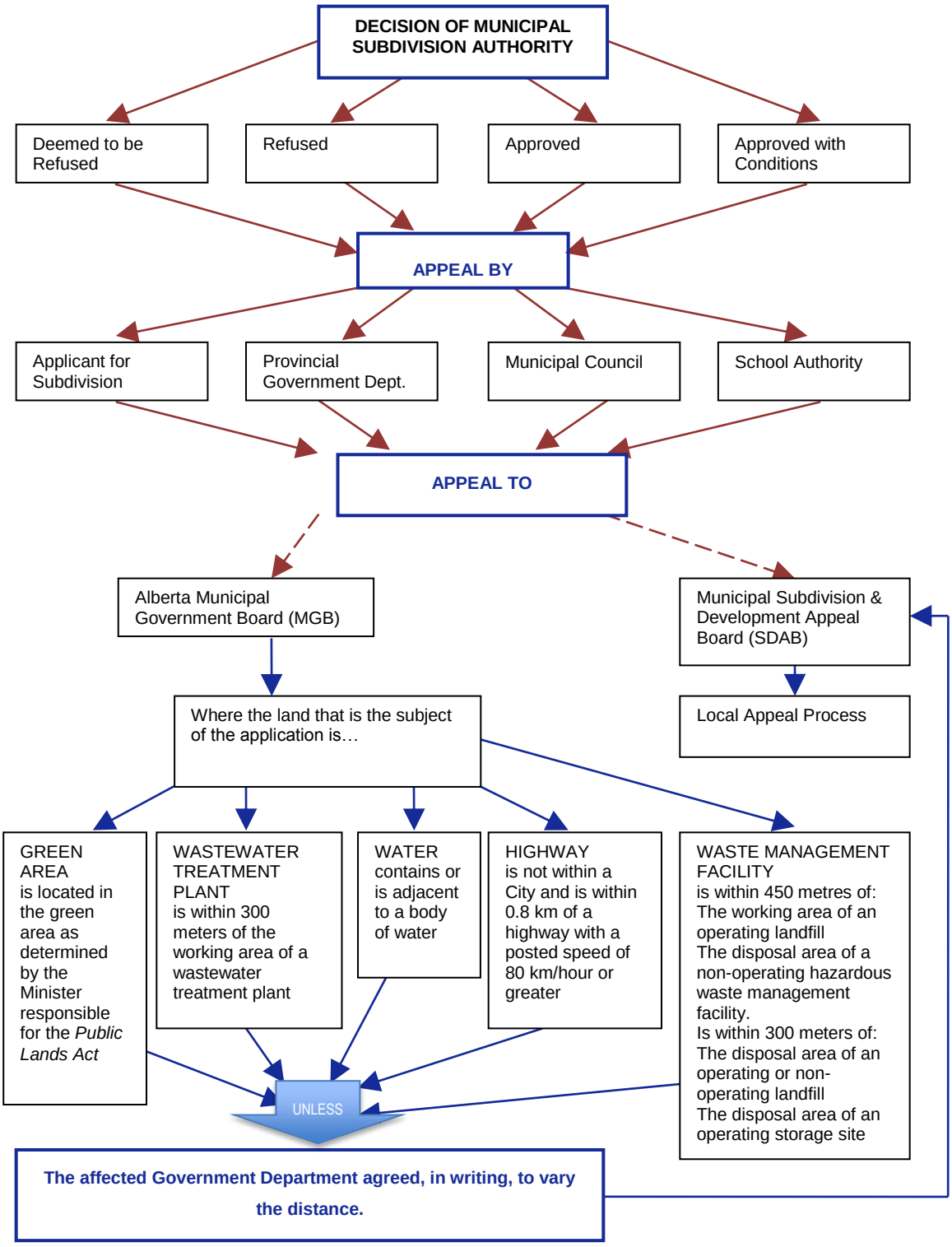


Figure 2 – Appeals to the MGB

2.4.4 DEVELOPMENT PERMIT APPEALS

✓ *s. 687 of the MGA*

In making a decision on a development appeal, the SDAB:

- Must act in accordance with any applicable *ALSA* regional plan;
- Must comply with the Provincial Land Use Policies if it is not subject to a regional plan under *ALSA*; statutory plans; and uses of land prescribed in the land use bylaw;
- Must have regard to, but is not bound by, the Subdivision and Development Regulation;
- May confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own; and
- May make an order or decision or issue or confirm the issuance of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, the proposed development conforms with the use prescribed for that land or building in the land use bylaw and would not:
    - Unduly interfere with the amenities of the neighbourhood, or
    - Materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

2.4.5 STOP ORDER APPEALS

Stop orders can be issued by a development authority under section 645 of the *MGA*. Stop orders issued by a development authority are meant to ensure that development complies with the land use bylaw, the development permit or the subdivision approval. A stop order on a development may require the demolition, removal, replacement or alteration of a building or structure or for the recipient to stop using the development. A stop order could also be used to require compliance with the requirements of subdivision approval, which could include the installation of servicing.

Stop orders issued under section 645 are different from municipal enforcement orders issued under sections 545 and 546 of the *MGA*. Orders issued under section 545 relate to legislative or bylaw contraventions such as illegal dumping, weeds, abandoned vehicles on a municipal street, etc. Section 546 enforcement orders deal with unsightly or dangerous properties. Orders and caveats issued under sections 545 and 546 can only be appealed to council (or an appeal committee established by bylaw), not to the SDAB (*MGA* s. 203(2)).

An appeal to the SDAB of a stop order is restricted to determining if the stop order was properly issued, and if agreeable, to give the recipient more time to comply with the terms of the order.

2.4.6 WHAT IS JURISDICTION?

A SDAB must act within its jurisdiction when it makes a decision. Without jurisdiction, the SDAB does not have the authority to make a decision. In order to maintain jurisdiction, the SDAB must:

- Adhere to the statutory requirements prescribed for SDABs in the *MGA*;
- Comply with the principles of natural justice; and
- Must only make decisions on matters which are properly before the Board.

A SDABs jurisdiction defines the matters and geographical area over which a SDAB has power to decide. Without jurisdiction, SDABs cannot make **binding** decisions.

The SDAB hears appeals from decisions on development, certain subdivision applications and stop orders. However, where provincial interests may be affected, the MGB hears certain subdivision appeals (See Figure 2).

The MGB hears subdivision appeals where the land (current title area including both the proposed lot(s) and the remnant land) that is the subject of the application is located:

- in the Green Area, as classified by the Minister responsible for the administration of the *Public Lands Act*;
- Not in a city and located within 800 metres of the centre line of a highway where the speed limit is 80km/h or greater;
- Adjacent to or contains, wholly or partially, the bed and shore of a river, stream, watercourse, lake or other body of water;
- Within 300 metres of the working area of wastewater treatment plant;
- Within 450 metres of the working area of an operating landfill;
- Within 300 metres of the disposal area of any operating or non-operating landfill;
- Within 450 metres of the disposal area of a non-operating hazardous waste management facility; or
- Within 300 metres of the working area of an operating storage site.

2.4.7 JURISDICTION OF COUNCIL

The SDAB cannot change land use bylaws or statutory plans. Amendments to statutory plans and bylaws follow a different process, involving an application to the municipality's council. This process similarly incorporates principles of administrative law and the rules of natural justice, including the requirement for a public hearing for the proposed amendments.

The SDABs jurisdiction on development permit appeals for direct control district lands is limited when council is the decision-making authority. (See Section 3.10.1 – Direct Control Districts)

2.4.8 JURISDICTION OF THE PROVINCE

There is other legislation that takes priority over the authority given to municipalities under Part 17 of the *MGA*. Sections 618 and 618.1 of the *MGA* exempt highways, roads, wells or batteries, pipelines, and confined feeding operations from Part 17 of the *MGA*. This means that municipal planning, development or subdivision application approval is not required. However, provincial approval may be required.

Section 619(1) provides that authorizations granted by the Natural Resources Conservation Board the Energy Resources Conservation Board, the Alberta Energy Regulator, and the Alberta Utilities Commission prevail over any conflicting statutory plan, land use bylaw, or municipal subdivision or planning decisions. Examples of developments that are subject to the jurisdiction of these regulatory boards include confined feeding operations, sulphur storage and processing facilities, and power plants including wind turbines.

Section 620 of the *MGA* indicates that a condition of a license, permit or authorization granted by the Lieutenant Governor in Council, a Minister or a provincial agency prevails over any condition of a development permit that conflicts with it.

Subdivision appeals where the land that is the subject of the application is located as outlined in Section 2.1 will be heard by the MGB.

2.4.9 FEDERAL JURISDICTION

Some developments and subdivisions are undertaken under federal legislation and do not require municipal approvals. The most common examples of this are cellular telephone towers, federal railways, or airports and related facilities, which are entirely under federal jurisdiction.

2.4.10 ESTABLISHING JURISDICTION (HEARING WITHIN A HEARING)

There are several situations where the SDAB needs to determine if it has the jurisdiction to hear the appeal. The following are some such situations:

- The application for appeal was received late and the appellant has requested the Board to hear the matter;
- The appeal was not complete or the appeal fee was not paid;
- The development or subdivision is for an “exempted” use under sections 618 and 618.1 of the *MGA* (for example a confined feeding operation), or the Planning Exemption Regulation;
- There is a question whether it is a matter that the MGB should hear;
- There is a question if the appellant has standing before the SDAB;
- The appeal is for a development permit issued for a permitted use;
- A party is requesting an adjournment of the hearing.

This is not an exhaustive list. The SDAB should hear evidence on questions of jurisdiction at the beginning of a hearing on a preliminary basis and make a decision on jurisdiction before any other evidence is heard on the merits of the appeal. Likewise, the SDAB may wish to alert the parties to a potential jurisdictional issue before the public hearing so that the parties are prepared to make submissions on jurisdiction.

2.4.11 ALBERTA COURT OF APPEAL

Section 688 of the *MGA* creates an appeal of a decision of the SDAB to the Alberta Court of Appeal, but only on questions of law or jurisdiction. Jurisdictional questions relate to actions that may be *ultra vires* or outside the SDAB's authority.

2.5 CONCLUSION

A SDAB must be mindful of the requirements of the legislation that governs it, and be aware of its jurisdiction to hear and decide on appeals.

3. Legislative and Planning Considerations

3. LEGISLATIVE AND PLANNING CONSIDERATIONS

Responsible planning has always been vital to the sustainability of safe, healthy, and secure urban and rural environments. Planning decisions must regularly deal with issues such as the conversion of land from one use to another, the impact of development on a person's quality of life or livelihood, the impact of development on the natural environment and the choice between competing interests. In order to deal with these issues, a variety of land use planning regulations have been developed to guide planning decisions.

This section of the training manual identifies the land use planning legislative framework in Alberta. In making the decision on an appeal case, the Subdivision and Development Appeal Board (SDAB) must consider the legislative framework of any application. Therefore, the SDAB needs to be familiar with the wider planning considerations used in decision-making.

This section discusses the aims of land use planning to provide a context for decisions to be made by a SDAB. The first portion sets out the legislative framework for planning. The second portion of this section describes the types of planning documents prepared by municipalities. The third section describes how planning is implemented through the subdivision and development review and approval process.

SDAB members have to answer the question **"Can you?"** to fulfill the legislative requirements and **"Should you?"** to answer the planning considerations of a proposal. To assist the SDAB in setting out its reasons, **"Why"** should be the question that the board asks and answers for each of the main issues raised in the appeal. This will ensure that the board members consider and discuss the main issues before them and assist interested parties in understanding what the SDAB considered in reaching its decision. In other words, first the SDAB must determine its jurisdiction. Second, within that jurisdiction the SDAB may weigh the planning merits of the matter under appeal. Third, it must elaborate on the reasons for the decision made.

3.1 Legislative Authority for Planning

In Canada, the Constitution divides all legal authority between two orders of government, either the federal or provincial government. The respective roles of each level of government are set out in sections 91 and 92 of the *Constitution Act*. Municipalities derive their authority from the provincial government, through legislation delegating certain powers to municipalities.

Part 17 of the *Municipal Government Act (MGA)* (sections 616 to 697) contains significant provisions relating to land use planning and the regulation of subdivision and development of land in Alberta. Section 617 of the *MGA* identifies the overall purpose of Part 17. This section states:

> ***617*** *The purpose of [Part 17] and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted to*
>
> *(a) achieve the orderly, economical and beneficial development and use of land and patterns of human settlement, and*
>
> *(b) maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,*
>
> *without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.*

When evaluating an application or appeal, the SDAB will consider questions such as:

- How does this proposal contribute to the orderly, economic, and beneficial development, use of land or pattern of human settlement?
- Is the land suitable for the purpose intended as a result of the proposed subdivision?
- Does the proposal maintain or improve the quality of the physical environment?
- How does the proposal impact the individual rights and the public interest? Which is more important in this case and why?
- Is the proposed subdivision or development compatible with existing subdivisions and development? With future planned subdivisions and developments?

For further information regarding the planning framework in Alberta, The Legislative Framework for Regional and Municipal Planning, Subdivision and Development Control discusses the legislated regional and municipal planning framework, outlines the legislated steps in the subdivision and development control process, and notes the statutory exemptions and limitations to municipal planning authority. (http://www.municipalaffairs.alberta.ca/documents/ms/THE_LEGISLATIVE_FRAMEWORK_2012-08_Version.pdf).

3.2 Provincial Land Use Policies

Section 622 of the *MGA* provides for the establishment of provincial Land Use Policies. The current Land Use Policies were adopted in 1996 to outline areas to be considered in municipal plans and bylaws. The policies should be read as a whole to get a sense of the policy objectives relating to planning and development.

The Provincial Land Use Policies provide guidance to and create a framework for Alberta's municipalities regarding land use planning and development matters which are of importance across the Province. (http://www.municipalaffairs.alberta.ca/documents/ms/landusepoliciesmga.pdf). The Land Use Policies themselves are stated generally. Section 1 sets out their purpose and clarifies the implementation roles of municipalities. Section 2 and 3 contain policies which address municipal approaches to planning and municipal interaction with residents, applicants, neighbouring municipalities, provincial and federal departments and other jurisdictions. Sections 4 to 8 contain policies which address specific land use planning issues in which the Province and municipalities share a common interest. A brief summary of the content of the Land Use Policies is as follows:

3.2.1 SECTION 1 – IMPLEMENTATION AND INTERPRETATION

There are both provincial and municipal interests that are affected by land use planning, development decisions and resource management. The Land Use Policies encourage municipalities and provincial departments to consult with one another where questions on the spirit and intent of these policies arise during implementation (s. 1.2 Policies).

3.2.2 SECTIONS 2 AND 3 – THE PLANNING PROCESS AND PLANNING COOPERATION

The process of land use planning should be carried out in a timely, fair, open, considerate, and equitable manner. This requires that appropriate opportunities and sufficient information is available for residents, landowners, community groups, interest groups, municipal service providers and other stakeholders to participate in the planning process. Decisions should respect the rights of individuals within the context of the overall public interest (s. 2.4).

Intermunicipal planning efforts are encouraged, especially where these efforts address common planning issues or valuable shared natural features. Cooperation is also encouraged with provincial land and resource management agencies, local school authorities, regional (Provincial) health authorities, First Nations Reserves, Metis Settlements, Irrigation Districts, and appropriate Federal departments.

3.2.3 SECTIONS 4 TO 8 – SPECIFIC PLANNING ISSUES

Land Use Patterns: Land use patterns that make efficient use of the land, which promote resource conservation and minimize environmental impact, and which contribute to the development of healthy, safe and viable communities are encouraged (s. 4.0). The land use patterns should provide for an appropriate mix of uses, including industrial and resource extraction, while minimizing the potential conflict with nearby land uses (s. 4.4). The land use pattern should be commensurate with level of infrastructure and services which can be provided (s. 4.6).

The Natural Environment: Planning decisions that contribute to the maintenance and enhancement of a healthy natural environment are encouraged (s. 5.0). Identification and mitigation of negative impacts of significant environmental features is encouraged.

Resource Conservation: The Provincial Land Use Policies encourage planning decisions that contribute to:

1. The maintenance and diversification of Alberta's agricultural industry (s. 6.1);
2. The efficient use of Alberta's non-renewable resources (s. 6.2);
3. The protection and sustainable utilization of Alberta's water resources (s. 6.3); and
4. The preservation, rehabilitation and reuse of historical resources (s. 6.4).

Transportation: The identification and planning for key transportation corridors and facilities is encouraged.

Residential Development: Land use patterns that are responsive to local housing needs are encouraged (s. 8.1). Intensification and diversification of housing types is encouraged where appropriate (ss. 8.2 and 8.3).

Under the *Alberta Land Stewardship Act (ALSA)*, when a regional plan is adopted for each of the seven Regional Plan areas, the Land Use Policies will cease to apply (*MGA* s. 622(4)). Currently the South Saskatchewan and Lower Athabasca Regional Plans have been adopted.

3.3 The *Alberta Land Stewardship Act*

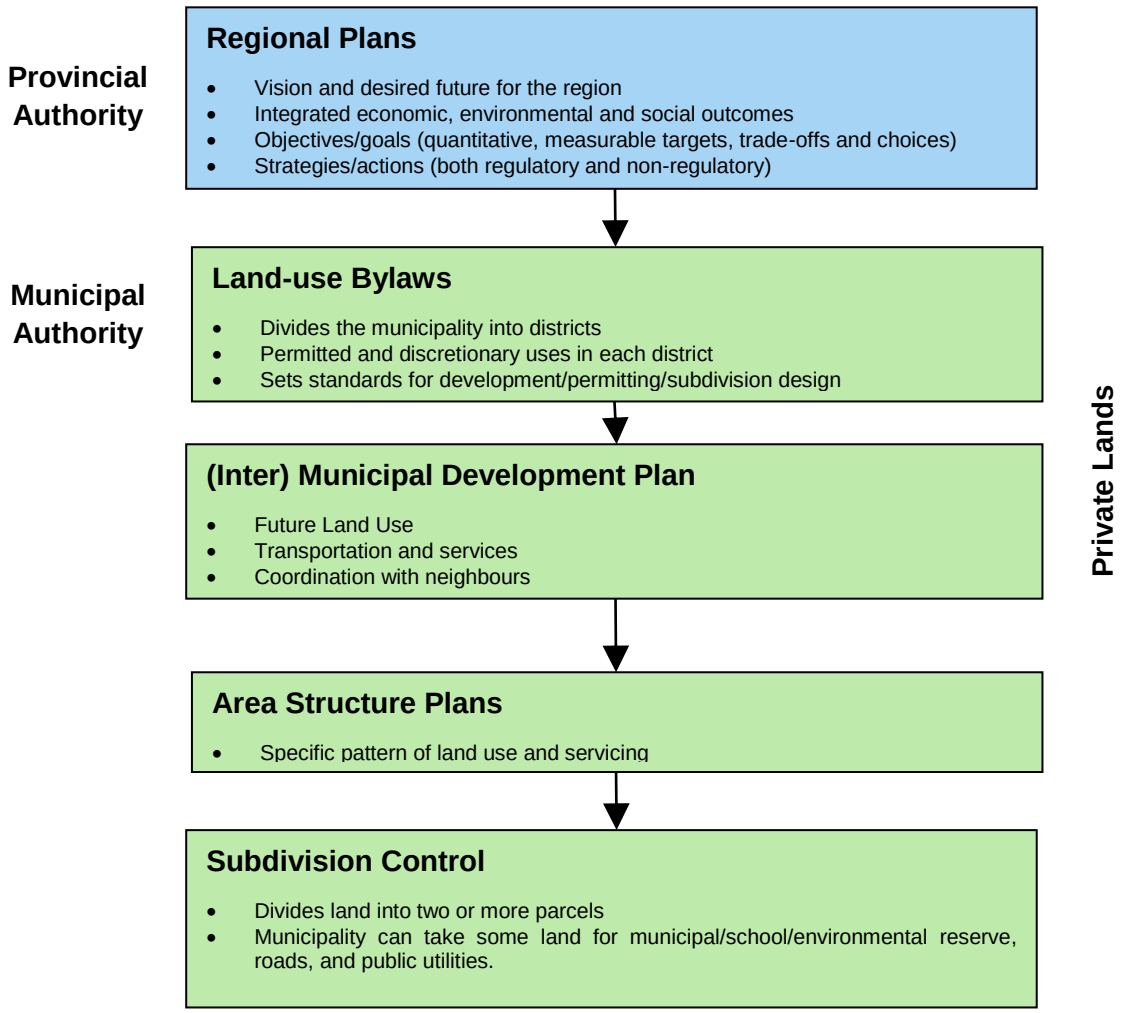
In 2009, the provincial government introduced the *Alberta Land Stewardship Act* (*ALSA)*. *ALSA* implements the provincial policy Alberta Land-use Framework. The Land-use Framework was released in December 2008 and set out seven "land-use regions" in the province. The Land-use Framework also established key provincial land use objectives. Responsibilities of the Stewardship Minister as well as the Stewardship Commissioner, Land Use Secretariat and Regional Advisory Councils are described in *ALSA*.

Where a decision is inconsistent with an adopted regional plan under *ALSA*, the regional plan prevails. *ALSA* imposes additional considerations and obligations on the planning and subdivision authorities when rendering a decision. The SDAB should interpret a municipality's statutory plans and land use bylaw in a manner that is consistent with the regional plan.

The *MGA* has been amended to require planning and subdivision authorities' actions to be consistent with the applicable *ALSA* regional plan (*MGA* s. 622(3)). Where the SDAB fails to "act in accordance" with a regional plan has made a substantive error, ~~and~~ therefore the SDAB decision could be appealed to the Court of Appeal.

With the adoption of *ALSA*, the planning framework (for subdivisions) in Alberta is as described in the following diagram:

Figure 3 - Municipal Alignment with Regional Plans



3.4 Growth Management Boards

On December 11, 2013, the *Enabling Regional Growth Boards Act* came into force. The *Enabling Regional Growth Boards Act* amends the *MGA* by adding new sections and revising existing sections to reflect the creation of "growth management boards". These growth management boards are optional. If two or more municipalities choose to participate, a possible board role will be to ensure that the planning and development in growth areas is coordinated.

A growth plan prevails in the event of conflict or inconsistency between the growth plan and a statutory plan or bylaw of a participating municipality. The SDAB should interpret a municipality's statutory plans and land use bylaw in a manner that is consistent with the growth plan. *ALSA* imposes additional considerations and obligations on the planning and subdivision authorities when rendering a decision.

The *MGA* has also been amended to require that any statutory plan or bylaw adopted by a participating municipality is consistent with, should one exist, a growth plan approved by the Minister of Municipal Affairs per Part 17.1, *MGA* 'Growth Management Boards, (*MGA* s. 708.12(1)).

3.5 The Capital Region Board (CRB) and the Calgary Regional Partnership (CRP)

The CRB and the CRP are two regional governance organizations that guide planning decisions of their respective members. A brief description of the organizations and their respective plans are as follows:

The CRB: On April 15th, 2008, the Government of Alberta established the CRB through a regulation enacted pursuant to the *MGA* (the "CRB Regulation"). The Capital Region Growth Plan, *Growing Forward*, was approved by the Province on March 11, 2010. Additional information on the CRB can be obtained online at http://capitalregionboard.ab.ca.

Section 17 of the CRB Regulation requires that all of the participating municipalities' statutory plans and land use bylaws are consistent with the growth plan. In the case of a member municipality of the CRB, before a statutory plan has legal standing, the CRB's planning committee must approve the statutory plan or any amendments thereto (s. 22 of the CRB Regulation).

The CRP: The CRP is a voluntary, collaborative relationship between its member municipalities. In June 2012, the CRP developed the Calgary Metropolitan Plan. It is a non-statutory plan that voluntary member municipalities ascribe to. Additional information on the CRP can be obtained online at http://calgaryregion.ca.

3.6 Municipal Responsibility

The *MGA* assigns the responsibility for planning to municipalities in Part 17. The *MGA* establishes the authority of municipalities to develop, adopt, implement, and review a series of plans and bylaws that integrate the legislation, planning principles, and community views to guide subdivision and development authorities in making decisions on applications. The *MGA* is not prescriptive; rather it is written in permissive language, respecting municipal autonomy and allows municipalities to make community-specific decisions.

Only municipal councils have the authority to adopt or amend land use bylaws or statutory plans. The SDAB should consider bylaws as validly enacted and legally binding as of the date they are adopted. If an appellant feels that the bylaw adopting a statutory plan or enacting a land use bylaw is improper or inconsistent with the *MGA,* the applicant may seek a decision from the Court of Queen's Bench. The SDAB does not have the legal authority to decide on the legal status of a municipal bylaw adopting a statutory plan or a land use bylaw.

3.7 The Subdivision and Development Regulation

In addition to the requirements of the *MGA*, the Subdivision and Development Regulation outlines a number of different setbacks, procedures and guidelines for the referral and decision-making process on subdivision applications in Alberta. The Subdivision and Development Regulation prescribes the following setback distances:

- 100 metres from gas and oil wells;
- 1.5 kilometres from sour gas wells and facilities (depending on the level of the sour gas facility and the intensity of the proposed use);
- 300 metres from the working area of a wastewater treatment plant;
- 300 metres from the disposal area of an operating or non-operating landfill, or the disposal area of an operating storage site; and
- 450 metres from the working area of an operating landfill, or the disposal area of a non-operating hazardous waste management site.

The Subdivision and Development Regulation requires that an applicant for subdivision or for development permit (except when the proposed building is less than 47 square metres) supply information regarding abandoned oil and gas wells on the subject parcel. If an abandoned well is identified during the application process, Alberta Energy Regulator Directive 079 prescribes minimum setbacks and may require the applicant to contact the licensee of record.

3.8 Statutory Plans

3.8.1 MUNICIPAL DEVELOPMENT PLANS (MDP)

✓ *s. 632 of the MGA*

A MDP is a planning document, adopted by bylaw after a public hearing, which establishes a long term planning vision for the municipality as whole. Municipalities with a population over 3,500 are required to adopt an MDP that reflects the Provincial Land Use Policies and section 617 (Purpose of Part 17) of the *MGA* from a local perspective.

The *MGA* outlines the areas that **must** be included in a MDP:

- Future land use in a municipality;
- Manner of, and the proposals for, future development in the municipality;

- Coordination of land use, future growth patterns and other infrastructure with adjacent municipalities, if there is no intermunicipal development plan with respect to those matters in those municipalities;
- Provision of the required transportation systems either generally or specifically with the municipality and in relation to adjacent municipalities;
- Provision of municipal services and facilities;
- Policies compatible with the Subdivision and Development Regulation to provide guidance on the type and location of land uses adjacent to sour gas facilities;
- Policies respecting the provision of municipal, school, municipal and school, or community service reserves, including but not limited to the need for amount of and the allocation of those reserves and the identification of school requirements in consultation with the affected school authorities; and
- Policies respecting the protection of agricultural operations.

In addition, an MDP **may** contain policies relating to:

- Proposals for the financing and programming of municipal infrastructure;
- Coordination of municipal programs relating to the physical, social, and economic development of the municipality;
- Environmental matters within the municipality;
- Financial resources for the municipality;
- Development constraints including results from development studies and impact analyses; and
- Any other matter relating to the physical, social or economic development of the municipality.

The *MGA* establishes a public input process during the development of an MDP (s. 636 of the *MGA*).

3.8.2 INTERMUNICIPAL DEVELOPMENT PLANS (IDP)

✓ *s. 631 of the MGA*

Two or more municipalities may prepare an IDP to address the future development of a shared sub-region. “May” means that an IDP is optional and there is no requirement for municipalities to have an IDP. Mandatory content is limited to developing a process to resolve disputes and providing for administering and changing the plan. Optional content may include future land use, future development, and any element of the social, economic, and physical environment that the municipalities wish to address.

Many municipalities use different documents to address the same issues as an intermunicipal development plan, including mutual agreements, provisions in a municipal development plan, intermunicipal dispute resolution processes, or mutually adopted area structure plans. If a proposed subdivision is in an intermunicipal development plan area, the SDAB must have regard to the content of the plan and reflect this consideration in its decision. If a proposed development is in an intermunicipal development plan area, the SDAB’s decision must comply with the content of the plan and reflect this in its decision.

3.8.3 AREA STRUCTURE PLANS AND AREA REDEVELOPMENT PLANS

- ✓ *ss. 633 and 634 of the MGA*

These plans may be adopted by municipalities that wish to plan future development for certain areas in greater detail (area structure plans) or for redevelopment (area redevelopment plans). These plans are used to address detailed development issues including infrastructure needs, types of development, development sequence, and density.

For appeals of subdivision applications, the SDAB must have regard to any statutory plan (*MGA* s. 680(2)(a.1)). For appeals of development permit applications, the SDAB must comply with any statutory plan (*MGA* s. 687(3)(a.1)).

3.9 Land Use Bylaw

- ✓ *s. 640 of the MGA*

All municipalities are required to adopt a land use bylaw. Whereas a MDP outlines the broader land use and policy framework, a land use bylaw generally defines the specific land use categories or districts within the municipality. The land use bylaw outlines council's specific requirements in accepting, considering, and deciding on applications.

In most land use bylaws, there is a purpose statement that can be used by an appeal board, including a SDAB, to identify council's intent for the land use district. The bylaw will also describe the land uses contemplated for each district and the related development standards. The land use bylaw provides the details to evaluate a specific application for development or subdivision. In that sense, it acts as the implementation document for the statutory plans.

