Subdivision and Development Appeal Board Training for Members and Clerks

Guidebook

February 2023

LAND & PROPERTY RIGHTS TRIBUNAL

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For more information about the Land and Property Rights Tribunal, visit https://www.alberta.ca/land-and-property-rights-tribunal-overview.aspx

CAUTION ON THE USE OF THE MATERIALS

The purpose of this Guidebook and accompanying materials is solely to facilitate delivery by the LPRT of the mandatory training for SDAB clerks and members required by regulation. They are not legal advice, and users should seek independent legal advice regarding specific issues that arise.

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INTRODUCTION

PURPOSE OF THIS GUIDEBOOK

Subdivision and Development Appeal Boards (SDAB) hear appeals about subdivision and development of land. As such, they shape communities and have permanent effects on the lives of landowners and residents. They are also vital to achieving municipal purposes set in the *Municipal Government Act* (*MGA*)[1], including safe and viable communities and the well-being of the environment. Good land planning decisions can improve the quality of the physical environment and promote orderly, economical and beneficial land use and development. Poor land planning decisions may result in inefficient or unsafe development that risks environmental degradation, property damage, and even personal injury.

Although members are appointed by municipal councils, each SDAB operates as an independent and impartial administrative tribunal. Like the courts, they use procedures designed to achieve a fair, transparent, independent hearing process. However, SDAB proceedings are unique in that they can involve submissions from many interested parties, including landowners and public authorities. SDAB members must also apply a wide variety of provincial and municipal land use planning requirements, and in some cases have broad discretion to apply the requirements to achieve appropriate results for particular circumstances.

This Guidebook provides a foundation to train members and clerks to ensure minimum standards of practice for land planning decisions within a tribunal hearing setting. It consists of four main components: 1) Guiding Principles; 2) Alberta's Planning Framework; 3) Establishing a SDAB; and 4) SDAB appeals. The Guidebook is also accompanied by a separate resource book that includes various exercises and case law.

After reading this guidebook and completing exercises assigned from the resource book, SDAB clerks and members should be able to understand and apply the basic principles of administrative law and the regulated framework for subdivision and development in Alberta. They should also be able to conduct effective hearings, deal with common procedural issues, and make well-written, legally sound and principled decisions. This Guidebook and the resource book reflect the requirements of the curriculum established under Ministerial Order MSL:019/18 (Appendix 7).

[1] *Municipal Government Act,* RSA 2000, Chapter M-26

WHERE THE SDAB FITS IN

SDABs hear appeals from decisions of development authorities (DA) and subdivision authorities (SA). The SA and DA make decisions about subdivisions and development permits, respectively; in addition, the DA can issue stop orders and decide a few other related matters. Subdivision, development, stop orders, and the roles of the SA and DA are discussed briefly below.

Subdivision is "the division of a parcel of land by an instrument".[2] This process usually involves the creation of two or more smaller parcels from a larger parcel but also includes cases where smaller parcels are consolidated and then redivided to adjust or "replot" their boundaries. Subdivision is effected by registering a legal document such as a plan of survey at the Land Titles Office. When an 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.[3]

Development The definition of development in the *MGA* includes nearly everything that can be done on land, including both the construction of structures and the use of land and structures. Generally, development requires the issuance of a development permit by the municipality's DA. However, for convenience, many municipalities' Land Use Bylaws (LUB) do not require development permits for common and straightforward types of development – e.g., fences under a certain height, landscaping, and small accessory buildings. There are also a few forms of development exempted by regulation. If no development permit is required, there is no DA decision to appeal.

Stop Order The purpose of stop orders[4] are to ensure development complies with the *MGA*, *Regulation*, LUB, development permit, or the subdivision approval. A stop order may require demolition, removal, replacement, or alteration of a building or structure or that the order's recipient cease to use the land or building as directed by the notice. A stop order could also require compliance with the conditions of subdivision approval, including the installation of servicing.

SA The SA processes subdivision applications and can refuse or approve them with or without conditions. Council may delegate any of its SA powers to a Municipal Planning Commission (MPC), Regional Services Commission, or Intermunicipal Services Agency.[5] SA decisions may be appealed to either the SDAB or the LPRT, depending on the characteristics of the land to be subdivided. (See chapter 5 in this Guidebook.)

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[2] *MGA* s. 616 (ee)

[3] *MGA* s. 652(4)

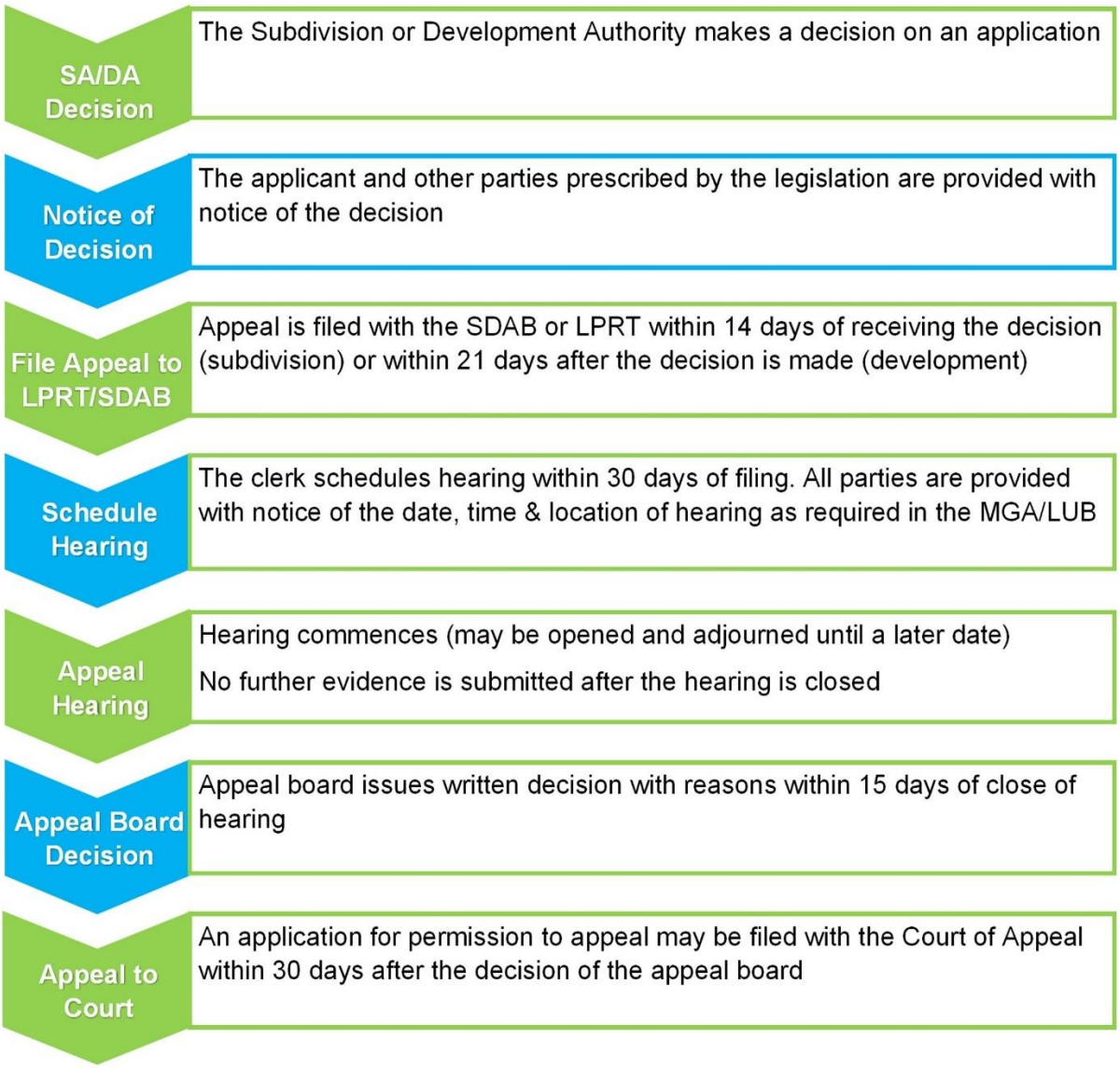
[4] *MGA* s. 645

[5] *MGA* s. 625

DA The DA process development permit applications, and can refuse or approve permits with or without conditions. It also issues stop orders, and can decide other related matters such as the expiry of permits and the fulfilment of conditions imposed on a permit. Council may delegate any of its DA powers to a Municipal Planning Commission (MPC), Regional Services Commission, or Intermunicipal Services Agency. The DA's decision can be appealed to either the SDAB or the LPRT, depending on the characteristics of the property affected by the application (see chapter 5 in this Guidebook).

The overview of the appeal process from decisions by the DA or the SA is shown in Figure 1.

Figure 1 Planning Appeal Process Overview



ACRONYMS AND PLANNING TERMS

Acronyms are unavoidable in land planning appeals. The following is short list of the acronyms used often in this Guidebook. A longer list of acronyms and other terminology appears in Appendix 2. Appendix 1 also lists definitions of some terms commonly encountered in planning appeals.

ALSA	-	*Alberta Land Stewardship Act*
ARP	-	Area Redevelopment Plan
ASP	-	Area Structure Plan
DA	-	Development Authority
IDP	-	Intermunicipal Development Plan
LPRT	-	Land and Property Rights Tribunal
LUB	-	Land Use Bylaw
LUP	-	Provincial Land Use Policies
MDP	-	Municipal Development Plan
MGA	-	*Municipal Government Act RSA 2000 Chapter M-26*
MGB	-	Municipal Government Board
MPC	-	Municipal Planning Commission
SA	-	Subdivision Authority
SDAB	-	Subdivision and Development Appeal Board
Regulation	-	*Matters Related to Subdivision and Development Regulation*

1 GUIDING PRINCIPLES AND ADMINISTRATIVE LAW

Learning Objective: By the end of this chapter, you will be able to

- ✓ Understand administrative law principles, including:
  - the general duty of fairness,
  - the rule against bias; and
  - the source and limits of delegated legislated authority.
- ✓ Understand how to identify relevant considerations versus irrelevant planning considerations.

SDAB members make decisions with important consequences for landowners, municipalities, and the public interest in safe and efficient development. Responsible use of this power requires an understanding of the specific rules that apply to land planning and development as well as the general principles of administrative law that govern how public officials and appointed decision-makers (including SDAB members) must exercise their powers and responsibilities.

Administrative law centres around two main common-sense concepts:

- First, boards and other decision-making bodies created through legislation get all their powers from the enabling legislation – in other words, they can only do what the legislation says or implies they can do.
- Second, they must exercise these powers in a way that is procedurally fair.

1.1 DOING WHAT THE LEGISLATION SAYS YOU CAN

All government actions and decisions must be founded on legal authority, and the decisions of SDABs are no different. Division 10 of Part 17 of the *MGA* establishes the matters SDABs can hear on appeal, the decisions they can make, and the things they must consider when making these decisions.

As discussed later in this Guidebook, the relevant considerations for SDAB decisions are set out in provincial legislation including Part 17 of the *MGA*, the *Matters Related to Subdivision and Development Regulation*[6] (*Regulation*), the provincial *Land Use Policies* and *Alberta Land Stewardship Act* Regional Plans, as well as in municipal legislation, including the Statutory Plans and Land Use Bylaw.

[6] As of June 1, 2022, the *Matters Related to Subdivision and Development Regulation* repealed and replaced the *Subdivision and Development Regulation,* the *Subdivision and Development Appeal Board Regulation*, and the *Subdivision and Development Appeal Regulation*

1.1.1 Irrelevant Considerations

While SDABs must consider the things the legislation requires, they must not allow circumstances irrelevant to the legislated requirements to affect their decisions. Decisions that take irrelevant considerations into account may be struck down by the courts. A few examples are listed below.

Business Competition Ordinarily, business competition will not be a relevant planning consideration in reviewing an application for a development permit.[7] However, a SDAB may consider the proliferation of uses as a reason for their decision.[8] Provisions in the LUB imposing a minimum distance between certain types of uses indicate that the cumulative effect of a type of development may be a valid planning consideration for the SDAB.

Personal character or situation The personal character or situation of the user is not valid consideration under the MGA's land planning framework because the landowner can sell the land the day after obtaining subdivision or development approval. Here are a few examples of irrelevant personal considerations:

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

Public Benefit Conditions attached to a subdivision approval or development permit that confer a public benefit must 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 dedication of land for roads/road widening, environmental reserve, municipal reserve (or cash in lieu), payment of an off-site levy, or an oversizing contribution.

Subdivision or development approval cannot be withheld because the approving authority or SDAB considers that the land should be used for purposes other than those specified in the Land Use Bylaw (LUB) and statutory plans. Council is responsible for designating potential uses in the LUB, and the approving authorities or SDAB cannot change the LUB's use provisions.

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[7] *Actus Management Ltd. v. Calgary (City)*, [1975] 6 W.W.R. 739 (Alta. C.A.)

[8] *Calgary (City) v. Valdun Development Ltd.*, 1997 ABCA 134

1.1.2 Fettering Discretion

Fettering of discretion occurs when a decision-maker adopts an inflexible policy instead of allowing the relevant circumstances of the particular case to influence a decision. For example, were an SDAB to adopt a policy to dispose of all appeals for secondary suites as a discretionary use in the same way, it would be improperly restricting its decision-making authority. The proper course would be for the SDAB to consider the specific facts and circumstances of each appeal and make a decision based on those facts and circumstances.

1.1.3 Unauthorized Sub-Delegation

Unless the enabling legislation says otherwise, a decision-maker cannot sub-delegate their powers to someone else. The risk of improper sub-delegation can arise for SDABs when a panel imposes conditions that require approval from another person. For example, it would be improper for the SDAB to impose a condition requiring a setback "to the satisfaction of the development officer" or "to the satisfaction of Council" since it is the SDAB panel's job to make the decision about the appropriate setback.

Often, agencies other than the SDAB have concurrent jurisdiction over certain aspects of development. Requiring a developer to meet the standards of such agencies does not constitute improper sub-delegation provided they serve a valid planning purpose and the standards are identified with sufficient precision.[9] For example, the SDAB can legitimately impose a condition requiring developers to meet specific standards set by Alberta Environment and Protected Areas concerning water supply or to construct a road to standards set by the municipality.

SDABs should be cautious about issuing approvals 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 hearing so the applicant can obtain the information and present it to the panel when the hearing reconvenes.

1.2 ACTING FAIRLY: PROCEDURAL FAIRNESS AND NATURAL JUSTICE

The rules of procedural fairness and natural justice are legal principles courts have created to guide administrative and quasi-judicial decision-makers. As judge-created "common law", rules of natural justice cannot "trump" clearly legislated procedures.

[9] *Rocky View (MD No 44) v Herron Estates,* 2001 ABCA 63

However, they form a useful context to help interpret legislated procedures, and they apply when the legislation is silent.

Procedural fairness has two main principles. The first principle is that parties have a right to be heard before the decision is made. The second principle is the right to an unbiased decision-maker.

1.2.1 Right to be Heard

The right to be heard means the parties affected by a decision must have a reasonable chance to present their own case to the decision-maker and respond to the case against them. This right has several related rights and implications:

Right to a Hearing Parties need an opportunity to present their case to the panel before it makes its decision. A person can be "heard" in various ways: face-to-face, by telephone, by video conference, or in writing. Different methods are appropriate for different circumstances: for example, a preliminary hearing to determine a date for an actual "merit" hearing may be conducted by phone or in writing, whereas merit hearings themselves are usually in-person or video conference.

