

WHERE TO FILE A SUBDIVISION APPEAL AND WHAT HAPPENS IF THE APPLICATION IS FILED AT THE WRONG BOARD?

SUBDIVISION APPEAL BULLETIN NO. SUB-2-2018

DISCLAIMER - This bulletin provides general guidance only and is not offered as legal or land planning advice. Each appeal is unique. The details in this bulletin may not apply to every case, or to future decisions of the Board. Please contact the MGB office if you have any questions.

INTRODUCTION

This Bulletin is designed to assist landowners, agents, municipal staff, subdivision authorities and other stakeholders to determine where to appeal the decision of a Subdivision Authority. Secondly, this Bulletin describes what happens if an appeal is filed at the wrong board.

BACKGROUND

Subdivision appeals are heard by either the Municipal Government Board (MGB) or the local Subdivision and Development Appeal Board (SDAB) depending on the subject lands' proximity to features deemed to be of provincial interest.¹

WHICH APPEALS SHOULD BE FILED AT THE MGB?

The question of where to file an appeal is determined by the location and characteristics of the land to be subdivided. Appeals should go to the MGB if the land that is the subject of the application is:²

- within the Green Area as classified by the Minister responsible for the *Public Lands Act* (mainly crown land in northern Alberta);³
- adjacent to or containing:
 - a body of water;
 - a historical resource;⁴ or
 - a historical site.⁵

¹ Section 678 of the *Municipal Government Act*, RSA 2000, c M-26 (*Act*) sets out who can appeal and which appeal board has jurisdiction.

² These distances are set out in section 22 and (5)(5) of the *Subdivision and Development Regulation*, Alta Reg 43/2002 (*Regulation*).

³ For more information on the boundaries of the Green Area, contact Alberta Environment and Parks Lands Division by phone at 780-427-3570 or by fax at 780-427-1185.

⁴ See section (1)(e) of the *Historical Resource Act*, RSA 2000, c H-9

⁵ See section (1)(f) of the *Historical Resource Act*, RSA 2000, c H-9

- within 300 m of:
 - the working area⁶ of a wastewater management facility or wastewater treatment plant;⁷
 - the working area⁸ of an operating storage site;⁹ or
 - the disposal area¹⁰ of an operating or non-operating landfill.
- within 450 m of:
 - the working area of an operating landfill;¹¹ or
 - the disposal area of a non-operating hazardous waste management facility.¹²
- within 1.6 km of a highway.¹³

WHAT IS “ADJACENT”?

The *Subdivision and Development Regulation* defines the term “adjacent” differently for situations adjacent to a highway and to a body of water.

- For the purposes of a highway¹⁴, “adjacent” means contiguous or would be contiguous if not for a river, stream, railway, road or utility right of way or reserve land.¹⁵
- For the purposes of a body of water¹⁶, “adjacent” means contiguous or would be contiguous if not for a railway, road, utility right of way or reserve land.

WHEN SHOULD APPEALS BE FILED AT A SDAB?

Subdivision Appeals should be filed with a municipal SDAB where:

- the MGB does not otherwise have jurisdiction;
- The affected Government department has agreed in writing to vary the specified distance requirement.¹⁷

⁶ “Working area” means those areas of a parcel of land that are currently being used or will be used for the processing of wastewater; see section 12(1) of the *Regulation*.

⁷ “Wastewater treatment plant” means a sewage treatment facility; see section (22)(2)(a) of the *Regulation*.

⁸ “Working area” is defined in section 13(1)(b) of the *Regulation*.

⁹ “Storage site” is defined in section 1(1)(ii) of the *Waste Control Regulation*.

¹⁰ “Disposal area” is defined in section 13(1)(a) of the *Regulation*.

¹¹ “Landfill” is defined in section 1(1)(z) of the *Waste Control Regulation*, Alta Reg 192/1996.

¹² “Hazardous waste management facility” is defined in section 1(1)(w) of the *Waste Control Regulation*.

¹³ “Highway” is defined in section 1(1)(l) of the *Highways Development and Protection Act*, SA 2004, c H-8.5.

¹⁴ See section 5(1) of the *Regulation*.

¹⁵ “Reserve land” includes: environmental reserve, municipal reserve, community services reserve, school reserve or municipal and school reserve; see section 616 (z) of the *Act*.

¹⁶ See section 5(2) of the *Regulation*.

¹⁷ Section 678(2.1) of the *Act* allows a government department to vary the specified distance requirements.

SA NOTIFICATION OF APPEAL LOCATION NOT BINDING

An SA's decision must state whether an appeal should go to the MGB or a local SDAB;¹⁸ however, the SA's statement is not binding.¹⁹ The board that considers the appeal is responsible to determine whether it is the right board to hear the appeal.

If there is a question about which appeal board has jurisdiction, it should be raised as a preliminary matter before the hearing with MGB administration or at the beginning of the hearing.

WHAT IF AN APPEAL IS FILED WITH THE WRONG BOARD?

If an appeal is wrongly filed with the MGB, the MGB must refer the appeal to the local SDAB. Likewise, if it is filed wrongly with the SDAB, the SDAB must refer the appeal to the MGB. In either case, the appropriate Board must hear the appeal as if the notice of appeal had been filed with it.²⁰ Therefore, filing an appeal with the wrong Board does not invalidate the appeal.

WHY DOES IT MATTER WHICH BOARD HEARS THE APPEAL?

The MGB and SDABs get their legal authority from the *Act*. If an appeal board makes a decision that is unauthorized by the *Act*, the validity of the decision may be in doubt.²¹

¹⁸ See section 656(2)(a) of the *Act*.

¹⁹ For example, in [Poelman v Municipal District of Foothills No. 31 \(Subdivision Authority\)](#), MGB 027/12, the SA stated the appeal should be heard by the SDAB. However the landowner appealed to the MGB. The MGB determined it had jurisdiction and that the SA's statement on where to file an appeal was incorrect.

²⁰ See section 678(5) of the *Act*.

²¹ See section 688(1) of the *Act*.