3.9.1 PERMITTED USES

If an applicant applies for a development permit for a permitted use, and the proposal conforms to the standards in the land use bylaw, the development authority **must** issue the permit. The ability to appeal a permitted use permit and/or its conditions is limited to situations where the land use bylaw is relaxed, varied or misinterpreted. The development authority may only impose those conditions expressly authorized by the land use bylaw. An omnibus clause, which generally allows the development authority to impose conditions, will not be sufficient for the SDAB to impose conditions on a permitted use. The SDAB must only impose conditions on a development permit that are contemplated in the land use bylaw or the legislation. For example, the ability to impose a condition that the applicant enter into a development agreement is expressly authorized in the case of subdivision applications (*MGA* s. 655(1)(b)). The equivalent section for development permit applications only authorizes the land use bylaw to authorize a condition that the applicant enters into a development agreement (*MGA* s. 650(1)).

In determining an appeal, the SDAB must consider the uses of land referred to in a land use bylaw and its decision must conform to the uses of land prescribed in the bylaw (*MGA* s. 680(2)(b)).

Only council has the authority to change the uses that are authorized in a particular land use district, to change the district that applies to a particular parcel of land, or to amend the land use bylaw.

3.9.2 DISCRETIONARY USES

With a development permit for a discretionary use, the development authority must examine the site, the adjacent uses, any additional requirements, and the planning merits of the proposal. The development authority may refuse the application, or approve the application with or without conditions. For discretionary use applications the development authority has far more flexibility to impose conditions, even those that are not contained in the land use bylaw, provided that the conditions achieve a legitimate planning and development objective, and align with the intent of the land use bylaw. Approval of a discretionary use development permit may involve exercising discretion to vary the general or district specific development standards.

3.10 Special Cases

3.10.1 DIRECT CONTROL DISTRICTS

- ✓ *s. 641 of the MGA*

The council of a municipality that has adopted a municipal development plan, if it wishes to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.

Appeals within a direct control district are a special case for a SDAB. The SDAB cannot hear a development permit appeal for Direct Control District lands where council is the decision-making authority. However, where council has delegated the decision-making authority to a development officer, there is a limited right of appeal to the SDAB on the question of whether the development officer followed the directions of council.

3.10.2 EXEMPTIONS FROM THE REQUIREMENT TO OBTAIN A DEVELOPMENT PERMIT

The Planning Exemption Regulation and the land use bylaw will exempt particular types of development from the necessity of a development permit. The issue of development exemption from the requirement to obtain a development permit most often arises in the context of a section 645 stop order appeal. If the development is exempt from the requirement to obtain a development permit, the development authority may not have the ability to issue a stop order requiring the discontinuance of the use or the demolition of the structure. The exemption from the requirement to obtain a development permit typically requires the use be ancillary to an approved use and for the structure to comply in all respects with the standards in the land use bylaw. If an appellant raises the issue during an appeal, the SDAB should carefully consider the scope of the exemptions listed in the land use bylaw or Planning Exemption Regulation.

3.10.3 NON-CONFORMING USES AND BUILDINGS

- ✓ *s. 643 of the MGA*

The issue of non-conforming uses and buildings most often arises in the context of a section 645 stop order appeal. A use is considered non-conforming where following the issuance of a development permit, the land use bylaw changes to effectively prohibit that use in the district. A non-conforming use can be continued, but generally speaking, it cannot be expanded. Section 643 of the *MGA* regulates the continuation or expansion of legal non-conforming uses.

In *Brooks (Town) v. Martin et al,* 1998 ABCA 168, the developer carried on an intensive agricultural use in an urban fringe district within the County of Newell. The developer applied to the County for an expansion of the operation. The SDAB approved the development permit on the grounds that the expansion is of a similar agricultural nature and will not significantly change the impact of the surrounding neighbourhood. The Court found that the SDAB had erred. The development was a non-conforming use because the intensive livestock operation was neither a permitted nor discretionary use (but had been authorized prior to an amendment to the land use bylaw). As such, an expansion was not authorized. A "similar use" provision cannot be used to allow an extension of a non-conforming use. The power of variance conferred by section 687(3)(d) of the *MGA* does not entitle a SDAB to amend the land use bylaw by approving a development for a use that is neither permitted nor discretionary.

When considering either a development appeal or a subdivision appeal, the SDAB only has the jurisdiction to vary the development standards under the municipality's land use bylaw. It cannot vary the use provisions of the land use bylaw.

3.10.4 HIERARCHY OF STATUTORY PLANS AND THE LAND USE BYLAW

The case law confirms that where there is a conflict between a statutory plan and the land use bylaw, the courts will "read down" the statutory plan to conform to the bylaw. In other words, the land use bylaw provisions will prevail over provisions to the contrary in a statutory plan.

In the case, Spruce Grove (City) v. Parkland (County), 2000 ABCA 199, the Appellant, Spruce Grove, sought leave to appeal a decision of its SDAB. The SDAB reversed a decision of the development authority by granting a development permit to develop a private campground and recreational storage facility. In the municipality's land use bylaw, the proposed use was a permitted use in the applicable district. The development authority refused the permit as a result of concerns about the development being contrary to the spirit and intention of the MDP. The Court of Appeal found that the SDAB's findings of fact demonstrated that it was aware of the provisions of the MDP. The Court noted that the SDAB applied the land use bylaw and relied on the uses prescribed in the applicable land use district. The Court agreed that in the event of a conflict between a statutory plan and the land use bylaw, it was permissible to read the statutory plan down. It is important that in this case the SDAB did not ignore the MDP, but rather placed more weight on the land use bylaw.

3.11 Policies, Procedures, and Standards

Periodically, municipalities will develop additional policies and procedures to provide more detail to statutory plans or the land use bylaw. Where such policies exist, planning staff should make the SDAB aware of these documents and their contents to assist in the decision-making. However, the SDAB must be mindful that it is not obligated to adhere to any such policies, procedures and standards, particularly if these provisions are not contained in a statutory plan or land use bylaw.

3.12 Beyond the Legislation: Other Planning Considerations

In addition to legislation and administrative procedures, planners and Appeal Boards (SDAB and MGB) must consider broad planning principles in evaluating applications. Some of these principles are:

- The proposal's compatibility with existing development and the landscape;
- Future considerations for the lands and those surrounding them, both in the short and long term;
- Values in planning, which include separating incompatible uses, promoting a variety of uses to build a community, and providing for different forms of transportation in the community;
- Cumulative impacts of different proposals, servicing ramifications (appropriate types, appropriate levels, sufficiency of servicing analysis, impacts on local and off-site infrastructure, adequacy of cost recovery);
- Mitigating negative impacts of proposals;
- Assessments of the severity of the impacts of the application; mitigating negative impacts of proposals; and
- Physical, social, economic, and environmental impacts.

The foregoing is not an exhaustive list, but gives an indication of some of the broad analysis that forms part of a recommendation and decision on land use proposals. A lot of planning analysis is rooted in risk management as well as public well-being and safety.

A SDAB makes its decisions after hearing from an appellant (and others) on why the decision of the approving authority should be changed. Hearings are scheduled so that both sides affected by a decision can be present. Presenting evidence and arguments in this type of forum allows the SDAB to hear all of the evidence and arguments that should be considered when it makes its decision. The law places limits on the types of decisions the SDAB can make and how it can conduct the hearings. These restrictions are to ensure that the SDAB is properly performing its role in the regulation of land use planning. A SDAB must:

- Stay within the limits of its job description in the legislation, as set out in the *MGA* and its regulations;
- Act fairly and reasonably within the limits imposed by administrative law and the principles of natural justice; and
- Act in accordance with its enabling bylaw.

The courts, from time to time, interpret legislation while deciding cases. Where the courts have interpreted the provisions of the *MGA*, the resulting case law also guides the SDAB.

3.13 Conclusion

The SDAB is just one of many planning bodies that form part of a municipality's planning process. This process involves a combination of bylaws and legislation, various agencies, the public, local authorities and planning documents that work together to guide the development of our built environment.

In making a decision, the SDAB must consider the relevant planning and development legislation, including the following:

- Part 17 of the *MGA*;
- The Subdivision and Development Regulation;
- The *ALSA* and applicable regional plan;
- The Provincial Land Use Policies;
- The municipality's municipal development plan and other statutory plans (including an intermunicipal development plan, an area redevelopment plan or an area structure plan); and
- The land use bylaw.

Where applicable and as required, the SDAB shall consider other pieces of legislation, regulations or policies. For example, the SDAB shall consider the provisions in the *Water Act,* the Alberta Energy Regulator's Directive 079, *Surface Development in Proximity to Abandoned Wellbores,* or the *Interpretation Act*.

Depending upon the nature of the appeal before the SDAB, it will consider and weigh each of the above documents differently. Frequently, issues in subdivision and development permit appeals arise where there is a conflict between one of more of the documents. The requirement in the *MGA* is that council will adopt statutory plans that are consistent with each other. However, the reality is that these documents are often evolving, and at the time of an appeal there may be tension between the goals established by the different statutory plans.

The SDAB should strive to make decisions that achieve compliance with all provincial legislation, municipal plans and bylaws. Where it is impossible to make a decision that is consistent with the relevant plans, the SDAB's priority should be to make a decision that is consistent with the more specific land use requirements, which are typically contained in the land use bylaw.

Although not addressed in the MGA, the case law indicates that in the event of a conflict between a statutory plan and the land use bylaw, the land use bylaw will prevail, Spruce Grove (City) v. Parkland (County), 2000 ABCA 199. (See Sec. 3.10.4 – Hierarchy of Statutory Plans and the Land Use Bylaw)

4. Overview of the Subdivision and Development Process in Alberta

4. OVERVIEW OF THE SUBDIVISION AND DEVELOPMENT PROCESS IN ALBERTA

There are 3 types of appeals that a Subdivision and Development Appeal Board (SDAB) may consider: subdivision, development and stop order:

1. **Subdivision:** A subdivision occurs when a legal document, such as a plan of survey, is registered at the Land Titles Office. This document describes one or more smaller units of land than the units described in an existing certificate of title. When the instrument is registered, the existing title is cancelled in whole or in part and new titles are issued describing each new unit of land. With few exceptions, subdivision cannot occur without approval of a municipality's subdivision authority.

2. **Development:** Generally, development requires the issuance of a development permit by the municipality's development authority. However, the definition of development in the *Municipal Government Act (MGA)* includes nearly everything that can be done on land. Development includes both the construction of structures on the land and the use of the land and structures. For convenience, many land use bylaws do not require development permits for the most common and straightforward types of development (for example fences under a certain height, landscaping, small accessory buildings). If no development permit is required, no decision of the development authority occurs; there is no right of appeal to the SDAB. (Also see Sec. 3.10.2 – Exemptions from the Requirement to Obtain a Development Permit)

3. **Stop Order:** Stop orders can be issued by a development authority under section 645 of the *MGA*. Stop orders issued by a development authority are meant to ensure that development complies with the land use bylaw, the development permit or the subdivision approval. A stop order on a development may require the demolition, removal, replacement or alteration of a building or structure or that the recipient of the order stop using the building, structure or land in a manner that contravenes the land use bylaw, development permit or subdivision approval. A stop order could also require compliance with the conditions of subdivision approval, including the installation of servicing.

4.1 The Mandate of a Development Authority

- ✓ *s. 624 of the MGA*

A development authority processes development permit applications under the planning provisions of the *MGA*. A development authority may include a designated officer (a development officer), the Municipal Planning Commission ("MPC"), or any other person or organization. On appeal, the authority lies with the SDAB.

4.2 The Mandate of a Subdivision Authority

- ✓ *s. 623 of the MGA*

A subdivision authority processes applications and issues subdivision approvals under the *MGA*. A subdivision authority may include council (or a committee of council), a designated officer, a Municipal Planning Commission, or any other person or organization. On appeal, the authority lies with either the SDAB or the

Municipal Government Board (depending on the characteristics of the land to be subdivided). (See Sec. 2.4.6 – What is Jurisdiction?)

4.3 Application

The first step in the subdivision or development process is for a proponent to make an application to the appropriate approving authority (subdivision or development). Depending on the nature of the proposal, including the complexity, location, potential impact on the community, just the process of applying can be time consuming and complex. The onus is on the applicant to provide enough information for the approving authority and referral agencies to determine the suitability of the proposal of subdivision or development. Information that is often required includes: geotechnical, soils and hydrogeological analysis; environmental site assessment; historical resources impact assessment; and traffic impact assessment.

For convenience, many municipalities outline in their land use bylaw, or in the application package, what material must be provided for a complete development permit or subdivision approval application. The required materials may include the appropriate application form, the relevant fee, sketch plans and the appropriate reports to support the scale of development or subdivision proposed in the application.

4.4 Acceptance

When a municipality receives an application for development, the land use bylaw may create a process for staff to determine whether the application is complete. Some land use bylaws may include a section that states that an application for a development permit shall not be considered completed until such time as the requirements of this bylaw have been met. The land use bylaw may provide the development officer with the option of returning the application and application fee to the applicant or may deem the application incomplete until such time as the required information has been received. Whichever process is available depends on the provision of a particular municipality's land use bylaw.

When a municipality receives an application for subdivision, the subdivision application must include information as required by Section 4 of the Subdivision and Development Regulation and any other information required by the subdivision authority to be deemed complete.

Once a complete application is received, a municipality may also have a process of sending written notification to the applicant that the application has been received and is deemed complete. This action is not required by the *MGA*, but it provides a concrete date for calculating the time limits in the legislation. Consequently, some municipalities have adopted the notification practice to provide greater certainty to the applicant and municipality about when the application decision timelines start.

For development permit applications, the land use bylaw will outline the process for notification of applications or approvals for development permits.

For subdivision, a copy of the application and notice must be provided to adjacent property owners and referral agencies outlined in section 5 of the Subdivision and Development Regulation.

4.5 Analysis

After receiving either the development or subdivision application, municipal staff or contracted professionals will assess the application based on legislative and planning considerations (See Sec. 3.0 – Legislative and

Planning Considerations). Staff and professionals will review additional information that is necessary for it to make its assessment including the configuration, layout and physical characteristics of the site, previous development activity in and around the site, the surrounding uses, the proposal, standards within that district, and any special considerations that need to be included as a result of the application. Some staff and professionals use a form to outline the legislative, statutory plan and bylaw sections used to analyze the application. This form assists in making recommendations and/or decisions.

4.5.1 DISCRETIONARY AUTHORITY

The information described above consists of tangible facts that can be attributed to the land, its use, the application, and municipal documents. In reviewing applications and arriving at decisions, subdivision and/or development authorities have the ability to exercise discretion within the parameters of the provincial legislation and municipal bylaws, including statutory plans and the land use bylaw.

Council sets out in the land use bylaw the instances where the subdivision or development authority may exercise its discretion in deciding on an application.

Exercising discretion does **not** include adding a permitted or discretionary use to a district. This type of decision is the equivalent of amending the land use bylaw. A municipal council is the only body that can approve an amendment to the land use bylaw.

4.6 Decision

If the proposal is for a permitted use and it complies with the land use bylaw and municipal development plan, then a development permit must be issued. If the proposal is for a discretionary use and it is suitable, the development authority will approve the application, with or without conditions. If the proposal is for a subdivision and it is suitable, the subdivision authority will approve the application, with or without conditions. If the application is not suitable, it will be refused.

For subdivision applications, the subdivision authority must issue its decision in writing, regardless of whether it is an approval, an approval with conditions, or a refusal. If the subdivision is refused, reasons must be given (s. 656(2)(b) of the *MGA*). For approvals and approvals with conditions, it is common practice for the decision of the subdivision authority to include reasons because section 8 of the Subdivision and Development Regulation does not distinguish between approvals or refusal when identifying the content of reasons for decision. Notice of the decision must be given to the applicant and other bodies defined in the legislation. The applicant must be advised of the appropriate appeal body and the appeal period (*MGA* s. 678(2)).

With development permits, a copy of the decision must be given in writing to the applicant as per section 642 of the *MGA*, but many municipalities have included notice in the land use bylaw to other affected parties (for example neighbouring property owners and neighbouring municipalities) and have determined how this notice may be provided.

5. Appeals to the Subdivision and Development Appeal Board (SDAB)

5. APPEALS TO THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This section discusses the nature of appeals against the different kinds of decisions that can be made by development and subdivision authorities.

5.1 Quasi-judicial Tribunal

The SDAB is part of a class of decision-makers called "administrative tribunals" which exercise quasi-judicial functions. This means that they make findings of fact based on evidence, and then apply legal rules to those findings. This process allows the SDAB to make a decision on a subdivision or a development matter after conducting a fair hearing in accordance with the legislation, administrative law, and the principles of natural justice (the common law).

The expectation is that a SDAB will act as fairly and as impartially as a court of law. As a quasi-judicial decision-maker, the SDAB will be required to follow fair processes and procedures.

5.2 Hearing *De Novo*

An appeal to the SDAB or the Municipal Government Board is considered a hearing "*de novo*". *De novo* is a legal term that means "anew"; the appeal board reconsiders all the facts and law, without assessing the decision made by the approving authority. In effect, during a hearing before the SDAB, the applicant makes a whole new application for subdivision approval or a development permit. The SDAB hears an application as if it were making the decision on the application (or the decision to issue the stop order) itself. This type of hearing is different to an appeal that evaluates the legality of the subdivision or development authorities' decision. Although the SDAB is required, pursuant to section 687 of the *Municipal Government Act (MGA)*, to hear from the development authority, it must come to its own conclusion and it must consider on its own whether the application has merit. The SDAB must hear the evidence and must allow the parties a reasonable opportunity to produce all relevant evidence so that the SDAB can consider the issue from a fresh point of view.

5.3 What Can Be Appealed?

5.3.1 SUBDIVISION APPLICATIONS

- ✓ *ss. 678, 681(1)(b) and 652(4) of the MGA*

The *MGA* sets out the following grounds for an appeal of a decision on a subdivision application. An appeal may be launched if:

- A decision is not made within 60 days or by an agreed-to extended date allowed under section 681(1)(b) of the *MGA* and confirmed through a time extension agreement;
- A decision on a subdivision under section 652(4) of the *MGA* (lands titled before July 1, 1950) is not made within 21 days;
- A written decision (approval with or without conditions) is made by a subdivision authority; or
- The application was refused.

5.3.2 DEVELOPMENT PERMIT APPLICATIONS

✓ *ss. 684 and 685 of the MGA*

The *MGA* sets out the following grounds for an appeal of a decision of a development authority. An appeal may be launched:

- Where a permit is not issued within the 40 days or as agreed to in a time extension agreement as allowed under section 684 of the *MGA*;
- If a permit is issued, with or without conditions;
- If a permit was refused; or
- If a stop order is issued.

Development permits for a permitted use can only be appealed if the land use bylaw was relaxed, varied, or misinterpreted in the issuance of the permit. This means that unless a variance or relaxation has occurred or the applicant or affected party can outline how the development authority misinterpreted the land use bylaw, no appeal is possible. This issue may require a SDAB to convene a hearing to receive evidence and submissions on the question of whether or not the appeal is properly brought before the SDAB and then make a preliminary decision with respect to whether or not it has jurisdiction to hear the matter.

5.3.3 STOP ORDERS

✓ *ss. 645 and 685 of the MGA*

Although the *MGA* states that a SDAB has the authority to vary or set aside the stop order, the SDABs authority has been defined by case law. A SDAB should focus on the issue of whether or not the stop order was properly issued by the development authority in the first instance.

A decision cannot be retroactive. This legal principle limits the SDAB's jurisdiction in dealing with *MGA* Section 645 (Stop Orders). As a result the SDAB cannot vary or waive the conditions of either the original development permit or subdivision approval on a stop order appeal.

A stop order may be issued when the landowner does not have a development permit. The SDAB should not delve into whether or not the use is appropriate, just on whether the landowner should be required to obtain a development permit. Where a land use bylaw amendment would be required to change the land use designation or to add the use to the district, the landowner should be directed to go through the regular planning application process for the necessary land use bylaw amendment to allow the new use of the lands.

A stop order may also be issued where a landowner has not complied with the conditions of a development permit. The SDAB should not delve into whether the development permit condition should be modified. Instead the landowner should be instructed to go through the development permit process to vary the conditions of the original development permit or to obtain a new development permit.

To determine whether or not the stop order has been properly issued, the SDAB must closely examine the relevant provisions and conditions of the development permit or subdivision approval, together with the requirements of the land use bylaw and determine whether or not there has been a breach of the conditions. If

no development permit has been issued, the SDAB must consider if a development permit was required under the land use bylaw or if the section 643 non-conforming use provisions of the *MGA* are relevant. Where the SDAB is satisfied that the stop order was properly issued, the SDAB's jurisdiction is generally limited to upholding the stop order, but in some circumstances it may vary the time for compliance.

5.4 How Must an Appeal be Filed?

Many municipalities may provide a form when filing an appeal. This form prompts the appellant to provide the address and the reasons for the appeal. Many municipalities equally accept a letter to the SDAB Chair or Administrator as a notice of appeal. Municipalities may also require the payment of a fee to initiate the appeal process.

5.4.1 SUBDIVISION APPEALS

✓ *s. 678(4) of the MGA*

In the case of the appeal of a subdivision decision, a notice of appeal must contain:

- The legal description and municipal location, if applicable, of the land proposed to be subdivided, and
- The reasons for appeal, including the issues in the decision or the conditions imposed in the approval that is the subject of the appeal.

5.4.2 DEVELOPMENT APPEALS

✓ *s. 686(1) of the MGA*

The *MGA* requires that a person lodging an appeal file a notice of appeal that includes reasons for the appeal.

5.4.3 STOP ORDERS

The *MGA* requires that a person lodging an appeal file a notice of appeal that includes the reasons for the appeal.

5.5 Who can Appeal?

It is important for a SDAB to know who can appeal matters or who has "standing" to appeal.

5.5.1 SUBDIVISION APPLICATIONS

✓ *s. 678(1) of the MGA*

The following parties can lodge an appeal under section 678(1) of the *MGA*:

- The applicant;
- Any government department to which the application was required to be referred under the Subdivision and Development Regulation, this does not include agencies that a municipality chooses to refer applications under section 5(5)(n) of the Subdivision and Development Regulation;

- Council of the municipality, if the municipality is not the subdivision authority; and
- A school authority regarding allocation of municipal, school, or community service reserve, the land, or money in place of the reserve.

Note: Adjacent landowners do not have standing to appeal.

5.5.2 DEVELOPMENT PERMIT APPLICATIONS

✓ *s. 685 of the MGA*

An appeal can be lodged by one of two parties:

- The person applying for the permit, or
- Any person who is affected by the development permit.

The SDAB must sometimes decide who qualifies as an "affected person."

5.5.3 STOP ORDERS

✓ *ss. 645(2) and 685(1)(c) of the MGA*

Any person affected by a stop order has standing to file an appeal. This includes any person who is the recipient of such an order. Typically, a recipient falls into three categories:

- The registered owner of the property;
- The person responsible for the contraventions; and
- The person in possession of the land or building (such as a lessor).

Note: The Court of Appeal has held that neighbours cannot lodge a stop order appeal. Cross Country Homes Marketing (1993) Ltd. v. Grande Cache (Town of), 2000 ABCA 27.

5.6 When Must an Appeal be Filed?

5.6.1 SUBDIVISION APPLICATIONS

With a subdivision application, an appeal must be lodged within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681 of the *MGA*. If the decision is sent by regular mail, section 678(3) of the *MGA* provides the date of receipt of the decision is deemed to be 5 days from the date the decision was mailed (postmarked).

5.6.2 DEVELOPMENT PERMITS

Section 686 of the *MGA* provides that a notice of appeal, containing reasons, must be filed within 14 days after the date on which the applicant received notice of the decision or after the date of a deemed refusal or within 14 days of an affected person receiving notice of the decision in accordance with the land use bylaw.

The land use bylaw sets out how notice of development permits can be issued; often references are made to notification in writing, by posting at the site, by posting a notice in the municipal building, or by placing a notice in the newspaper. An appeal period ends 14 full days after the last date a notice of any description was given. If the notice is mailed, section 23 of the *Interpretation Act* states that the mail is deemed to be delivered 7 full days after it was placed in a mailbox. For a development appeal, the total timeline may be as long as 21 days.

Many municipal bylaws require notice for discretionary use permits, but not for permitted use permits. Recent decisions have indicated that notice on all permits may be necessary to establish a time frame for appeals. A municipality may wish to provide notice where a development permit is issued for a permitted use to provide certainty for appeal timeframes.

5.6.3 STOP ORDERS

Section 685(1) of the *MGA* provides that a person affected by a stop order under section 645 may appeal to the SDAB. Section 686(1) goes on to provide that a person making an appeal under section 685(1) must commence the appeal within 14 days of the date the person was notified of the order (which means 21 days from the mailing date, if using the *Interpretation Act*).

A stop order must specify a time within which compliance must occur. Given the varied nature and circumstances that provide the grounds for a stop order, the time given for compliance needs to be reasonable, having regard to the circumstances. Given the right of appeal, the time given for compliance must be long enough to enable the filing of an appeal and its disposition by the SDAB, unless the contravention has created a dangerous situation. Alternatively, the SDAB may need to extend the time for compliance if it confirms the issuance of the stop order.

5.6.4 TIME EXTENSION AGREEMENTS

The *MGA* contemplates that there may be situations where a longer period of time is needed for the subdivision or development authority to consider an application. In these circumstances, where the time periods contemplated by the *MGA* cannot be met, the *MGA* allows the approving authority and the applicant to enter into an agreement for an extended deadline. These agreements are given voluntarily by the applicant as an alternative to their application being deemed refused because no decision was made within the time limits prescribed by the *MGA*.

5.7 Has Adequate Notice Been Provided?

It is the SDABs responsibility to ensure advance notice is provided to parties in a hearing to allow them reasonable time to prepare. A failure to provide adequate notice of a hearing may result in a SDAB decision being appealed to the Court of Appeal. The *MGA* stipulates who must be notified in the case of subdivision, development or stop order appeal (*MGA* s. 679 and 686(3)), as well as the amount of notice required in

scheduling a hearing. Where there is discretion as to who is notified, appropriate care should be taken that adequate notice is given to all persons.

5.8 Time Limit to Hold a Hearing

Once an appeal has been filed, the SDAB must open the appeal within 30 days. The person who files the appeal (the appellant, or their designate) is expected to give a verbal presentation to the SDAB (a written and visual presentation is also permitted). Persons who have been notified of the appeal (affected persons) also have the right to present a verbal, written and/or visual presentation. As well, a representative from the approving authority (the respondent i.e.: development officer or planner) presents the application, including where the site is located, the proposed development and the reasons for the authority's decision.

6. Common Law Substantive Limitations

6. COMMON LAW SUBSTANTIVE LIMITATIONS

The Subdivision and Development Appeal Board (SDAB) makes an error in jurisdiction when it acts outside its authority.

6.1 Irrelevant Considerations

The SDAB must only take into account relevant considerations. Certain features, such as the impact of the development on adjacent lands and the surrounding area (traffic, noise, visual impact) are relevant considerations. Board decisions have been struck down for taking irrelevant considerations into account in the following situations.

6.1.1 BUSINESS COMPETITION

Ordinarily, business competition will not be a relevant planning consideration in reviewing an application for a development permit (*Actus Management Ltd. v. Calgary (City)*, [1975] 6 W.W.R. 739 (Alta. C.A.)). Yet, there are some decisions where the courts have accepted arguments that a SDAB may consider the proliferation of uses as a reason for their decision (*Calgary (City) v. Valdun Development Ltd.,* 1997 ABCA 134).

Provisions in the land use bylaw imposing a spatial separation between certain types of uses indicate that the cumulative effect of a type of development may be a valid planning consideration for the SDAB.

6.1.2 USER VS. USE

The character or personal situation of the user is generally not a valid planning consideration. The landowner can sell the land the day after obtaining subdivision or development approval. Therefore, the SDAB should remember that a subdivision or a development permit is tied to the land and that the SDAB's decision should be based only on the planning merits of a proposal. Accordingly, the following are possible examples of irrelevant considerations:

1. Whether the applicant is a long standing member of the community;
2. Whether the applicant is applying to subdivide land to allow a family member to build on the newly created parcel;
3. Whether the applicant has other circumstances that require the land to be subdivided or the development permit application to be approved; and
4. Whether the applicant has gone to great lengths to obtain the approval being requested.

6.1.3 PUBLIC BENEFIT

Subdivision or development approval cannot be withheld because the approving authority considers that the land would best be used for a public benefit, such as parkland. That determination is made by the dedication of Municipal Reserve and is *ultra vires* of the SDAB's mandate.

Conditions attached to a subdivision approval or development permit that confer a public benefit must similarly be authorized by the legislation. These types of conditions usually require the applicant to provide land to the municipality or to pay a levy or fee. Examples of the types of conditions include environmental reserve, municipal reserve (or cash in lieu), payment of an off-site levy or an oversizing contribution. The provisions in the *Municipal Government Act* relating to these types of conditions are strictly interpreted and have been litigated extensively.

6.2 Fettering Discretion

A SDAB cannot adopt an inflexible policy. Fettering discretion is a legal principle where a board views its decision-making powers as constrained in some improper fashion. When the SDAB makes a decision, it has the same powers as a development or subdivision authority. For example, a SDAB cannot make a decision that it will treat all appeals for secondary suites in a certain way. A SDAB must consider each case on its own merits.

6.3 Unauthorized Sub-delegation

The SDAB must make a decision on the appeal before it. The SDAB cannot delegate the decision to another party. For example, on an appeal relating to appropriate setbacks for a development, it would **not** be appropriate for the SDAB to state that the setback is to be to the "satisfaction of the development officer." However, if in issuing its decision, a SDAB imposes conditions that the developer will be required to meet, for example the standards and requirements of another appropriate government agency, this may constitute proper delegation (*Kowalchuk v. Two Hills No. 21 (County)* (1995), 169 A.R. 372, 31 Alta. L.R. (3d) 404).