SDAB hearings are open, meaning members of the public may attend; however, only persons entitled to notice under the *MGA* are automatically entitled to make presentations. The SDAB can still hear others if they have a legitimate interest in the hearing's outcome. Some SDAB hearings attract numerous attendees. In such cases, the panel may need to consider procedures to limit the length and scope of presentations to ensure an orderly and efficient hearing, while still preserving the participants' right to be heard.

The SDAB's deliberations do not form part of the open hearing and are conducted in closed meetings ("in camera").

Right to Representation Parties have the right to be represented by counsel or an agent so their case can be made and heard as effectively as possible.

Right to Notice Parties cannot participate at a hearing if they do not know when and where it will be held. The *MGA* requires an SDAB to give at least five days' notice of the time and location of the hearing.[10]

Right to Disclosure[11] Parties must have access to enough information to prepare their case and respond to the case against them if they are to have a meaningful opportunity to be heard.

[10] *MGA* ss. 679 and 686

[11] *Freedom of Information and Protection of Privacy Act* may require the redaction of some protected information

For development appeals, the SDAB must make 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 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.[12]

In subdivision appeals, the *MGA* requires a certain amount of disclosure be provided with the notice of appeal. 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.[13] As a result, recipients of the notice also receive information that helps to understand the nature of the appeal. Many SDABs also have rules of procedure that require additional prehearing disclosure.

Right to Adjournment Parties have the right to request an adjournment if they have not had time to prepare for a hearing. This right is not absolute and need not be granted in cases where a reasonably diligent party would have been able to prepare or where fairness to the applicant is outweighed by prejudice to opposing parties, such as the cost of delay. All parties affected should have an opportunity to make submissions before the panel decides whether to grant a postponement.

Communication with Panel Parties should not discuss their case with panel members unless the other parties are present (or at least have had a reasonable opportunity to be so); otherwise, the other parties may be deprived of a fair opportunity to respond.

Decision to be Made by Panel Allowing non-panel members to make the decision deprives parties of their right to be heard by the actual decision-makers. This rule does not prohibit panels from using board counsel or staff to help draft decisions. However, the drafter must act on the panel's instructions, and all panel members should review and approve the final decision. In other words, the decision and the reasons for it must be the panel's.

Decision to be Based on Evidence Presented at the Hearing If a panel relies on evidence obtained outside the hearing, the parties will not have a fair opportunity to understand and respond to the case against them.

[12] *MGA* s. 686(4)

[13] *MGA* s. 678(4)

Members Must Hear all the Evidence The members who make the decision must hear all of the evidence. Therefore, a member who leaves during the hearing may not return or participate in the decision in any way.

Right to Cross-examine After a witness has given evidence on behalf of one party, best practice is to allow the other parties to question the witness to allow them to probe or clarify the evidence brought against them. Because many parties can be involved in an SDAB hearing, most SDABs control questioning in interests of practicality and efficiency, and require all questions to be directed through the panel chair.

Right to Reasons Without reasons, parties will not know if the panel heard and understood their position before making a decision.[14] Also, parties will have no record to explain why the decision was made, making it difficult to exercise a right of appeal. The requirement for reasons is also codified in the *MGA,* which requires the SDAB to give written decisions with reasons.[15]

Part 17 of the *MGA* and the *Regulation* address some of the items listed above – e.g., notice and disclosure requirements – while other related matters may be covered in municipal SDAB bylaws or the LUB. These legislative provisions help to clarify the degree of procedural fairness required. However, it is helpful to keep the underlying principles of procedural fairness and natural justice in mind when interpreting these provisions and when setting procedures where the legislation is silent.

1.2.2 Right to an Unbiased Decision Maker

The second principle of natural justice says decision-makers should not be biased. They need to come to their work with open minds, willing to let evidence and arguments from the parties persuade them. Bias is lack of neutrality that makes a decision-maker predisposed to decide an issue a certain way for reasons unrelated to the law or the evidence. Parties naturally want to know that their presentations may persuade the decision-maker and influence the outcome of the case.

(A) Actual Bias versus the Perception of Bias

SDAB members must not only have an open mind (subjectively); they must also be *perceived* to have an open mind (by objective observers).

- Actual bias means the member is actually predisposed to decide a matter for reasons that have nothing to do with the law or evidence.

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[14] Many court cases discuss the need for reasons, see for example *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at para 77

[15] *MGA* ss. 680(3) and 687(2)

- Perception of bias is the view of a party that particular circumstances make a panel member likely to be biased.

Members must not make decisions if they have actual bias or if there is a reasonable apprehension of bias. A decision made by one or more biased panel members may be challenged in court and a new hearing ordered before a fresh, unbiased panel.

(B) What Creates a Perception of Bias?

A reasonable apprehension of bias can arise in many ways. However, four common cases where a reasonable observer might conclude a decision-maker is biased are outlined below.

Material financial interest in the outcome of the case - e.g., the member or a person related to the member may benefit or suffer financially because of the decision.[16]

Close association or prior involvement with one of the parties - e.g., the member is related to or closely involved with one of the parties or witnesses or representatives appearing in the case.

Prior participation in process or a related process - e.g., the member previously represented one of the parties now appearing before the SDAB on the same matter or made the decision now under appeal.

Attitude or conduct that shows bias or hostility - e.g., a member who makes statements at the hearing or in public that leave the impression the member has made up his or her mind on the outcome before having heard the parties' submissions.

(C) Informed versus Biased

A decision-maker who holds fixed and unalterable views on a question at issue must disclose the bias and withdraw from the case. However, to be unbiased **does not** mean to be uninformed. It means only that the decision-maker should be open to persuasion.

Members of an SDAB may read filed submissions about the case before the hearing and hold tentative views on the matters at issue. Similarly, panel members may draw on their general expertise in planning and development to help them decide a case.

Keep an open mind Do not make up your mind in advance to the point you cannot be influenced to decide differently at the hearing. Do not hold predetermined views of the issues on the matters that would be applied regardless of merits.

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[16] *MGA* ss. 169 to 173 address pecuniary interest for councillors. These sections may be used to give context for an SDAB member; however, the list of potential conflicts is not exhaustive.

Avoid expressing conclusions about substantive issues during a proceeding A statement that the outcome of a proceeding is a foregone conclusion suggests bias.

Act professionally and respectfully during the hearing Never make flippant remarks or derogatory statements. Use of intemperate language or the display of hostility toward a party may give rise to a reasonable apprehension of bias. A member who repeatedly interferes with or interrupts witnesses and parties may be suspected of having bias for or against a party.

Ask parties if they object to the panel Best practice is for SDAB chairs to ask parties at the start of a hearing if they object to any of the panel members. Any allegation of bias can then be dealt with as a preliminary matter.

Deal with allegations of bias as early as possible You should deal with questions about bias as soon as the relevant circumstances become known; similarly, parties who discover such circumstances should make any objection as soon after the discovery as possible.

Do not comment on cases outside the hearing Panel members have lives outside the hearing room and inevitably interact with others in their communities. However, refrain from expressing opinions about cases before you, and avoid activity that would encourage a perception of impartiality toward one party over another. SDAB members should exercise caution when using social media and avoid commenting on SDAB matters or hearings.

(D) Procedure to Deal with Allegations of Bias

When a party raises an allegation of bias, the panel should give the parties an opportunity to address the question. Having heard from the parties, the panel may adjourn to discuss the submissions, but the member in question must make the final decision about whether to withdraw.

(E) The Test for Reasonable Apprehension of Bias

The legal test to evaluate perception of bias is the reasonable bystander test: would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude it is more likely than not that the member, whether consciously or unconsciously, would not decide fairly?[17]

What matters is whether a reasonable and informed person would conclude a member would probably not act impartially. The objector does not have to show bias actually

[17] Committee for Justice and Liberty v. National Energy Board [1978] 1 S.C.R. 369 at 394-5

prejudiced one of the parties or affected the result. If the test is satisfied, even decision-makers who are confident they can act impartially despite the appearance of bias, must disqualify themselves.

In a situation where a councillor is also an SDAB member, an allegation of bias may arise from statements about an issue the councillor made before the hearing – e.g., during redistricting or an election. The role of a councillor involves public discussion about issues of public interest, including land use planning issues. Therefore, so long as the councillor has not indicated their position will not change or their mind is made up, they can probably still hear the appeal. However, if a councillor has publicly taken a position on an issue related to an appeal, the safest approach is to appoint someone else to the panel.

2 ALBERTA LAND USE PLANNING FRAMEWORK

Learning Objective: By the end of this chapter, you will be able to

- ✓ Understand the role of municipalities in planning and development in Alberta.
- ✓ Understand Legislative and planning considerations, including:
  - ➢ the purpose and content of Part 17 of the *MGA* and the *Regulation;*
  - ➢ LUP and *ALSA* Plans, and Growth Plans under 17.1 of the *MGA*; and
  - ➢ the difference between statutory plans and LUBs, and their roles and application in planning and development.

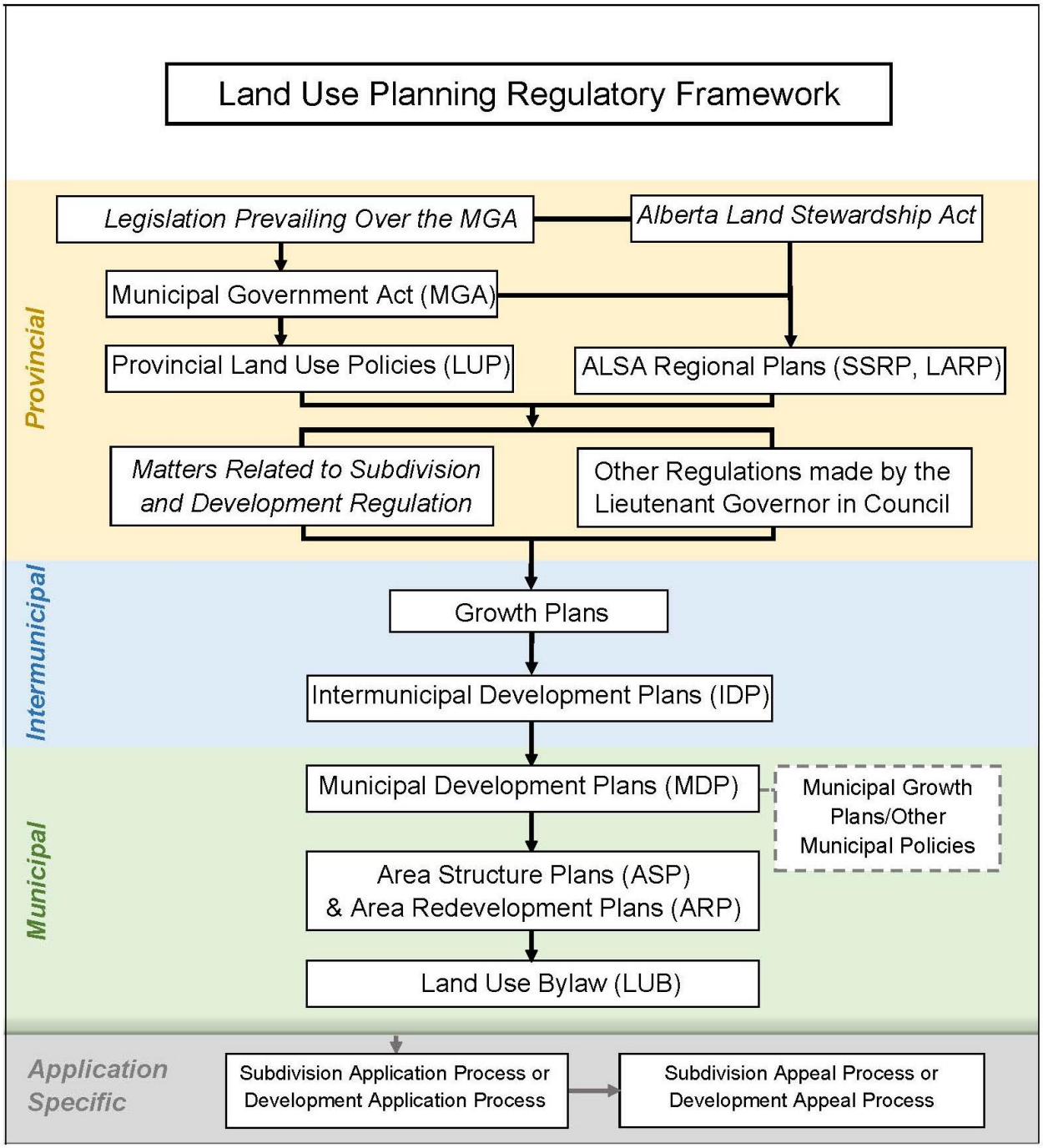
Responsible planning has always been vital to the sustainability of safe, healthy, and secure urban and rural environments. Planning decisions must choose between competing interests to deal with issues such as land use conversion and the impact of development on livelihoods, quality of life, and the environment. Alberta's land use planning and development legislative framework is designed to guide the decisions that deal with these issues.

2.1 LEGISLATIVE AUTHORITY FOR PLANNING

In Canada, the Constitution divides powers to create legislation between the federal and provincial levels of government. The respective roles of each level are set out in ss. 91 and 92 of the *Constitution Act*, which gives responsibility over municipal matters to provincial governments. Alberta municipalities are subject to legislation passed by the Alberta Legislature, notably the *MGA*.

The *MGA* delegates power to the Minister and Cabinet to make additional regulations respecting municipalities. It also gives municipalities certain powers and responsibilities, including preparation of land use planning bylaws and documents to further the objectives in s. 617 of the *MGA* and the high-level land use planning policies and procedures set by Provincial regulation. The chart on the next page shows the main provincial and municipal components of Alberta's land use planning framework and their hierarchical relationships.

Figure 2 Land Use Planning Hierarchy



2.1.1 *Municipal Government Act*

Part 17 of the *MGA* (ss. 616 to 697) addresses land use planning and the subdivision and development of land in Alberta. Section 617 of the *MGA* identifies the overall purpose of Part 17:

> ***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.*

Municipal councils strive to achieve these objectives when passing land use bylaws and statutory plans. SDABs should also keep them in mind when interpreting and applying these documents to specific cases; as such, the implication of s. 617 is that SDABs will consider questions such as:

- Does the 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 proposal compatible with existing subdivisions and development? With future planned subdivisions and developments?

Exemptions

The legislation carves out specific types of subdivision and development where the planning regime established under Part 17 does not apply: for example, certain subdivisions required by the Crown; development or subdivision for transmission lines, irrigation works, and various specified sites.[18] In addition, subdivisions for highways or roads, oil and gas developments, and designated Crown land are exempted. Approvals

[18] See the *Planning Exemption Regulation* AR 223/2000

issued by other regulators and Crown corporations also take precedence over decisions and or conditions imposed by planning authorities under Part 17.[19]

2.1.2 Provincial Land Use Policies and *Alberta Land Stewardship Act* Regional Plans

(A) Provincial Land Use Policies

Section 618.4[20] of the *MGA* provides for the establishment of Land Use Policies (LUP). The LUP create a high-level policy framework to guide land use planning and development across the entire Province. Each section deals with a separate planning objective or principle, but the LUP should be read as a whole to get an overall sense of the Province's policy objectives relating to planning and development. Where there is also a regional plan under the *Alberta Land Stewardship Act*[21] (*ALSA*), the policies in the regional plan prevail over the LUP in case of a conflict.[22]

Section 1 – Implementation and Interpretation There are both provincial and municipal interests that are affected by land use planning, development and resource management. The LUP encourage municipalities and provincial departments "to consult with one another where questions on the spirit and intent of these policies arise during implementation".[23]

Section 2 – The Planning Process 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.

Section 3 – Planning Cooperation 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, Provincial health authorities, First Nations, Metis Settlements, Irrigation Districts, and appropriate federal departments.

Section 4 – Land Use Patterns Land use patterns that make efficient use of the land, which promote resource conservation and minimize environmental impact, and which

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[19] *MGA* ss. 618-620

[20] Prior to Bill 48, this provision was in s. 622 of the *MGA*

[21] *Alberta Land Stewardship Act*, Statutes of Alberta 2009 Chapter A-26.8

[22] *MGA* s. 618.3(2)

[23] LUP s.1.2

contribute to the development of healthy, safe, and viable communities are encouraged. 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. The land use pattern should be commensurate with level of infrastructure and services which can be provided.

Section 5 – The Natural Environment Planning decisions that contribute to the maintenance and enhancement of a healthy natural environment are encouraged. Identification and mitigation of negative impacts of significant environmental features is encouraged.

Section 6 – Resource Conservation The LUP encourage planning decisions that contribute to:

- the maintenance and diversification of Alberta's agricultural industry;
- the efficient use of Alberta's non-renewable resources;
- the protection and sustainable utilization of Alberta's water resources; and
- the preservation, rehabilitation, and reuse of historical resources.

Section 7 – Transportation The identification and planning for key transportation corridors and facilities is encouraged.

Section 8 – Residential Development Land use patterns that are responsive to local housing needs are encouraged. Intensification and diversification of housing types is encouraged where appropriate.

(B) *Alberta Land Stewardship Act*

ALSA establishes seven planning regions corresponding roughly to the natural watersheds in the province. Its goals include sustainable development, promotion of environmental, economic, and social objectives, and coordination of land use planning decisions. Once an *ALSA* regional plan is adopted, it takes precedence over the LUP in case of conflict.[24] Currently, two of the seven Regional Plans have been adopted: the South Saskatchewan and Lower Athabasca.

Where a land-use bylaw or statutory plan is inconsistent with an adopted regional plan under *ALSA*, the regional plan prevails. The SDAB should interpret planning documents to be consistent with the regional plan. Likewise, an SDAB decision that fails to "act in accordance" with a regional plan would contain a substantive error and would be subject to challenge on appeal to the Court of Appeal.

[24] *MGA* s. 618.3

While the *MGA* establishes decision-makers must act in accordance with regional plans, the plans themselves may specify that some provisions non-binding. However, if departing from a non-binding provision, SDAB decisions should explain the land use planning rationale for the departure.

2.1.3 Growth Management Boards

Growth management boards are generally voluntary; however, amendments to the *MGA* in 2016 required the Lieutenant Governor in Council to establish growth management boards for the Edmonton and Calgary regions. The purpose of a growth management board is to provide for integrated and strategic planning for future growth.[25]

A growth plan must be consistent with *ALSA* but 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 LUB in a manner that is consistent with the growth plan.

The Edmonton Metropolitan Region Board The first regional growth board created was the Capital Region Board in 2008. Effective 2017, the *Edmonton Metropolitan Region Board Regulation*[26] (EMRB) continued the Capital Region Board with reduced membership.

The Calgary Metropolitan Region Board The Calgary Metropolitan Region Board (CMRB) Regulation[27] came into force on January 1, 2018, and established the Calgary Metropolitan Region Growth Board, the current Growth Plan was approved by the Minister of Municipal Affairs and came into force in August, 2022.

Each Metropolitan Region has a Regional Evaluation Framework (REF), which sets out a process for member municipalities to submit statutory plans to their growth management board for approval. The regional board approves or rejects member municipalities' statutory plans in accordance with the REF.

2.1.4 *Matters Related to Subdivision and Development Regulation*

In addition to the requirements of the *MGA*, the *Regulation* outlines procedures, setbacks, and guidelines for the referral and decision-making process on subdivision and development applications.

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[25] *MGA* part 17.1

[26] *Edmonton Metropolitan Region Board Regulation*, AR 189/2017

[27] *Calgary Metropolitan Region Board Regulation*, AR 190/2017

Section 7 of the *Regulation* requires the Subdivision Authority (SA) to refer complete applications to various agencies if the subject land is within a specified distance of certain features. Input from the agencies helps the SA avoid decisions that could result in dangerous development or affect the public interest. Some examples are as follows:

- The Deputy Minister of the Minister responsible for administration of the Public Lands Act, if land is:
  - adjacent to or contains the bed and shore of a "body of water" (where adjacent means contiguous or would be contiguous if not for a railway, road, or utility right of way or reserve land); or
  - within the Green Area or a restricted development area.
- Environment and Protected Areas, if the land:
  - has a proposed lot boundary within 300m or 450m of a landfill, wastewater treatment plant, storage site, or hazardous waste facility (depending on the precise feature and its operating status), where the lot is for a school, hospital, food establishment, or residence; or
  - adjacent to "works" as defined in the *Water Act* owned by the Alberta Crown.
- Alberta Transportation and Economic Corridors if land is:
  - within 1.6 km of the centre line of a highway right of way.
- Public Utility, if:
  - proposed subdivision is to be served by the utility.
- School Board, if land is:
  - within the jurisdiction of the school board, if the application may result in allocation of reserve land or money in place of reserve land.
- Alberta Culture, if land is:
  - adjacent to or contains land identified on the Listing of Historic Resources or land set aside for use as an historic resource under the *Public Lands Act.*
- Alberta Energy Regulator (AER), if land is:
  - within 1.5 km of a sour gas facility, where a subdivision is intended for permanent dwelling, public facility, or unrestricted country residential development as defined by the AER.
- Licensee of abandoned well, where there is:
  - an abandoned well is on a proposed subdivision.
- Irrigation district, if land is:
  - within an Irrigation District.

- The *Regulation* also prescribes the following setback distances:
  - 100 m from gas and oil wells to the building or proposed building site;
  - a distance specified by the AER from sour gas wells and facilities to land proposed for a permanent dwelling, public facility, or country residential development (depending on the level of sour gas and intensity of proposed use);
  - 300 m from the working area of a wastewater treatment plant to the property line of land used for a school, hospital food establishment, or residence;
  - 300 m from the disposal area of an operating or non-operating landfill, or the working area of an operating storage site to the property line of land used for a school, hospital food establishment, or residence; and
  - 450 m from the working area of an operating landfill, the working or disposal area of a non-operating hazardous waste management facility or the working area or disposal area of an operating hazardous waste management facility to the property line of land used for a school, hospital, food establishment, or residence.

The *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, AER Directive 079 (*Surface Development in Proximity to Abandoned Wells*) prescribes minimum setbacks and may require the applicant to contact the licensee of record.

The *Regulation* also covers:

- requirements for subdivision decisions, including time limits and reasons for decision;
- list of relevant considerations concerning site suitability;
- requirement for access to parcels created by subdivision;
- Alberta Transportation and Economic Corridors' ability to veto subdivision within referral distances unless specific criteria are met; and
- whether appeals of certain SA and DA decisions lie with the LPRT or SDAB.

2.1.5 Planning Bylaws

Part 17 of the *MGA* assigns a great amount of responsibility for planning to municipalities by authorizing them to develop, adopt, implement, and review plans and bylaws. These documents integrate the legislation, planning principles, and community views to guide subdivision and development authorities in making decisions on applications. The *MGA* respects municipal autonomy by allowing municipalities to make community-specific decisions through this legislated framework.

It is the role of municipal council to adopt or amend LUBs and statutory plans. The SDAB must consider bylaws as validly enacted and legally binding as of the date they are adopted. Arguments that the bylaw adopting a statutory plan or enacting a LUB is improper or inconsistent with the *MGA* should be directed to the Court of King's Bench.[28] The SDAB does not have authority to decide the legal status of a municipal bylaw adopting a statutory plan or an LUB.

(A) Statutory Plans

The *MGA* empowers municipal councils to pass bylaws to adopt and amend statutory plans – namely, intermunicipal development plans (IDP), municipal development plans (MDP), area structure plans (ASP) and area redevelopment plans (ARP). Municipalities must allow for input from members of the public who be affected as well as specific stakeholders identified by the *MGA* when preparing statutory plans.[29]

When deciding subdivision appeals, the SDAB must *have regard* to all applicable statutory plans.[30] Therefore, an SDAB has discretion to depart from the provisions of a statutory plan in cases where a subdivision applicant can establish sufficient land use planning reasons to support a variance. In contrast, for appeals of development permit applications the SDAB must *comply* with all applicable statutory plans. Therefore, it has no such discretion to vary their provisions in that context.[31]

i. Intermunicipal Development Plans

Councils of municipalities that share a common boundary and are not part of a growth region must prepare an IDP to address the future use and development the relevant

[28] *MGA* s. 536

[29] *MGA* s. 636

[30] *MGA* s. 680(2)(a.1)

[31] *MGA* s. 687(3)(a.2)

areas. However, this requirement does not apply if both municipalities agree an IDP is not necessary.[32]

An IDP must address or include the following:

- future land use within the IDP area;
- the manner of, and proposals for, future development in the area;
- the provision of transportation systems for the area;
- the coordination of intermunicipal programs relating to the physical, social, and economic development of the area;
- environmental matters within the area;
- any other matter related to the physical, social, or economic development of the area that the councils of the municipalities consider necessary;
- a procedure to resolve conflicts between the participating municipalities;
- a procedure to amend or repeal the IDP; and
- provisions relating to administration of the plan.

ii. Municipal Development Plans

An MDP is a planning document which establishes a long-term planning vision for the municipality as whole. All municipalities are required to adopt an MDP.[33]

The *MGA* outlines the matters that **must** be included in an 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 IDP with respect to those matters in those municipalities;
- provision of the required transportation systems either generally or specifically within the municipality and in relation to adjacent municipalities;
- provision of municipal services and facilities;
- policies compatible with the *Regulation* to provide guidance on the type and location of land uses adjacent to sour gas facilities;

[32] *MGA* s. 631

[33] *MGA* s. 632

- 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;
- the provision of conservation reserve in accordance with s. 664.2(1)(a) to (d) of the *MGA;* and
- any other matter relating to the physical, social, or economic development of the municipality.

iii. Area Structure Plans and Area Redevelopment Plans

- Municipalities do not have to adopt ASPs[34] or ARPs, but may choose to do so to provide an area specific framework for subsequent subdivision and development. For example, ASPs/ARPs can address issues such as land use, infrastructure needs, types of development, development sequence, and density in more detail than the MDP.[35]

(B) Land Use Bylaw

All municipalities must adopt an LUB[36], which outlines specific requirements for subdivision and development. As such, the LUB is the implementation tool for the statutory plans, which outline municipal council's vision for the broader land use and policy framework.

The LUB identifies districts within the municipality and assigns land uses and development standards for each district. The uses assigned to each district are usually

[34] *Prairie Crocus Ranching Coalition Society v Cardston (County of)*, 2002 ABCA 189 at para 18

[35] The contents of ASPs and ARPs are covered in *MGA* ss. 633 and 634

[36] *MGA* s. 640

specific permitted or discretionary uses; in addition, council may designate a district as "direct control." Most LUBs also contain a purpose statement that SDABs and other decision-makers can use to identify council's intent for a given land use district.

Only council can change the uses authorized for a particular land use district or change the district that applies to a particular parcel of land, or otherwise amend the LUB. However, the SDAB can vary the development standards in the LUB on a case-by-case basis if there are sufficient planning reasons to do so.

i. Permitted Uses

If an applicant applies for a development permit for a permitted use and the proposal conforms to the standards in the LUB, the development authority **must** issue the permit.[37] The ability to appeal a permit for a permitted use is limited to cases where the LUB is relaxed, varied or misinterpreted.[38]

The DA and the appeal board (SDAB or LPRT) may still impose conditions on a development permit for a permitted use, but only if the LUB expressly authorizes the specific conditions – a general clause that attempts to give broad authority to the DA or appeal board to impose conditions will not be sufficient.[39]

ii. Discretionary Uses

A DA or appeal board may refuse or approve a development application for a discretionary use, with or without conditions. Use of this discretion requires consideration of the site's suitability for the intended use, the adjacent uses, any additional requirements, and the planning merits of the proposal. The conditions imposed need not be mentioned specifically in the LUB; however, they must achieve a legitimate planning and development objective aligned with the LUB's intent.

iii. Standards in the LUB

In addition to permitted and discretionary uses for a given district, most LUBs contain standards to govern subdivision design and development[40] – for example, maximum and minimum lot sizes, lot density, and setbacks.

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[37] Unless the proposed development does not comply with the applicable requirements of regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises. (*MGA* s. 642(5))

[38] *MGA* s. 685(3)

[39] In contrast, an SA's discretion to impose conditions of subdivision is not restricted to conditions in the LUB. *MGA* s. 655 directly authorizes an SA to impose conditions, including conditions requiring development agreements.

[40] *MGA* s. 640(1.1)

iv. Direct Control Districts

Municipal council can exercise particular control over the use and development of land or buildings within an area (subject to the requirements of any applicable statutory plan) by designating it as a direct control district in the LUB.

The SDAB cannot hear appeals of development permits for Direct Control (DC) District unless council has delegated its decision-making authority to a development officer, in which case appeals are limited to deciding whether the development officer followed the directions of council.[41] Appeals with respect to DC district development permits can only be heard by the SDAB – not the LPRT.[42]

v. Exemptions from the Requirement to Obtain a Development Permit

The LUB may exempt particular types of development[43] from the necessity of a development permit. Questions about development permit exemptions sometimes arise in the context of a section 645 stop order appeal. If the development is exempt from the requirement to obtain a development permit, the DA may not have jurisdiction to issue a stop order requiring discontinuance of the use or demolition of the structure. A development permit exemption typically requires the proposed use to be ancillary to an approved use and for the structure to comply in all respects with the standards in the LUB. If this issue arises during an appeal, the appeal board should carefully consider the scope of the exemptions listed.

vi. Non-Conforming Uses and Buildings

Section 643 of the *MGA* regulates the continuation or expansion of legal non-conforming uses. A use is considered non-conforming where following the issuance of a development permit, the LUB changes to effectively prohibit that use in the district; similarly if the LUB is altered to remove an exemption that previously covered an existing use or development, that use or development becomes non-conforming.

A non-conforming use can be continued indefinitely; however, it cannot be expanded or converted to a different use without obtaining an additional permit. The power of variance conferred by s. 687(3)(d) of the *MGA* does not entitle an appeal board to vary the LUB by approving a development for a use that is neither permitted nor discretionary.

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[41] *MGA* ss. 641 and 685(4)

[42] *MGA* s. 685(4)

[43] The *Planning Exemption Regulation, Alta Reg 223/2000* also removes the requirement for a development permit for certain developments or types of development

vii. Development Agreements

The *MGA* allows for development agreements as conditions of subdivision and specifically allows the LUB to authorize them as conditions of development. These agreements require applicants to construct or pay for certain types of infrastructure listed in *MGA* ss. 650 and 655, including:

- a road required to give access to the development or subdivision;
- a pedestrian walkway system to serve the development or subdivision or connect the system serving the development or subdivision with a system that serves or is proposed to serve an adjacent development or subdivision, or both;
- a public utility that is necessary to serve the development or subdivision, whether or not it is located or will be located on the land that is the subject of the development or subdivision;
- off-street or other parking facilities; or
- loading and unloading facilities.

A development agreement may also require a developer to pay an off-site levy or redevelopment levy imposed by bylaw, and to give security to ensure that the terms of the development agreement are carried out. Municipalities can register a development agreement against title to the lands that are the subject of the development or subdivision.