One key SDAB case relates to a subdivision approval that was appealed to the Municipal Government Board (MGB). The most significant concern raised with the MGB was the matter of on-site sewage disposal. In response, the MGB imposed a condition that required the applicant conduct a hydrogeological site investigation and develop a ground water monitoring program. Both the investigation and monitoring program were required to be acceptable to three separate provincial regulatory agencies. The MGB required that the applicant satisfy the condition by providing mutual agreements and authorizations from the three referenced provincial agencies. One of these agencies, the regional health authority, did not have permitting or licensing authority.

The Court of Appeal found that this condition was objectionable. Despite its concern with the particular wording, the Court confirmed that an appeal board "has the power to stipulate conditions in subdivision approvals where provincial legislation grants concurrent or superior jurisdiction to other statutorily empowered provincial agencies" (*Rocky View (Municipal District No. 44) v. Herron (Estate),* 2001 ABCA 63, at para. 5). The Court of Appeal revised the subdivision approval so that it did not delegate the decision-making to the provincial agencies; instead the standard established, by the condition, referenced the standards established by the provincial agencies.

The SDAB should not issue an approval subject to the applicant providing information satisfactory to another department or person. Where additional information is required, and this information is central to the approval, the preferred approach is for the SDAB to adjourn the appeal hearing. The SDAB should allow the applicant an opportunity to obtain the information and require that the information be presented when the appeal hearing is reconvened.

7. Procedural Constraints and the Rules of Natural Justice

7. PROCEDURAL CONSTRAINTS AND THE RULES OF NATURAL JUSTICE

In addition to the legislation, Subdivision and Development Appeal Board (SDAB) members must also be aware of the principles of administrative law. Generally, administrative law deals with procedural fairness and principles of natural justice. This area has developed a considerable number of rules to guide decision-makers in their processes and procedures. These common law principles govern not only the rules a SDAB must apply in making a decision on the appeal before them; they also govern the way members must conduct themselves. The process of a SDAB is equally important to ensuring that its decisions will not be subject to a later appeal.

7.1 General Duty of Fairness

A series of practices have been developed in the common law. These practices are based on well-established legal principles that guide administrative decision-makers, including SDABs. These principles were developed to ensure fairness in hearings before decision-makers other than in a court of law. These practices are referred to as the rules of natural justice. Failure to comply with the rules of natural justice will give rise to grounds for further appeal to the Court of Appeal. The rules of natural justice are important principles for a SDAB to remember while conducting a hearing.

The elements of a fair hearing are contained in the format and procedure of the hearing, and the way in which decisions are made after the hearings. Hearings are a means for the SDAB to gather information, which enables the members to weigh the evidence, determine the facts, develop their reasons, and make a decision.

7.1.1 RIGHT TO A PUBLIC HEARING

A SDAB is a committee of council. Under the *Municipal Government Act (MGA)*, a committee of council must conduct open hearings. Five days' notice, announcing of the time and location of the hearing, as well as a location where the information can be reviewed, must be made available to the public.

Hearings must be held in public, including evidence gathering and presentation of arguments, since the parties are entitled to know the facts of the case. Everything that the SDAB has that is relevant to the case must be disclosed. However, deliberations of the SDAB can be conducted in private ("in camera").

Regarding participation by members of the public, the SDAB needs to determine who is entitled to be heard and who is affected enough to be heard. As a general rule, and if time permits it, it is better for a SDAB to hear any person who wishes to speak and later determine whether their comments are relevant for consideration in the case. A SDAB has a duty to the public when the public attends the hearing. Often, members of the public are unfamiliar with the workings of the SDAB. Members of the public view the SDAB as an integrated part of the municipality's planning and development approvals.

The appropriate action for the Chairperson would be to ask who wishes to speak, acknowledge their attendance at the hearing, and have their names recorded. In practice, the Secretary of the SDAB will record the names and addresses of attendees in order to send the written decision.

The SDAB deliberates on the evidence provided and must determine which evidence is relevant to consider for their decision. Evidence provided at the hearing should be reflected in the written decision. The written

decision may outline the evidence, what evidence the SDAB considered and why the evidence was incorporated, or not incorporated, into the decision.

The duty to members of the public extends to ensuring that the SDAB develops a consistent method for appeal hearings. This method may include a requirement that each hearing follows a similar process and that stages of the hearing are described to all in attendance. The Chairperson's consistent handling of a hearing and participants contributes to a sense of fairness. Some appeal boards and community associations have information available to members of the public to assist them in launching an appeal and in making presentations at appeal hearings i.e., the City of Edmonton, the City of Calgary, the Edmonton Federation of Community Leagues and the Federation of Calgary Communities. The Chairperson may need to prompt members of the public making presentations or ask questions to ensure that they are afforded an equal opportunity to make their case and remain on topic.

In addition to the copies of the agenda materials prepared for SDAB members and other parties in the appeal, a copy of the materials could be made available to members of the public prior to and at the hearing, keeping in mind *Freedom of Information and Protection of Privacy Act* requirements. Access to the information would provide affected parties with all of the available information about the appeal. If there are many members of the public in attendance at a hearing, the SDAB must try to allow adequate time to each speaker to make a presentation, and balance the presentations. For example, the SDAB should strive to provide equal opportunity to persons who are against the appeal. This opportunity may not be practical in all circumstances, but efforts should be taken to balance the presentations.

In practice, many SDABs limit lengthy presentations, especially when they become repetitious or irrelevant. However, it is recommended that time limits not be set to ensure that the parties have had the opportunities to present their evidence to the SDAB. As the Chairperson should maintain a productive meeting, he/she can ask a lengthy presenter to sum up or speed up their presentation.

7.1.2 RIGHT TO KNOW THE CASE TO BE MET

This principle of natural justice effectively means that the parties have been provided adequate disclosure of any written materials that will be presented to the SDAB. These materials must be provided so that the parties can prepare effectively for the issues that are likely to arise during the hearing. For development appeals, the *MGA* in section 686(4) states what must be disclosed to the parties. The *MGA* requires that the SDAB makes available for public inspection all relevant documents and materials respecting the appeal, including the application for the permit, the decision of the development authority and the notice of appeal. These documents must all be available for inspection prior to the start of the hearing. Where a stop order has been issued under section 645 of the *MGA*, both the order and other relevant documents and materials respecting the appeal must be made available pursuant to section 686(4) of the *MGA*.

In subdivision appeals, the *MGA* combines the disclosure requirement with the notice requirement. This is a common way to give disclosure where there is a limited amount of information that needs to be conveyed to the parties. Section 678(4) of the *MGA* states that a notice of appeal must contain the legal description and municipal location, if applicable, of the land proposed to be subdivided, along with the reasons for the appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

In the result, when the notice of the appeal is provided, the recipients are provided with the necessary information to understand the nature of the appeal.

7.1.3 RIGHT TO HAVE REASONABLE OPPORTUNITY TO STATE THEIR CASE

Parties must be given a reasonable opportunity to provide the SDAB with written materials, present argument and introduce evidence to establish their case. Adequate time to make arguments must be provided to all parties. The SDAB should not unnecessarily restrict parties presenting arguments and evidence. For this reason, the SDAB should not impose time limits on the parties, within which their presentations must be made. However, the Chairperson should maintain a productive meeting. He/she can ask a lengthy presenter to sum up or speed up their presentation.

7.1.4 RIGHT TO BE REPRESENTED BY COUNSEL OR AN AGENT

The SDAB must allow any party in the hearing to be represented by legal counsel or an agent. It is important that the SDAB members recognize that a party's lawyer is present to represent the party and to provide evidence through documents and witnesses, not to provide advice to the SDAB on the operation of the hearing or to assist the SDAB.

7.1.5 RIGHT TO QUESTION THE OTHER SIDE AND THEIR WITNESSES

When the SDAB holds a hearing, all parties must be given the opportunity to call witnesses and challenge the other side's arguments and evidence. A party may question another participant. The questions should be directed through the SDAB Chairperson to allow for smooth flow of the hearing and to ensure that the questions are neither rude nor abusive of witnesses. Generally, Robert's Rules of Order are followed to maintain proper meeting procedures.

In a court of law, usually parties will ask the other side questions directly. This process is called cross-examination. The common law says that there is no right to cross-examination. However, asking questions through the Chairperson may be necessary to allow a party a fair opportunity to correct or disagree with the evidence of another party. It is also proper to question the other parties or their witnesses in order to challenge the credibility of a party's evidence and the weight that the SDAB should give to it.

7.1.6 RIGHT TO REQUEST AN ADJOURNMENT/POSTPONEMENT

Essentially, where a party requests a reasonable adjournment because he or she has not had the time to prepare sufficiently for the hearing due to time constraints, the SDAB should allow an adjournment. The key is that the request and the amount of time must be reasonable. The SDAB need not grant adjournments where a reasonably diligent party would have had time to prepare or where a party requests numerous or lengthy adjournments.

In practice, a SDAB should deal with requests for adjournment as a preliminary matter, at the beginning of the hearing. If an adjournment or postponement is granted, the SDAB must ensure that all parties intending to participate in the hearing have input into the decision, and the new date and time for the hearing. Many boards achieve this by collecting the names and addresses of the parties in the hearing room before the meeting is

convened. Ideally, the date and place of the adjourned date will be announced at the hearing. If this announcement is done, notice of the adjournment (as prescribed under the *MGA* for convening the hearing) need not be provided a second time to the required parties. However, recording it in the meeting minutes is recommended.

It should be noted that this is not an absolute right, and the availability of an adjournment will depend on the circumstances. For example, a person may have previously rejected a lawyer. Later, the same person may, as a delay tactic, try to obtain an adjournment to obtain legal counsel. In these circumstances, the SDAB may decide to deny the request for an adjournment, which means that this person participates without a lawyer. Whenever the SDAB refuses to allow an adjournment for a party to be represented by counsel or an agent, the reasons should be made clear to the person and recorded in the minutes and written decision.

7.2 Right to a Fair Hearing

A SDAB must ensure that it does not adopt procedures that align itself with or against one party, or that appear to align itself with or against one party. A SDAB must treat the parties fairly. Fair treatment requires that all parties have an opportunity to present their case. A SDAB must be particularly careful where the municipality itself either opposes or favours a particular position in the appeal. In these circumstances, the SDAB should distance itself from municipal employees or advisors who have had previous involvement with the particular application or decision to issue a stop order.

In order to ensure a fair hearing, the SDAB must also abide by fair procedures when conducting a hearing. A hearing must be structured to ensure that all parties have the opportunity to participate in the hearing. The Chairperson directs, guides, and controls the hearing to allow parties to present their case.

Administrative boards, like the SDAB, that do not follow fair procedures risk their decision being challenged. This challenge may result in the decision of the board being overturned by the courts and having to rehear the matter again after following a fair procedure.

The following principles are helpful to ensuring that the hearing is fair for all parties.

7.2.1 PRIOR DETERMINATION

No SDAB member should ever state, prior to rendering a written decision, that his or her mind is made-up with respect to a particular appeal.

7.2.2 DISCLOSURE OF EVIDENCE

A SDAB member must rely on evidence presented at the SDAB hearing. If the SDAB member receives evidence prior to the SDAB hearing, those facts should be disclosed at the SDAB hearing, and all parties should be given an opportunity to respond to those facts.

7.2.3 MUNICIPAL POSITION

In circumstances where the municipality is either supporting or opposing the development, the SDAB should limit interactions with municipal employees or advisors prior to the hearing.

7.2.4 BOARD PRACTICE

The SDAB should, at the start of the hearing, ask whether the parties have an objection to any of the SDAB sitting members. If there is a potential issue that may not be known to all of the parties, it would be appropriate for the SDAB member to provide details.

The Chair must abide by the local SDAB Bylaw and meeting conditions. This may require the chair to request a member not sit and to ensure that quorum is maintained.

7.2.5 RIGHT TO HAVE THE DECISION-MAKER HEAR THE WHOLE CASE

The SDAB members who hear a case must make the decision on that case. The parties to the appeal have the right to have the decision made by SDAB members who heard the complaint. No one else can make their decision for them. The decision-makers must deliberate among themselves to reach a decision.

The SDAB members must be present for the entire hearing of a specific appeal. SDAB members cannot be substituted for other members during the hearing. SDAB members should ensure that they do not leave the hearing room during the hearing. Any member who leaves during the hearing may not return or participate in the decision in any way, if the hearing has continued without the member.

In practice, the Chairperson of the SDAB may call a recess to allow members to rest after a long series of presentations or to settle down the meeting participants after a contentious presentation or if someone must be removed from the hearing.

7.2.6 RIGHT TO HAVE THE DECISION BASED ON RELEVANT EVIDENCE

In making its decision, the SDAB should only consider relevant facts and evidence presented in the appeal hearing or in the written documents submitted. For example, a SDAB should not make its decisions on irrelevant considerations, that is, evidence that has nothing to do with development, subdivision, or stop order.

The subdivision/development authority's original decision is based on the information that is presented in with the application, as well as the information required under the legislation, statutory plans, and land use bylaw.

Case law examples of overturned SDAB decisions include:

- A SDAB cannot consider evidence about an applicant's infractions of the noise bylaw or the streets bylaw as a reason for refusing an application to construct a deck on his land.
- Development approval cannot be granted on the condition that a developer confers a public benefit, except where such a condition is authorized by statute.
- Development approval may not be used to regulate business competition.
- The SDAB may not normally consider the applicants' moral character.
- The SDAB may not consider the great length to which the applicant has already gone to obtain approval.

7.3 Rule Against Bias

Administrative law requires not only that justice be done, but it must also be seen to be done. A SDAB must not have an actual or perceived bias for or against the appellant. The Alberta Court of Appeal has divided "bias" into three different categories:

1. An opinion about the subject matter that is so strong so as to produce fixed and unalterable conclusions;
2. Any pecuniary interest, however slight; or
3. Personal bias whether by association with a party or personal hostility to a party where the test is a real likelihood of bias and the appearance that justice will be done if that person makes a decision. For example, the public is unlikely to perceive it "just" or fair for a SDAB member to hear an appeal on a nephew's appeal.

All SDAB members must consider perceived influence or perceived bias. If there is an argument that the public will perceive that the member's presence may affect the deliberations on the appeal or affect the outcome in any way, the SDAB member may consider making a declaration and excluding themselves from further discussion. This declaration should be noted in the minutes.

A SDAB member must listen to the appeal with an open mind and without being influenced by factors outside of the evidence and arguments of the parties participating in the appeal. A perception of bias is enough to disqualify a member. This perception exists where an ordinary observer, knowing all the facts, would think the member might not act in an entirely impartial manner.

In a situation where councillors are also SDAB members, an apprehension of bias can sometimes be alleged as a result of statements that a councillor may have made prior to the hearing, as part of a redistricting process or possibly a position taken on an issue during an election. So long as this councillor has not indicated that his/her position will not change or that his mind is made up on the issue before the appeal, this councillor is likely entitled to hear the appeal. A SDAB member must avoid creating a perception of bias; for example, talking with the parties before the hearing, or having lunch with the parties while there is an ongoing hearing.

7.4 Pecuniary Interest

Sections 170 and 172 of the *MGA* deal with "pecuniary interest" in relation to members of council. If council hears an appeal where a councillor or their family has an economic interest in the outcome of the decision, the councillor must declare the interest and must abstain from discussion or voting on the appeal. Typically, the councillor will leave the room after declaring a conflict. Any declaration or action must be noted in the minutes.

A SDAB member with a financial interest in the appeal should also declare this interest and exclude him or herself from the hearing. The conflict of interest rules under section 172 of the *MGA* can be used as a guideline for a SDAB member.

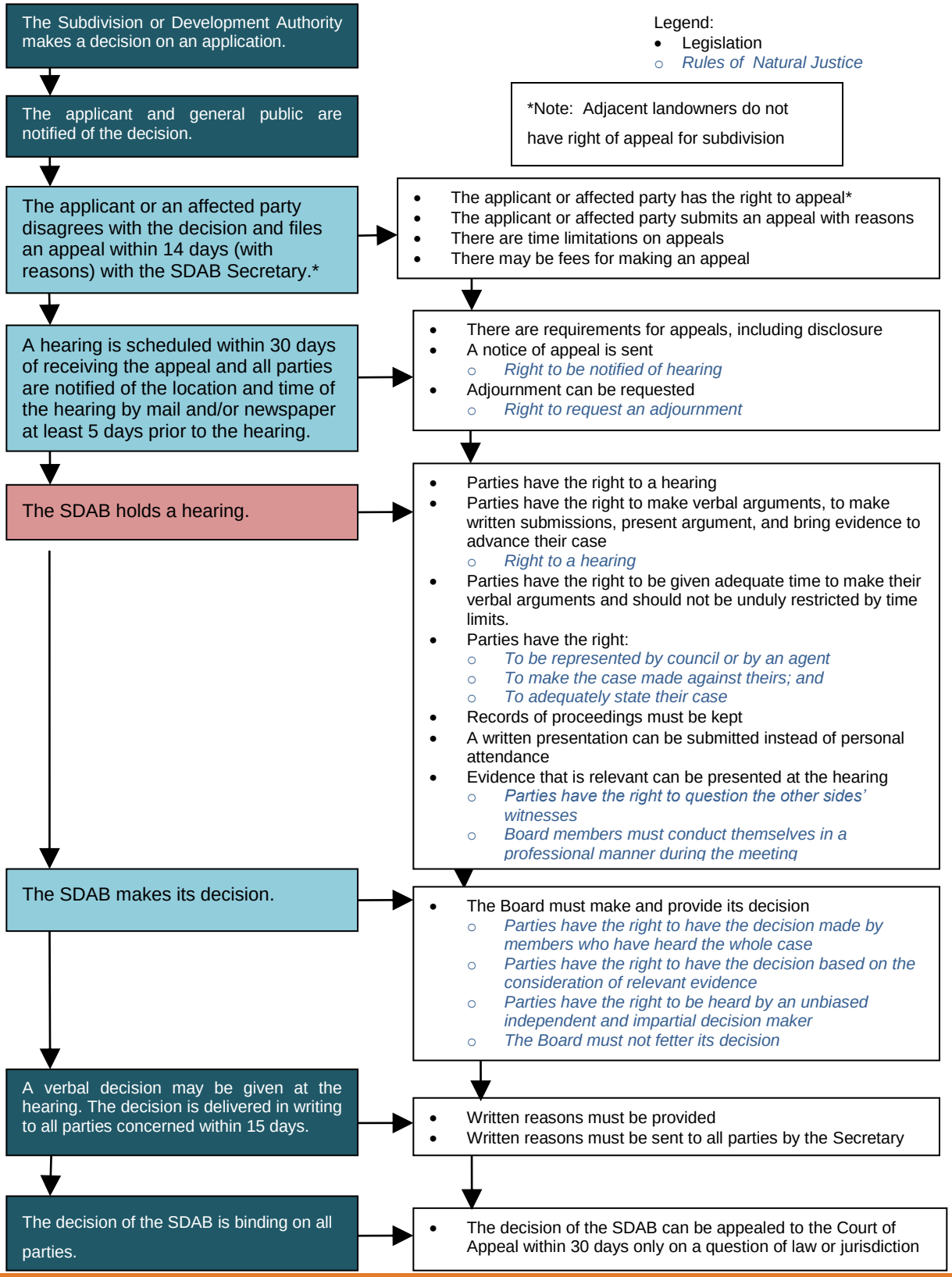
7.5 Conclusion

SDAB decisions must meet the requirements of the law and be legally defensible. In addition, although any one of the parties involved in the hearing may not be happy with the decision, it is imperative that the parties feel that:

- their individual concerns have been heard,
- they have been dealt with in a respectful manner, and
- the decisions rendered are fair and just.

As set out in Figure 4, the second column demonstrates how the legislation and principles of natural justice should guide the actions of the SDAB:

Figure 4 – How Legislation and Natural Justice Guide the Actions of the SDAB



8. THE APPEAL PROCESS

8. THE APPEAL PROCESS

A Subdivision and Development Appeal Board (SDAB) is the master of its own procedure (the *Municipal Government Act* s. 628). The SDAB will decide how it can best operate with regards to its resources, expertise and preferences. Despite this flexibility, all SDAB's must ensure that their procedures meet the requirements imposed by the SDAB bylaw, the legislation, and the common law.

The majority of these requirements can be satisfied by following well established processes and procedures that ensure full participation by those persons entitled to participate. Below is an order of presentation commonly used in hearings before the SDAB. An example of a typical hearing would involve the SDAB listening to evidence and directing questions in the following order:

- Development officer or other planning staff;
- The applicant;
- If other than the applicant, the appellant(s);
- Persons supporting appellant;
- Persons opposing appellant;
- Affected municipalities (other than the municipality with jurisdictions over the application), school authorities and government agencies (where subdivision appeal is involved);
- Final questions from the SDAB members; and
- Closing remarks and brief summary from the parties.

The following section explores in detail the roles and responsibilities of participants in the appeal process.

8.1 Roles and Responsibilities of Persons at a Hearing

Some municipalities have chosen to prepare a pamphlet explaining the SDAB process, identifying how residents can gain information about decisions, and how to make a submission to the SDAB. This pamphlet or guide can provide useful information about how the municipality's SDAB operates. In general, participants in an appeal before the SDAB will have the following roles and responsibilities.

8.1.1 APPELLANT

The appellant's role is to provide submissions and evidence on the grounds for the appeal of the approving authority's decision.

The appellant may or may not be familiar with the various rules or appeal processes and may rely on the description of the process provided by the Chairperson.

The appellant should review the application and the decision, and ensure the appeal letter give reasons for the appeal. The appellant should also be prepared to elaborate on these reasons at the hearing and possibly cite examples and use illustrations to assist the SDAB members understand both the problems with the original decision and the decision the appellant is asking the SDAB to make. Well thought-out arguments to support

the appeal will assist the SDAB in understanding why the application was appealed. The appellant may want to review the legislation, relevant plans and bylaws to identify what was taken into consideration with the decision.

8.1.2 RESPONDENT

The respondent at the hearing typically includes either the subdivision or the development authority of the municipality. A representative of the approving authority has the role of describing the steps that the authority followed to make their decision. The respondent's representative can be a subdivision officer or a development officer, or a lawyer. The respondent's case may also be made or supported by evidence presented in writing or by a witness.

The following are some of the roles that a respondent (usually a Planning Officer or a Development Officer) can fulfill:

- State the basis for the original decision;
- Provide reference/precedence and explain in plain language the relevant aspects pertaining to the case of the legislation, Provincial Land Use Policies, statutory plans, land use bylaw and other relevant municipal documents (polices, engineering standards, long range projections);
- Submit evidence on a decision made by the subdivision authority;
- Refer to duties, time limits and authority to make a decision;
- Outline requirements under the statutory plans and land use bylaw or jurisdiction issues for the SDAB;
- Provide pictures, video or information gathered from a site visit and a map of the area indicating the location of the lands and (if known) the lands of the affected persons; and
- In the land use bylaw, describe the standards and the test for relaxation or variation of the standards.

8.1.3 APPLICANT

The applicant is the person whose application was considered and on which a decision was rendered by the subdivision or development authority. In the hearing, the applicant may be an appellant if:

- The respective approving authority refused his/her application; or
- The approving authority issued a decision with a condition, or conditions, that the applicant disagrees with.

The applicant may be a respondent to the appeal if the appeal has been filed by another person who disagrees with the subdivision or development permit approval.

8.1.4 AFFECTED PERSONS

For subdivision purposes, there is no appeal role for adjacent landowners. The SDAB may choose to hear them if a valid appeal has been launched by another party. Adjacent landowners cannot appeal but they have

the right to be heard. Land use bylaws may identify land to be considered as adjacent for notification purposes. Generally speaking, a flexible approach should be used to determine whether a party is “affected” in a planning and development sense.

Affected persons include people who speak in favour or against the decision being appealed. Those individuals who have standing at the appeal will be provided the opportunity to speak in the appropriate order. If a member of the general public attends and wants to speak to the case, the SDAB may wish to determine whether it will hear that person.

8.1.5 AGENT

In some cases, an applicant, appellant, or an affected person will bring advisors or specialists to speak for them, or to assist in providing information to the SDAB. Agents might include lawyers, consultants (planner, engineer, architect, appraiser, surveyor or real estate agents), or other people who will provide different facts and information to the SDAB to represent the appellant’s arguments and to expand on the reasons for the appeal. Often, these agents provide written submissions.

8.1.6 SDAB COUNSEL

The SDAB may wish to retain a lawyer to provide training or procedural advice to assist during involved and contentious hearings. An important consideration for the SDAB to remember is that the SDAB must conduct the hearing, not their legal counsel, although advice may be sought during a hearing, if appropriate.

Counsel to the SDAB must not act in a way that will give rise to the appearance of bias or fettering of the SDAB’s discretion. Counsel cannot be seen to be the decision-maker, nor can the SDAB abdicate its role in conducting the hearing to counsel. The SDAB counsel should not be seen to act as a member of the SDAB or Chairperson of the hearing, under any circumstance.

8.2 Roles and Responsibilities of SDAB Members

Being a SDAB member is different from being a councillor. Councillors represent the community and are often asked to speak about issues and can respond to outside questions and influences. When councillors are members of SDABs, they are acting like a judge. This role means that they must be careful not to speak out of turn and that they must make their decision fair and impartial based only on the evidence presented to the SDAB during the hearing. SDAB members who are also councillors must “leave the councillor’s hat at home” when dealing with an appeal.

Any SDAB member also needs to be aware of potential for or perception of conflict of interest and bias. If the impression is created that the member might benefit directly or indirectly from the ruling of the SDAB or that there has been a previous association with a party to the appeal, the member should not participate in the hearing.

The SDAB should not see itself as solving people’s problems. It is not an advocate and should not be perceived as such. This restriction also applies to providing any advice that may relate to the issues of the case. For example, if the problem of the case could be resolved by rezoning the property, the SDAB should refrain from making this suggestion. The appellant can obtain independent advice that may identify the

appropriateness of this solution. Any advisory function could be handled by informed professionals, which possibly include the municipal staff.

The role of any SDAB member is to participate in the hearing process and to help ensure that decisions are made in a fair and timely manner. A list of members' responsibilities includes:

Before the hearing,

SDAB members must:

- Be informed about their legislative and quasi-judicial responsibilities;
- Be familiar with the relevant plans and bylaws (*Alberta Land Stewardship Act* regional plans and/or the Provincial Land Use Policies, municipal development plan, area structure plans, area redevelopment plans, land use bylaw and the SDAB bylaw); and
- If an agenda package is circulated before the hearing, review the material and become familiar with and understand the case.

SDAB members must not:

- Speak with the appellant or any other parties prior to the appeal (the SDAB member may advise people to attend the hearing in order to make their views known);
- Discuss the item being appealed with anyone, including SDAB members, outside the hearing;
- Conduct independent research including site visits (members should only hear the evidence at the hearing, not become an expert witness); and
- Form a conclusion prior to attending the hearing.

SDAB members should refrain from discussing appeals with municipal staff except within the context of the hearing. Caution is also advised if municipal staff provides training to the SDAB as this may be perceived as bias. If staff provides training, they must do so in a professional and unbiased manner.

At the hearing:

SDAB members must yield the operation of the hearing to the SDAB Chairperson and may ask questions during the hearing only with the permission of the Chairperson.

<u>At the hearing, SDAB members should</u>:

- Follow fair procedure and act in accordance with the rules of natural justice;
- Attend the entire hearing to make a decision;
- Determine if their sitting at a hearing is appropriate;
- Take notes to ensure that issues or evidence provided in the hearing is addressed in findings of fact, the reasons for the decision, or the decision;
- Hear from all parties in a hearing in a fair, open, and objective manner;

- Ask questions of the appellant, subdivision authority or other parties in the appeal to determine the findings of facts or to clarify information provided;
- Participate in the decision by concentrating on the evidence presented, and on the rules of natural justice and administrative law principles;
- Base their decision on the evidence provided in the hearing;
- Contribute to the written decision and ensure that written reasons are provided;
- Support the decision made by the SDAB after it is made;
- Treat all participants, including other SDAB members, with respect and fairness; and
- Use plain language as the audience may not be familiar with planning and development terminology, or the process respecting hearings conducted by a SDAB.

8.3 Roles and Responsibilities of the Chairperson

The SDAB bylaw may set out how the Chairperson is designated and specify the term of office. The Chairperson usually:

- Signs orders on behalf of the SDAB;
- Runs the meetings;
- Sets the tone of the hearing;
- Directs questions to be answered by the relevant party (including the appellant, SDAB member, approving authority, other staff, agent);
- Prevents improper questions, behaviour, or irrelevant information; and
- Conducts hearings in a fair and business-like manner, ensuring all parties are given an opportunity to speak about the item being appealed.

When the Chairperson opens the hearing, he or she should provide some direction to the people attending the hearing to help them understand the process and how their input may be recognized.

The Chairperson has control over the hearing and can call for breaks during the hearing if necessary. Questions and requests are referred to the SDAB through the Chairperson. The correct way to make a request is to direct the question to the Chairperson.

The Chairperson sets the tone of the hearing by ensuring the appropriate behaviour of people in the hearing and ensuring that the SDAB and persons appearing in the hearing ask relevant questions, and that irrelevant information is minimized.

Prior to adjourning, the Chairperson should ensure that the other members of the SDAB have adequate facts to develop the reasons for their decisions and to formulate the decision.