2.1.6 Resolving Conflict Between Legislated Provisions – the Land Planning Hierarchy

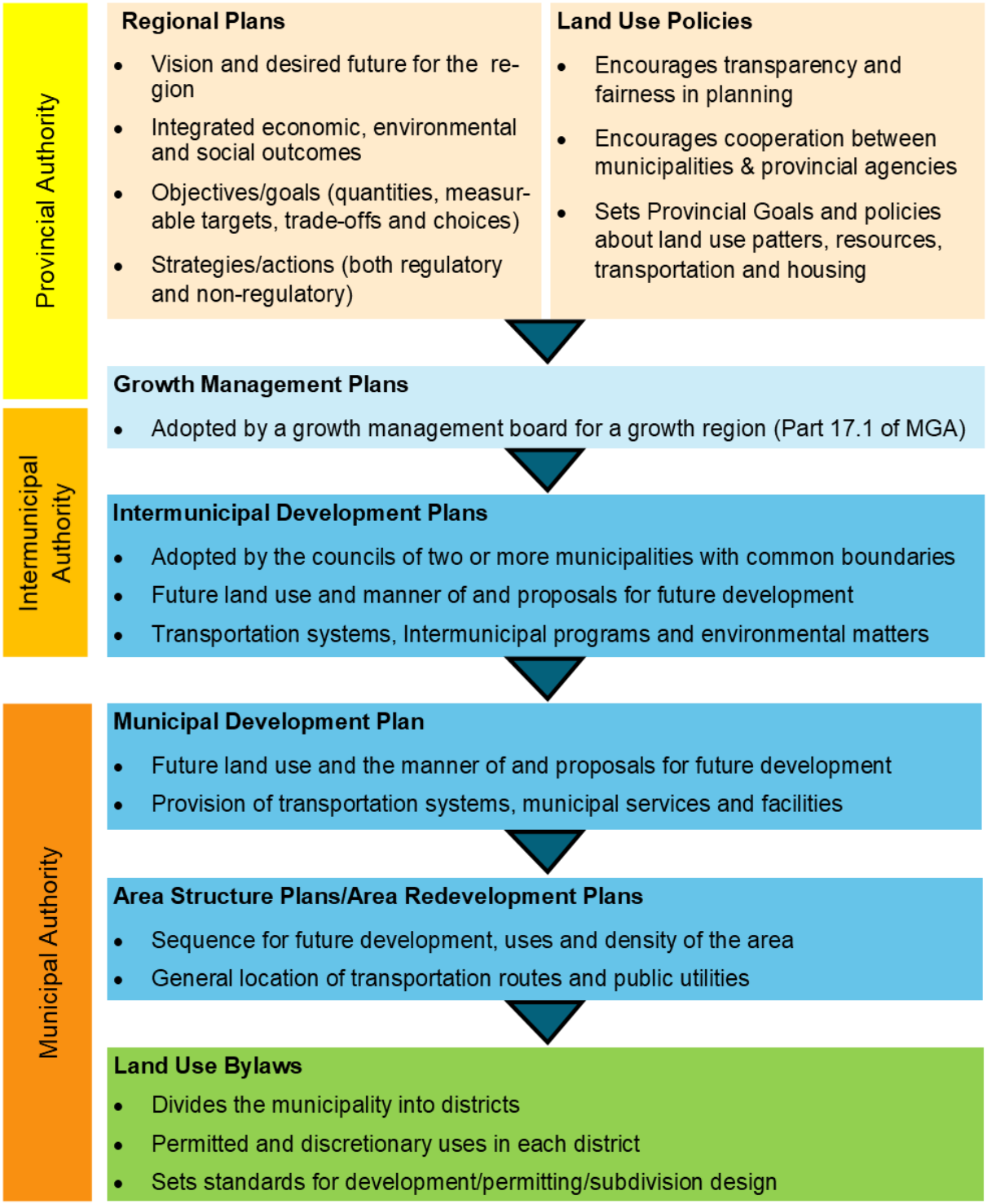
The *MGA* requires statutory plans must be consistent with one another; however, it also states that if they do conflict, the IDP takes precedence over MDP, which in turn takes precedence over an ASP or ARP. If a statutory plan conflicts with a permitted use in an LUB, the statutory plan may be "read down" to the extent of the inconsistency.[44] For example, where the LUB lists residential use as a permitted use in an area the MDP identifies as intended for parks, the DA would still issue a development permit for a residence (provided the LUB standards are met); in addition, it might consider adding conditions specified in LUB that are in keeping with the municipality's vision for a park.

The *MGA*'s land use planning framework inevitably interacts with other legislated provincial and federal regulatory schemes designed to regulate the physical and human environment. In most cases, the framework under the *MGA* gives way to the other legislated schemes in case of conflict.

[44] *Hartel Holdings Co. Ltd. v City of Calgary* [1984] 1 SCR 337

The planning policy hierarchy and a summary of its components are shown in Figure 3.

Figure 3 Levels of Planning Policy



2.1.7 Policies, Procedures, and Standards

Periodically, municipalities will develop additional policies and procedures to provide more detail to statutory plans or the LUB, such as servicing requirements or engineering standards. 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 obliged to adhere to any such policies, procedures, and standards, particularly if these provisions are not contained in a statutory plan or LUB.

The *MGA* requires municipalities to compile, update, and publish a list of policies to be considered when making decisions under Part 17 (Planning and Development) of the *MGA* and which have been approved by council or its delegate.[45] The SDAB must not consider a policy of this nature unless the list of policies is prepared, maintained, and published in accordance with these requirements.

2.1.8 Planning Principles and Best Practices

The purpose provision in Part 17 of the *MGA* sets out the overall goals for which municipal councils and land use planning decision-makers must strive when setting and applying land use planning policy, including:

- the orderly, economical, and beneficial development, use of land, and patterns of human development; and
- maintenance or improvement of the quality of the physical environment within which patterns of human settlement are situated.

These goals are to be achieved without infringing on the rights of individuals except to the extent necessary for the overall greater public interest.

The LUP and regional plans flesh out high-level public interest and policy goals. Likewise, the *MGA* provides further parameters within which municipal councils are to set local planning priorities and processes for orderly and beneficial development. Detailed guidance about the application of this policy is contained in the *Regulation* – e.g., appropriate setbacks for development and the characteristics of land to consider respecting suitability for use (topography, soil characteristics, storm water, and sewage arrangements, flooding potential, accessibility, etc.).

Inevitably, evaluation of individual applications against this extensive goal-oriented legislative framework often involves the use of discretion to account for particular

[45] *MGA* s. 638.2

circumstances. In exercising this discretion, decision-makers should be sensitive to broader planning principles, including those listed below:

- 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);
- assessments of the severity of the impacts of the application; minimizing or mitigating negative impacts of proposals; and
- physical, social, economic, and environmental impacts.

The foregoing is not an exhaustive list, but illustrates the broad analysis that underlies 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.

The *Flood Recovery and Reconstruction Act* amended 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. However, no regulations have been passed as of January 2023.

Many LUBs regulate development in flood hazard areas as previously recommended by Alberta Environment and Protected Areas. To the extent the LUB addresses subdivision and development in a flood hazard area, the appeal board should make decisions consistent with LUB. Once regulations are passed under the *Flood Recovery and Reconstruction Act*, the appeal board must apply the regulations. If the LUB and regulations are silent, the appeal board should consider the location of the lands and the risk of flooding to determine suitability or appropriate conditions of development.

2.2 SUBDIVISION AND DEVELOPMENT PROCESS

2.2.1 Planning Authorities (SA and DA)

Each municipal council must establish a subdivision authority and a development authority by bylaw to make decisions about subdivision and development applications.[46] The SA and/or DA is often one or more of the following: council, a person (municipal employee or external individual), organization, Municipal Planning Commission (MPC), Intermunicipal Planning Commission, Regional Services Commission, or an Intermunicipal Service Agency.

(A) Filing an application

The first step in the subdivision or development process is for a proponent to make an application to the appropriate approving authority (SA or DA). The application process can be time-consuming and complex, depending on the nature of the proposal, its complexity, location, and potential impact on the community. Onus rests on the applicant to provide enough information for the approving authority and referral agencies to determine the suitability of the proposal. Many municipalities have instructions in their application package to help applicants understand what material must be provided for a complete application.

(B) Contents of Applications

A subdivision application must include the prescribed form and basic information required by s. 6(2) of the *Regulation*[47] and any additional information the SA requests to determine if the application meets site suitability and other requirements outlined in the legislation – for example, geotechnical reports, flood maps, traffic and impact assessments.[48]

For development permit applications, the LUB will outline the information to be included with the application – such as site plans, description of the proposed development, or drainage information. The LUB may also contain requirements indicating who must be notified of a development application and how notice is to be given.

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[46] *MGA* ss. 623 and 625

[47] A complete application at minimum consists of the following: an application form, proposed plan of subdivision, required fee, copy of current land title, a copy of any environmental reserve agreement.

[48] These are common examples, but *MGA* ss. 653, 654 and *Regulation* ss. 6(3) to 6(7) identify a very long list of potential studies and other information an authority may request.

(C) Acceptance (Completeness of Applications)

After receiving a subdivision or development application, the SA or DA normally has 20 days to determine whether it is complete; however, this period may be extended either by a written agreement between the applicant and the SA or DA, or by regulation.[49] The relevant authority must notify the applicant whether the application is complete or whether additional information is required to complete it. If the authority does not issue a notice within the required time, the application is deemed complete.

If the SA or DA determines the application is incomplete, the applicant may complete the application by providing outstanding information referred to in the notice by the date specified in the notice or a later agreed date. If the authority is satisfied the outstanding information is sufficient, it will issue a notice of completeness. However, if the applicant does not provide the information or the approving authority finds additional submissions are deficient, the application is “deemed refused”.

When an application is deemed refused in this way, the SA or DA must notify the applicant, who can then appeal to the SDAB (or LPRT) to determine completeness as described in sections 4.1.1 and 4.2.1 of this Guidebook. If the SDAB determines the application is complete, the approving authority will continue to process and analyse it to issue a decision.

(D) Analysis of Applications

The SA must refer a copy of a completed subdivision application to the departments and other authorities listed in s. 7 of the *Regulation* and notify adjacent landowners; similarly, the DA refers a completed development application to the parties required in the LUB. The SA and DA take the information received in response to the referral and notification process into consideration when issuing their decisions.

Municipal staff or contracted professionals will assess the application based on the nature of the application and the legislative and planning considerations. They will also review additional information necessary to make an assessment, including the site’s configuration, layout, and physical characteristics, previous development activity in and around the site, surrounding uses, the proposal, standards within that district, and any special considerations that need to be included as a result of the application.

Despite best efforts, an SA or DA may find additional information is required from the applicant after it has acknowledged the application as complete. Sections 653.1(10) and

[49] In 2020 the *MGA* was amended to remove the ability of a municipality with a population over 15,000 to provide alternative time periods to determine completeness. At the same time, s. 694(1) was amended to give the Minister specific regulation making power to alter these periods.

683.1(10) of the *MGA* specifically authorize further requests for information necessary to review the application even after the application has been accepted as complete.

In carrying out their duties, approving authorities must exercise discretion within the parameters of the provincial legislation and municipal bylaws, including statutory plans and the LUB. The *MGA* empowers the SA to depart from LUB standards in cases where it is satisfied such departure would not unduly affect use and enjoyment of neighbouring parcels or neighbourhood amenities.[50]

In the development context, the LUB may outline specific instances where the DA can exercise discretion – for example, to vary setbacks in suitable circumstances. However, the LUB **cannot** allow planning authorities to depart from statutory plans or depart from uses within an LUB district. Changes to statutory plans and LUB districts require bylaw amendments, which only Council can make.

(E) Decisions

Subdivision: Generally, the SA must make a decision on a subdivision application within 60 days of receipt by an applicant of the SA's acknowledgement that the application is complete.[51] The applicable time period may be extended by an agreement in writing between the applicant and the SA or by regulation.

The SA will generally approve (with or without conditions) an application to accommodate a permitted use provided the site is suitable and meets the requirements of the applicable plans and bylaws.[52] When an application is to accommodate a discretionary use, the SA will consider all the relevant circumstances, plans, and policies to determine if approval is appropriate, and if so, what conditions should apply.

The SA has wide discretion to craft conditions that will ensure compliance with Part 17 and the regulations and bylaws passed under Part 17.[53] Conditions must be for a valid land use planning purpose, and the obligations they impose should be within the applicant's control or ability to fulfil – e.g., they should not impose obligations on third parties.

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[50] *MGA* s. 654

[51] However, the SA only has 21 days to issue a decision for applications concerning parcels registered before 1950 containing 2 or more lots where one is less than 8.0 Ha as *MGA* s. 652(4) for which no referrals were made.

[52] *MGA* s. 654(1)(a)

[53] *MGA* s. 655(1)(a)

In addition to this broad authority, the *MGA* provides specific authority to impose conditions requiring subdivision applicants to do or agree to do the following:[54]

- construct or pay for roads required to give access to the subdivision, pedestrian walkways, and off-street or other parking facilities;
- install or pay for the installation of public utilities needed to serve the subdivision; and
- pay offsite levies.

Conditions can also require landowners to provide land without compensation for public roads environmental, municipal, and school reserves, as well as for public utilities.[55] There are some circumstances where reserves cannot be imposed - e.g., for a first parcel out of a quarter section.[56]

The SA must issue its decision in writing, regardless of whether it is an approval or a refusal. If it refuses the subdivision, it must give reasons.[57] Reasons may be required for approvals, too, since s. 10 of the *Regulation* requires reasons that explain why they made their decision and how they considered any submissions from adjacent landowners and the site suitability criteria in s. 9. The *Regulation* does not distinguish between a decision for approval or refusal. In any case, it is good practice for the SA to include reasons, so parties understand the basis for approval and conditions. Notice of all decisions must be given to the applicant and other parties required in the legislation.

Development: The DA must decide an application for a development permit within 40 days of receipt by an applicant of the DA's acknowledgement that the application is complete. Again, the 40 day time period may be extended by an agreement in writing between the applicant and the DA or by regulation.[58]

If a development permit application is for a permitted use, the DA **must** issue a permit, with or without conditions. If the application is for a discretionary use, the DA may refuse to issue a permit if it is not satisfied as to suitability.[59]

Similar to subdivision conditions, conditions of development must be for a valid land use planning purpose and within the applicant's control to fulfil. Unlike the subdivision

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[54] *MGA* s. 654(1)(b)

[55] *MGA* s. 661, 662

[56] *MGA* s. 663

[57] *MGA* s. 656(2)(b)

[58] *MGA* s. 684

[59] *MGA* s. 642

context, authority to impose conditions must be found in the LUB. For permitted uses, the LUB must list each type of permissible condition specifically; however, for discretionary uses, it can use broader language to give the DA discretion to craft conditions to ensure appropriate land use planning objectives are achieved.[60]

A copy of the DA's decision and written notice specifying the decision date must be given or sent to the applicant the same day the decision is made. The applicant must also be advised of the appropriate appeal body and the appeal period.[61] Many municipalities have LUBs that require notice to other affected parties (for example, neighbouring property owners and neighbouring municipalities) and explain how this notice should be provided.

Deemed Refusals: If the DA or SA fails to make a decision within the timeframe allowed in the *MGA* or a written time extension agreement, the application is deemed refused and can be appealed.[62]

2.3 ENFORCEMENT OF PLANNING AND DEVELOPMENT REQUIREMENTS

The *MGA* provides municipalities with a number of options for enforcing their planning and development requirements.

Section 645 of the *MGA* authorizes the DA to issue a Stop Order when a development, land use, or use of a building does not comply with any of Part 17 of the *MGA*, the *Regulation*, or a development permit or subdivision approval. A Stop Order may require any one or more of the landowner, person in possession of the land, or person responsible for the contravention to:

- stop the development or use of the land;
- demolish, remove, or replace the development; or
- take any other actions required to bring the development or use of the land or building into compliance.

If a person fails or refuses to comply with a Stop Order or an order of the SDAB within the time specified in the order, the municipality has the statutory authority to enter on to

[60] See *Burnco Rock Products Ltd. v Rockyview* 2000 ABCA 129

[61] *MGA* ss. 656 and 678(2)

[62] *MGA* ss. 681 and 684

the land or building to take any action necessary to carry out the order[63] and the ability to add any costs and expense it incurs in doing so to the tax roll for the parcel of land.[64]

In addition to Stop Orders, municipalities may impose fines or penalties under either the *MGA* or the municipality's LUB on individuals who do not comply with planning and development requirements.[65]

A municipality's LUB may also provide for enforcement matters including: the creation of offences; imposition of fines and penalties; voluntary payments; inspections to determine if the LUB is being complied with, and remedying contraventions of the LUB.[66]

[63] *MGA* s. 646

[64] *MGA* s. 553(1)(h.1)

[65] *MGA* s. 557

[66] *MGA* s. 7(i)

3 ESTABLISHING AN SDAB

Learning Objective: By the end of this chapter, you will be able to

- ✓ Understand the roles and responsibilities of clerks and members.
- ✓ Understand requirements for clerks and members before, during, and after hearings.
- ✓ Understand the composition and membership of SDABs.

Every municipality must pass a bylaw to create an SDAB or authorize an agreement establishing an intermunicipal SDAB with one or more other municipalities.[67] An intermunicipal SDAB is like an ordinary SDAB but allows municipalities to gain efficiencies by sharing clerks, members, and administrative costs.

The SDAB bylaw must establish the procedures, conduct, functions, and duties of the SDAB and may also describe:

- how council appoints members of the SDAB;
- the SDAB members' term of office and compensation (including remuneration and *per diem* payments);
- how the chair and vice-chair are determined;
- who is appointed as clerk(s) of the SDAB:
- quorum and the appointment of alternate members;
- use of independent legal counsel by the SDAB;
- how required training programs are to be delivered in accordance with the *Subdivision and Development Appeal Board Regulation*; and
- other matters at the discretion of council.

Familiarity with a municipality's bylaw will provide helpful insight and information to understand the particular roles and responsibilities of that municipality's membership.

[67] *MGA* ss. 627

3.1 CLERK APPOINTMENTS AND RESPONSIBILITIES

A council that establishes a SDAB, or jointly establishes an intermunicipal SDAB, must also authorize the appointment of one or more clerks of the SDAB.[68] As with SDAB members, the *MGA* identifies certain constraints about who may be appointed as the clerk. In particular, the clerk:

- must *not* be an SA or DA; and
- must successfully complete the training and examination requirements under the *SDAB Regulation*, including the refresher training every three years.

3.1.1 Clerk Duties

SDAB clerks are key officials responsible for administering and processing planning and development appeals. Their duties vary somewhat depending on the content of the SDAB bylaw and the discretionary policies adopted by each SDAB. However, all SDAB clerks have important obligations to implement procedures within legislated timeframes to achieve a fair, inclusive, timely, and unbiased complaint process.

Clerks are in contact with parties both before and after the hearing. They explain procedures, provide general information about the appeal process and the SDAB's role, issue required notices, and in some cases, have to communicate instructions on behalf of panels (e.g., to request additional information). As such, SDAB clerks are in many ways the public face of the board outside of the hearing itself. How they perform their duties affects the SDAB's reputation and the trust parties place in its process and decisions.

Clerks also support panels in the performance of their duties. This aspect of the clerk's role ranges from booking hearing space to maintaining the SDAB's record to facilitating decision meetings and drafting the SDAB's decisions based on panel member instructions. In some municipalities, SDAB clerks have legal or professional land planning backgrounds and can provide panels with a high level of expert support.

Since practices vary between SDABs, it is impossible to list all the duties clerks perform in every municipality. However, some common duties are described below.

(A) Before the Hearing

Before the hearing, SDAB members should:

[68] *MGA* s. 627.1

- ensure that the appeal has been properly filed (and within the appeal deadline);
- contact SDAB members to ensure quorum;
- ensure that the appropriate people are informed of appeal (including the appellant, affected persons, and anyone else identified in the LUB and *Regulation*);
- prepare an agenda for the hearing day (although not required, a general guideline is to have simple appeals placed early on the agenda);
- prepare an agenda package for each appeal with copies of relevant documents and materials, including:
  - the application for the development permit or subdivision;
  - the decision or Stop Order being appealed;
  - the notice of appeal;
  - the development or subdivision authority's written submissions or report; and
  - any written submissions or other correspondence received by the clerk regarding the appeal;
- ensure hearing notices meet the legislated requirements (mailed notice[69] must be received at least 5 days prior to the hearing; newspaper advertisements or posting the notice on the land may also be used in some cases);
- ensure that all relevant documents and materials are available for public inspection; and
- set up any equipment/materials needed in the SDAB meeting room.

(B) At the Hearing

At the hearing, SDAB members should:

- make a sign-in sheet available for the hearing;
- ensure quorum of the SDAB for the hearing and that no more than one councillor is on the panel hearing an appeal;
- announce the appeal at the commencement of the hearing;
- record names of speakers;

[69] *MGA* ss. 679(2) and (3); 653(4.2) for subdivision appeals; s. 686(3) for development appeals; s. 606(1) for general advertising instructions

- mark exhibits;
- take notes or minutes of the appeal and
- operate recording equipment, if any.

(C) After the Hearing

After the hearing, SDAB members should:

- prepare a record of proceedings (summary of evidence presented at hearing);
- prepare the session summary setting out the SDAB's decision(s) for the SDAB's review and edits, and signature of the SDAB members or chair;
- 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 the LUB to be notified); and
- ensure a new development permit is prepared if necessary.

3.2 MEMBER APPOINTMENTS AND RESPONSIBILITIES

Council decides who to appoint to an SDAB within certain constraints imposed by the *MGA*.[70] In particular, the *MGA* states a 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 an MPC.

A panel can have one councillor.[71] However, Councillors who serve as SDAB members should take care to "leave the councillor's hat at home" when dealing with an appeal, and "put on their judge's hat" instead. Unlike the Councillor's role, the judicial role requires members to refrain from speaking publicly about the appeals before them and to make their decisions based only on the evidence and argument presented during the hearing.

Members cannot sit on a panel until they have completed the approved training and any refresher training required under the *Regulation*.

[70] *MGA* ss. 627(3) to (5)

[71] *MGA* s. 627(3) allows more than one councillor only if authorized by Ministerial Order

3.2.1 Members' Duties

The basic role SDAB members is to give parties a fair and efficient hearing and make decisions based on the evidence and applicable legal rules.

SDAB members should be alert to potential conflict of interest or bias. If it appears the member could benefit directly or indirectly from the ruling of the SDAB or has a close personal or professional association with a party, the member should not participate in the hearing. Similarly, the SDAB should not act as an advocate for any party and should refrain from providing advice to parties about the issues before it.

(A) Before the Hearing

SDAB members should:

- understand their legislative and quasi-judicial responsibilities. This understanding includes appreciation of which documents the SDAB must act in accordance with, have regard to, conform with, and/or be consistent with when determining an appeal;
- be familiar with the relevant plans and bylaws (*Alberta Land Stewardship Act* regional plans, Provincial Land Use Policies, growth plans, MDP, ASP, ARP, LUB, 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 should 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 publicly outside of the hearing;
- conduct independent research, including site visits (members should only hear the evidence at the hearing, not become a witness); or
- form a conclusion prior to attending the hearing.

(B) At the Hearing

SDAB members must allow the panel chair to conduct the hearing and ensure they pose any questions through the chair. SDAB members should also:

- follow fair procedure and the rules of natural justice;
- attend the entire hearing;

- take notes to ensure that issues or evidence provided in the hearing is addressed later in the decision and reasons;
- hear from all parties in a fair, open, and objective manner;
- ask appropriate questions of all parties to clarify information provided and make findings of fact;
- concentrate on the evidence presented; and
- enforce rules with respect to decorum in the hearing room – e.g., controlling use of cell phones or other electronic devices.

(C) After the Hearing

After the hearing, SDAB members should:

- meet as a panel as soon as possible after the hearing to reach a decision;
- follow a decision-making process that ensures all evidence is considered and that the decision is based on the evidence provided;
- identify a writer to draft the decision;
- ensure all panel members review the draft to confirm it reflects the panel's decision and reasons;
- ensure the decision uses plain language and avoids technical terminology;
- avoid commenting publicly about the decision after it is made – the decision should speak for itself and
- treat all participants, including other SDAB members, with respect and fairness.

3.2.2 Chair's Duties

The SDAB bylaw may set out how the chair is designated and specify the term of office. The chair's duties often include:

- opening the hearing by introducing the panel and explaining the process to those in attendance, including order of presentations, questioning, anticipated breaks, etc.;
- running the hearing, by giving procedural directions as required;
- ensuring the hearing proceeds efficiently;
- ensuring parties have a fair opportunity to present their case and respond to the case against them;
- setting the tone of the hearing, and ensuring parties act respectfully;
- preventing improper behaviour;

- managing questioning from parties and panel to maintain an orderly process – a common practice is for parties to ask questions through the chair;
- calling adjournments to let the panel discuss preliminary or procedural issues in private and delivering the panel's ruling when the hearing reconvenes; and
- signing orders on behalf of the SDAB.

Before ending the hearing, the chair should ensure the panel has no further questions about information required to make findings or formulate reasons. The chair may also facilitate the panel's deliberations and decision-making and may draft the final decision – however, these duties may also be performed by other members or the clerk.

3.3 LIABILITY

Approving subdivision or development without adequate consideration of the hazards associated with the intended use or development creates a risk of harm to the community, landowners, and developers for which the municipality may be held liable.

3.3.1 Liability of the Approving Authority

The case law shows municipalities may be liable for damages to property arising from inappropriate approval of subdivision or developments. Generally speaking, municipal decisions fall into one of two categories:

1. broad-based legislation or "policy" decisions; and
2. implementation or "operational" decisions.

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 those decisions, usually made by a technical staff, that relate to the implementation of a policy. These decisions include interpretation of policies or determination of facts that would trigger the application of a policy. In Alberta, the issuance of development permits, and in some cases subdivision approvals, have been characterized as 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:

- the municipality breached the duty of care it owed to that person; and
- the loss or injury inflicted on that person was reasonably foreseeable.

The courts have held that SAs, DAs, and SDABs owe a duty of care to applicants when making decisions related to subdivision or development. The principles from the cases suggest this duty extends to adjacent landowners 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
- ensuring appropriate municipal standards, policies, and procedures are considered when evaluating applications.

See, for example, *Bowes v Edmonton,* 2007 ABCA 347, which is also summarized in the Resource Book that accompanies this Guidebook.

3.3.2 Municipal Liability

A few municipal liability themes are identified below.

Municipal Hazard A municipality may be liable if it creates a hazard and then allows development that is compromised by the hazard.[72]

Records/Information Disclosure A municipality may be liable if it is aware of environmental limitations and does not disclose them to the affected stakeholders.[73]

Breach of Policy A municipality may be liable if it breaches its own policy in issuing approvals, improperly allowing development in high-risk areas or on environmentally sensitive lands.[74]

The courts have shown sympathy towards landowners who have suffered a significant loss, even if the landowner is sophisticated or has unique knowledge of the risks.[75]

3.3.3 Personal Liability of SDAB Members and Clerks

Liability generally falls on the municipality rather than members or clerks for damage resulting from negligent SDAB approvals. The *MGA* makes SDAB members immune from personal liability for their actions (or inactions) in the exercise of their functions, duties, or powers, unless the member acted in bad faith.[76] Clerks are less likely to need similar protection since their role in appeal process does not include making the decision. However, the *MGA* also gives all municipal employees protection from liability

[72] *Gibbs v. Edmonton,* 2001 ABQB 413 (*Gibbs*)

[73] *Gibbs, supra; Bowes v. Edmonton*, 2005 ABQB 502 (*Bowes*)

[74] *Papadopoulos v. Edmonton*, 2000 ABQB 171 (*Papadopoulos)*

[75] *Papadopoulos, supra*

[76] *MGA* s. 628.1

for loss or damage caused by acts or omissions done in good faith in the performance of their duties or powers.[77]

[77] *MGA* s. 535(2)

4 SDAB APPEAL TYPES

Learning Objective: By the end of this chapter, you will be able to

- ✓ Understand SDAB powers and their limits, and the source and scope of SDAB authority.
- ✓ Understand the types of appeal heard by the SDAB and those heard by the LPRT.
- ✓ Understand municipal processes for subdivision, development permits, and stop orders.

SDAB appeals fall into two main categories: subdivision and development. This chapter explains both categories and what the SDAB must consider for each.

4.1 SUBDIVISION APPEALS

Subdivision applicants, and in some cases government departments, municipal councils, and school boards have the right to appeal SA decisions.[78]

4.1.1 SA decisions that can be appealed

An SDAB can hear appeals of most SA decisions,[79] including:

- a subdivision refusal, approval, or condition of approval;
- a subdivision "deemed refusal"; and
- a determination about the completeness of an application[80] (also called a deemed refusal).

Most subdivision appeals fall into the first category listed above – they concern decisions to refuse or approve subdivision, or one or more conditions of approval. The deadline to file these appeals is within 14 days of receipt of the SA's written decision; however, since receipt is deemed to occur 7 days from the date the decision is mailed, the appeal period is effectively 21 days from the date of mailing.[81]

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[78] *MGA* s. 678(1) gives standing to appeal to the subdivision applicant, government departments to which the application must be referred, municipal council (where the SA is not council, its designated officer or MPC), and affected school boards (with respect to municipal reserves, or the amount or location of school reserves, or money in place of reserves)

[79] *MGA* s. 678(2)

[80] *MGA* s. 653.1(2) allows the SA to determine what information is required for a complete subdivision application

[81] *MGA* s. 678(2) and (3)

The *MGA* also allows appeals of non-decisions called “deemed refusals”. This second category of appeal involves cases where SA has not issued a decision within the legislated timeframe, which is:[82]

- 60 days of the date the application was determined or deemed to be complete;
- 21 days of the date the application was determined/deemed to be complete, for subdivisions under s. 652(4) of the *MGA* (lands titled before July 1, 1950);
- the time set out in a written time extension agreement between the applicant and the SA; and
- an alternative time set by the Minister, if applicable.[83]

The ability to appeal deemed refusals gives applicants a way to avoid indefinite delays that could arise from a municipality’s failure to make a decision. Since no decision is sent, there is no time for mailing and applicants only have 14 days to file an appeal from the date the SA was to make its decision.[84]

Confusingly, the *MGA* also creates a second kind of “deemed refusal”, which occurs when a subdivision application is determined to be incomplete. Section 653.1(1) requires the SA to determine whether an application is complete within 20 days of receipt (or an extended time agreed to by the SA and the applicant). If the SA does not do so, the application is deemed complete.[85]

If the SA decides more information is needed to complete the application, it must issue a notice of incompleteness listing the missing information and setting a deadline for its submission. If the applicant does not provide the requested information within the time specified in the notice, or if the SA finds it is still deficient, the application is “deemed refused”.[86] When an application is deemed refused in this way, the SA must notify the applicant and provide reasons for the deemed refusal.

The right to appeal this kind of deemed refusal gives subdivision applicants a way to avoid the expense and delay that could result from unreasonable demands for information during the application process. Since these appeals only concern

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[82] *MGA* ss. 653.1, 681(1)(a) and 652(4) and s. 8 of the *Regulation*

[83] *MGA* amendments in 2020 repealed s. 640.1, which allowed a municipality of with a population of 15000 or more to provide for an alternative time period by bylaw. Section 694(1)(a.1) gives the Minister power to make regulations to extend this period instead.