8.4 Roles and Responsibilities of the Secretary

The SDAB Secretary must perform a variety of important functions that are not carried out by the SDAB members. The Secretary is more of an administrator or executive officer because many functions need to be carried out at the right time and in the right way. The Secretary has duties to perform before, during, and after the public hearing. The functions below are only meant to be a guide and may vary according to the specifics of a municipality's SDAB bylaw.

The duties of the Secretary include:

Before the hearing:

- Ensure that the appeal has been properly filed (and within 14 days of decision or order);
- Phone members to ensure quorum;
- Ensure that the appropriate people are informed of appeal (including the appellant, affected persons, and anyone else identified in the land use bylaw and Subdivision and Development Regulation);
- Prepare a report for each appeal for the SDAB members (copies of relevant material for the SDAB members including zoning map, facts, application, notice of appeal, letters, report of development officer, surveyor's certificates, any other useful information);
- Prepare an agenda for the hearing (having simple appeals placed early on the agenda);
- Confirm all advertisements (such as in the newspaper) and notices have been made at least 5 days prior to hearing;
- Ensure that all relevant documents and materials are available for public inspection;
- Set up any equipment/materials needed in the SDAB meeting room;

At the hearing:

- Ensure quorum of the SDAB for the hearing;
- Announce the appeal at the commencement of the hearing;
- Record names of speakers;
- Mark exhibits;
- Take notes or minutes of the appeal;
- Record motions;
- Record attendance and absences of SDAB members;

After the hearing:

- Prepare the session summary setting out the SDAB's decision(s) for the Chairperson's review, edits, and signature;

- Send notification of the SDAB's decision(s) to the appropriate parties (including appellant, applicant, those persons who sent a written submission, those persons required by bylaw to be notified);
- Prepare a new development permit if necessary; and
- Prepare official minutes (summary of evidence presented at hearing).

8.5 Conclusion

The operation of the SDAB should be established with regards to the obligations imposed by the *MGA*, the mechanics set out in a municipality's SDAB bylaw, and with reference to the SDAB's past practices. It is essential for all participants to understand their roles and responsibilities. For those participants who may be interacting with the SDAB for the first time, it is important for the municipality and/or SDAB to be able to provide them with accurate information has to how the SDAB will operate.

9. Hearing Evidence

9. HEARING EVIDENCE

The *Municipal Government Act,* section 629, directs the Subdivision and Development Appeal Board (SDAB) to 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." Although the SDAB has broad discretion in this area, the following section describes the limits concerning the nature and quality of the evidence it may receive.

A hearing before the SDAB is a new hearing into the merits of the application for subdivision approval or a development permit. The SDAB hears any information that might have been considered as part of the initial application. This means that the appellant and other parties must present all of the relevant evidence about the item under appeal to the SDAB. The SDAB cannot fill in the blanks of the evidence provided in the hearing from its knowledge. Information to the SDAB is provided through:

- Presentations at the hearing;
- Written submissions;
- Technical information (reports supplied with application or at the hearing);
- Questions asked by SDAB members; and
- Questions asked by the appellant and other parties in the appeal.

9.1 Presentations

These will be a mix of opinions, evidence, facts, and statements. The SDAB must listen to each presentation to determine what is fact and what is opinion. A common statement in an appeal hearing is that the development will decrease the value of property. Information must be provided to support an argument that a person will experience a decrease in the market value of the property. Market value is based on a mixture of location, physical characteristics, amenities, and repairs needed or environmental problems. Thinking this statement through, the person complaining that the value of his property would be affected would raise issues of insufficient parking, strong lighting, increased traffic, decreased sun exposure, or decreased privacy. Just an allegation (or mere opinion) of decreased value is not sufficient—this statement should be supported by evidence or fact. An example of other allegations and supporting data include: "The development will result in my home being in the shade for most of the day". This should be supported by drawings or a model of the impact of the proposed development on the property.

9.2 Written submissions

The practice of some SDABs is to read shorter submissions aloud at the hearings, or the Chair acknowledges the written submissions and the SDAB reads the submissions while determining their findings. With some appeals there might be a number of lengthy written submissions; the SDAB may wish to review these before its deliberations. It is possible that written summaries of the submissions can be requested by the Chairperson, but the members are still required to review the written submissions in their entirety before deliberating on the evidence and making a decision.

9.3 Technical information

Technical information provided to the SDAB creates a unique challenge. Unless the information is presented in its entirety in a manner that is understandable to the SDAB, the SDAB may require the services of an outside consultant or expert to provide a report to the SDAB. Alternatively, council could appoint an expert (for a specific case) to sit on the SDAB to hear a complex appeal to assist in understanding the information. The SDAB must draw its own conclusion and make a decision.

If technical information that the SDAB needs to make a decision is not directly available, the SDAB could recess the hearing and request such information from a technical expert directly or request one of the parties to obtain it. Upon reconvening the hearing, the SDAB could then receive and review the report and/or have the technical expert present the evidence and be available for questions and interpretation.

As a tribunal, the SDAB is not bound by the formal rules of evidence. If technical evidence is presented in a report by one of the parties, but the author of the report is not present for questioning, this may affect the weight to be given to the evidence. If the validity of the report is challenged, the SDAB may assess the evidentiary value of the report.

9.4 SDAB Member Questions

SDAB members should use their opportunity to question all parties in the appeal. Asking questions allows the SDAB to clarify points raised during presentations, to gather greater detail on information presented, to separate facts from opinion or to assess the impact of the application on the speaker. Members should be careful in their questioning and not be seen as interrogating the parties. Members should also be careful that through questioning they do not appear to be an advocate for a party. More discussion on questioning techniques is set out in the section on effective communicating.

As a suggestion, SDAB members may find it useful to keep notes during the hearing to reference during deliberations. The notes can outline what the appeal is about, what the issues are, what evidence was presented. During deliberations, the SDAB members can think about each of these and reflect these in their findings, reasons, and decision, and outline why some evidence or information was considered but not used in the decision. These notes may assist the SDAB in formulating reasons for a decision and the motion for the decision. The SDAB bylaw may require a policy regarding retention or destruction of these rough notes, and production of the official transcripts or record of the hearing.

9.5 Other Questions

The appellant and other parties in the appeal may also ask questions. The parties in the appeal can ask questions of other parties in the hearing including the planner or development officer, parties speaking for the appeal and parties speaking against the appeal. Generally, any questions need to be addressed through the Chairperson. The Chairperson of the SDAB needs to direct questions to the appropriate parties, and may need to ask the questioner to rephrase questions that are confrontational or accusatory in nature, or may have to intervene and ask the questioner to leave the appeal hearing if repeated warnings do not alter the style of questioning.

9.6 Site Visits

A site visit or inspection is normally carried out by the planning staff as part of the initial application. Photographs, videos, aerial photos or maps may be used to illustrate the topography of the site, adjacent uses and to give a sense of the land that is the subject of the application. The planning officer or the development officer may present site visit materials in the hearing as part of the information taken into account when the initial decision was made or a stop order issued. Appellants and other parties in the appeal may do the same to illustrate how the item under appeal affects them.

In an appeal, a site visit is periodically suggested as a method for the SDAB to gather information. Generally, site visits should be avoided as they present the potential for challenge of the decision of the SDAB. It is preferable that SDAB members hear evidence about the site at the hearing, together with all participants. If a site visit is requested, the SDAB should carefully consider the usefulness of the process and obtain further advice.

10. Communication Skills

10. COMMUNICATION SKILLS

When it comes time to conduct a hearing and listen to different points of view, the Subdivision and Development Appeal Board (SDAB) members will have to be aware of some basic communication skills. Using effective communication skills will increase all participants' perception of a fair hearing.

SDAB members should be cautious about becoming indifferent. Even though in the course of the proceedings, members will hear similar presentations from many appellants and respondents, each case or matter should be treated as if it is their one experience with the SDAB. SDAB members are expected to listen attentively to each individual case and to understand the perspective presented. The atmosphere created should reflect the principles of fairness and natural justice being adopted by the members.

10.1 Setting an Appropriate Tone

The following are suggested techniques and approaches to create an atmosphere where the parties feel they have been dealt with in a considerate and respectful manner:

- Maintain a degree of formality during the SDAB proceedings;
- Always address participants by Mr., Mrs., Ms., or other title;
- Pose questions through the Chair;
- Restrict conversation to the subject matter of the appeal;
- Avoid socializing with any of the parties to the hearing before, during, or immediately after the hearing period;
- Using appropriate body language and tone of voice to convey that you are interested and attentive;
- Face the person who is speaking – this says, "I am listening…";
- Smile or nod – this says, "I understand you…";
- Use eye contact – this says, "I care about what you are experiencing and I am paying attention…";
- Avoid any gestures, such as scowling, yawning, raising your eyebrows, that could suggest boredom, disagreement or lack of respect for the perspective being presented;
- Avoid sounding officious, sarcastic or condescending. Regardless of your personal reaction to what is being presented, a professional manner should prevail; and
- An appropriate tone of voice will indicate attentiveness and respect.

Note: *some of these skills are covered by other Municipal Affairs courses: "Finding Agreement on Difficult Issues" offered by Mediation Services; and "Effective Communications and Actions" offered by the Municipal Advisory Services. Specific training may be offered by other service providers that will enhance members' training in the areas of dealing with difficult situations.*

10.2 Minute taking

The Secretary is responsible for keeping a record of the proceedings. It is essential that this record accurately reflect the proceedings before the Board. It is important for participants to avoid speaking over each other and for the comments to be made clearly so that they can be recorded. The Secretary may need clarification during the proceeding to ensure that this record is accurate. Once the minutes have been prepared, this document should accurately communicate what occurred at the hearing.

10.3 Asking Questions

The SDAB must ask questions to gather complete information. The responses to the SDAB's questions will normally be a crucial part of the evidence. Questioning the parties gives the SDAB the opportunity to discover the basis behind opinions (if any) and to better determine the relevance of specific portions of presentations.

The following are reasons to ask questions:

- Clarify the information presented;
- Assist in understanding the information presented;
- Assist a party to the appeal to present evidence;
- Show that you were listening to the evidence presented;
- Move a party along in their presentation when too much detail is being provided or similar evidence that has previously been presented is being repeated; and

The SDAB's questioning of presenters can help distinguish between fact and opinion.

It is advisable not to ask questions that seek information of a non-planning nature because they confuse participants, give the appearance that irrelevant information is being considered, and prolong the hearing. Examples of questions of a non-planning nature would be personal information or business practices.

10.3.1 OPEN QUESTIONS

The best questions are neutral in tone and are open ended, which assists the presenter in providing facts and evidence related to the appeal, rather than opinion or a view elicited from a leading question.

Some examples of open-ended questions include:

- ***Objective*** – To gain understanding about the facts: What happened? When did it happen? What can you tell me about...?
- ***Subjective*** – To gain understanding about thoughts, views, or perspectives: What is your view? What is your opinion of…?
- ***Interpretive*** – To gain understanding about how they interpret the effect and impact: How did that affect...? What is the impact on...?
- ***Reflective*** – To gain understanding of how the other party is feeling" What made you angry? What was it like…?

- ***Decisive*** - to understand how the other party thinks an issue can be resolved: "What do you think should happen?"

10.4 Reflecting Content

The purpose of reflecting content is to check for clarity of understanding. Paraphrase to clarify thought, summarize, and confirm understanding. Let the other person finish what they are saying. Listen accurately to another person and restate in your own words the content of what the speaker said. The speaker should acknowledge that your paraphrase is accurate. When paraphrasing, do not:

- Add extra information;
- Diminish the value of the message;
- Add your own opinions; or
- Repeat word for word.

Paraphrasing sounds like this: "So, you're saying…" or "Do you mean…?"

10.5 Reflecting Feelings

The purpose of reflecting feelings is to recognize and acknowledge an emotion. Doing so can defuse the emotion and allow the speaker to move on to another topic.

In reflecting feelings, it is important to be tentative and allow time for the other person to correct your reflection if it is inaccurate.

Express in your own words the essential feelings stated or strongly implied by the other person. Listen to the tone of the speaker's voice; observe the speaker's body language. Imagine what the speaker is feeling.

In reflecting feelings, your response will include "you" phrases: "you feel…"; "you sound…"; "you look…"; or "I sense you're feeling…" This will help the other person recognize his or her feeling and represent his or her experience accurately. Tell the speaker what you understand his or her feeling to be. Listen for confirmation.

10.6 HANDLING DIFFICULT SITUATIONS

Members will occasionally need to handle difficult situations. In the course of the hearings, individuals may become defensive, frustrated, or angry. Some participants may attempt to influence the SDAB's by making emotional appeals, rather than appeals based on facts and reason. By being aware of the changes in verbal or non-verbal behaviour, SDAB members can be aware of the need to refocus the appeal and deal with an individual's feelings, prior to proceeding.

Be aware of changes in:

- Body language (such red face, gesturing, leaving one's seat); or
- Voice (the raising of pitch or volume, abusive language or sarcasm).

By recognizing these conditions in other people you can avoid being drawn into an emotional exchange. You do not want to become defensive, abusive, or return anger with anger.

Respond to upset behaviour with a professional manner:

- Acknowledge feelings: “I appreciate your perspective.”
- Assist to focus request: “So you are asking that the SDAB allow the service road to be provided by easement instead of by plan of survey?”
- Provide clarifying information regarding the SDAB’s jurisdiction and procedures: “You will be given a chance to question representatives at the end of the presentation.”

Occasionally, serious situations arise that threaten to disrupt the SDAB hearings. If such a situation should occur, the Chairperson should be guided by the following procedure:

- Advise the individual(s) that the disruptive behaviour must stop to allow the hearing to proceed in an orderly manner;
- If the situation continues, advise the individual(s) responsible for the disruption that they will be required to leave the hearing if the disruption does not stop immediately;
- If the situation continues, ask the individual(s) to leave the room; and
- If the situation continues, contact the local police or building security and request that the individual(s) be removed from the hearing room.

A Chairperson may choose to call a brief recess to allow for a “cooling down period” at any time. An intermediate solution is to adjourn the hearing to another date to allow parties or the SDAB time to cool down. As the Chairperson is responsible for maintaining orderly proceedings, he or she is encouraged to take every precaution to prevent situations from escalating to the point that action as described above would be necessary.

10.7 Conclusion

Good communication skills are essential to an effective appeal hearing. These skills ensure that all participants feel that they have been heard. For some people these skills come naturally and for others practice is necessary. Regardless of one’s natural ability to listen and to communicate, these skills can be learned with practice and should be demonstrated at all SDAB meetings with all parties to the appeal, or on the SDAB itself.

11. Making and Communicating Decisions

11. MAKING AND COMMUNICATING DECISIONS

Within the Subdivision and Development Appeals Boards (SDAB) jurisdiction, it must consider the merits of the appeal and make a decision as to the appeal before it. The SDAB must elaborate, in writing, on the reasons for the decision it made. This section of the training manual deals with decisions by the SDAB.

A SDAB must base its decision on the evidence presented and on relevant legislation. The following is a list of factors that may be considered in arriving at a decision (if applicable):

- The authority of the SDAB;
- A regional plan adopted under *Alberta Land Stewardship Act* or the Provincial Land Use Policies;
- Any applicable statutory plans;
- The land use bylaw (particularly land use);
- The Subdivision and Development Regulation;
- Municipal bylaws, policies, procedures, and standards;
- The suitability of the land for the proposed use;
- The adequacy of access to the site;
- The provision of services and utilities;
- Existing and future surrounding land uses;
- Environmental considerations;
- Provincial and federal legislation;
- Administrative law; and
- The rule of natural justice.

Each of these matters will be dealt with differently, depending on the nature of the appeal before the SDAB.

11.1 Guiding Principles

In making a decision, the SDAB must:

- Identify the specific issue(s) giving rise to the appeal;
- Determine the facts of the case before it;
- Decide what provisions of the legislation and the planning documents are applicable;
- Understand and evaluate the arguments presented by all parties; and
- Render a decision accordingly.

The three questions that must be answered when assessing an appeal to the SDAB are:

- **Can you?** Can this development or subdivision proceed at this location given the uses under the land use bylaw, the municipal development plan, and the legal and statutory framework?
- **Should you?** Is this an appropriate location for this proposed use or subdivision given the future goals for the area/municipality, the land uses, site characteristics, the aesthetics of the surrounding area, and the impact on the surrounding environment?
- **Why?** Given the evidence before the SDAB, why did it make the conclusion it did on each of the major issues before it?

These questions form the basis for determining if an application is appropriate for the location it is being proposed.

In determining the facts of the appeal hearing, SDAB members must keep in mind that the parties in the hearing will present both evidence and argument about the item under appeal. Evidence is the relevant facts, circumstances, or information given personally or drawn from a document etc., tending to prove a fact or proposition. Once all of the evidence is provided in an appeal hearing, the SDAB can hear all submissions on the arguments of the case; e.g., why the application is or is not appropriate at this location.

After hearing all parties, the SDAB faces a challenge in making a decision.

11.2 Evaluating Evidence

The SDAB must limit itself to acting upon evidence relating to legitimate planning considerations.

During the hearing, the Chairperson should have minimized the presentation of irrelevant information. However, this may be difficult to do during the hearing. Presentations will be a mix of opinions and facts. A SDAB must not decline to receive relevant evidence nor may it consider irrelevant evidence.

During its deliberations, the SDAB has a second opportunity to separate the relevant testimony and information from the irrelevant, and to distinguish between fact and opinion. Its decision should be based on fact, not opinion. During its deliberations, the SDAB must determine what is fact and what is opinion.

11.3 Organizing Information

There are a variety of ways that the SDAB can organize the evidence and information presented to it. It is suggested that the SDAB members keep notes during the appeal hearing to keep track of the information presented. This information can be used to develop the findings of the SDAB, the reasons for the decision, and the decision of the SDAB. The members may find the notes valuable in drafting the decision.

The method of working through the findings, developing the reasons and then finally making the decision sets up a logical path for information in the hearing to be reflected in the reasons and into the final decision. It makes information both easy to understand for the SDAB members and easy to track when reviewing the written decision.

11.4 Merits of Subdivision Appeals

The SDAB is granted a wider set of powers to hear subdivision appeals than those for development or stop orders. The difference with a subdivision appeal is in the SDAB's ability to have regard for statutory plans and to be consistent with the Land Use Policies rather than compliance with the land use bylaw and Land Use Policies. Where the SDAB decides to make a decision that is consistent with statutory plans or with the Land Use Policies, these reasons should be reflected in the decision and outlined in the reasons for the decision.

One question that the SDAB must address when making a decision on a subdivision appeal is "Is the site suitable for this subdivision?" Section 7 of the Subdivision and Development Regulation identifies a number of considerations for the SDAB in determining whether a site is suitable for the proposed subdivision. In making this determination, the SDAB must provide its reasons for finding the site suitable. After the determination of site suitability, conditions can be determined.

11.5 Merits of Development Permit Appeals

The requirements for the SDAB in considering development and stop order appeals are outlined in section 687 of the *Municipal Government Act (MGA)*. It is important to recognize that the SDAB is granted wider powers than the development authority. However, the SDAB's decision must still comply with the *MGA*, other provincial and federal legislation, the Provincial Land Use Policies and with any of the municipality's statutory plans, and the use provisions in the land use bylaw. The SDAB may vary any requirements of the land use bylaw, other than the use, if it is of the opinion that the variance will not adversely impact the adjacent properties and amenities of the neighbourhood.

The SDAB must first decide whether the land use that is applied for is among those listed as a permitted or discretionary use for that district. The second stage is to determine whether the proposed development complies with the standards and regulations of that use and district. If the application does not comply with the standards and regulations the SDAB must either refuse to grant the permit or grant a variance of the regulations.

11.6 Merits of Stop Order Appeals

Stop order appeals are slightly different, as the SDAB's first actions are to confirm that:

- The order was properly issued, and if it was properly issued,
- A breach of the land use bylaw or development permit has occurred.

If the order was not properly issued or if a breach has not occurred, the order should be revoked. If the breach is related to the use that is permitted or discretionary in the district, the SDAB does not have the jurisdiction to vary or set aside the order.

If the breach is related to a condition of a permit or a condition of an approval, the SDAB cannot amend the previous decision or reopen the initial approval, as this would be equivalent to a second hearing of the original case by the SDAB. The SDAB can vary the order to allow the appellant additional time to meet the conditions of the stop order, or based on the evidence submitted, to allow a new permit to be applied for to allow the development or subdivision to proceed under a new approval.

11.7 Setting Conditions on a Decision

The SDAB has the same ability to set conditions as either the subdivision or development authority. The conditions imposed by the SDAB must reflect its authority. The conditions must not transfer the responsibility for the decision to another person or body. Generally, these conditions should address standards or details within the purview of another body or department that need to be verified.

In setting conditions, the SDAB must ensure that the conditions are enforceable. For example, an inappropriate condition would be that the development must not generate unreasonable noise, dust, or light. This condition is too vague to be enforceable. Other potential problems with conditions include that they do not serve a valid planning purpose, or they go beyond the authority of the SDAB.

When the SDAB is discussing conditions and the appropriate information has not been presented in the hearing, it has two options. The SDAB may:

1. Require the preparation of the appropriate reports which may require recessing the hearing and reconvening the hearing at a later date; or
2. Determine that adequate information has been provided and evaluate the available information on its merits and arrive at a decision.

Respecting subdivision applications, the *MGA* expressly allows a SDAB to require an applicant to enter into a development agreement as a condition of subdivision approval, even if a land use bylaw fails to address this issue (section 655 of the *MGA*). Because of the difference in the language of the *MGA,* the SDAB can only impose a condition on a development permit approval if authorized by the land use bylaw (section 650 of the *MGA*). Additionally, the SDAB may impose a condition that the applicant is required to pay for an off-site levy imposed by council (section 648 of the *MGA*).

The safest course for the SDAB is to attach a general or generic condition for a development agreement and the payment of an off-site levy. Municipal planning staff can determine the correct amount of the levy and the specific provisions of the development agreement. An example of this type of condition is: “The developer shall enter into and abide by the terms a development agreement pursuant to section 650/655 of the *Municipal Government Act.*” The condition does not have to go into detail about what will be included as terms in the development agreement.

11.8 Writing decisions

Each SDAB has a certain style for writing up a decision. A decision of the SDAB should include the following:

- The evidence that the SDAB considered, and that which it did not. The written decision should refer to the documents it considered in its assessment (including a statutory plan, land use bylaw, or the Subdivision and Development Regulation).
- The reasons for the decision should be adequate and should include the nature of the issue, findings of fact, and discussion of statutory requirements and applicable planning documents as well as of issues and arguments raised by the parties.
- The decision of the authority (refuse, approve, or approve with conditions).

The SDAB's reasons must be more than just conclusions. For example, the SDAB should not conclude that the development would not "adversely affect the amenities of the neighbourhood". The SDAB should identify why there was no adverse effect on the amenities of the neighbourhood.

In addition to reasons the written decision of the SDAB should include a methodical evaluation of evidence. This information is important because it:

- Minimizes the chance of arbitrary decisions;
- Adds to the application of fairness; and
- Affords the opportunity for parties to assess the question of appeal or judicial review.

The written decision of the SDAB may include additional information that is not required by law. Some SDABs include the following information as part of their decision package:

- The process for an appeal to the Court of Appeal and the time limit to file the appeal (*MGA* s. 688).
- A contact person if there are any questions on the decision.

A decision to include this additional information will depend on the practices of a particular SDAB.

11.9 Implementing the Decision

Once a SDAB has made a decision, it has no jurisdiction to deal further with the case. This also means that the SDAB's role does not include following up on any decision or ensuring that any of its conditions are implemented. Ensuring compliance with decisions, or conditions thereof, is a responsibility of the municipality and their regulatory and enforcement personnel.

Once a SDAB has rendered a decision, it is *functus officio* (its function is officially over) and any reconsideration is null. It is done with the subject matter of the appeal. There is nothing in the *MGA* conferring power on a SDAB to reconsider a decision. This is different from the Municipal Government Board, which is allowed to reconsider decisions, but does so based on a procedures guide.

12. Other Issues

12. OTHER ISSUES

The following sections expand on more advanced topics that may be of interest.

12.1 Liaising/Explaining the Decision

In a general sense, it is the Subdivision and Development Appeal Board (SDAB) members' responsibility to understand and explain their duties whenever it is appropriate and they have the opportunity to convey the message to the public. To create greater awareness, they should explain the SDAB's function and area of jurisdiction. They can indicate that they are a member of the SDAB. In other words, they are a part of, but not "the SDAB". They also need to be careful not to misrepresent what the SDAB may or may not do in a certain situation. The SDAB members need to explain that the SDAB reviews every case on its own merits and in context of the requirements of legislation and prevailing municipal planning policies.

Members may also outline that decisions cannot consider personalities or moral issues. The SDAB needs to be able to justify any decision and provide clear reasons for it in writing.

12.2 Dealing with the Community

Affected people in the community may question decisions of the SDAB and SDAB members may be approached individually to account for the decision. Sometimes these decisions are contentious and divisive. This situation could be particularly difficult in smaller communities where most people know each other personally.

In answering any questions, the member will need to identify what their job and their role is on the SDAB. They will need to focus on the purpose of the SDAB and be mindful of the planning objectives. SDAB members can indicate that they have an obligation to carry out their duties in context of the legislation requirements and the rules established in the municipal bylaws and the statutory documents. They may point out that they have to determine each case on its merits and will make decisions to the best of their abilities. They may also want to point out that this is a volunteer job and they do this job for the betterment of their community.

After conclusion of any hearing, SDAB members should also avoid expressing "personal" opinions but should focus rather on the decision that the SDAB made.

What will help the SDAB explain a difficult decision is a clear, well-defined process and adherence to the legislation and rules of natural justice. If parties feel that they have been treated fairly by the process, they may be able to agree to disagree when they do not agree with or like a particular decision.

12.3 Dealing with the Media

Similar to a situation with any member of the public, a SDAB member is not to discuss the item being appealed before or during the hearing with a member of the media. These discussions may affect the objective hearing of the case. The only thing that the SDAB should acknowledge is that the case is before it.

The SDAB should determine or agree on how to deal with the media. The SDAB's policy could address who speaks for it and possibly indicate, in principle, the parameters for what may be discussed. Most SDABs select their Chairperson as their spokesperson. In this context, when somebody from the media asks a member about an appeal, that SDAB member should refer the questioner to the spokesperson.

It is important that the SDAB speaks with one voice and that there is a single consistent message. To this end it is critical that all members support the decision on an appeal after it was made. SDAB members should not make any statements that may undermine the credibility of the SDAB.

Recognizing that media persons often seek out controversial aspects of a situation, it is advisable for the member selected as spokesperson to be prepared and receive some training for how to deal with the media. A variety of organizations can provide such training.

12.4 Appeals from a Decision of the SDAB

Legal challenges of SDAB decisions fall into two general categories. Namely, most appeals allege that:

1. The decision of the SDAB is wrong in law (substantive grounds); and/or
2. The process and procedures used by the SDAB in coming to its decision were flawed, and as such the decision may not be fair or right (procedural grounds).

There is an appeal to the Alberta Court of Appeal, but only on questions of law or jurisdiction.

As acting *ultra vires* or outside of its jurisdiction is a basis for an appeal to the Court of Appeal, Subdivision and Development Appeal Boards must be mindful of the requirements of the law that governs them, as set out in the *Municipal Government Act (MGA)*, *Alberta Land Stewardship Act*, statutory plans and bylaws, and be aware of their jurisdiction to hear and decide on appeals. As outlined in the preceding sections, SDAB members are expected to understand the context of the decisions they make on appeals, with regard to legislation and common law.

12.5 Liability for Planning Decisions

Approving development without adequate consideration of the hazards associated with the development may expose the community to harm and the municipality to liability. A SDAB may be held to the same standard as municipal planning staff. The case law demonstrates that municipalities may be liable for damages suffered by property owners arising from the approval of inappropriate developments or developments that are approved in inappropriate locations. Generally speaking, all municipal decisions fall into one of two categories:

- Broad based legislation or “policy” decisions; and
- Implementation or “operational” decisions.

The courts have generally held that municipalities will be protected from liability for policy decisions made in good faith. However, municipalities will be liable for operational decisions or inaction in the operational sphere if the approving authority acted negligently. To be found negligent, a person must prove that:

a) The municipality breached the duty of care it owed to that person; and

b) The loss or injury inflicted on that person was reasonably foreseen.

Pure policy decisions are characterized as decisions made at a senior, regulatory level, where a variety of competing considerations must be weighed, including economic or social factors. Operational decisions are essentially those decisions, usually made by a technical level staff, that relate to the implementation of a policy or a decision made at the policy level. These decisions include interpretation of policies or determination of

facts that would trigger the application of a policy. In Alberta, the issuance of subdivision approvals and development permits has been characterized as an operational decision of the municipality.

The courts have held that a subdivision authority or development authority owes a duty of care to an applicant when making decisions related to subdivision or development. The principles from the cases suggest that this duty likely extends to adjacent land owners impacted by land use planning decisions. This potential liability means that a municipality must use reasonable care when considering all applications. Reasonable care includes:

- Reviewing all the relevant material presented to the SDAB at the hearing; and
- Consistently following the municipality's policies and procedures when evaluating applications.

The courts have demonstrated an increased tendency to hold municipalities accountable to both present and future landowners who suffer losses or injuries as a result of the approval of a development or subdivision; the courts may find the municipality to be negligent if the approving authority knew or ought to have known that the lands were unsuitable for the proposed subdivision or development.