[84] *MGA* s. 681

[85] *MGA* s. 653.1

[86] *MGA* s. 653.1(9)

application completeness and not whether to approve or deny a subdivision, the *MGA* only requires the SDAB to send hearing notices to the SA and the applicant.[87] Given the limited notice requirements and scope of appeal, the SDAB would send the matter back to the SA to process if it finds the application to be complete. Presumably, the deadline to appeal such decisions is the same as for other subdivision decisions – i.e., 14 days from receipt of the date the decision, with 7 days for mailing.

4.1.2 Subdivision Appeals heard by LPRT

The SA's decision must be appealed to the LPRT instead the SDAB if there is a provincial interest in the land being subdivided. Further details about the LPRT's jurisdiction are set out in Chapter 5 of this Guidebook. Although the SA's notice of decision should state where an appeal must be filed, the SDAB must also be satisfied it is the proper board for the appeal (see Figure 8 in this Guidebook). If the appeal is filed at the wrong board, it must be forwarded to the right board. The board that receives the referral is deemed to have received the notice of appeal from the applicant on the date it received the notice of appeal from the first board.[88]

The *MGA* and the *Regulation*[89] direct appeals of subdivision decisions to the LPRT where the land that is the subject of the application:

- is within the Green Area as classified by the Minister responsible for the *Public Lands Act;*
- contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site;
- is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission; or
- is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Protected Areas or Minister of Forestry, Parks, and Tourism, or under any act for which they are responsible.

[87] *MGA* s. 679(2.1)

[88] *MGA* s. 678(5)

[89] *MGA s, 678(2) and Regulation, ss. 26 to 29*

Figure 4 Green and White Area Map

4.1.3 Applying the Legislated Framework to Subdivision Appeals

On appeal, the SDAB has the same powers as the SA.[90] The SDAB can refuse or approve the subdivision, with or without conditions, which need not be the same as the SA's. Like the SA, the SDAB must apply the legislated land planning framework; however, it has more discretion than the SA in how it applies some of the components of that framework.

As noted earlier, the framework includes numerous statutes, regulations, statutory plans and other documents. *MGA* s. 680(2) lists various components of the framework and describes the degree to which they must guide the SDAB's decision as follows:

- must be consistent with the Provincial Land Use Policies;[91]
- must conform with the uses of land referred to in a LUB;
- must have regard to any statutory plan;
- must have regard to, but is not bound by, the *Regulation;* and
- may confirm or revoke or vary the approval or decision or any condition imposed by the SA or make or substitute an approval, decision, or condition of its own.

In addition, s. 618.3(1) requires anything done by an SDAB is to be:

- done in accordance with any applicable *ALSA* regional plan.

The requirements about how an SDAB must apply the elements of the framework differ slightly from how an SA must apply them. In particular, some elements bind both the SA and SDAB, other elements bind only the SA, and still other elements bind neither.

The elements of the framework that bind both the SA and SDAB are the uses in the LUB and the high-level Provincial policies, including the LUP and provisions identified as binding in regional plans under the *Alberta Land Stewardship Act*.[92]

The elements that bind the SA, but not the SDAB, are the statutory plans (IDP, MDP, ASP, and ARP) and the *Regulation*. The practical effect of this difference is that the SDAB may occasionally vary provisions in the *Regulation* or statutory plans to allow a subdivision that the SA had to deny. Use of this discretion requires solid land use planning reasons, and SDABs should take care not to grant approvals inconsistent with

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[90] *MGA* s. 680(2)(f)

[91] If there is an inconsistency between the *ALSA* Regional Plan and the LUP, the Regional Plan prevails

[92] The status of the Edmonton and Calgary Metropolitan Regional Growth Plans are less clear: s. 654(1)(b) says an SA must not approve a subdivision that does not conform to a growth plan; however, s. 680(2) does not mention growth plans in the list of enactments the appeal boards must consider

the underlying planning goals established by the municipality through its planning documents.

Finally, the elements that bind neither the SA nor the SDAB are the standards in the LUB – though the SA must consider the negative effects test in s. 654(2) of the *MGA*. Again, use of discretion by either the SA or SDAB requires solid land use planning reasons.

4.1.4 Subdivision Conditions

The SDAB has the same ability to set conditions as the SA (see 2.2.1 of this Guidebook), including:

- any conditions to ensure compliance with Part 17 and its subordinate legislation (LUB, statutory plans, etc.), or with *ALSA* regional plans; and
- a condition that the applicant enter into a development agreement to construct or pay for roads and public utilities to give access to or serve the subdivision, pedestrian walkways, parking and loading facilities, or to pay offsite levies.[93]

It is good practice to reference the authority for the condition within the reasons (or the condition itself) to clarify for parties where it is allowed by the legislation. The ability to impose conditions in the subdivision context is broader than in development, where conditions must be authorized under the LUB.

In addition to falling within the legislated authority, subdivision conditions must:

- serve a valid planning purpose;
- relate to the specific application and not fetter discretion by blindly applying policy;
- be specific[94] and enforceable;
- not sub-delegate responsibility for the decision to another person or body (see section 1.1.3); and
- not be unreasonable, discriminatory, or uncertain.

SDABs often attach a general condition for a development agreement and payment of an off-site levy or intermunicipal off-site levy, leaving planning staff to determine the amount of the levy and negotiate specific provisions of the development agreement with

[93] *MGA* s. 655, 648 and 648.01

[94] For example, a condition prohibiting unreasonable noise, dust, or light is too subjective and vague to be enforceable

the developer.[95] In rare cases, the SDAB may be asked to impose specific provisions within the development agreement; however, the case law has not yet settled as to whether the SDAB has this authority.

4.2 DEVELOPMENT PERMIT APPEALS

Any affected person can appeal a DA's decision, unlike the subdivision context where standing is more limited. As with subdivision, development appeals are heard by the SDAB unless a provincial interest identified by legislation brings them before the LPRT.

4.2.1 DA Decisions that Can be Appealed

DA decisions, including the following, can be appealed:[96]

- refusal or approval of a development permit, or condition of the permit, including a variance to an LUB standard;
- deemed refusal of a development permit;
- a determination about the completeness of an application;[97] and
- a stop order under section *MGA* s. 645.

Most development appeals fall into the first category listed above – they concern decisions about development permits or their conditions. The deadline for filing these appeals is within 21 days of the day the DA's decision.[98]

As with the subdivision context described earlier in this Guidebook, the *MGA* also creates a category of appeal of non-decisions termed "deemed refusals". An applicant can consider their application to be "deemed refused" if the DA did not make a decision within the legislated timeframe, which is:

- 40 days of the date the application was determined or deemed to be complete;
- the alternative period of time set by the Minister, if applicable;[99] or
- the time set out in a written time extension agreement between the applicant and the development authority.

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[95] *MGA* s. 655(1)(b) outlines the potential contents of a development agreement imposed as a condition of subdivision

[96] *MGA* ss. 683.1, 684 and 685

[97] *MGA* s. 683.1(2) outlines the requirements for a complete subdivision application

[98] The DA must send the decision the same day it is made - *MGA* s.642(3) - and no time is added for mailing.

[99] *MGA* s. 694(1)(a.1) gives the Minister power to make regulations to extend this period.

If a matter is deemed refused in this way, the applicant can file an appeal within 21 days of the date on which the DA should have made a decision.[100] Once an appeal is filed, SDAB may proceed to hear the merits of the application and grant an approval, conditional approval, or refusal as it may find appropriate under the circumstances.

Similar to the subdivision context, the *MGA* also creates a second type of "deemed refusal" for development permit applications. This second type of deemed refusal stems from the requirement for the DA to determine whether an application is complete within 20 days after receipt of an application for a development permit, or a longer time agreed to in writing between the applicant and the DA.[101]

Depending on the circumstances and contents of the LUB, the DA may request a wide variety of material to complete an application; however, the *MGA* stipulates the DA may not require, as a condition of a completed development permit application, the submission to and approval by council of a report regarding the development.[102]

If the DA fails to issue a determination, the application is deemed complete. However, if the DA determines the application is incomplete and the applicant fails to submit the information requested to the DA's satisfaction, the application is "deemed refused"[103], and the DA must issue a notice explaining the reasons for the deemed refusal. As with subdivision, notice of hearing for appeals of such deemed refusals need only be provided to the applicant and the DA[104] – therefore, if the application is found to be complete, the matter should be returned to the DA to process and decide.

Presumably, the deadline to appeal this type of deemed refusal is the same as for other development decisions – i.e., 21 days from the date the decision. As with the subdivision context, it is less clear what happens if the municipality fails to issue a notice as required after requesting additional information.

4.2.2 Development Appeals Heard by the LPRT

Recent amendments to *MGA* s. 685 direct some development appeals to the LPRT instead of the SDAB, which previously heard all development appeals. Section 685 identifies the same provincial interests that attract subdivision appeals to the LPRT as

[100] *MGA* s. 686(1)(a)(B)

[101] *MGA* 683.1

[102] *Regulation* s. 18.1

[103] *MGA* s. 683.1(8)

[104] *MGA* s. 686(4.1)

listed in s. 678. However, as of April 29, 2021, the *Regulation*[105] (and its predecessor[106]) have removed the Green Area and land containing or adjacent to a highway, a body of water, a sewage treatment or waste management facility, or a historical site from the scope of LPRT development appeals. Therefore, development appeals only come to the LPRT when the land in question:

- is the subject of a licence, permit, approval, or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board, or Alberta Utilities Commission; or
- is the subject of a licence, permit, approval, or other authorization granted by the Minister of Environment and Protected Areas or Minister of Forestry, Parks, and Tourism, or under an act for which they are responsible.

The *MGA* now clarifies that appeals of DA decisions regarding development permits in a Direct Control district are only to be made to the SDAB and are limited to whether the DA followed directions of municipal council (see 4.2.5 of this Guidebook).

The DA's notice of decision should state where to file an appeal; however, the appeal boards have the final say on this question. If the appeal is filed at the wrong board, it must be referred to the right board. The dates to process the appeal then run from the date the second board received the notice of appeal from the first board.[107]

4.2.3 Applying the Legislated Framework to Development Permit Appeals

As with subdivision appeals, the SDAB can refuse or approve a development permit, with or without conditions, which need not be the same as the DA's.[108] The *MGA* lists how the appeal boards must be guided by the various planning documents. In particular, an SDAB is to:[109]

- act in accordance with any applicable *ALSA* regional plan;
- comply with the Provincial Land Use Policies;
- comply with any applicable statutory plans;

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[105] *Regulation, ss 27, 28*

[106] *Subdivision and Development Appeal Regulation*

[107] *MGA* s. 686(1.1)

[108] *MGA* s. 687(3)(c)

[109] *MGA* ss. 687 and 618.3

- comply with the LUB (a variance is possible if the proposed development conforms with the use prescribed for the land or building and the variance 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);
- comply with the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of the development described in a cannabis licence[110] Subject to a variance by an LUB, an exterior wall of a premises described in a cannabis licence may not be located within 100 m of:
  - a provincial health care facility or a boundary of the parcel of land on which the facility is located;
  - a building containing a school or a boundary of a parcel of land on which the building is located; or
  - a boundary of a parcel of land that is designated as school reserve or municipal and school reserve under the *MGA*; and
- have regard to, but is not bound by, the *Regulation.*

Although there are many similarities between the subdivision and development contexts, the specific requirements for development permit appeals mean SDABs have less room for discretion than they have for subdivision appeals.

First, development permits *for permitted uses* can only be appealed if the LUB was relaxed, varied, or misinterpreted or the application was deemed refused under *MGA* s. 683.1(8). While there is no appeal in such cases, the SDAB may still need to hold a hearing to address whether the DA in fact varied, relaxed, or misinterpreted the LUB.[111]

Second, whereas the SDAB need only "have regard to" the statutory plans in the case of a subdivision appeal, it must "comply" with them in the development appeal context. In other words, the SDAB has no discretion to vary provisions of the MDP (or the IDP, ASP, or ARP) in the development context.

4.2.4 Development Permit Conditions

The SDAB can confirm, revoke, or vary the DA's conditions, provided the conditions are listed in the LUB.[112] As noted previously (see 2.2.1 of this Guidebook), the SDAB can only impose a condition on a development permit approval if authorized by the LUB. For

[110] Section 105(3) of the *Gaming and Liquor and Cannabis Regulation*

[111] *Rau v Edmonton (City)* 2015 ABCA 136

[112] *MGA* s. 640(2)(c)(iv) and 687(3)

permitted uses, the LUB must list each potential condition specifically; however, for discretionary uses the LUB can give broad authority to impose conditions.[113] It is good practice to reference the LUB authority for the condition within the reasons (or the condition itself) to clarify for parties where it is allowed.

As with subdivision, development conditions must be specific and enforceable, serve a valid land use planning purpose, and avoid improper sub-delegation of decision-making responsibility. Similar considerations also apply to development permit conditions requiring parties to enter into a development agreement or pay off-site levies.[114]

4.2.5 Council Decisions in Direct Control Districts

Appeals within a direct control district are a special case: The SDAB cannot hear a development permit appeal for Direct Control District lands where council is the decision-making authority. Where council has delegated the decision-making authority to a different development authority, there is a limited right of appeal to the SDAB on the question of whether the development authority followed the directions of council.[115] The *MGA* requires all appeals of development permit applications in direct control districts to be heard by the SDAB and not the LPRT.

4.3 STOP ORDER APPEALS

The *MGA* allows a person affected by a stop order issued under s. 645 to appeal the decision.[116]

4.3.1 Purpose of Stop Orders

Stop orders issued by a DA are meant to ensure development complies Part 17 and its regulations – and particularly with the LUB[117] or applicable development permits and subdivision approvals. A stop order may require the recipient to demolish, remove, replace, alter, or to stop using a development, or to comply with conditions imposed by the DA or SA - for example, by installing servicing. Stop orders must specify the date on which the order was made and must be given or sent to the person the order is directed to on the same day the order is made. Stop orders are tools to enforce compliance and are not considered punitive. As such, they are not subject to limitation periods, meaning

[113] *Burnco Rock Products Ltd v Rockyview* (MD No. 44) 2000 ABCA 129

[114] *MGA* s. 650 outlines potential contents of development agreements imposed as conditions of development

[115] *MGA* s. 685(4)

[116] *MGA* s. 685

[117] Potential considerations may be whether the use or building is exempted under the LUB or non-conforming under s. 643 of the *MGA*

a municipality can issue a stop order to prevent a noncompliant use no matter how long the use has continued.[118]

4.3.2 Limits of SDAB Authority in Stop Order Appeals

The Courts have clarified the SDAB's power to vary or set aside stop orders is limited to determining whether the stop order was properly issued in the first instance. Where the SDAB is satisfied that the stop order was properly issued, the SDAB's jurisdiction is limited to upholding the stop order. The SDAB cannot vary or waive the conditions of the original development permit or subdivision approval on a stop order appeal – though, in some circumstances, it may allow more time for compliance.

For example, if the DA has issued a stop order against a use that requires a development permit, the SDAB should not delve into whether to issue a permit; rather, it should confine its enquiry to whether the landowner was required to obtain one. Similarly, if the DA has issued a stop order because a landowner has not complied with the conditions of a development permit, the SDAB should not delve into whether the condition should be modified; rather, it should confine its enquiry to whether the landowner is in compliance.

As with other appeals, if an LUB amendment is required to change the land use designation or add the use to the district, the SDAB cannot make this change; rather, the landowner must go through the regular planning application process for the necessary LUB amendment.