The following themes respecting municipal liability can be gleaned from the case law:

- **Municipal Hazard** – A municipality will be liable if it creates a hazard and then allows development that is compromised by the hazard (*Gibbs v. Edmonton,* 2001 ABQB 413).
- **Records/Information Disclosure** – A municipality will be liable if it is aware of environmental limitations and does not disclose them to the affected stakeholders (*Gibbs v. Edmonton,* 2001 ABQB 413, and *Bowes v. Edmonton, 2005 ABQB 502*).
- **Breach of Policy** – A municipality will be liable if it breaches its own policy in issuing approvals, improperly allowing development in high risk areas or on environmentally sensitive lands (*Tarjan v. Rocky View,* 1993 ABCA 257, and *Papadopoulos v. Edmonton,* 2000 ABQB 171).
- **Sympathy to Landowner** – The courts have shown incredible sympathy towards the plight of landowners who have suffered a significant loss. This sympathy is evident even if the landowner is sophisticated or has unique knowledge of the risks (*Tarjan v. Rocky View*, *Papadopoulos v. Edmonton*) or if ample evidence is available to support the municipality's decision (*Bowes v. Edmonton*).

12.6 Personal Liability

SDAB members generally will not be held personally liable for actions in the exercise of their functions, duties, or powers including for decisions they render in a hearing. This protection exists unless the member acted in bad faith or in a defamatory manner.

12.7 Development on Flood Prone Lands

The *Flood Recovery and Reconstruction Act* came into force on December 11, 2013. The *Flood Recovery and Reconstruction Act* amends the *MGA* to provide for regulations for controlling or prohibiting any use or development in the floodway and to exempt the application of these regulations in municipalities with significant development already in a floodway, specifically Drumheller and Fort McMurray.

Many land use bylaws currently regulate development in flood hazard areas as previously recommended by Alberta Environment and Sustainable Resource Development. To the extent that subdivision and development in a flood hazard area is addressed by a municipality's land use bylaw, it is essential that the SDAB make decisions on appeals before it that are consistent with these regulations. Once regulations have been adopted pursuant to the *Flood Recovery and Reconstruction Act*, where there is a flood hazard map, the SDAB must apply the regulations when considering an appeal for lands that are covered by the flood hazard mapping. Until such time as regulations have been adopted, where the use is discretionary or for subdivision approvals, the SDAB may consider the location of the lands and the risk of flooding in relation to determining the suitability of the proposal.

12.8 Recent Case Law and Learning

Below are summaries of cases that highlight significant issues with respect to liability for planning and appeals of decisions of the SDAB.

12.8.1 BOWES V EDMONTON, 2005 ABQB 502

This case relates to the slope instability of three residences near the bank of the North Saskatchewan River. The incident attracted national media attention, as three executive style homes were destroyed in October, 1999.

In the Court of Queen's Bench decision, the Honourable Justice T. Clackson found that the City of Edmonton could not be found liable for the claims brought by the property owners because of a limitations issue; that is, the claims were brought more than 10 years after issuance of the relevant City permits and approvals. Justice Clackson went on to note, however, that if the claims had not been barred by the limitations issue, he would have found the City to be liable for negligent issuance of the permits and approvals.

Prior to considering subdivision of lands in the area, the City had commissioned a geotechnical report in relation to road construction. This report (referred to in the decision as the "1977 Hardy Report") indicated that the land between the road and the top of the bank was not developable, as the risk of subsidence was too great. This report was never disclosed to the developer or to the individuals who purchased the individual lots and built the homes. There were subsequent engineering reports that indicated that the land was developable, and that the risk of subsidence was not extreme, provided that certain conditions were followed (vegetation must be retained, no underground sprinklers, no swimming pools).

At trial, the City argued that the 1977 Hardy Report was not relevant to the issue of liability because the report (and its testing) focused on the risk of superficial subsidence, and not the risk of a deeper failure that the experts agreed was the cause of the subject collapse. Justice Clackson disagreed and stated:

- "The City is not a guarantor of the safety or suitability of a proposed development and is not responsible for every potential latent defect.
- The City is obliged to conduct itself carefully in granting or refusing permits.
- The City should have reviewed the materials in its possession bearing on the landowners applications and should have disclosed the 1977 Hardy Report to the applicants. The report would have caused a careful municipality to require a more detailed geotechnical opinion which would justify ignoring the 1977 Hardy Report.
- The City should have disclosed any information in its possession which might bear on the risk of development."

The decision was upheld on appeal, with a split decisions by the justices of the Court of Appeal with respect to whether or not the City should have been found negligent in these circumstances.

12.8.2 CANADA LANDS CO. (CLC) V EDMONTON, 2005 ABCA 218

The Alberta Court of Appeal has given a broad interpretation of section 662 of the *MGA*. This section allows a subdivision authority to require a land owner to provide lands for roads, public utilities or both, up to 30% of the developable area of the lands to be subdivided. There is a qualifier, though, if the owner has provided sufficient land for road and public utility purposes (even though the maximum amount has not been provided), the subdivision authority may not require the owner to provide additional amounts.

The Court of Appeal considered the not uncommon scenario where the developer was being asked to dedicate road width beyond the roads strictly necessary to meet the needs of the subdivision, namely to allow for road widening from four to six lanes. The Court supported the subdivision authority's decision to require this additional dedication and noted that the additional dedication (2% of the parcel involved) was not "grossly disproportionate" to the size of the development.

12.8.3 SIHOTA V EDMONTON (CITY), 2013 ABCA 43

The appellant owned property in a strip mall zoned "Neighbourhood Convenience Commercial Zone". This zone allows for the use of "Professional, Financial and Office Support Services", but General Industrial Use is neither permitted nor discretionary. In 2000, the appellant applied for, and obtained, a development permit to operate a post office facility. The appellant operated the post office facility for 12 years, during which time neither the zoning of the lands nor the provisions of the applicable zoning bylaw changed.

In 2012, the appellant applied to construct an addition to the building in order to provide additional amenities, including a washroom and lunchroom for his employees. The development authority determined the use was General Industrial, which is not permitted in the district, and refused the application. On appeal, the SDAB agreed with this characterization and concluded that at the time of the development permit application, the development authority was entitled to make a decision on the use that was being proposed.

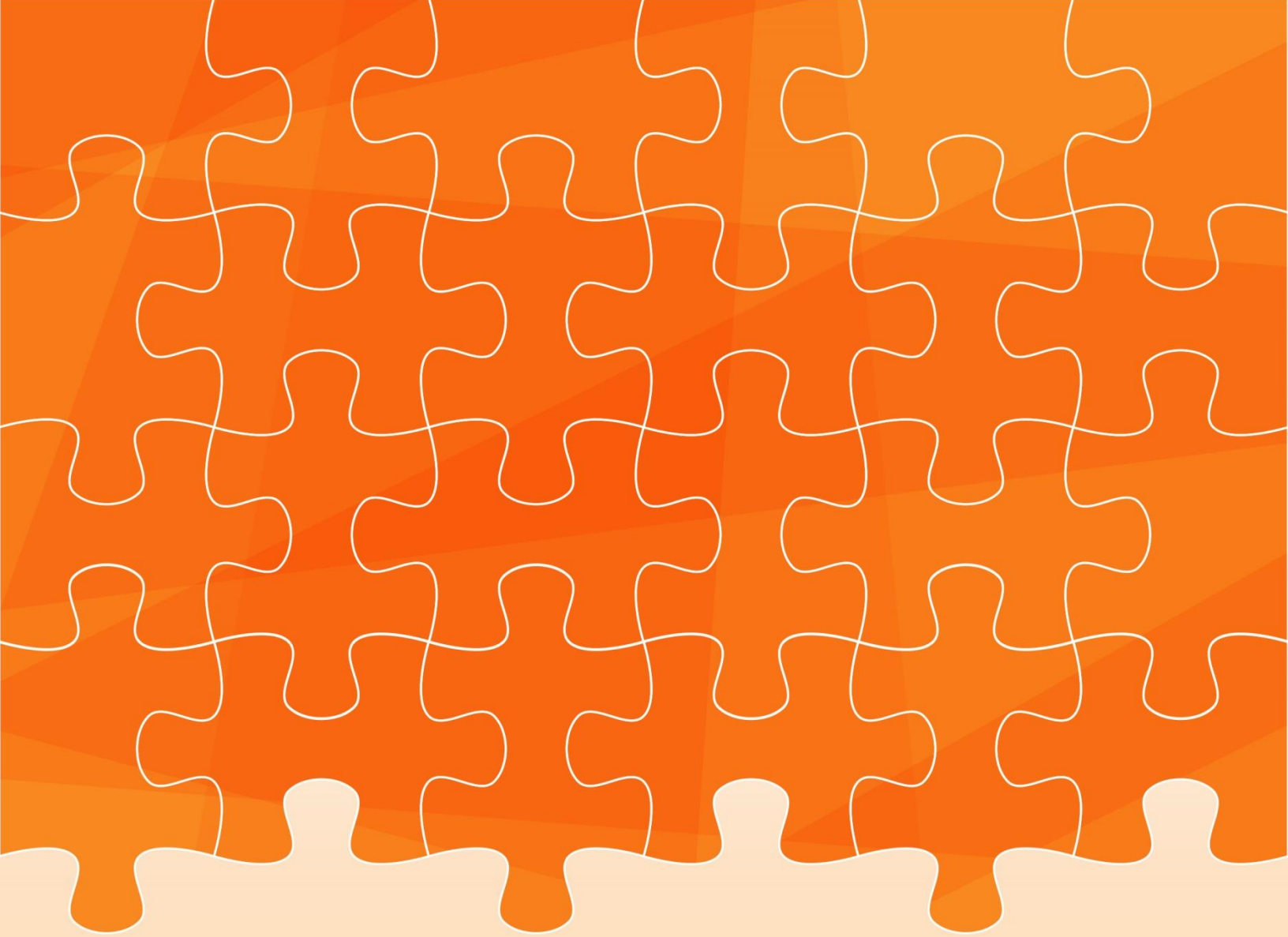
The Court of Appeal disagreed with the SDAB conclusions. Instead, the Court of Appeal relied on the doctrine of "issue estoppel". This principle prevents a previous decision of a planning authority from being reopened during a subsequent approval process. In this case, the development authority decided in 2000 that the proposed use was "Professional, Financial and Office Support Services". The current development authority could not reopen the original decision on the proper characterization of the use. The Court of Appeal stated that "it would be unfair, and economically untenable, to permit significant investments in one year, and then allow the municipality to declare the intended use unlawful in a later year."

12.9 Use of Technology and Social Media

Increasingly, SDABs are being asked to deal with the use of modern technologies. In many cases, the issue arises where an appellant, respondent or affected person would like to present evidence to the SDAB using technology such as teleconferencing or videoconferencing programs including Skype and FaceTime.

Section 629 of the *MGA* allows a SDAB a significant amount of latitude in the manner in which it will accept evidence. It may be appropriate for the SDAB to allow individuals to appear remotely using technology. The SDAB will have to decide whether it will accept evidence in this manner. There are issues such as the capacity of the SDAB to connect using such technology, the reliability of such evidence, and the procedural issues that may arise as a result of the use of such technology. For example, the hearing can be longer and require the presence of a computer technician to ensure the proper functioning of equipment. The degree to which the SDAB will permit the use of such technology will likely depend on its resources and capacity to accommodate new technology into existing procedures.

In other instances, issues arise where modern technologies are being used inappropriately by members of the SDAB or members of the public. The disruptive use of technology may include the use of personal electronic devices during the hearing, or the use of social media before or after the hearing. SDAB board members may be subject to an appropriate use of technology policy. If the municipality has created such a policy, it is important for SDAB members to comply with these policies. Alternatively, if it is members of the public that are being disruptive, the SDAB may consider banning the use of personal electronic devices during a hearing. The Chairperson would be responsible for enforcing the rules with respect to decorum in the hearing room.



13. Appendix 1 - Glossary

13. APPENDIX 1- GLOSSARY

These definitions are to facilitate an understanding of the training materials and for the purposes of the training exercises. The Municipal Government Act and other pieces of legislation include definition sections. Each land use bylaw will contain its own definitions. The definitions in the local land use bylaw should be used during an appeal.

"accessory building" means a building separate and subordinate to the main building, the use of which is incidental to the main building and is located on the same parcel of land;

"accessory use" means a use customarily incidental and subordinate to the main use or building and is located on the same parcel of land with such main use or building;

"adjacent land" means land that is contiguous to a particular parcel of land and includes land that could be contiguous if not for the presence of a highway, road, river or stream;

"affected person/parties" means a person or group of people who may experience an adverse effect generated by the proposed activity that will be greater than the effect on others in the general public;

"agent" means a person authorized to act on behalf of another;

"agricultural land" means lands whereby the use for agriculture is either permitted or discretionary under the land use bylaw of the municipality;

"Alberta Land Stewardship Act" or "ALSA" means the *Alberta Land Stewardship Act*, R.S.A. 2000, c. A-26.8, being an act implementing the Alberta Land-use Framework, which requires that all regional plans correspond with the provincial Land-use Framework;

"appeal" means the review of a decision by a higher body;

"appellant" means the party appealing a decision to a higher body;

"applicant" means the party applying for or making the request to the municipality or its representative(s), in the case of subdivision approval or development permits, the person making an application to the subdivision or development authority;

"approving authority" means the entity responsible for providing an approval relating to either an application for subdivision or development, which includes both a subdivision authority and a development authority;

"Area Structure Plan" or "*ASP*" means a plan relating to a specific area within a municipality that may be adopted by bylaw to provide detail with respect to future development, redevelopment or general use of the lands;

"bias" means a particular tendency or inclination that may impact an unprejudiced consideration of a question put before a party;

"Chairperson" means a person who presides over a meeting, committee or board;

"council" means the assembly of those members elected to sit on the council of the municipality;

"counsel" means the legal representative appointed to provide advice to a party;

"development" means development as defined in the *Municipal Government Act;*

"development authority" means a development authority established by bylaw pursuant to section 624 of the *Municipal Government Act*;

"development officer" means a person appointed as the development authority for a municipality, with the powers and responsibilities established by bylaw;

"Direct Control District" means an area within the municipality that has been declared a direct control district in accordance with section 641 of the *Municipal Government Act;*

"discretionary use" means the use of land or building provided for within a municipality's land use bylaw, for which a development permit may be issued upon an application being submitted;

"enactment" means a law or statute which is published as an enforceable set of written rules;

"Intermunicipal Development Plan" or *"IDP"* means a statutory plan prepared by neighbouring municipalities to ensure development in either jurisdiction reflects mutual and individual interests of the parties involved;

"hearing" means a meeting on a contested matter or an opportunity whereby the applicant or agent representing the applicant is provided the opportunity to be heard by the SDAB, in addition to any other person with standing;

"jurisdiction" means the right, power or authority to make a decision regarding the issue before the decision-maker;

"Land Use Bylaw" or *"LUB"* means a compulsory document required by the *Municipal Government Act* for each municipality in Alberta that regulates and controls the use and development of land and buildings within the municipality;

"legislation" means a law or body of laws enacted by an elected body;

"Municipal Development Plan or *"MDP"* means a compulsory document required by section 632 of the *Municipal Government Act* for each municipality in Alberta with a population exceeding 3,500 that outlines the future use of lands within the municipality;

"Municipal Government Act" or *"MGA"* means the *Municipal Government Act*, R.S.A. 2000 c. M-26, being an act under which all Alberta municipalities are empowered and governed in their actions;

"Municipal Government Board" or *"MGB"* means the independent and impartial quasi-judicial board established under the *Municipal Government Act* to make decisions about certain land planning and assessment matters;

"Municipal Planning Commission" or *"MPC"* means a commission established by a municipality in accordance with the *Municipal Government Act* to deal with subdivision and/or development decisions;

"non-conforming use" means the use of land as described in section 643 of the *Municipal Government Act,* being a lawful specific use being made of a building or lands that was underway or in place at the time of establishing a land use bylaw within the municipality, and does not comply with the new land use bylaw;

"pecuniary interest" means a pecuniary interest as defined in section 170 of the *Municipal Government Act,* being something that causes either a negative or positive financial impact for the individual;

"permitted use" means the use of land or a building provided for in a land use bylaw for which a development permit shall be issued by the approving authority of the municipality following the application being made and the requirements and conditions required of the development authority being satisfied;

"precedent" means a principle or rule established in a previous decision that is either binding on or persuasive to the body making a decision in subsequent cases;

"quorum" means the minimum number of members that must be present at a meeting or hearing in order for a decision to be valid and enforceable;

"regulation" means both a rule, principle or condition that governs procedure or action and a form of law, sometimes referred to as subordinate legislation, which define the application and enforcement of legislation;

"reserves" means lands retained or secured for particular use, purpose or service as outlined in the MGA and can include but are not limited to School Reserves, Municipal Reserves, Environment Reserves;

"respondent" means a person or party making a reply to the appellant;

"retroactive" means operating with respect to past occurrences;

"Secretary" means that person operating in the capacity of Secretary as defined and appointed by the SDAB bylaw;

"statutory plans" means plans developed by the municipality in accordance with the *Municipal Government Act* for the purpose of identifying future plans for development within the municipality and can include IDPs, MDPs, ASPs and area redevelopment plans;

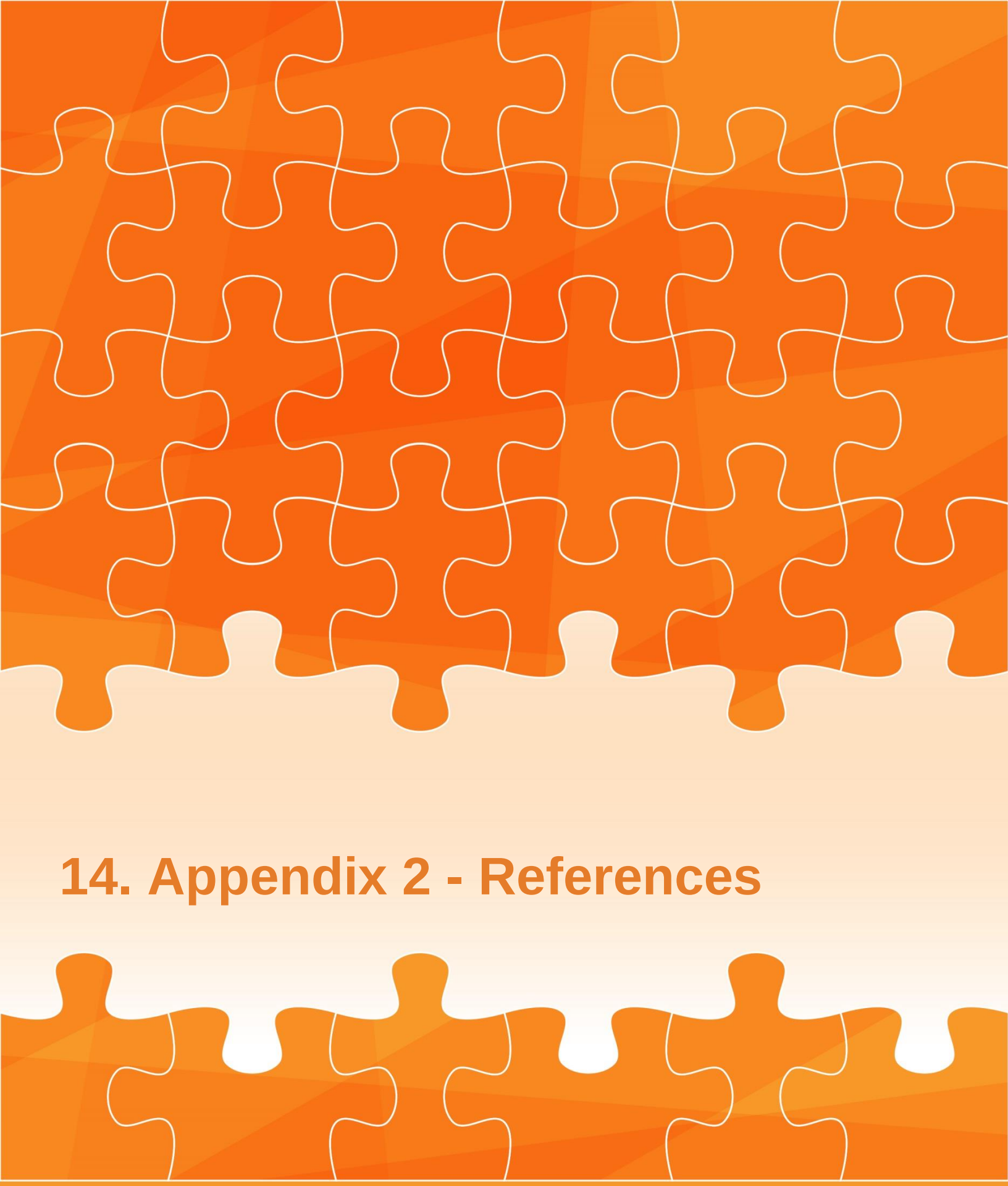
"stop order" means a written notice pursuant to section 645 of the *Municipal Government Act* issued by the development authority of the municipality, which may order the stoppage of all works or activities on the lands and/or require compliance with actions required by the notice to ensure the use of structures on the lands in question are in accordance with the requirements of the *Municipal Government Act,* the municipal land use bylaw, development permit or a subdivision approval;

"subdivision" means the division of a parcel of land by an instrument;

"subdivision authority" means a subdivision authority established by bylaw pursuant to section 623 of the *Municipal Government Act;*

"Subdivision and Development Appeal Board" or *"SDAB"* means an appeal board established by bylaw pursuant to section 627 of the *Municipal Government Act*;

"Subdivision and Development Regulation" means the *Subdivision and Development Regulation*, A. R. 43/2002, being a regulation enacted pursuant to the *Municipal Government Act* dealing with matters related to the subdivision process and applications for development permits.



14. Appendix 2 - References

14. APPENDIX 2 – References and List of Figures

14.1 References to Important Planning legislation in Alberta

The *Municipal Government Act (MGA),* R.S.A. 2000, c. M-26:

Section	Topic
617	Purpose of Part 17 of the *MGA*
618/618.1	Exemptions from application of Part 17 of the *MGA*
619	Paramountcy of approvals from NRCB, ERCB, AER, AUC, AEUB
620	Paramountcy of approvals by Lieutenant Governor in Council, a Minister, a Provincial agency or a Crown controlled corporation
622	Land Use Policies
623	Creation of Subdivision Authority
624	Creation of Development Authority
627	Creation of SDAB (or intermunicipal subdivision and development appeal board)
628	SDAB Bylaw
629	Evidence to be considered by a SDAB
630.2/638.1	Planning decisions must be consistent with *ALSA* regional plan, regional plans prevail
631	Intermunicipal development plan
632	Municipal Development plan
633	Area Structure plans
634	Area Redevelopment plans
638	Consistency of plans
640	Content of a land use bylaw
641	Direct Control Districts
642	Permitted and Discretionary Uses
643	Non-conforming uses and buildings
645	Stop Orders
647	Redevelopment levies

648	Off-site levies
650/655	Development Agreement as conditions for subdivision and development permits
651	Oversize infrastructure
653	Application for subdivision approval
654	Approval of subdivision
678	Subdivision Appeals
679	Notice of Appeal (Subdivision)
680	Hearing and Appeal (Subdivision)
685	Grounds of Appeal (Development Permits and Stop Orders)
686	Appeal (Development Permits and Stop Orders)
687	Hearing and Decision (Development Permits and Stop Orders)
688	Appeals to the Court of Appeal
693.1	Development in Floodways

The Subdivision and Development Regulation, A.R. 43/2002:

Section	**Topic**
4	Application (Subdivision)
5	Referrals (Subdivision)
6	Time Limit for Decision
7	Relevant considerations
9-18.1	Subdivision and Development conditions
22	Appeals to the MGB

The *Alberta Land Stewardship Act (ALSA)*, R.S.A. 2000, c. A-26.8:

Section	**Topic**
3-4	Regional plans
22-22	Compliance and conformity to *ALSA* regional plan

14.2 LIST OF FIGURES

ADDITIONAL INFORMATION/REFERENCES

Planning Law and Practice in Alberta (third edition), Dr. Frederick Laux, LLD, Juriliber, 2002

Subdivision and Development Appeal Board Issues, Brownlee LLP, 2003

"How to Make Effective Presentations to Subdivision and Development Appeal Boards", April 15, 2003, Presentation to Urban Development Institute, Miller Thomson LLP

Orientation Program for Development Appeal Boards, Alberta Municipal Affairs, 1986

Critical Skills for Communication, Alberta Municipal Affairs, 2000

Council and Councillor Seminar – Roles and Responsibilities, Alberta Municipal Affairs, 2001

Finding Agreement on Difficult Issues, Alberta Municipal Affairs and Alberta Agriculture Food and Rural Development, 2000

Decision Making at the SDAB and MPC Seminar for County of Forty Mile, Jeanne Byron and Alberta Municipal Affairs, 2001

Parkland County Subdivision and Development Appeal Board Manual, 2001

Lethbridge County Subdivision and Development Appeal Board Manual, 2001

The Legislative Framework for Regional and Municipal Planning, Subdivision and Development Control, Alberta Municipal Affairs, February 1997, Updated August 2012

15. Appendix 3 – Mock Hearing Materials

15. APPENDIX 3 – MOCK HEARING MATERIALS

The foregoing information will be the subject matter of a mock hearing. After the agenda, there are roles for different participants in the hearing. Review your task and practice the skills each participant requires to perform their function in the process.

Subdivision and Development Appeal Board (SDAB) AGENDA

Municipal District of Agriville

APPLICATION: Appeal of a Development Officer's decision to approve a development application to allow (with conditions) recreational uses in a residential area.

BACKGROUND: The subject site is zoned CR – Country Residential District in the Land Use Bylaw (LUB). Neighbouring residents have launched an appeal.

DEVELOPMENT OFFICER'S REPORT

PROPOSED DEVELOPMENT: Year round recreation camp for sick children and their families on 8 ha (20 acre) parcel.

- 180m² (2000 ft²) Lodge and Overnight Accommodations;
- Two Ski Lifts – one T-Bar; one rope tow;
- Parking Lot; and
- Go-Cart Track proposed for summer use.

This recreational land use is considered a "discretionary use" in the CR – Country Residential District of the MD of Agriville's LUB. The LUB defines Recreational Development as "the use of land, buildings or structures for active or passive recreational purposes and may include indoor recreation facilities, sports fields, sports courts, playgrounds, multi-use trails, picnic areas, scenic view points and similar uses to the foregoing, together with the necessary accessory buildings and structures."

The Development conforms to the LUB's "Special Provisions", which states the following respecting Recreational Development:

1. Recreational Development may only be allowed on lower capability agricultural land.
2. The Developer shall identify, to the Development Officer's satisfaction, all servicing costs associated with the development.

The proposed development must comply with these provisions.

DEVELOPMENT OFFICER'S DECISION: Approval, subject to the following conditions:

1. Parking areas to be screened and landscaped to minimize visual intrusion on neighbouring properties; and

2. Operation of the summer go-cart track is restricted to day light hours to minimize noise impact on neighbouring properties.

BASIS OF APPEAL: Every Country Residential household (13) in the Fox Creek subdivision has submitted letters of appeal on this development.

The residents argue that the 'quality' of their subdivision will be destroyed in the winter by traffic generated by the ski hill, and in the summer from noise generated by the go-cart track.

OTHER INFORMATION: The Development Officer has attempted to minimize the impact of the development by attaching conditions. Also, the Development Officer held meetings between the developer and the residents, without resolving their differences.

LAND USE BYLAW

Municipal District of Agriville

CR - COUNTRY RESIDENTIAL

This district is intended to protect more intensively developed country residential areas from problems of incompatible development.

PERMITTED USES

1. Dwelling
2. Accessory buildings and uses
3. Park

DISCRETIONARY USES

1. Greenhouse
2. Mobile Home
3. Stable
4. Public Buildings
5. Recreational Development
6. Dugouts
7. Home Occupations
8. Other uses of a similar nature as approved by the Municipal Planning Commission.

MINIMUM DEVELOPMENT STANDARDS

1. Lot Area: For parcels not served by a sewage collection or water distribution system, 0.4 hectares (1 acre) with a minimum width of 30.5 metres (100 feet).
2. Setback from Roads:
   - 40 metres (131.2 feet) from the centre line of any local or secondary road. Any waiver of the 40-metre regulation shall be a recommendation from the MPC to Council for final approval.
   - 7.5 metres (24.6 feet) from the property line to any service road or subdivision street.
   - As required by Alberta Transportation for primary highways.
3. Setback from Other Property Boundaries:
   - Cornered side yard: as required for the setback from roads
   - Internal side yard: 3 metres (9.8 feet)
   - Rear yard: 15 metres (49.2 feet)

ROLE 1: SUBDIVISION AND DEVELOPMENT APPEAL BOARD

In this exercise, you will be conducting a development appeal. Your group will act as the Board. The background information on the case is included in the materials.

Your Task:

1. Review the case.
2. Nominate a Chair to conduct the hearing.
3. Conduct the hearing according to proper procedure – including addressing any preliminary issues, hearing from all parties present at the hearing and posing appropriate questions to the parties.
4. Make a decision on the appeal based only on relevant considerations.
5. Present your decision to the class, outlining how you made your decision.

Note: There is no right answer; the objective of the Mock Hearing is to go through the decision-making process and to reach a decision that is appropriate.

ROLE 2: SUBDIVISION AND DEVELOPMENT APPEAL BOARD (Shadow Board)

In this exercise, you will be viewing a development appeal as though you are attending a public hearing. Your group will act as the Shadow Board such that you will offer comments to the group on how the Board handled itself in terms of procedure keeping order, maintaining a sense of pace, asking relevant questions, sifting through the information that was presented (both relevant and irrelevant) or any other topic that was discussed during the workshop.

Your Task:

1. Review the case.
2. Observe the Mock Hearing, make notes and prepare questions.
3. Present your comments/questions to the group at the end of the Mock Hearing.