4.3.3 Stop Orders versus Enforcement Orders

Stop orders issued under s. 645 are different from municipal enforcement orders issued under ss. 545 and 546. Section 545 orders relate to legislative or bylaw contraventions such as illegal dumping, weeds, abandoned vehicles, etc., while s. 546 orders deal with unsightly or dangerous properties. These orders can only be appealed to council (or an appeal committee established by bylaw), and not to the SDAB.[119]

[118] *Legacy Inc v Red Deer (City)*, 2020 ABCA 105. However, a municipality cannot use a stop order to prevent a legally non conforming use.

[119] *MGA* s. 203(2)

4.4 OTHER DECISIONS OF DEVELOPMENT AUTHORITIES

The Courts have directed that what constitutes an appealable decision of a DA should be given a broad interpretation. Examples of other DA decisions that give rise to a right of appeal are:

- a decision as to whether a development permit has expired;[120] and
- a decision as to whether the conditions attached to a development permit have been fulfilled.

4.5 DIFFERENCES BETWEEN DEVELOPMENT AND SUBDIVISION APPEALS

There are differences between subdivision appeals and development appeals under the *MGA*. One important distinction is how the SDAB is required to treat statutory plans. When hearing a development appeal, the SDAB must comply with any applicable statutory plan; in contrast, when hearing a subdivision appeal, the SDAB must only have regard to any applicable statutory plan. The key differences are summarized in the following figures.

Figure 5 SA and SDAB Variance Powers

Subdivision Authority	Policy	SDAB
✗	MGA	✗
✗	Regulation	✓
✗	LUP	✗
✗	ALSA	✗
✗	Statutory Plans (IDP, MDP, ASP)	✓
✗	LUB Use	✗
✓*	LUB Standards	✓

[120] *MGA* s. 640(2)(c)(v) requires the LUB to provide for how long development permits remain in effect. The LUB may also regulate times for commencement and completion of a development, and include provisions for temporary permits

Figure 6 DA and SDAB Variance Powers

Development Authority	Policy	SDAB
✗	MGA	✗
✗	Regulation	✓
✗	LUP	✗
✗	ALSA	✗
✗	Statutory Plans (IDP, MDP, ASP)	✗
✗	LUB Use	✗
✓**	LUB Standards	✓*
✗	Gaming Liquor and Cannabis Act	✗

* The proposal must 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.[121]

**In addition, the above, the LUB must specifically grant authority for the DA to vary.[122]

[121] *MGA* ss. 654(2), 640(6), and 687(3)(d)

[122] *MGA* s. 640(6)

Figure 7 Conditions of Subdivision and Development

Subdivision	Condition	Development
✓	Ensure that Part 17 of *MGA*, *Regulation*, statutory plans, LUB are complied with	✓*
✓	Off Site Levy (assuming it is permitted in the OSL bylaw)	✓*
✓	Development Agreement (ss. 650 and 655)	✓*
✓	Development Agreement to construct or pay for construction of a road required for application	✓*
✓	Development Agreement to install or pay for installation of a public utility necessary for the application	✓*
✓	Dedicate Land for Roads (ss. 661, 662)	✗
✓	Dedicate Land for Public Utilities	✗
✓	Dedicate Land for Reserves	✗
✗	Require approval of a third party (e.g. adjacent landowner)	✗
✓	Require compliance with specific standards within another agency's jurisdiction or expertise (e.g. engineering standards)	✓*

* Conditions should be listed in the LUB and must be specifically listed for permitted uses.

5 APPEAL PROCEDURES

Learning Objective: By the end of this chapter, you will be able to

- ✓ Understand the conduct of an appeal, including:
  - ➢ types of evidence, including oral and written, and how it is introduced;
  - ➢ how to communicate with hearing participants, and the panel's role in asking questions;
  - ➢ the hearing process, and the roles and responsibilities of participants in the process.
- ✓ Evaluate evidence and apply legislation and planning considerations to facts.
- ✓ Understand the importance of case law and previous decisions.
- ✓ Make and write effective written decisions.

SDABs must ensure they meet the procedural requirements imposed by the *MGA*, SDAB bylaws, other legislation, and common law rules of procedural fairness. This chapter discusses these requirements, which can usually be satisfied by following well-established procedures designed to ensure hearing participants have full opportunity to make their case and respond to the case against them.

If the legislation is silent, administrative tribunals, including SDABs, are the "masters of their own procedure" – that is, they have flexibility to choose procedures best suited to their context. The rationale behind this rule is that each administrative tribunal operates in its own specialized area of jurisdiction and has a unique understanding of the practical realities that affect its proceedings – e.g., available resources, industry practice, and stakeholder expectations. As long as the tribunal observes the legislated requirements and basic common law principles of procedural fairness, it may select procedures it considers appropriate to achieve efficiency and fairness.

The rules an SDAB adopts will only be effective if participants understand them. SDABs should educate participants about their procedure rules – for example, by publishing them on their websites, providing relevant information with appeal and hearing notices, and ensuring staff can explain procedures to participants. Ensuring all parties have a solid understanding of their respective roles and responsibilities helps them to plan and prepare effectively, avoids delay, and increases confidence in the hearing process.

5.1 FILING AN APPEAL

The *MGA* sets basic requirements for notices of appeal. The SDAB bylaw and LUB may also include procedures related to filing an appeal.

5.1.1 LPRT versus SDAB

Some subdivision appeals must be heard by the LPRT and not the SDAB. The LPRT hears appeals where the land that is the subject of the application (land in the current titled area including both the proposed lot(s) and the remnant land) is located:[123]

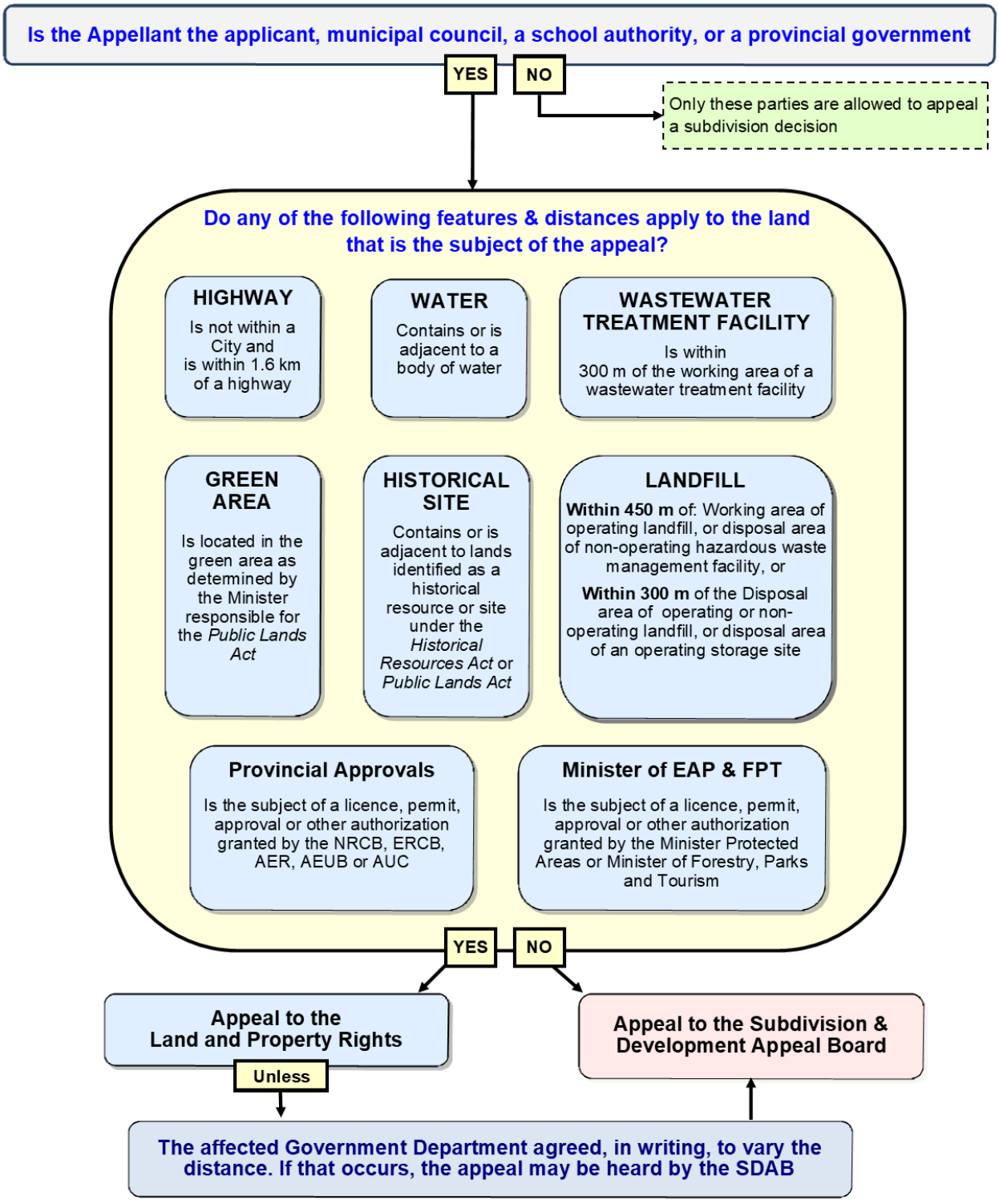
- in the Green Area, as classified by the Minister responsible for the administration of the *Public Lands Act;*
- adjacent to or contains all or a part of the bed and shore of a body of water;
- adjacent to or contains all of part of land identified as a historical resource or site under the *Historical Resources* Act or *Public Lands Act;*
- outside of a city and is located within 1.6 km of the centre line of a highway right of way;
- within 300 m of the working area of an operating wastewater treatment plant (sewage treatment facility);
- within 300 m of (i) the disposal area of an operating or non-operating landfill or (ii) the working area of an operating storage site;
- within 450 m of (i) the working area of an operating landfill or (ii) the working area or disposal area of an operating or non-operating hazardous waste management facility;
- is the subject of a licence, permit, approval, or other authorization granted by the NRCB, ERCB, AER, AEUB, or AUC; or
- is the subject of a licence, permit, approval, or other authorization granted by the Minister of Environment and Protected Areas or the Minister of Forestry, Parks and Tourism, or an authorization granted under an act for which they are responsible.

If an applicant for subdivision files a notice of appeal with the wrong board, the board must refer the appeal to the appropriate board. The appropriate board must hear the appeal as if the notice of appeal had been filed with it on the date the appropriate board receives the notice of appeal from the first board.[124]

[123] *MGA* s. 678(2) and *Regulation* ss. 26 and 29. However, if the relevant government department has agreed in writing to vary the distance specified in the *Regulation*, then the appeal is still heard at the SDAB.

[124] *MGA* s. 678(5)

Figure 8 Where to File a Subdivision Appeal [125]



[125] The Minister may pass regulations that can alter the provincial appeal jurisdiction, such as the *Regulation*.

5.1.2 Filing a Notice of Appeal

The SDAB clerk needs a variety of information to process subdivision and development appeals. Some of the requirements are contained in the *MGA* and apply to all SDABs; others may be established by bylaw or in procedure rules created by the SDAB.

(A) *MGA* Requirements

The *MGA* requirements to file subdivision and development appeals differ slightly from one another. For subdivision appeals, s. 678(4) requires the notice of appeal to 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.

For appeals of development permit decisions, stop orders, or other DA decisions, s. 686(1) requires the notice of appeal to contain:

- reasons for appeal.

(B) Additional Requirements

The appeal requirements listed in the *MGA* are not exhaustive, and SDABs will inevitably need more information to process appeals.

Appeal forms are commonly used to gather additional information required to facilitate the application process. Such forms prompt appellants to provide reasons as well as relevant contact information, land descriptions, and other necessary information. Some SDABs may accept a letter to the SDAB chair or clerk containing the same information that would be expected on a notice of appeal. SDABs may also require the payment of a fee to initiate the appeal process.

The SDAB cannot hear an appeal that is filed late or where the filing fee is unpaid. However, an appeal will still be valid despite an irregularity or omission in the land description, provided that the location of the lands can be determined.[126] Similarly, although the *MGA* requires notices of appeal to contain reasons for the appeal, the requirement should not be interpreted to prevent an appellant from arguing grounds or issues not specifically identified in the notice of appeal.

[126] *Alberta Snyders Holdings v Newell (County No. 4) Subdivision and Development Appeal Board*, 2002 ABCA 282

5.2 STANDING TO APPEAL

The SDAB can only hear appeals filed by those who have the legal right, or "standing", to appeal. If someone who does not seem to have standing files a notice of appeal, the clerk should alert the panel and advise the parties to be prepared to address standing as a preliminary issue. The SDAB panel will then hear the parties' submissions about standing before deciding whether it can proceed with the appeal. A party may raise this issue before or at the hearing as a preliminary matter.

For **subdivision appeals**, the following parties can appeal an SA's decision:[127]

- the applicant for subdivision (agent or landowner);
- a government department;[128]
- Council, if the SA is not Council, MPC, or a designated officer; and
- a school board, but only with respect to the allocation of reserves.

For **development appeals**, the following parties can appeal a DA's decision:[129]

- the person applying for the permit or affected by a stop order; and
- any person affected by an order, decision, or development permit.

The SDAB may have to determine if a person has a sufficient interest in a proposed development to be "affected" so as to have standing. Each set of circumstances must be judged on its merits. Giving standing to anyone who claims to be affected risks allowing busybodies to waste resources and unnecessarily delay development. On the other hand, standing should be granted to those who have real interests that may be substantially impacted. Affected persons would typically include the owner/tenant of the land or of land in close proximity, and those with significant financial interests that may be affected by the development. The caselaw gives some guidance on this topic, but does not contain a comprehensive definition of "affected".[130]

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[127] *MGA s.* 678(1)

[128] The government department can appeal only if the *Regulation* requires that government department to be referred the subdivision application

[129] *MGA s.* 685

[130] See for example *Pension Fund Properties Limited v The Development Appeal Board of Calgary, et al*. 1981 ABCA 195 and *Spruce Grove Gun Club v Parkland (County) Subdivision and Development Appeal Board,* 2015 ABCA 382

5.3 TIMELINES FOR FILING APPEALS

The *MGA* sets deadlines to file appeals. If a notice of appeal appears to be late, the clerk should alert the panel and advise the parties to be prepared to address lateness as a preliminary issue. If the SDAB panel finds the appeal was filed late, it cannot proceed with the hearing as it has no authority to extend the timelines. While this result may appear harsh in some circumstances, it is a result of the basic rule that statutory decision makers such as the SDAB can only exercise power delegated to them by the Legislature. Since the *MGA* sets specific timelines to file an appeal and does not empower SDAB to change those timelines, the SDAB has no power to hear appeals that are filed late.

Although panels cannot change the legislated appeal deadline, they may still have to decide if an appeal has actually been filed late. This task will involve deciding (1) when the circumstances were fulfilled to trigger the start of the appeal period and (2) when the appeal was actually filed. If the parties disagree, the panel will have to hear submissions from the parties and make factual findings on both these points. For example, if the appeal deadline is expressed to occur a certain number of days after notice of the decision to be appealed, the panel may need to determine when the appellant had notice of the decision – a determination may require consideration of competing evidence from the parties.