Note: Where appropriate, the Shadow Board may pose questions to the other participants to clarify the information being presented by the parties.

ROLE 3: SECRETARY

In this exercise, you will be attending a development appeal. Your group will act, collectively, as the Secretary.

Your Task:

1. Review the case.
2. Nominate a Secretary to speak on behalf of the group.
3. The Secretary will introduce the matter before the Board at the outset of the Mock Hearing.

ROLE 4: PLANNING STAFF/DEVELOPMENT OFFICERS

In this exercise, you will be attending a development appeal as though you are presenting at a public hearing. Your group will act as the Municipal Staff and will present the details of the Development to the Board.

Your Task:

1. Review the case.
2. Nominate a speaker to act as the Development Officer on behalf of the group.
3. The Development Officer should present the details of the development contained in the Development Officer's Report. This includes explaining the details of the approval and the conditions imposed by the Development Officer.
4. Nominate a speaker to act as a member of the Municipal District's Planning Staff.
5. The Planning Staff member will present the details of the development related to planning, including any noise or traffic studies that have been completed respecting the development.
6. Each speaker must present their report to the Board.

Note: The speakers may be requested by the Board to add details to the information that has been provided by other parties and may have to respond to questions from the Board, Developer and/or the Landowners.

ROLE 5: APPELLANT LANDOWNERS (Adjacent Landowners)

In this exercise, you will be attending a development appeal as though you are presenting at a public hearing. Your group will act as the Appellant Landowners, arguing against the Development Officer's decision to approve the development. The letters you have filed with the SDAB follow these instructions.

Your Task:

1. Review the case and the letters provided.
2. Brainstorm as a group some relevant considerations to present to the Board (examples: concerns related to traffic, parking, noise, devaluation of property).
3. Brainstorm as a group some irrelevant considerations to present to the Board (examples: bad character of the developer, business competition, amount of time put into the appeal).
4. Nominate a few members to speak to the Board on behalf of the group about the issues identified in the letters provided and any additional matters identified by the group.

Notes:

- *Consider raising the preliminary issue of bias on the part of one of the Board members (examples: closed mind, pecuniary interest, personal bias).*
- *Consider appointing one member of the group to be "difficult" for the purpose of requiring the Board's Chair to keep the hearing on track.*

Dee Manding
7788 – 88th Street
Agriville, AB
(123-444-3123)

November 1, 2014

Subdivision and Development
Appeal Board of Agriville
1245 67th Avenue
Agriville, Alberta

Attention: Municipal District of Agriville SDAB

To Whom It May Concern:

Re: Recreation Camp

I am writing to oppose the year round recreation camp for sick children and their families. It's not that I don't appreciate that sick kids need a place to play, I just don't know why they have to put the camp right outside my front door.

I have three children of my own and there are many children who live on the street. My husband and I bought our house because it was on a quiet street where we knew our children could play without worrying about traffic and strangers.

If you approve this camp, my husband and I worry that there will be significant increases in the traffic on our peaceful street - our kids won't be able to play ball hockey and other sports outside because of the increases in traffic at all times of the day.

As I mentioned before, we have a very close relationship with the 12 other families on the street, everyone looks out for each other; it is a very safe place to live. If you approve this camp there will be all kinds of people wandering around the block and scaring our children. It will ruin the sense of community we have worked so hard to achieve. I really hope that you will consider my perspective and the pitfalls of approving this development during the appeal hearing. Thank you.

Yours truly,

DEE MANDING

Eugene Feisty
9785 – 46th Street
Agriville, AB
(123-489-9966)

November 1, 2014

Subdivision and Development
Appeal Board of Agriville
1245 67th Avenue
Agriville, Alberta

Attention: Municipal District of Agriville SDAB

To Whom It May Concern:

Re: Recreation Camp

I am writing about the recreation camp that has been approved next to the Fox Creek subdivision. It's not that I mind having the kids next door, I'm just worried about the kind of activities they are having on site. It's my understanding that the developer has plans to put in a Go-Cart track. I am concerned about the noise that this track will create in the neighbourhood. As you know, it can get quite hot here in the summer and I can't afford air conditioning, so I keep my windows open most of the time. I am worried that the placement of the Go-Cart track will make it very noisy and make it impossible to keep my windows open during the summer.

As well, my brother-in-law owns "Bart's Carts" and as far as I know, it's the only Go-Cart track around for miles. His business is good, but there are a limited amount of people who go Go-Carting on a regular basis. I'm worried that allowing another track in town will have an impact on his business.

Thanks for your consideration of these matters.

Yours truly,

EUGENE FEISTY

Adam Ant
6452 – 99th Street
Agriville, AB
(123-472-1346)

October 31, 2014

Subdivision and Development Appeal Board of Agriville
1245 67th Avenue
Agriville, Alberta

Attention: Municipal District of Agriville SDAB

To Whom It May Concern:

Re: Recreation Camp

It just came to my attention that the development permit for a Recreation Camp beside my house has been approved by the Municipality. I just want to make sure that the Board considers the issues of parking and value of the properties in the subdivision before it makes its decision.

I have reviewed the proposal submitted by the Developer and I'm worried that there won't be enough parking. I am concerned that we'll get the overflow of vehicles onto our street from the Camp.

I used to live in a different community and they put in a movie theatre across the street from my house. It was just awful. People would park in my driveway and I couldn't get into my garage. I don't want a situation like that to happen again.

I am also concerned that the value of my property, and the value of my neighbours' properties, will be significantly reduced as a result of this development. I'm no real estate appraiser, but I'm pretty sure a busy camp full of sick kids and their families is going to dissuade prospective purchasers who would have otherwise been interested in our peaceful cul-de-sac.

Thank you.

Yours truly,

ADAM ANT

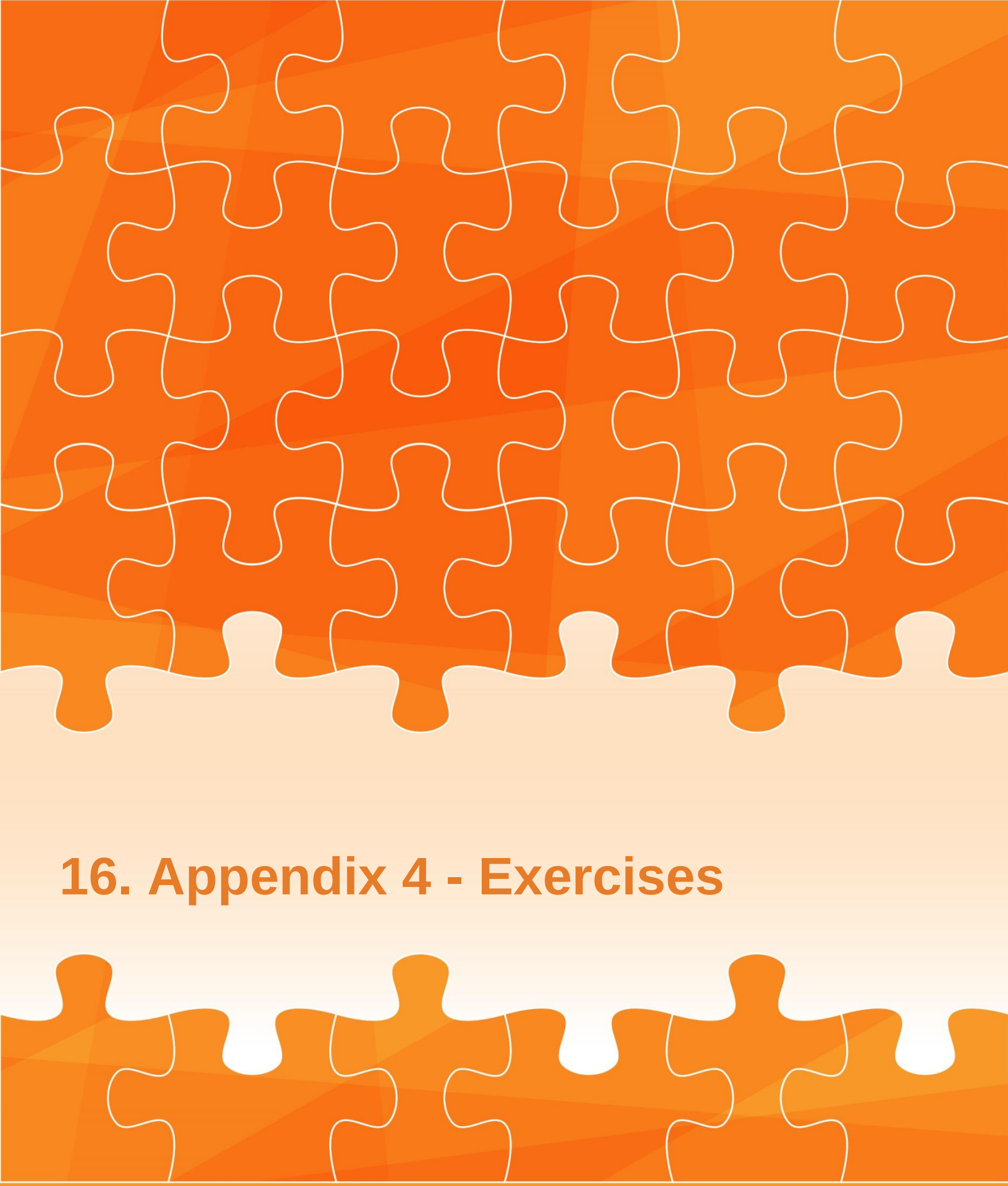
DEVELOPER/APPLICANT (Respondent)

In this exercise, you will be attending a development appeal as though you are presenting at a public hearing. Your group will act as the Developer, arguing that the Development Officer's decision to approve the development be upheld.

Your Task:

1. Review the case.
2. Brainstorm, as a group, some relevant considerations to present to the Board (examples: adequate parking, minimal impact of noise, increased valuation of property, etc.).
3. Brainstorm, as a group, some irrelevant considerations to present to the Board (examples: amount of money spent on the development plans, welfare of the sick children, bad character of the Appellant Landowners, etc.).
4. Nominate one member of the group to act as the Developer and to present your considerations to the Board.

Note: Consider raising the preliminary issue of bias on the part of one of the Board members (examples: closed mind, pecuniary interest, personal bias).



16. Appendix 4 - Exercises

16. APPENDIX 4 – EXERCISES

EXERCISE ONE

Assume you are sitting on a Subdivision and Development Appeal Board (SDAB). The following case studies include the addenda for a public hearing which you are about to conduct. Please review the materials and consider the following:

- Does the SDAB have jurisdiction to hear the appeal?
- What, if anything, might the board suggest to the applicant if it does not have jurisdiction to hear the appeal?
- If the original development permit application was a deemed refusal, is this relevant to the SDAB's decision?
- Please support your reasons for upholding, denying, or not hearing the appeal.

Exercise One – A

1. SDAB Agenda

CITY OF URBANA

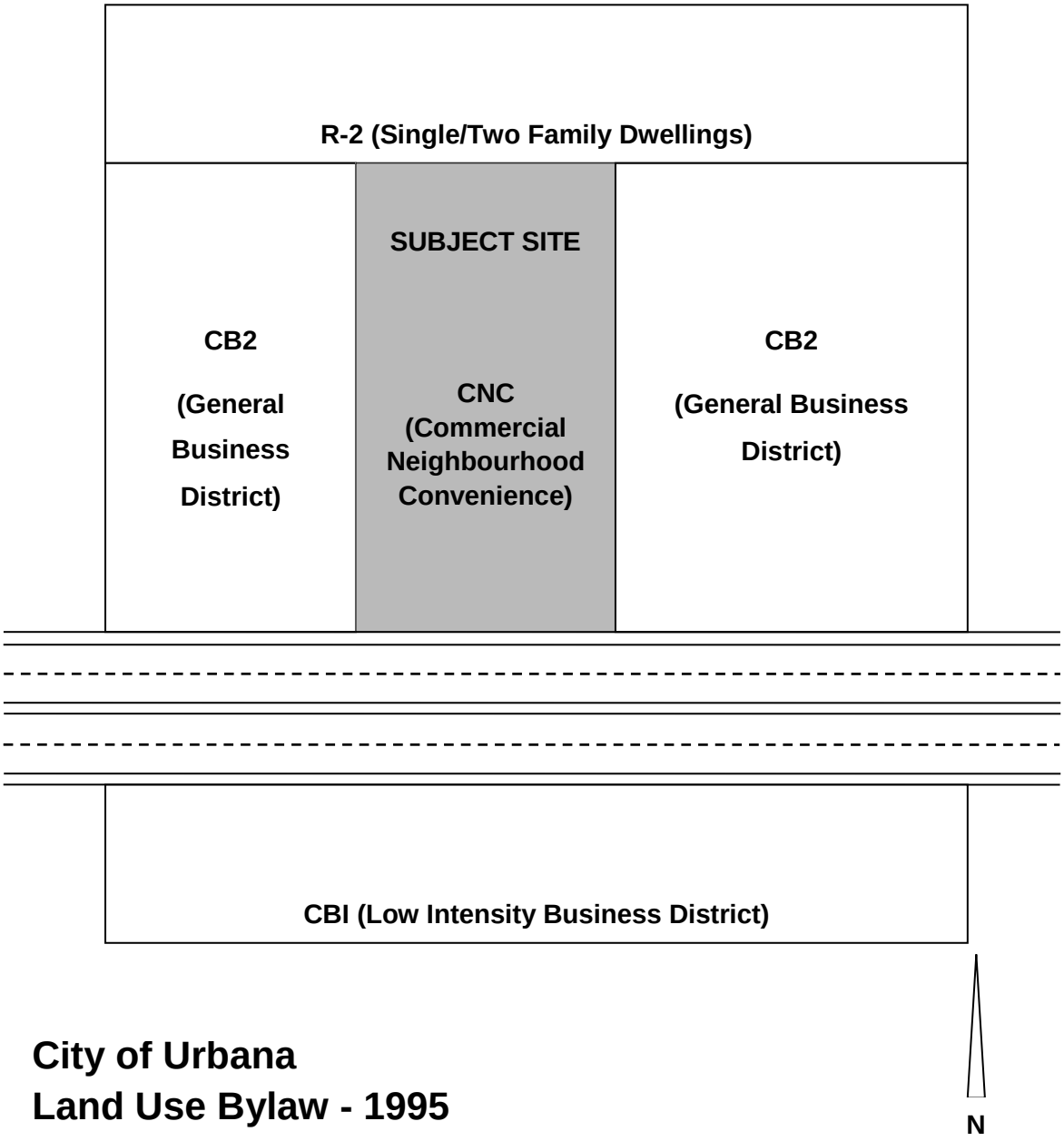
Appellant: Ed Norton

Application:To develop a self-serve gas station and automobile repair shop.

Background: Ed Norton has launched this appeal because the development officer did not make a decision within 40 days of the application. The Development Authority has requested some additional information (as to how vehicles would be able to be driven into the building for servicing) which was not provided by the applicant. Mr. Norton has deemed his application refused (in accordance with Section 684 of the Municipal Government Act). The applicant proposed to develop a self-serve gas bar and automobile repair shop from a vacant 279 m^2 (3000 ft^2) building that is on the subject property.

The subject site is designated CNC – Commercial Neighbourhood Convenience District, in the City of Urbana's Land Use Bylaw.

Figure 5: City of Urbana Land Use Bylaw - 1995



2. Development Officer's Report

Subject Site: The site is located along a major roadway, which has a number of different commercial land use designations. The landowner intends to convert the existing 279 m² (3000 ft²) building, which was used as a former tennis club, into a gas bar/automobile repair shop.

Existing Land Use Classification: CNC 0 Commercial Neighbourhood Convenience District
Existing Structure: Vacant 279m² (3000 ft²) building

Existing Land Use: Vacant

Adjacent Land Uses: North – single and two family residential
South – major road and retail commercial
East – retail commercial
West – gas bar

Proposed Development:Convert an existing 279m² (3000 ft²) building into an automobile repair business and a self-serve gas bar.

Decision: The application was deemed refused by the applicant under Section 684 of the Municipal Government Act. No decision had been made within 40 days of the receipt of the application due to insufficient information supplied by the applicant.

Please note the attached definitions of specific uses related to this application. These definitions are from the Operative and Interpretive Clauses section of the Land Use Bylaw.

A General Business District (CB-2) extract is also attached as the lots on the east and west of the subject site are classified CB-2.

3. Applicant's Statement

City of Urbana
Subdivision and Development Appeal Board
City Hall
Urbana, Alberta

Dear Sir or Madam:

I wish to appeal to the Subdivision and Development Appeal Board my development permit application. I have deemed this application refused as no decision was made by the development officer.

The development permit application is for a gas bar/automobile repair shop. This business will be similar to the business to the west of my property, and will be one of a number of gas bars and combined gas bar/automobile repair shops located on the street.

I feel this business will contribute to the improvement of the area by creating new development in a vacant building. My development will also add to the changing character of the area, which is becoming a major automobile service centre in the city.

Yours sincerely,

Ed Norton

City of Urbana Land Use Bylaw (Extracts)

Definitions:

Automotive and Equipment Repair Shops – means a development used for the servicing and mechanical repair of automobiles, motorcycles, snowmobiles and similar vehicles, or the sale, installation or servicing of related accessories and part. This includes transmission shops, muffler shops, tire shops, automotive glass shops and upholstery shops.

Gas Bars – means a facility for the sale only of gasoline, lubricating oils and associated

CNC – COMMERCIAL NEIGHBOURHOOD CONVENIENCE DISTRICT

To establish a district for convenience commercial and personal service uses intended to serve the day-to-day needs of residents within new or established neighbourhoods.

PERMITTED USES:

(1) Convenience Retail Stores

(2) Health Services

(3) Minor Eating and Drinking Establishments

(4) Personal Service Shops

(5) Professional, Financial and Office Support Services

DISCRETIONARY USES:

(1) Apartment Housing

(2) Commercial Schools

(3) Daytime Child Care Services

(4) Gas Bars

(5) General Retail Stores

(6) Indoor Amusement Establishments

(7) Indoor Participant Recreation Services

(8) Minor Veterinary Services

(9) Religious Assemblies

CB-2 – GENERAL BUSINESS DISTRICT

GENERAL PURPOSE:

To establish a district for businesses which require large sites and a location with good visibility and accessibility along, or adjacent to, major public roadways.

PERMITTED USES:

(1) Auctioneering Establishments

(2) Automobile and Equipment Repair Shops

(3) Business Support Services

(4) Commercial Schools

(5) Custom Manufacturing

(6) Equipment Rentals

(7) Funeral Services

(8) Gas Bars

(9) General Retail Stores

(10) Greenhouses and Plant Nurseries

(11) Health Services

(12) Household Repair Services

(13) Indoor Amusement Establishments

(14) Service Stations (Major or Minor)

(16) Minor Eating and Drinking Establishments

(17) Service Stations (Major or Minor)

(18) Minor Veterinary Services

(19) Personal Service Shops

(20) Professional, Financial and Office Support Services

(21) Recycling Depots

(23) Warehouse Sales

(24) Spectator Entertainment Establishments

(25) Second-hand Stores

DISCRETIONARY USES:

(1) Automobile/Minor Recreational Vehicle Sales/Rentals

(2) Animal Hospitals and Shelters

(4) Carnivals

(5) Cremation and Interment Services

(6) Daytime Child Care Services

(7) Drive-In Food Services

(9) General Retail Stores

(10) Hotels

(11) Major Eating and Drinking Establishments

(13) Mobile Catering Food Services

(14) Motels

(18) Rapid Drive-through Vehicle Service

Exercise One – B

1. SDAB Agenda

TOWN OF WESTWOOD

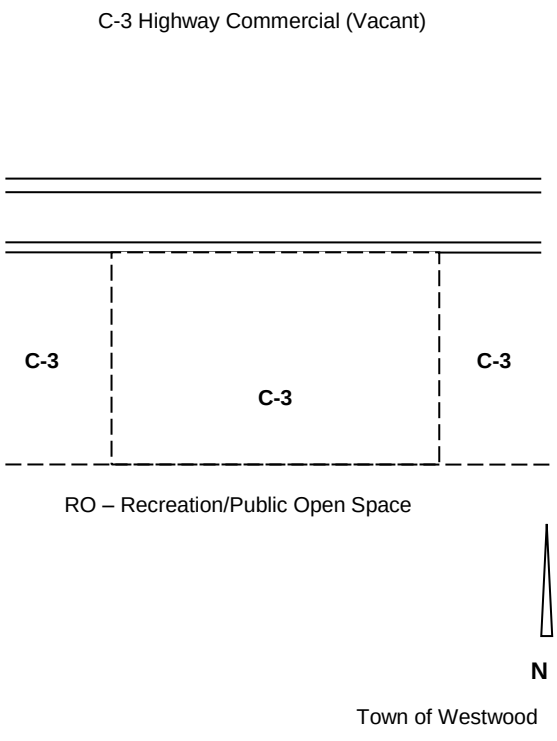
Appellant: J. Fixx

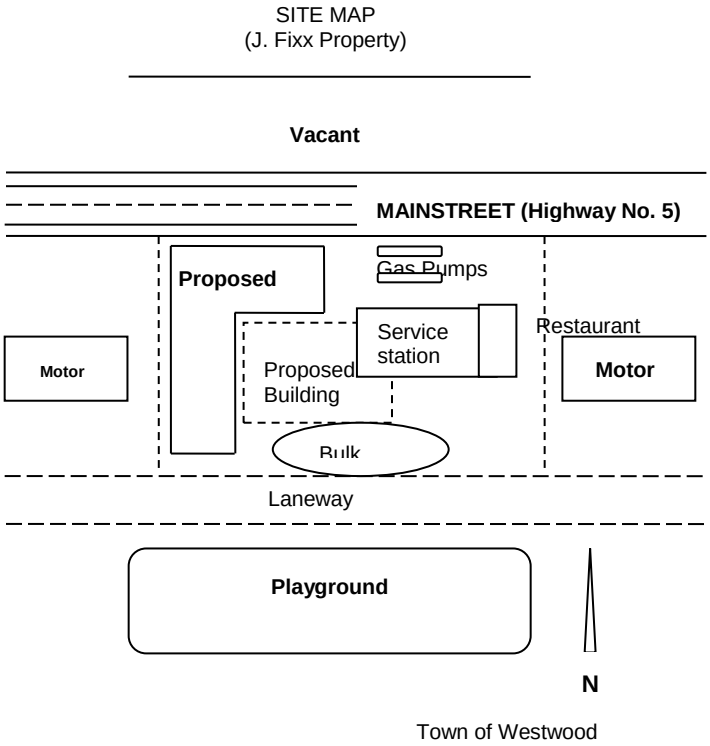
Application: To construct an addition to service station & restaurant for a new farm machinery & equipment business

Background: John Fixx has launched this appeal because the development officer did not make a decision within 40 days of the development permit application (in accordance with Section 684 of the Municipal Government Act). The application proposes to construct a new building for a wholesale farm machinery/equipment business and bulk fuel storage & sales. This new building will be added to an existing service station, (with a restaurant), currently operated by Mr. Fixx.

The subject site is designated C-3 Highway Commercial, in Land Use Bylaw #1995 in the Town of Westwood.

Figure 6: Town of Westwood Land Use Bylaw Map:





2. *Development Officer's Report*

Subject Site:Subject site is located on Main Street, which runs through town as a continuation of Highway No. 5. The site is already developed with a service station and restaurant, which have been in operation since 1995.

Existing Land

Use Classification: C-3 Highway Commercial

Existing Structure:One 450 m² (5000 ft²) full service gas station with 3 repair bays, with attached restaurant.

Existing Land Use: Service Station and roadside restaurant.

***Adjacent Land Use* & Land Use Districts**:

North: Highway No. 5 (Main Street) and vacant and designated C-3 Highway Commercial

South: Playground designated RO-recreation/public open space

East: Motor hotel designated C-3 Highway Commercial

West: Motor hotel and roadside café designated C-3 Highway Commercial

Proposed Development:Additional 450 m² (5000 ft²) building for wholesale farm machinery sales & service & bulk fuel storage & sales. The proposed addition will be attached to the service station on the opposite side of the restaurant.

Decision:This application was deemed refused by the applicant due to delays caused by changing in municipal staff; no decision had been made within 40 days of receipt of the application.

3. Applicant's Statement

Town of Westwood
Subdivision and Development Appeal Board
Town Hall
Westwood, Alberta

Dear Sir/Madam:

I wish to appeal my development permit application needed to expand my existing service station and restaurant business because no decision was made on this application.

I have recently acquired a franchise to sell and repair farm machinery, which is compatible with my auto service centre. Also, as part of my retail gasoline operation, I am expanding my business to include wholesale bulk fuel.

Therefore, I am requesting appeal for the development of a 450 m^2 (5000 ft^2) building for farm machinery sales and servicing. I believe my expanded operation will contribute to the economic health of our town through the purchase of materials needed for construction and the creation of 5-8 permanent jobs.

Yours sincerely,

John Fixx

Town of Westwood Land Use Bylaw

C-3 HIGHWAY COMMERCIAL DISTRICT

GENERAL PURPOSE

The general purpose of this district is to permit commercial uses which will serve the traveling public.

PERMITTED USES:

(1) Motor hotels

(2) Roadside restaurants and cafes

(3) Service stations

(4) Automotive

(5) Motels

(6) Accessory buildings

DISCRETIONARY USES:

(1) Governmental

(2) Hotels

(3) Institutional

(4) Residential accommodation in conjunction with an approved commercial use

(5) Theatres

(6) Light industry (non-polluting)

COMMERCIAL DISTRICT C-2

GENERAL PURPOSE

The general purpose of this district is to permit commercial development of a secondary nature, involving workshop type uses, and at the discretion of the Development Officer, more land extensive uses.

PERMITTED USES:

A workshop used by the following:

(1) Cabinet Maker
(2) Carpenter
(3) Decorator
(4) Electrician
(5) Gas Fitter
(6) Laundry
(7) Metal Worker
(8) Painter
(9) Plumber
(10) Printing Shop
(11) Pipe Fitter
(12) Tinsmith
(13) Upholsterer

DISCRETIONARY USES:

(14) Motel
(15) Funeral Parlour
(16) Service or Gas Station
(17) Automobile Garage
(18) Auction Mart
(19) Veterinary Clinic
(20) The storage and/or sale of:
(21) Automobiles
(22)Building Supplies
(23)Farm Machinery
(24)Lumber
(25)Propane Gas
(26)Fertilizer
(27)Bulk Fuel and Oil

Exercise One – C

1. SDAB Agenda

MUNICIPAL DISTRICT OF AGRIVILLE

Application: Mr. Simpson has applied for and received a development permit to construct a new building for a farm machinery repair business.

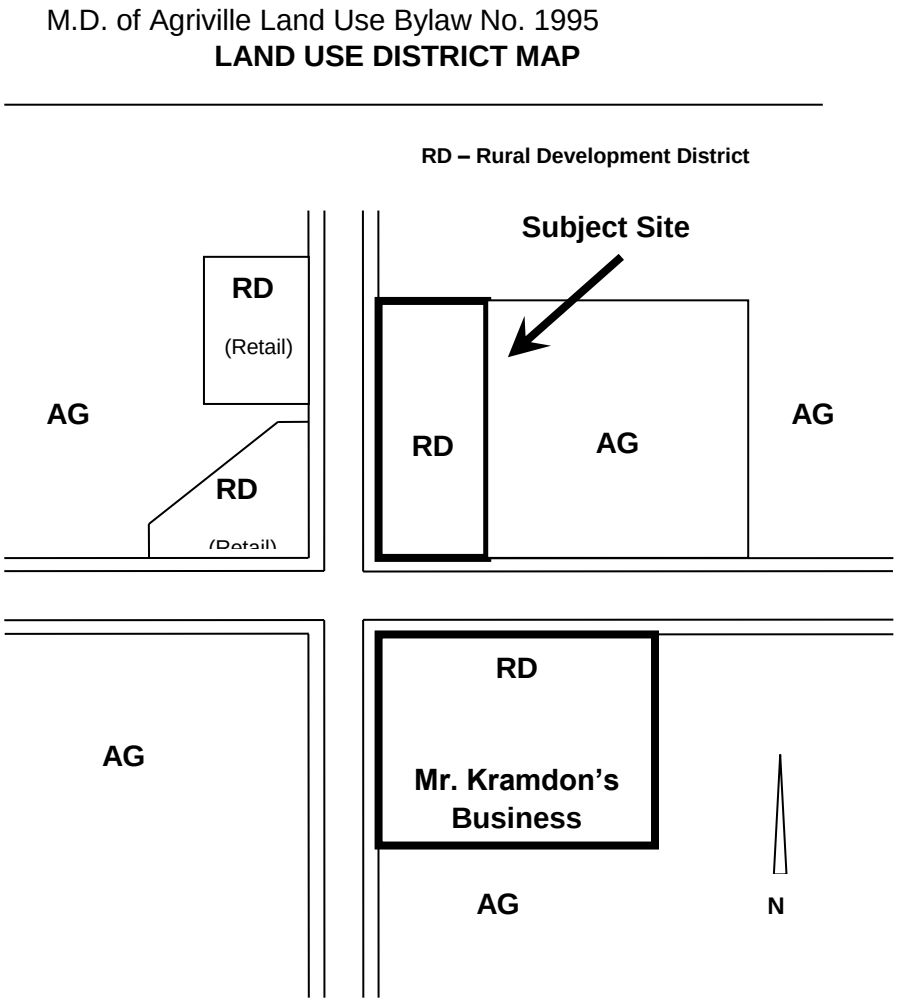
Background: Ralph Kramden has launched this appeal against this application because he currently operates a farm machinery and storage business on the adjacent quarter section to the south of the subject property. Mr. Kramden feels that there is not enough business in the Municipal District to support two such operations and therefore it would be unfair of the Municipal District to approve the development.

The subject site is designated RD – Rural Development, in Land Use Bylaw #1995 in the rural municipality of Agriville.

2. Development Officer's Report

Subject Site:	Subject site is a 4.0 hectare (10 acre) farmstead located at the intersection of Highway 2 and Highway 49. The parcel is accessible from both highways. The farmstead is 8.0 km (5.0 miles) from the Town of Dog River.
Existing Land Use	
Classification:	RD – Rural Development
Existing Structures:	The farmstead has 3 permanent structures: a farmhouse, a three-vehicle detached garage, and a barn.
Existing Land Use:	Primarily grain production with a 30 head cow/calf operation confined outdoors in a livestock pen. Farm equipment is stored outdoors and in the storage shed. Homestead is occupied by the owner and his family.
Adjacent Land Use	
& Land Use Districts:	North: Grain production operation (Ag – Agriculture) South: Grain production operation (Ag – Agriculture), and a farm machinery repair business (Rd – Rural Development) East: Grain production operation (Ag –Agriculture) West: Highway 2, Retail uses (RD – Rural Development) and a grain production operation (Ag – Agriculture)
Proposed Development:	The applicant wants to construct a 225 m^2 (2500 ft^2) building.
Proposed Land Use(s):	Farm machinery repair business.
Decision:	Approval

Figure 7: M.D. of Agriville Land Use Bylaw No. 1995 Land Use District Maps



3. Appellant's Statement

Municipal District of Agriville
SDAB
Municipal Building
Agriville, Alberta

Dear Sir or Madam:

The Kramden family has owned our farm for almost 100 years, being passed down from generation to generation. In addition to the farming operation, my family also runs a farm machinery repair business. Unfortunately, the recent mad cow crisis almost collapsed our modest cow/calf operation and we must rely almost entirely on the repair business to make ends meet.

Mr. Simpson was not affected by the mad cow crisis at all since he is primarily a grain farmer and a very wealthy on at that. We feel that it would be grossly unfair if the M.D. allowed Mr. Simpson to open another farm equipment repair business directly across the highway from ours. There is barely enough business in the area to support one such business let alone two. If this is allowed to happen we will most likely be forced to sell the farm and move into town. Please don't let this happen to one of the longest standing farm families in the area.

Yours sincerely,

Ralph Kramden and Family

4. M.D. of Agriville Land Use Bylaw (Extracts)

Rural Development (RD) District

In this district no person shall use any lot to erect, alter or use any building for any purpose except for one or more of the following:

PERMITTED USES

- accessory building public utility
- agriculture industry
- building, or related type of contractor
- dwelling unit accessory to an agriculture use
- electrical or plumbing contractor
- farm machinery or equipment, sales or service
- sign

DISCRETIONARY USES

- abattoir
- alfalfa pelletizing or seed cleaning plant
- anhydrous ammonia storage
- asphalt or cement plant
- auto wrecker
- bulk petroleum sales and/or storage
- fertilizer plant
- motel
- natural resource extraction industry
- oilfield service
- petro-chemical processing plant
- repair and/or auto body shop
- restaurant
- retail establishment
- sawmill
- service station and/or car wash – trucking contractor
- warehousing
- welding shop

Exercise One – D

1. SDAB Agenda

CITY OF PETROVILLE

Application: Mr. Barker has applied for and received a development permit to open an adult video store in an existing commercial strip.

Background: Mrs. Kravitz, on behalf of a group of 150 neighbours that have signed a petition against the development, has launched an appeal against this application. The neighbours feel that an adult entertainment video store does not fit in with the character of the neighbourhood and that it is too close to the elementary school.

The subject site is designated CNC – Commercial Neighbourhood Convenience, in the City of Petroville's Land Use Bylaw.

2. Development Officer's Report

Subject Site: The site is located alone a major roadway, which has a number of different commercial land use designations. The landowner intends to open an adult video store in a building that was originally used as a convenience store.

Existing Land Use Classification: CNC – Commercial District Neighbourhood Convenience

Adjacent Land Uses:
North – single and two family residential
South – major road and retail commercial
East – retail commercial
West – retail commercial and an elementary school

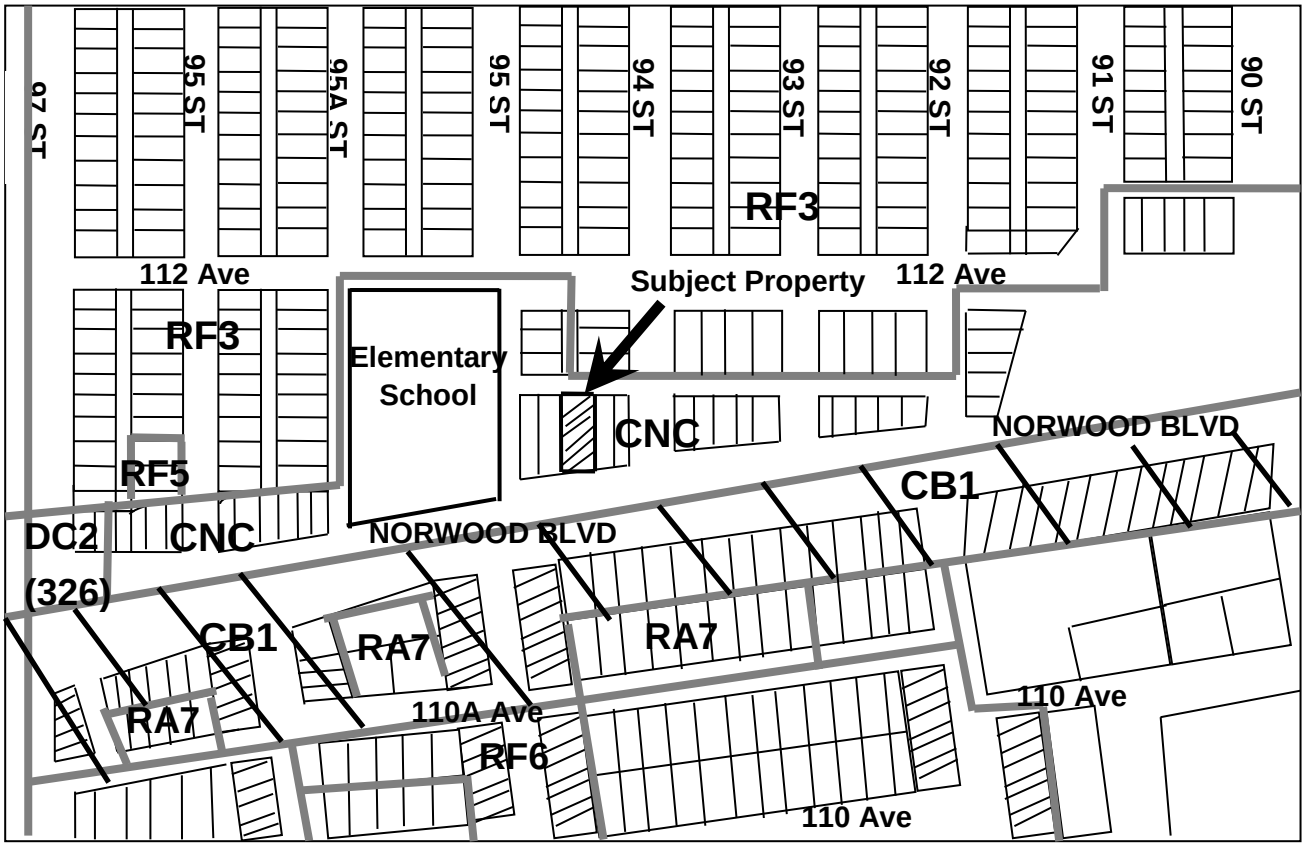
Proposed Development: Open an adult video store in an existing 79 m^2 (850 ft^2) building that used to be a convenient store.

Decision: This application was approved subject to the following conditions:

- provide 1 parking stall per 20 m^2 plus one stall for staff for a total of 5 stall. (the application shows the provisions of 8 parking stalls; and
- any store front windows must be opaque and free of any advertising graphics.

Please note the attached definitions of specific uses related to this application. These definitions are from the Operative and Interpretive Clauses section of Land Use Bylaw.

Figure 8: City of Petroville Land Use Bylaw Map



3. Appellant's Statement

City of Petroville
Subdivision and Development Appeal Board
City Hall
Petroville, Alberta

Dear Sir or Madam:

We wish to appeal to the Subdivision and Development Appeal Board regarding the approval of this development permit application! We the concerned residents of this community (see attached 152 name petition) are outrages and this indecent business be allowed in this family-oriented communicate especially down the street from an elementary school.

We strongly urge you to overturn the decision of the development officer (who also happens to be the applicant's second cousin) and deny the development permit application.

Yours sincerely,

Alice Kravitz

4. City of Petroville Land Use Bylaw (Extracts)

CNC COMMERCIAL NEIGHBOURHOOD CONVENIENCE DISTRICT

To establish a district for convenience commercial and personal service uses intended to serve the day-to-day needs of residents within new or established neighbourhoods.

PERMITTED USES:

(1) Convenience Retail Stores with a gross floor area up to 100 m^2

(2) Health Services

(3) Minor Eating and Drinking Establishments

(4) Professional, Financial and Office Support Services

(5) Video outlet with a gross floor area up to 80 m^2

DISCRETIONARY USES:

(1) Convenience Retail Stores with a gross floor area over 100 m^2

(2) Minor Eating and Drinking Establishments

(3) Video outlet with a gross floor area over 80 m^2

(4) Apartment Housing

(5) Commercial Schools

(6) Daytime Child Care Services

(7) Gas Bars

(8) Indoor Amusement Establishments

(9) Minor Veterinary Services

(10) Religious Assemblies

Definitions:

Video Outlet – means a development where pre-recorded videocassettes or computer disks are rented to the public for any consideration for use off-site.

Exercise One – E

1. *SDAB Agenda*

COUNTRY COUNTY

Application: This is an appeal of the Subdivision Authority decision conditionally approving the creation of two 0.7 hectare (1.73 acre) parcels from an existing 1.4 hectare (3.46 acre) parcel within the Green Acres subdivision.

Background: Ike and Tina Turner are going through an acrimonious divorce and are in the process of separating their assets including a recreational property located in the Green Acres Subdivision. The property is of great sentimental value to both Ike and Tine and therefore they cannot come to an agreement on the division of the property.

As a result, they propose to subdivide the property into two smaller parcels. However, the lots will be smaller than are allowed for the Country Residential one (CR-1) land use district and in the Green Acres Area Structure Plan. The application was refused on that basis.

2. *Subdivision Authority Report*

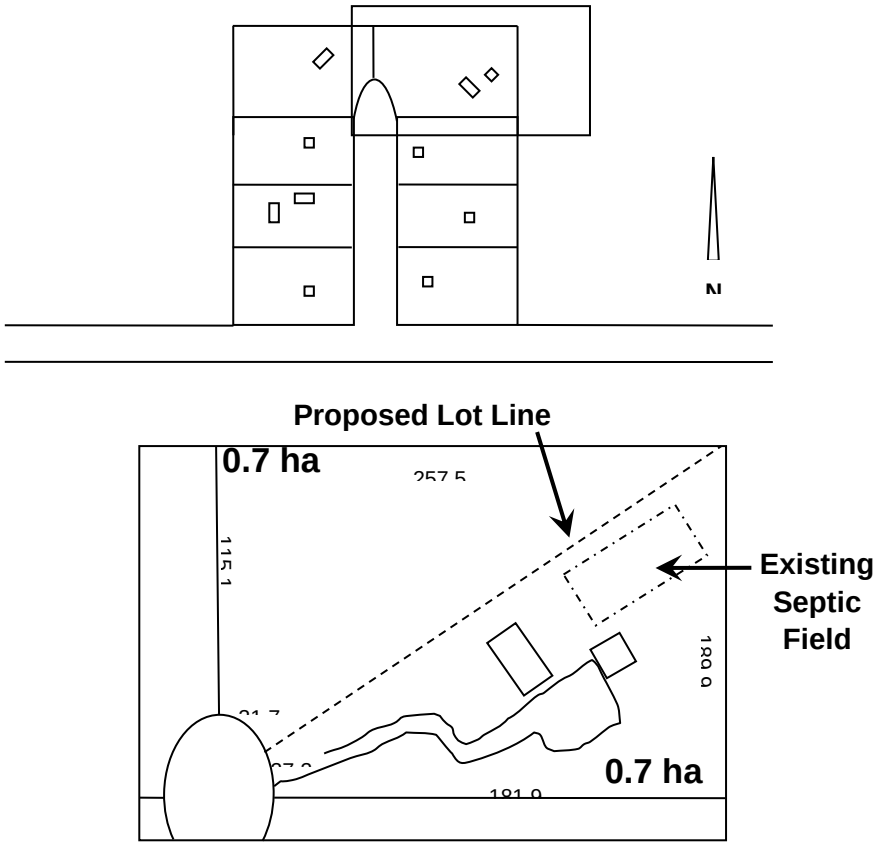
Subject Site: The site is located in an existing country residential subdivision.

Existing Land Use Classification: CR-1 – Country Residential District

Adjacent Land Use & Land Use Districts:
North: Grain production operation (Ag – Agriculture)
South: Residence (Cr-1 Country Residential)
East: Grain production operation (Ag – Agriculture)
West: Residence (CR-1 Country Residential)

Proposed Subdivision: Subdivide existing 1.4 ha lot in half to create two 0.7 ha lots.

Figure 9: Country Residential Subdivision- Country County



Additional Information:

- All 8 lots in the subdivision conform to the 1.0 hectare (2.47 acres) minimum area requirement; two lots at the end of the cul-de-sac are each 1.4 hectares (3.46 acres); one of which is owned by the Turners.
- The Turners have asked the neighbours to sign a letter of non-objection; 6 or 7 neighbours have signed it.
- The proposed new lots will meet building setbacks and will conform to the other regulations contained in the land use district.
- Another septic field could be accommodated on the proposed vacant lot.
- Water is provided from a communal well serving all 8 lots.

Decision: This application was refused for the following reasons:

1. The proposed subdivision is contrary to the MGA which states that a subdivision must conform to the provisions of any statutory plan and be subject to any land use bylaw that affects the land proposed to be subdivided.
2. The Land Use Bylaw states that that the minimum size for a parcel in the CR-1 land use district is 1.0 hectare (2.47 acres).
3. The Green Acres Area Structure Plan indicates that the minimum lot size in the plan area should be one hectare.

3. ***Applicant's Statement***

Country County
Subdivision and Development Appeal Board
County Hall
Oxford-on-Pipestone, Alberta

Dear Sir or Madam:

We wish to appeal to the Subdivision and Development Appeal Board regarding the refusal of our subdivision application. We are divorcing and it seems that this is the only way we can deal with our property settlement. We both want to stay in this location, but we can't live under the same roof anymore. (If you knew my wife, you'd understand why!)

We have the support of 6 of our 7 neighbours, and the other one is concerned about traffic. With only one lot being added, we think this objection is unreasonable.

We ask you to use your discretionary powers under the Municipal Government Act overturn the decision of the Subdivision Authority.

Yours sincerely,

Ike Turner

Exercise One –F

1. SDAB Agenda

CITY OF URBANA

Application: Appeal against the development officer's decision to approve a development application to allow the construction of a new residential building to accommodate a group care facility.

Background: The subject site is designated R-1 Low Density Residential District in the Land Use Bylaw. Neighbouring residents have launched the appeal.

2. Development Officer's Report

Proposed Development: Construction of a group care facility with 24 hour supervision to accommodate a maximum of 5 people. The house will have cooking and laundry facilities for residents to use. Structure will be bungalow style, 135 m^2 (1500 ft^2) with 3 bedrooms on main floor and 2 bedrooms in basement. The group home has been proposed by a local service group in conjunction with a social services agency to help troubled youths re-enter the community.

A group care facility is a discretionary land use in the R-1 District. The proposed development meets all the regulations of the land use district.

Development Officer's Decision: Approval.

Basis of Appeal: Neighbouring families have appealed the Development Officer's decision because they feel that the *troubled youths* will present security problems in the neighbourhood. The neighbours are concerned with the possibility of increased vandalism and security problems if this development is approved.

4. *City of Urbana Land Use Bylaw (Extracts)*

R-1 – LOW DENSITY RESIDENTIAL DISTRICT

The general purpose of this District is to permit development of low-density single-family dwellings and associated uses at the discretion of the Development Officer.

PERMITTED USES

(1) One family dwellings

(2) Accessory buildings and uses

DISCRETIONARY USES

(1) Small parks and playgrounds which serve specific residential developments

(2) Churches

(3) A public or quasi-public building, which is required to serve in the immediate area

(4) Home occupations and professional offices

(5) Group care facilities

REGULATIONS

1. Relating to One Family Dwelling serviced by water and sanitary sewer.
   - Minimum site area: 495 m^2 (5500 ft^2)
   - Front yard setback: 7.6 m (25 ft.) minimum
   - Rear yard setback: 7.6 m (25 ft.) minimum
   - Side yard setback: 10% of the lot width
   - Minimum floor area: 90 m^2 (1000 ft^2) for 1
2. Maximum Lot Coverage:
   - Dwellings – 23%
   - Accessory – 12%
   - Others – as required by the Development Officer

Definitions:

"Group Care Facility" means a facility, which provides resident services to individuals who are handicapped, aged, disabled, or undergoing rehabilitation. This category includes supervised uses such as group homes (all ages), halfway houses, resident schools, resident facilities and foster or boarding homes.

Exercise One – G

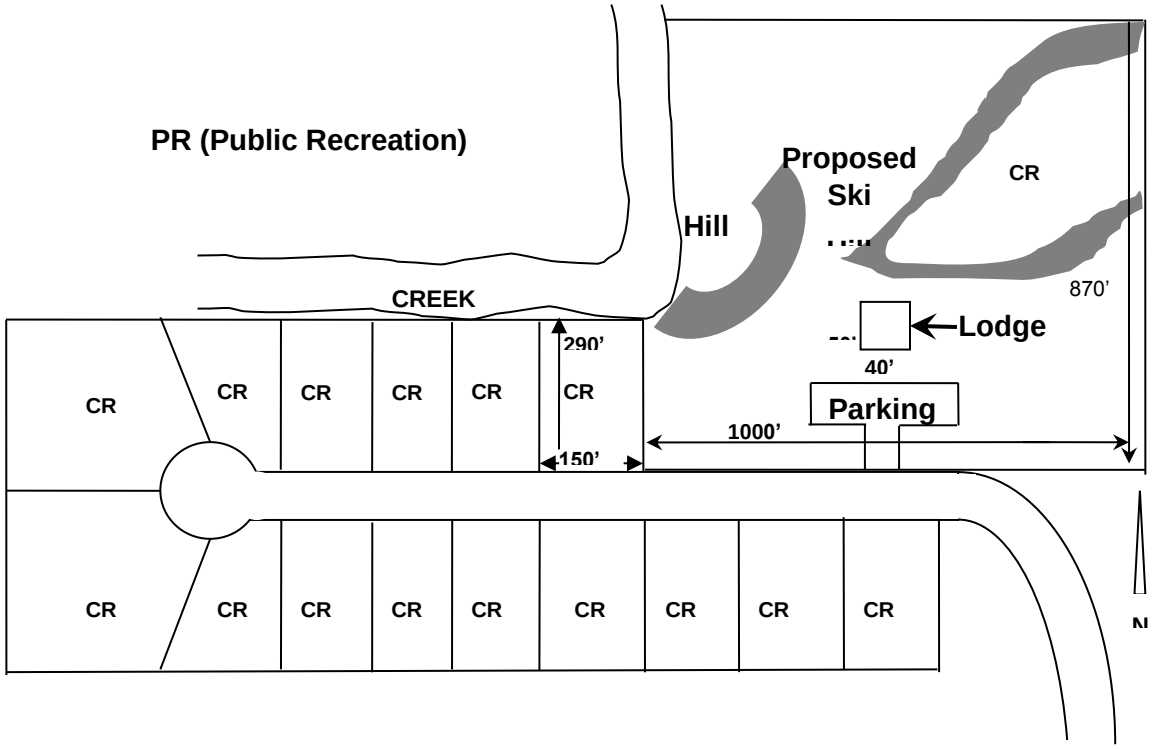
1. SDAB Agenda

MUNICIPAL DISTRICT OF AGRIVILLE

Application: Appeal of development officer's decision to approve a development application to allow (with conditions) recreational uses in a residential area.

Background: The subject site is districted CR – Country Residential District in the land use bylaw. Neighbouring residents have launched the appeal.

Figure 10: Country Residential Subdivision- Recreational use in a residential area (A).



2. Development Officer's Report Development Officer's Report

Proposed Development: Recreational ski area – 8 ha (20 acre) parcel

- 180 m^2 (2000 ft^2) lodge
- two ski lifts – one T-bar; one rope tow
- 125 stall parking lots
- A BMX Bicycle park is proposed for summer use

This recreational land use is considered a "discretionary" use in the CR – Country Residential District of the MD of Agriville's Land Use Bylaw.

The development conforms to the Land Use Bylaw's "Special Provisions", which states for Recreational Development.

1. Recreational development may only be allowed on lower capability agricultural land.
2. The developer shall identify, to the Development Officer's satisfaction, all servicing costs associated with the development.

Development Officer's Decision: Approval, subject to these conditions:

a) parking areas to be screened & landscaped to minimize visual intrusion to neighbouring properties; and

b) summer operation will be restricted to day light hours.

Basis of Appeal: Every country residential household (15) in the Fox Creek subdivision has submitted letters of appeal on this development.

The residents argue that the 'quality' of their subdivision will be destroyed in winter by traffic generated by the ski hill, and in summer by the BMX Bicycle Park.

Other Information: The Development Officer has attempted to minimize the impact of the development by attaching conditions. Also, the development officer has held meetings between the developer and the residents, without resolving their difference.

3. Municipal District of Agriville Land Use Bylaw (Extracts)

CR – COUNTRY RESIDENTIAL

This district is intended to protect more intensively developed country residential areas from the problems of incompatible development.

PERMITTED USES

(1) Dwelling

(2) Accessory buildings and uses

(3) Park

DISCRETIONARY USES

(1) Greenhouse

(2) Mobile Home

(3) Stable

(4) Public buildings

(5) Recreation facilities

(6) Dugouts

(7) Home occupations

(8) Other uses of a similar nature as approved by the MPC

MINIMUM DEVELOPMENT STANDARDS

(1) Lot Area: For parcels not served by a sewage collection or a water distribution system, 0.4 hectares (1 acre) with a minimum width of 30.5 metres (100 feet).

(2) Setback from Roads:

  (a) 40 metres (131.2 feet) from the centre line of any local or secondary road. Any waiver of the 40-metre regulation shall be a recommendation from the Municipal Planning Commission to Council for final approval.

  (b) 7.5 metres (24.6 feet) from all property line to any service road or subdivision street.

  (c) As required by Alberta Transportation for primary highways.

(3) Setback from Other Property Boundaries:

  (a) Corner side yard: as required for the setback from roads.

  (b) Internal side yard: 3 metres (9.8 feet)

  (c) Rear yard: 15 metres (49.2 feet)

Exercise One – H

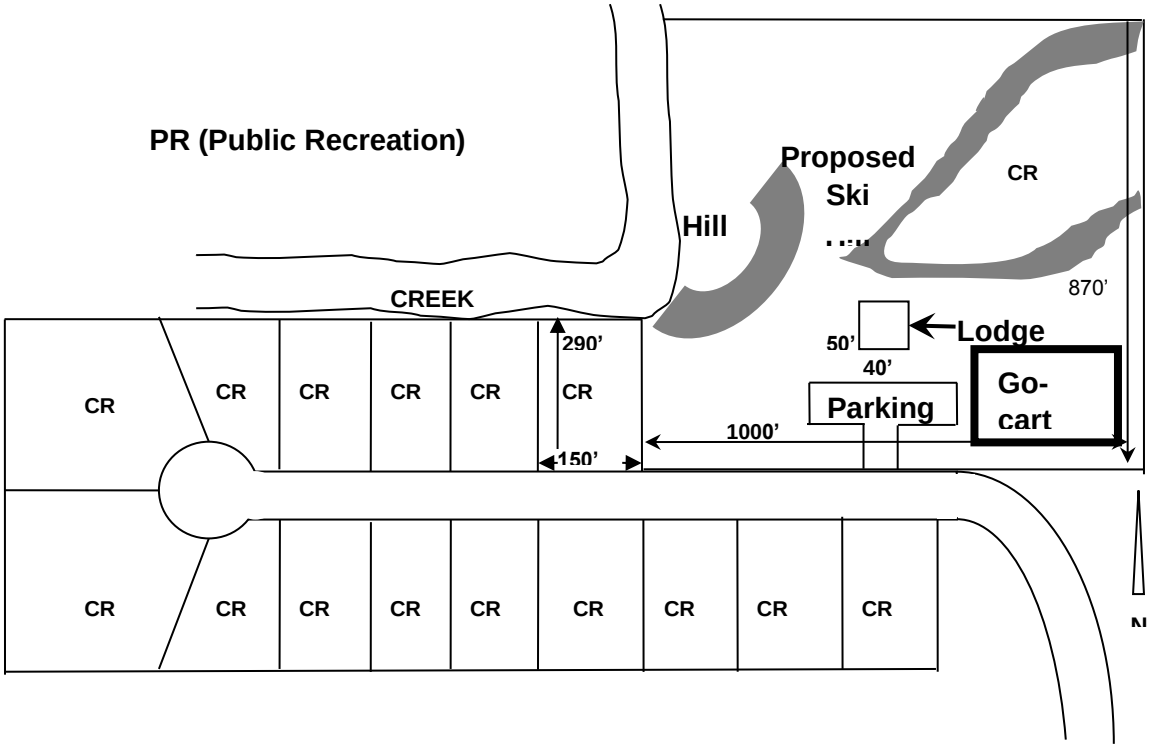
1. SDAB Agenda

MUNICIPAL DISTRICT OF AGRIVILLE

Application: Appeal of development officer's decision to approve a development application to allow (with conditions) recreational uses in a residential area.

Background: The subject site is districted CR – Country Residential District in the land use bylaw. Neighbouring residents have launched the appeal.

Figure 11: Country Residential Subdivision- Recreational use in a residential area (B).



2. Development Officer's Report Development Officer's Report

Proposed Development: Year round recreation camp for sick children and their families on 8 ha (20 acre) parcel

- 180 m^2 (2000 ft^2) lodge and overnight accommodations.
- two ski lifts – one T-bar; one rope tow
- parking lots
- a go-cart track is proposed for summer use

This recreational land use is considered a "discretionary" use in the CR – Country Residential District of the MD of Agriville's Land Use Bylaw.

The development conforms to the LUB's "Special Provisions", which state for Recreational Development.

1. Recreational development may only be allowed on lower capability agricultural land.
2. The developer shall identify, to the Development Officer's satisfaction, all servicing costs associated with the development.

Development Officer's Decision: Approval, subject to these conditions:

- parking areas to be screened & landscaped to minimize visual instruction on neighbouring properties; and
- the summer go cart track is restricted to day light hours to minimize noise impact.

Basis of Appeal: Every country residential household (15) in the Fox Creek subdivision has submitted letters of appeal on this development.

The residents argue that the 'quality' of their subdivision will be destroyed in winter by traffic generated by the ski hill, and in summer by the BMX Bicycle Park.

Other Information: The Development Officer has attempted to minimize the impact of the development by attaching conditions. Also, the development officer has held meetings between the developer and the residents, without resolving their difference.

3. Municipal District of Agriville Land Use Bylaw (Extracts)

CR – COUNTRY RESIDENTIAL

This district is intended to protect more intensively developed country residential areas from the problems of incompatible development.

PERMITTED USES

(1) Dwelling

(2) Accessory buildings and uses

(3) Park

DISCRETIONARY USES

(1) Greenhouse

(2) Mobile Home

(3) Stable

(4) Public buildings

(5) Recreation facilities

(6) Dugouts

(7) Home occupations

(8) Other uses of a similar nature as approved by the MPC.

MINIMUM DEVELOPMENT STANDARDS

(1) Lot Area: For parcels not served by a sewage collection or a water distribution system, 0.4 hectares (1 acre) with a minimum width of 30.5 metres (100feet).

(2) Setback from Roads:

(a) 40 metres (131.2 feet) from the centre line of any local or secondary road. Any waiver of the 40-metre regulation shall be a recommendation from the Municipal Planning Commission to Council for final approval.

(b) 7.5 metres (24.6 feet) from all property line to any service road or subdivision street.

(c) As required by Alberta Transportation for primary highways.

(3) Setback from Other Property Boundaries:

(a) Corner side yard: as required for the setback from roads.

(b) Internal side yard: 3 metres (9.8 feet).

(c) Rear yard: 15 metres (49.2 feet).

Exercise One – I

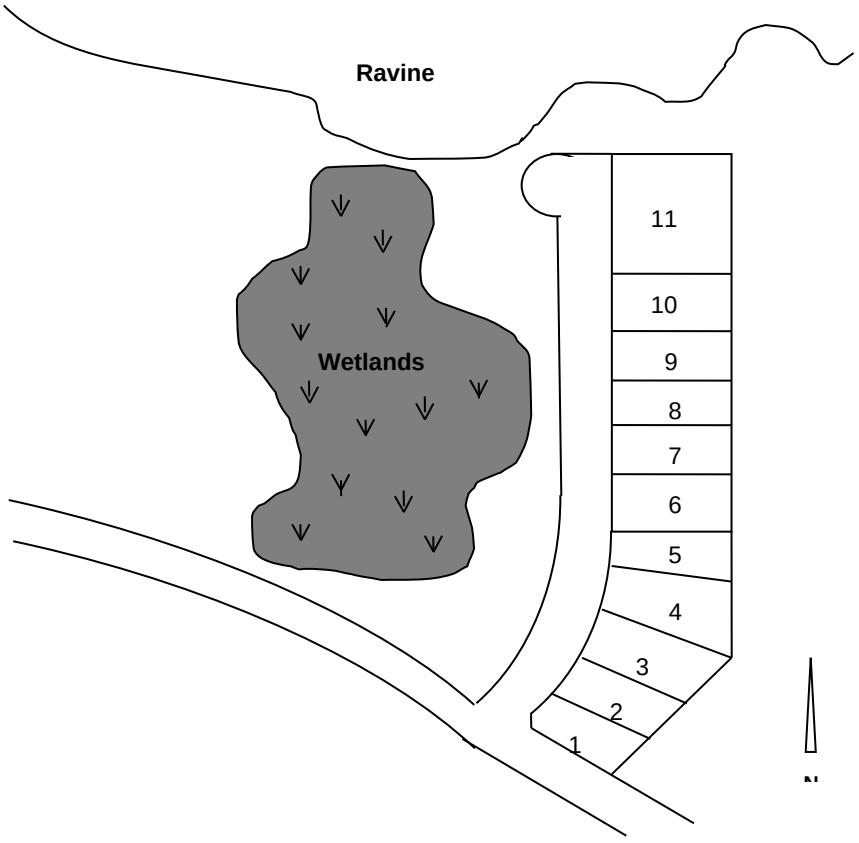
1. SDAB Agenda

MUNICIPAL DISTRICT OF RAGING RIVER

Application: This is an appeal by the applicants of the Subdivision Authority decision refusing the creation of two 0.16 hectare (0.4 acre) parcels from the existing0.32 hectare (0.8 acre) Lot 11 within the Riverview Estates subdivision.

Background: Brad and Angelina Pitt own the municipally serviceable but undeveloped Lot 11 in an upscale country estate subdivision. They propose to subdivide the parcel into two lots to give to each of their children.

Figure 12: Country Residential Subdivision- Municipal District of Raging River



2. Subdivision Authority Report

Subject Site: The site, Lot 11, is located in an existing country residential subdivision.

Existing Land Use Classification: CR-E – Country Residential – Estate District

Existing Development: None.

Adjacent Land Use & Land Use Districts:

North: Public Open Space (OS – Open Space)
South: Residence (CR-E Country Residential – Estate)
East: Grain production operation (Ag – Agriculture)
West: Public Open Space (OS – Open Space)

Proposed Subdivision: Subdivide an existing 0.32 ha (0.8 acre) lot in half to create two 0.16 hectare (0.4 acre) lots.

Additional Information:

- The lots will be smaller than 0.2 hectare (0.5 acre) minimum area allowed for the Country Residential – Estate (CR-E) land use district. The Water World Area Structure Plan designates the land *Serviced Country Residential*, but does not specify a minimum lot area.
- The proposed new lots will meet building setbacks and will conform to the other regulations contained in the land use district.
- All 10 developed lots in the subdivision currently conform to the 0.2 hectare (0.5 acre) minimum area requirement. The Pitts' Lot 11 is the remnant at the end of Dead End road.
- Municipal services (water and sanitary) are located in the road; capacity exists to service three additional lots.
- No comment has been received from the neighbours, but an objection was received from the *Friends of Alberta Wetlands* organization. The letter cites increased traffic and the negative impact of additional population on wildlife habitat as reasons.

Decision: The Subdivision Authority refused this application for the following reasons:

1. The lot areas proposed are 20% less than the minimum lot size of 0.2 hectare (0.5 acres) specified in the applicable Country Residential Estate district.
2. Section 654 (2) of the MGA grants the Subdivision Authority some discretion with respect to land use bylaw regulations, where the use of the land conforms to the land use bylaw and the variance would not have an unduly negative impact on other land in the vicinity. However, the Subdivision Authority feels that granting a 20% variance in lot area is beyond the limits of its discretion.

3. Letter from Friends of Alberta Wetlands

SDAB
MD of Raging River
POB 456, RR17
Hyperbole, AB T9H 4W5

Dear Board Members:

Our organization consists of some 250 members from all walks of life, including many environmental experts. We are dedicated to the protection and preservation of Alberta's natural heritage and environmental sustainability. We focus our efforts on wetlands, both as a source of groundwater recharge and as wildlife habitat, as well as, of course, as amenities for all Albertans. Although we are based in Calgary, and the subject subdivision is 200 km north of Lac La Biche, we see the problem of disappearing and damaged wetlands as a province-wide concern.

We also see the negative impacts of many forms of development as incremental – each decision to allow further degradation of our nation heritage, no matter how small, just adds to the problem.

The Water World Area Structure Plan attempts to keep any residential development as compact as possible and to minimize development impacts on our natural environment. Adding even one lots, and relaxing standards to do so defeats the purpose of long range, comprehensive planning.

We therefore ask that the SDAB reverse the decision of the Subdivision Authority and thereby protect our environment and support the policies and direction of the area structure plan that Council has adopted.

Yours for a Better World,

Tweed Beaverton III

For the Friends of Alberta Wetlands

Exercise One –J

1. SDAB Agenda

Meeting of the Subdivision and Development Appeal Board of Wilma County scheduled for January 24, 2011.

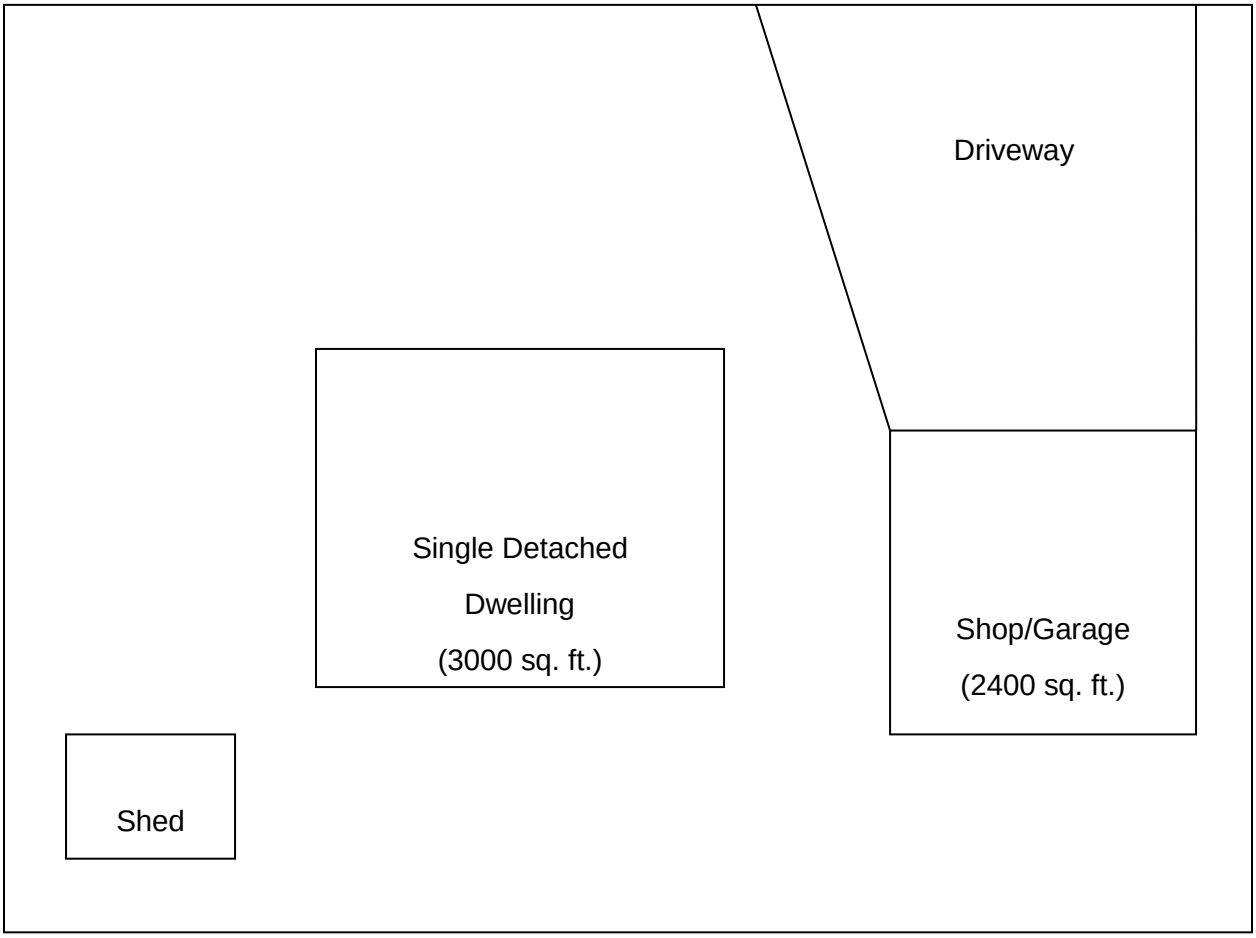
Appellant: Mr. Joe Grogan

Appeal: The landowner is appealing the decision of the Development Officer of Wilma County to issue a Stop Order pursuant to section 645 of the *Municipal Government Act*, R.S.A. 2000, c M-26, as amended, claiming the shop/garage located on the lands is unauthorized and a contravention of the County's Land Use Bylaw.

Background: The subject site is designated CR – Country Residential pursuant to the County's Land Use Bylaw, Bylaw 06-211, as amended. The Development Officer issued a Stop Order December 15, 2010 in relation to a 222.967 m^2 (2400 sq. ft.) shop/garage located on the lands for which no development permit has been issued and which is in contravention of the County's Land Use Bylaw. The Stop Order was delivered to the landowner via registered mail and was signed for by the landowner on December 23, 2010. The landowner filed a Notice of Appeal to the Subdivision and Development Appeal Board on January 4, 2011.

A copy of the Stop Order under appeal is attached.

Figure 13: Country Residential Subdivision- Shop/Garage.



NOTICE OF APPEAL

January 4, 2011

Subdivision and Development Appeal Board of Wilma County
c/o Wilma County Administration Office
11111 – 11 Avenue
Wilma, Alberta T0G 0G0

To Whom It May Concern:

I wish to appeal to the Subdivision and Development Appeal Board of Wilma County the Stop Order issued by the Development Officer for Wilma County dated December 15, 2010.

The Stop Order claims that the development of the shop/garage located on my lands is unauthorized as no development permit has been issued. However, on February 23, 2010 a development permit for an Accessory Building (Shop/Garage) was issued by Wilma County for my lands.

Therefore, there is no basis for the Stop Order and the Board should rescind the Order.

Yours truly

MR. JOE GROGAN

2. DEVELOPMENT OFFICER'S REPORT

SUBJECT SITE: The site is located in a County Residential subdivision and contains 1.42 hectares (3.5 acres). Currently located on the site is a 278.209 m^2 (3000 sq. ft.) single detached dwelling, a small shed 13.935 m^2 (approx.. 150 sq. ft.) and a 222.967 m^2 (2400 sq. ft.) shop/garage. A development permit has been issued for the single detached dwelling and no development permit is required for the shed pursuant to the County's Land Use Bylaw.

EXISTING LAND USE CLASSIFICATION: CR – Country Residential

ADJACENT LAND USES: Single Detached Dwellings

DECISION: A Stop Order was issued as a result of a 222.967 m^2 (2400 sq. ft.) Accessory Building being located on the lands in contravention of the County's Land Use Bylaw. The Stop order provides that the landowner either has to apply for and obtain a development permit or removed the Accessory Building and restore the lands to the satisfaction of the Development Officer, within 30 days of receipt of the Stop order.

DISCUSSION: The *Municipal Government Act,* R.S.A. 2000, c. M-26, as amended development, land use or use of a building is not in accordance with

"645(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with:

(a) this Part or a land use bylaw or regulations under this Part, or

(b) a development permit or subdivision approval,

the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

(a) stop the development or use of the land or building in whole or in part as directed by the notice,

(b) demolish, remove or replace the development, or

(c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or subdivision approval, within the time set out in the notice.

(3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685."

The County's Land Use Bylaw provides:

"6.3 Any use or development of lands within the County requires a valid development permit unless the use or development of the land has been exempted from the requirement of obtaining a development permit pursuant to this Bylaw."

The Land Use Bylaw goes on to provide:

6.4 A development permit is not required for the following uses or developments:

… … …

(d) Accessory Buildings not exceeding 13.935 m^2 (150 sq. ft.) that comply with all other provisions of this Bylaw;

… … …

Accessory Building is defined in the Land Use Bylaw as:

"Accessory Building means a building that is separate from the primary or primary building and the use of which is incidental to the principal or primary building."

As Development Officer for the County I conducted a visual inspection of the lands and determined that a large shop/garage has been constructed on the lands. The shop/garage is not connected to the single detached dwelling and therefore falls within the definition of "Accessory Building" as defined in the County's Land Use Bylaw. As a result of the Accessory Building having a floor area of 222.967 m^2 (2400 sq. ft.), a development permit is required as the exemption from the requirement for a development permit only applies to Accessory Buildings with a floor area of less than 13.935 m^2 (150 sq. ft.). From a review of the County's records a development permit was issued to the landowner on February 23, 2010 for a 55.74 m^2 (600 sq. ft.) Accessory Building – garage use. No 55.74 m^2 (600 sq. ft.) garage is currently located on the lands. No development permit has been applied for or issued for a 222.967 m^2 (2400 sq. ft.) shop/garage.

As no development permit has been issued and the County's Land Use Bylaw requires a development permit be obtained for an Accessory Building exceeding 13.935 m^2 (150 sq. ft.), I was able to conclude that the Landowner was in contravention of the Land Use Bylaw. As a result, the Stop Order was issued to the landowner requiring the landowner to apply for and obtain a development permit for the shop/garage or to remove the Accessory Building from the lands and restore the condition of the lands within 30 days of receipt of the Stop Order.

WILMA COUNTY

STOP ORDER

December 15, 2014

Joe Grogan
13 Wilma Close
Wilma, AB T0G 1G0

HAND DELIVERED

X **REGISTERED MAIL**

Dear Sir:

RE: Plan 0324557 Block A Lot B2

In my capacity as Development Officer for Wilma County, I hereby issue a Stop Order pursuant to Section 645 of the *Municipal Government Act*, with respect to the aforementioned Lands.

The County's Land Use Bylaw states:

> 6.3 Any use or development of lands within the County requires a valid development permit unless the use or development of land has been exempted from the requirement of obtaining a development permit pursuant to this Bylaw

Part 17 of the *Municipal Government Act* allows a Development Officer to issue a Stop Order where a development or use of land or buildings does not comply with the *Municipal Government Act*, the Land Use Bylaw, or a development permit or subdivision approval.

At present, the Lands do not comply with the County's Land Use Bylaw given:

> There is a 2400 sq. ft. shop/garage located on lands for which no development permit has been applied for or obtained.

Accordingly, you are hereby ordered to stop the unauthorized development and use of the aforementioned lands and the buildings thereon and comply with the Land Use Bylaw by:

- Applying for an obtaining a development permit for the Accessory Building; or
- Removing the Accessory Building and restoring the condition of the Lands to the satisfaction of Development Officer

within thirty (30) days of receipt of this Order.

You are hereby advised that you have the right to appeal this Order to the Subdivision and Development Appeal Board. If you wish to exercise this right, written notice of a must be received by the Secretary of the Subdivision and Development Appeal Board within fourteen (14) days of receipt of this letter. The address for filing an appeal is:

Subdivision and Development Appeal Board of Wilma County
c/o Wilma County Administrative Office
11111 – 11 Avenue
Wilma, AB T0G 0G0

Please be advised that Wilma County has the authority, in the event that this Stop Order is not complied with within the time limit provided, to enter onto your lands to take whatsoever actions are determined by Wilma County to bring the lands into compliance, and may seek an Injunction or other relief from the Court of Queen's Bench of Alberta pursuant to section 554 of the *Municipal Government Act.* Further, Wilma County has the authority to add the costs and expenses for carrying out this Stop Order to the tax roll for your Lands pursuant to Section 553(1)(h.1) of the *Municipal Government Act*.

YOURS TRULY,

Wilma County

Per:

George Lemon

Development Officer

Wilma C

CR – Country Residential

Purpose

The purpose of this district is to foster residential development of 2 acres or greater within multi-lot residential subdivisions and to regulate such development.

Permitted Uses:	**Discretionary Uses:**
Single Detached Dwelling	Minor Home Occupation
Modular Home	Major Home Occupation
Manufactured Home	Garden Suite
Accessory Building	Bed and Breakfast
	Group Home
	Residential Sales Centre

Subdivision Regulations

a) The minimum parcel area is 2 acres

b) The minimum parcel width is 60 m

Development Regulations

a) The minimum front yard setback is 15 m;

b) The minimum side yard setback is 7 m unless adjacent to a road then the minimum side yard setback is 10 m;

c) The minimum rear yard setback is 7 m;

d) Any Accessory Building shall be located at least 7 ft. from the principal or primary building;

e) An Accessory Building shall not have a floor area more than 70% of the floor area of the principal or primary building;

f) An Accessory Building shall not be located closer to the front of the site than the principal or primary building;

g) In addition to the regulations set out above the following other regulations also apply: General Development Regulations, Landscaping and Screening Regulations, Parking and Loading Regulations, Manufactured Home Regulations, and Sign Regulations.

Exercise Two

The City of Vista is blessed with a majestic embankment in its west end. This embankment gives residents an incredible view of the downtown and the lake. Many residents enjoy the scenic quality and recreational trails in this part of the City. Consequently, it has become a prestigious postal code and many smaller older homes on larger lots are being purchased for redevelopment into larger “estate-style” homes.

The City’s Land Use Bylaw imposes a minimum setback from the top of the slope, but the Development Authority has an unlimited ability to vary the setback. The Development Officer received an application on December 20, 2014 for a permitted use, single detached dwelling, with a minor variation to the top of the bank setback for 123 Folly’s Lane. The application included significant landscaping of the backyard and the removal of a number of existing trees.

An accessory building marked “shed” was shown on the site plan, well inside the setback area. However, the structure was small enough that but for the variation to the setback, it would have fallen within the Land Use Bylaw’s “exemptions” from the need to obtain a development permit.

The Development Officer checked other development permits for Folly’s Lane and found that many of the single detached dwellings included a minor variation and a small accessory building in the backyard. Consequently, the Development Officer issued the development permit, with variations as requested to the standards contained in the Land Use Bylaw.

On May 21, 2013, the adjacent neighbours appealed the development permit to the City’s SDAB. The grounds of appeal are that the proposed development is too big for the street and that the location of the building would interfere with the adjacent properties’ view. Another her appeal included an environmental report that indicated that the natural vegetation and trees on the slope were “essential” for maintaining the structural integrity of the slope.

Questions:

1) What is the difference between a permitted and discretionary use?
2) Does the shed, within the setback area, require a development permit?
3) What factors should be considered in assessing the proposed development permit?

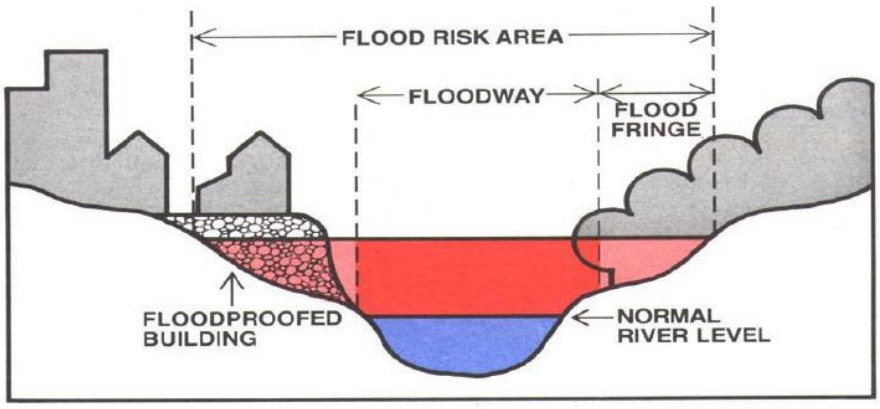
Exercise Three

The Town of Downstream was constructed in the early 1900s as a mining centre in the Rocky Mountains. The Flowing River runs through the centre of the Town of Downstream. Its oldest areas are located adjacent to the Flowing River. The geography of this area is ideal for low cost development because of the expanse of flat land.

The centre of the Town of Downstream is characterized by mixed use commercial and residential buildings, transitioning to exclusively residential uses. Many of the residential areas near the centre of the Town of Downstream have a single detached dwelling as a permitted use.

The Town's Land Use Bylaw prohibits development in the floodway, but only requires appropriate mitigation for development in the flood fringe. The regulation of development in the flood risk area is contained in an overlay district that applies to all lands that have been "identified in a flood risk area." The Land Use Bylaw includes the following definitions:

> "flood fringe" means one of the two zones in the flood risk area where lands could be inundated by a 1 in 100 year flood event, and where flood waters are shallower (less than 1 m deep) with lower velocity (typically less than 1 m/s) than he floodway area, causing less significant damage to human life or property.
>
> "flood risk area" means all lands included in any inventories and maps of all flood risk areas, including meander belts if deemed appropriate.
>
> "floodway" means one of the two zones in the flood risk area where there is the greatest risk of personal injury or damage to property. Flood waters in this area are deep (typically more than 1 m deep), move with greatest velocity (typically more than 1 m/s) and cause significant damage to human life, land or property.



From Canada - Alberta Flood Reduction Program

Figure 14: Flood Risk Area

On December 31, 2014, the Town's Planning Authority approved a development permit for a single detached dwelling adjacent to the Flowing River. At that time, the Town was in the process of obtaining new flood risk maps. The older flood risks maps, created in the 1980s, did not show the subject property within the flood risk area. However, the Town had draft maps by the water resource engineers retained to update the flood hazard maps. These draft flood hazard maps indicated that this area was in fact located within the floodway, and would likely be part of the updated flood risk area management plan.

Questions:

1. Is the subject property within the flood risk area?
2. If the subject property is within the flood risk area, do the standard land use regulations apply or the regulations in the overlay district?
3. Can the Planning Authority issue a development permit for a single detached dwelling in the floodway?

Exercise Four

1. What is the relationship between statutory plans and a land use bylaw? Which prevails in a conflict?

2. What is the difference between a use and a standard (or regulation) in a land use bylaw?

3. Can the SDAB request additional information from the applicant that was not before the development authority or the subdivision authority?

4. When should an issue respecting the validity of the appeal be dealt with by the SDAB?

5. Who writes the decisions of the SDAB?

6. What are common examples of irrelevant conditions?

7. Why is it important for SDAB members and other participants to be able to ask questions of the person presenting the material to the SDAB?

8. What should SDAB members do both inside and outside the hearing to ensure the appearance of impartiality?

9. What is the test for varying a standard?

10. What are examples of irrelevant considerations by the SDAB?

17. Appendix 5 – CHAIRPERSON'S REMARKS

17. APPENDIX 5: CHAIRPERSON'S REMARKS

SAMPLE SUBDIVISION & DEVELOPMENT APPEAL BOARD (SDAB) CHAIRMAN'S ADDRESS *(For Reference Only)*	
CALL THE HEARING TO ORDER	*I call this meeting of the Subdivision and Development Appeal Board to Order.*
CHAIR INTRODUCTION	*My name is _____ and I will Chair this hearing. All questions and comments shall be directed through me.*
BOARD INTRODUCTIONS	*Will the Board members please introduce themselves?*
SDAB ADMINISTRATIVE STAFF INTRODUCTIONS	*Will our administrative staff please introduce themselves?*
ADOPT AGENDA	*Are there any additions/deletions/changes to the Agenda?* *Can I have a motion to adopt the Agenda? All in favour?*
CONFIRM RECORD OF PROCEEDINGS	*Can I have a motion to confirm the record of proceedings for the meeting of …….? All in favour?*
ASK THE SECRETARY TO READ THE FIRST APPEAL	*Will the Secretary please read the first appeal?*
CALL FOR APPELLANT TO COME FORWARD	*Will the Appellant please come forward to the presentation table and introduce him/herself?*
OBJECTIONS TO	To Appellant: *Do you object to any of the present Board members hearing*

BOARD?	*this appeal?* To Audience: *Does anyone in the audience affected by this appeal object to any of the present Board members hearing this appeal?*
OUTLINE THE HEARING PROCESS	*The hearing process will be as follows:* *1) Administration will make a presentation first -* *a) there will be an opportunity for the Board to ask questions of clarification;* *2) the Appellant will then make a presentation;* *a) there will be an opportunity for the Board to ask questions of clarification;* *3) the Board will then hear from those affected persons in the audience:* *a) first, those in favour of the appeal,* *b) then those in the audience opposed to the appeal;* *4) the Secretary will read into the record any written submissions received;* *5) the hearing will recess for a few minutes (if deemed necessary by the Chair);* *6) upon reconvening there will be an opportunity for the Board to ask questions of clarification;* *7) any person who has presented will then be given an opportunity to ask questions for clarification, through the chair, of other persons who have presented*

	8) brief summaries or closing comments will follow: *a) first, Administration will have an opportunity for closing comments;* *b) then the Appellant will have an opportunity for closing comments;* *c) then other parties will have an opportunity for closing comments.* *9) I will provide closing direction and the Board's review and decision will be issued in writing within 15 days following the hearing. If you wish to receive a copy of the decision, it is important for you to enter your name and mailing address on the sign in sheet on the table at the entry to the hearing room.* *10)* [optional comments on decorum and purpose] *The purpose of the appeal hearing is for the appellant and affected parties to provide the Board with information in relation to the appeal. The Board must base its decision on planning merits. Affected persons will be given an opportunity to speak. Please ensure that all comments are directed through the chair. We would ask that comments be of proper decorum and succinct; if another person has already made a point, simply state that you agree with the point.* *If any presenter is referring to a written document, including a map, photographs or a report, a copy of those documents must be left with the Board. If you are reading from a written statement, please leave a copy with the Board as this will assist the Secretary in preparing the minutes, and the Board in making its decision.*
CONFIRM THE HEARING PROCESS	*Does the appellant have any concerns with the process I have outlined?* *Does anyone in the audience have any concerns with the process as outlined?*
DEVELOPMENT OFFICER OR PLANNER PRESENTATION	*……, please proceed with your presentation.*
	To Board: *Does the Board have any questions for clarification?*
PRESENTATION OF POTENTIAL CONDITIONS	The potential conditions of approval should be placed on the overhead so that the audience may view.

APPELLANT PRESENTATION	*The Appellant may now make his/her presentation.*
	To Board: *Does the Board have any questions for clarification?*
CALL FOR OTHERS TO SPEAK ON APPEAL **NOTE: NORMALLY, ALLOW PERSONS SUPPORTING THE APPEAL TO BE HEARD FIRST, FOLLOWED BY PERSONS OPPOSING THE APPEAL.**	*Is there anyone in the audience who wishes to speak in support of the appeal?* *Would you please come forward and introduce yourself to the Board and outline how you are affected? You may now make your presentation.* *Is there anyone in the audience who wishes to speak against the appeal?* *Would you please come forward and introduce yourself to the Board and outline how you are affected? You may now make your presentation*
READ INTO RECORD ADDITIONAL INFORMATION **(WHEN APPLICABLE)**	*The Board has received additional comments (or letters) not previously contained in the appeal package.* *I will call on the Secretary to read in for the record additional submissions in relation to the appeal.* [The Secretary may read this in word for word, or indicate that only a summary is being provided orally and that the parties may review the written submissions]*A letter (or phone call) from…… in support / in opposition of the appeal.*
BRIEF RECESS **(WHEN APPLICABLE)**	*The hearing will recess for a few minutes.* [Direct the parties and the audience to the appropriate waiting area, or the Board can retire to another room.]
CALL THE HEARING BACK TO ORDER (WHEN APPLICABLE)	*I call this meeting of the Subdivision and Development Appeal Board back to Order.*
BOARD QUESTIONS	To Board: *Does the Board have any questions for clarification for Administration?* *Does the Board have any questions for clarification for the Appellant?* *Does the Board have Are there any questions for any other person?*

OTHER QUESTIONS	To the audience: *Does any other person who has presented have any questions for clarification of any other presenter? If so, please direct the questions through the Chair.*
SUMMARIES – following all submissions	
DEVELOPMENT OFFICER OR PLANNER'S FINAL COMMENTS	*Would the Development Officer (or Planner) please make any brief, final comments?*
APPELLANT'S FINAL COMMENTS	*Would the Appellant please make any brief, final comments?*
POTENTIAL CONDITIONS OF APPROVAL (WHEN APPLICABLE)	Ask the Appellant: *Have you reviewed the potential conditions of approval provided to you? Do you have any concerns or comments?*
OTHER PERSON'S FINAL COMMENTS	Ask the other persons: *Would any other person who has made representations please make any brief, final comments.*
FAIR HEARING?	Ask the persons who have made representations: *Do the persons who have made representations feel that you have had a fair hearing?*
CONCLUDE AND GIVE CLOSING ADVICE TO APPELLANT AND OTHER PRESENTERS	*This hearing is now concluded.* *In accordance with Provincial legislation, the Board is required to hand down a decision within 15 days from the date of today's hearing. No decision is binding on the Board until it issues a written decision.*
ASK THE SECRETARY TO READ NEXT APPEAL	*Will the Secretary please read the next appeal?*

Alberta
Government