Deciding whether an appeal has been filed late may also involve interpreting the words of the legislation that set the deadline. Default rules about interpreting provisions that specify periods of time are found in s. 22 of the *Interpretation Act.*

5.3.1 Subdivision Appeals

An SA decision may be appealed by filing a notice within 14 days after receipt of the written decision or deemed refusal.[131] The *MGA* presumes decisions sent by regular mail or email to be received 7 days from the date the decision was sent.[132]

5.3.2 Development Appeals: Permits, Stop Orders, and Other Decisions

The applicant for a development permit must file their notice of appeal within 21 days of (a) the date of the written decision on the application, or (b) the date of the deemed

[131] *MGA* ss. 678(2) and 681

[132] *MGA* ss. 678(3) and 608(2)

refusal.[133] Similarly, the person affected by a stop order[134] must file their notice of appeal within 21 days of the date the order was made.[135]

As previously discussed, the *MGA* also allows any person affected by a DA's decision to appeal.[136] How and when these additional persons are to receive notice is usually set out in the LUB, so their 21 day appeal period will runs from the date they received notice in accordance with the LUB.[137] Typically, the LUB will require notification by mail, posting a notice on-site or at the municipal building, or publishing in a local newspaper. Posting to a municipal website may also trigger the beginning of the appeal period, provided it is the method specified in the LUB.[138]

In some cases, the LUB is silent about how or when affected persons are to receive notice about a decision. For example, some LUBs require notice for discretionary use permits, but not for permitted use permits. In such cases, the caselaw suggests the appeal period begins when the interested party has actual notice of the permit or decision, or ought to have realized it has been issued.[139]

5.4 PRE-HEARING PROCEDURES

A lot of important work takes place before the hearing, much of which falls to the clerk. This work lays the foundation for a smooth hearing and builds public confidence in the SDAB's process. It also prevents legal challenges to the ultimate decision by ensuring parties receive appropriate notice as required by the *MGA* and the rules of procedural fairness.

5.4.1 Time Limit to Hold a Hearing

Once an appeal is filed, the SDAB must hold a hearing within 30 days.[140] In some circumstances, it may not be practically possible for the parties to proceed that quickly – for example, in very complex cases. To deal with this scenario, some SDABs formally

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[133] *MGA* s. 686(1)(a)

[134] The owner, the person in possession of the land or building, and the person responsible for the contravention per *MGA* s. 645(2))

[135] *MGA* s. 686(1)(b)

[136] *MGA* s. 685(2)

[137] *MGA* s. 640(2)(d) and 686(1)

[138] In *Grande Prairie (City) v Grande Prairie (County No.1)*, 2022 ABCA 191, the Alberta Court of Appeal found an appeal filed more than 21 days after publication of the decision on the County's website was out of time, since the LUB directed the DA to provide notice of its decision in that way.

[139] See for example, *McCauley Community League v. Edmonton (City)*, 2012 ABCA 86 at para 36; see also, *Coventry Homes Inc v Town of Beaumont*, 2001 ABCA 49

[140] *MGA* s. 680(3) - for subdivision; and 686(2) - for development

open the hearing to comply with the 30-day requirement and adjourn to a later date requested by the parties.

5.4.2 Notice of Hearing

Responsibility for providing notice falls to the SDAB clerk, who prepares and sends out the notices to meet the legislated notice requirements.

The purpose of the hearing notice is to ensure those affected by the application know the time and location of the hearing and have a reasonable time to prepare. Anyone the legislation or LUB says is entitled to notice is presumed to be affected and must be given an opportunity to speak.

Those who are not entitled to notice may still have an interest in the outcome of the hearing and should be given an opportunity to speak to the extent of their interest. For subdivision hearings, the SDAB is not *required* to hear from anyone other than the applicant, those entitled to notice under s. 679(1) of the *MGA*, and adjacent landowners;[141] however, this provision does not preclude the SDAB from hearing other interested persons as well.

Usually, the appellant, the DA or SA, and the landowner (if different from the appellant) are most heavily affected and can be expected to make the most extensive presentations. Other affected parties such as area landowners and interested members of the public typically make shorter presentations later in the proceedings to explain how the application affects them.

(A) How Much Notice Is Required?

The *MGA* requires the SDAB to give “at least” 5 days’ notice in writing for both subdivision and development appeals.[142] To meet this requirement, the notice should be sent at least 12 days before the hearing, since the 5 days is presumed to run from the date of receipt, and the *MGA* presumes receipt 7 days from the date of mailing or emailing. Email alone can only be used for parties who have agreed to receive documents by email.[143]

(B) Who Is Entitled to Notice?

Subdivision Appeal Hearings The hearing notice must be provided to:[144]

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[141] *MGA* s. 680(1)

[142] *MGA* ss. 679(2) and 686(3)

[143] *MGA* s. 608

[144] *MGA* s. 679(1)

- the applicant for subdivision approval;
- the subdivision authority that made the decision;
- if the land that is the subject of the application is adjacent to the boundaries of another municipality, that municipality;
- any school board to whom the application was referred;
- every Government department that was given a copy of the application under the *Regulation*; and
- adjacent landowners.

Adjacent land means "land that is contiguous to the parcel of land that is being subdivided". It includes land that would be contiguous if not for a highway, road, river or stream and any other land identified in the LUB as adjacent land.[145]

Development Appeals The hearing notice must be provided to:[146]

- the appellant;
- the DA whose order, decision, or development permit is the subject of the appeal;
- the owners required to be notified under the LUB; and
- any other person the SDAB considers to be affected by the appeal and should be notified.[147]

In some cases, it may not be apparent who is affected by an appeal until the hearing convenes. In those situations, the SDAB should adjourn the hearing to allow the clerk time to give all parties and affected persons at least 5 days' notice of the new hearing date (or effectively at least 12 days from the date of mailing, as discussed above).

Deemed Refusals of Incomplete Applications The hearing notice requirements for appeals of deemed refusals for incomplete applications are less stringent than for other types of appeal, since in these cases the SDAB's mandate is limited to determining whether the information provided by the applicant to the SA or DA was complete and does not involve consideration of the merits of the application.[148]

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[145] *MGA* s. 616(a)

[146] *MGA* s. 686(3)

[147] SDABs typically notify landowners within a standard radius of a development under appeal. However, the Alberta Court of Appeal has cautioned that blind reliance on such general criteria may not be sufficient to ensure proper notice in all cases; as such, the SDAB may still need to consider whether a person who does not receive notice under the general criteria is an affected person to whom notice should be given (*587901 Alberta Ltd. v Calgary (City),* 2007 ABCA 421, at para 15).

[148] If the SDAB determines the application was complete, the SA or DA must process the application following normal process. Any decision of the SA or DA may be appealed once it has been issued.

For appeals of deemed refusals of incomplete subdivision applications, notice need only be provided to the subdivision applicant and the SA (and not an adjacent municipality, school board, Government department or adjacent landowners).[149] Likewise, for appeals of deemed refusals of incomplete development applications, notice need only be provided to the applicant and the DA (and not to the owners required to be notified under the LUB).[150]

5.5 HEARING PROCEDURES

Some SDABs prepare guides explaining the SDAB's process, how to find previous decisions, and how to make submissions. These guides can be published on the SDAB website and/or attached to hearing notices or other correspondence to ensure parties and affected persons understand their roles and responsibilities before the hearing.

5.5.1 Hearings are Open to the Public

SDAB appeal hearings are open to the public. However, s. 197(2.1) of the *MGA* specifically allows an SDAB to deliberate and make its decisions in meetings closed to the public - sometimes referred to as *in-camera*. This enable SDABs to have candid discussions and deliberations about the merits of an appeal. A panel may also go *in camera* to obtain independent legal advice.

5.5.2 Dealing with the Media

SDABs should be prepared to deal with questions from the media. Many SDABs have policies that set parameters around what may be discussed and who will speak for the SDAB. In this context, when somebody from the media asks a member or a clerk about an appeal, they should refer the questioner to the spokesperson.

Apart from acknowledging whether a particular case is before it, responses to questions should be limited. Discussing the details of a case before the board may affect the SDAB's objectivity and create a perception of bias. Recognizing that the media often seeks controversial aspects of a situation, it may be useful for the SDAB spokesperson to take training about how to deal with the media.

Decisions issued by the SDAB speak for themselves. Members and clerks should avoid publicly commenting on, criticizing, or defending SDAB decisions since such behaviour risks undermining the board's neutrality and credibility.

[149] *MGA* s. 679(3.1)

[150] *MGA* s. 686(4.1)

5.5.3 Types of Hearings

While parties must have a fair opportunity to make their case and respond to the case against them, this goal may be achieved in many cases without holding a traditional in-person hearing.

(A) Common types of hearing

The three common alternatives to an in-person hearing are:

1. written submissions;
2. telephone; and
3. videoconference.

Written submissions may be effective if the issue is well defined and unlikely to require questioning from the panel or parties – e.g., for preliminary matters or postponement requests. Telephone hearings allow for oral submissions and questioning and can be used along with written submissions; however, they may not be suitable for complex hearings or where there are multiple parties involved.

Video conferences are the closest alternative to traditional in-person hearings; they also tend to reduce reliance on paper submissions since documents can be called up electronically and displayed for simultaneous viewing. Videoconferences have become more common since the COVID 19 pandemic and its associated risks and restrictions on public gatherings.

SDABs that opt for videoconference hearings should make sure everyone involved has the appropriate equipment and internet connections and understands how to use the platform. To this end, information about videoconference procedures and requirements should be distributed along with hearing notices and published on the SDAB website. It is also good practice to schedule time before the hearing to ensure technical issues are resolved and parties understand the electronic controls and the expectations surrounding their participation.

All of the alternative types of hearing have the advantage of minimizing travel. In some cases, only some of the parties may wish to attend in person, while others prefer another mode of participation. In such cases, the SDAB can consider holding hearings where parties appear in different ways. Such “hybrid” hearings can strike an appropriate balance between procedural fairness and access to hearings when personal attendance is not practical. However, before departing from their normal hearing procedures, the SDAB should examine the SDAB bylaw and any other regulations that may give direction as to appropriate hearing modes and seek input from all primary parties as to whether the new procedures proposed are appropriate.

5.5.4 Preliminary versus Merit Hearings

In some cases, there may be procedural or jurisdictional matters that are more efficient to deal with before hearing submissions about how the panel should decide the application: e.g., a postponement request, or a question about jurisdiction, late filing, standing to appeal. These types of procedural or jurisdictional matters are often called "preliminary issues", in contrast to the substantive or "merit" issues.

In some cases, the SDAB may arrange a separate preliminary hearing to deal with preliminary issues flagged ahead of time, leaving the substantive issues to be heard at the "merit hearing", which is scheduled for a later date. Depending on the complexity of the preliminary issues, disclosure may be ordered before the preliminary hearing begins to outline the party positions on those issues. Usually, the order of presentation is for the party asking for a preliminary ruling to go first so the other parties can provide their positions or comments in response.

5.5.5 Order of Proceedings for Merit Hearings

The order in which parties make presentations varies from one SDAB to another; however, a common process for subdivision or development permit appeals is set out below. The panel can also make adjustments depending on the number of parties before it and the scope of their intended submissions. If you do make adjustments, make sure you discuss them with the parties, so no one is surprised or caught off guard. The objective is to give all the parties a fair opportunity to make their case and respond to the other side.

- The clerk or chair introduces the appeal (name of appeal, file number) and advises parties recording equipment is operating, if applicable.[151]
- The chair has the panel introduce themselves, describes the SDAB's procedures, has the parties introduce themselves, and asks if there are any objections to the panel or other preliminary issues.[152]
- If there are no preliminary issues, the panel will proceed to hear from the parties about the merits or substance of the appeal. The chair will invite parties to present their cases in the order described below. After each party's presentation, the other parties may ask questions. The purpose of questioning is to bring out or clarify evidence rather than for the parties to argue their case. The panel may then have questions of its own, or it may defer all its questions until all the

[151] A sample script for the chair's remarks is in Appendix 5

[152] If there is a preliminary issue, the chair asks the party raising it to explain their position, and then gives the other hearing participants an opportunity to respond. If the issue requires a ruling, the chair may call a brief adjournment to let the panel to deliberate in private, and will deliver the ruling when the hearing reconvenes.

evidence is in. If the panel does ask questions, parties should all receive another opportunity to address anything new arising from them.

- The DA, SA or other planning and development staff explains the decision and supporting rationale. *(The other parties usually question the DA or SA once they are done, and board may follow with questions of its own).*
- The applicant for subdivision or development explains why the application should be allowed and the appropriateness of any disputed conditions. *(The other parties usually question the applicant once they are done, and board may follow with questions of its own).*
- The appellant(s), if someone other than the applicant, explain why the SA or DA decision should be varied or reversed. *(The other parties usually question the appellant once they are done, and board may follow with questions of its own).*
- Other affected municipalities, school authorities, government, and regulatory agencies explain how the public interest they represent is affected by the decision and how the SDAB decision should reflect that interest. *(The other parties usually question each authority once they are done, and board may follow with questions of its own).*
- Persons supporting appellant explain their positions. *(The other parties or the board may have questions for those who have spoken in support, depending on the scope of presentation).*
- Persons opposing appellant explain their positions. *(The other parties or the board may have questions for those who have spoken in support, depending on the scope of presentation).*
- The appellant has an opportunity to respond to issues raised by the other parties.

➢ SDAB members ask any final questions to clarify evidence presented or request additional information; parties have an opportunity to address anything new arising from SDAB's questions.

➢ The parties who made substantial submissions may make closing remarks and argument to summarize their evidence and positions and explain what they want the SDAB to do, with the last word to the appellant: i.e.:

- First, administration.
- Next, the applicant and other parties involved.
- Finally, the appellant.

- Chair confirms all parties have had a fair opportunity to present their cases and closes the hearing. (If the panel believes further information may be required, the chair may adjourn the hearing instead and close it by letter once the panel is satisfied it has the necessary information and all parties have had a chance to address the additional information.)

5.5.6 Roles and Responsibilities of the Participants in the Hearing

The typical mode of presentation to an SDAB is by oral presentation, often supplemented by written submissions and/or PowerPoint or other visual presentations. Everyone who has a right to receive notice of the appeal has a right to make presentations, but many affected persons may choose not to participate or make limited submissions. If many affected landowners wish to speak, the panel may impose time limits for presentations or request landowners with common positions to choose a representative to speak for all.

In general, participants in an appeal before the SDAB have the following roles and responsibilities.

(A) Approving Authority (i.e., the SA or DA Acting as Respondent)

The respondent is typically either the SA or DA, usually represented by a Planning Officer, Development Officer, or lawyer. The representative of the approving authority will describe the steps the authority followed to make their decision and may lead supporting evidence presented in writing or by a witness.

The respondent will typically:

- explain the basis for the original decision;
- provide copies of relevant legislation and explain in plain language how it affects the application. This role requires consideration of the *MGA,* LUP, or regional plan, *Regulation,* statutory plans, LUB, and other relevant municipal documents (polices, engineering standards, long-range projections);
- provide copies of any relevant cases, and explain how they apply;
- 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

- describe the standards and the test for relaxation or variation of the standards in the LUB.

(B) Applicant for Subdivision or Development Permit

The applicant is the person who applied for a subdivision or development permit and may be the appellant or a respondent. In either case, the applicant's goal is to explain why the SDAB should allow their application and the appropriateness of any conditions – or in the case of a stop order, why the stop order should not apply.

(C) Appellant

The appellant gives evidence and argument to persuade the panel to vary or reverse the SA or DA's decision.

Ideally, the appellant will review the application and explain how the reasons provided in the notice of appeal (and other submissions, if any) support the requested change to the SA or DA's decision. The appellant should review the relevant legislation, plans, and bylaws to identify what the SDAB should take into consideration; in addition, supporting evidence (oral testimony, maps, reports, and so on) should show how the facts support the requested decision in view of those considerations.

(D) Adjacent Landowners

An adjacent landowner may be an appellant or an interested person in the development appeal context. Adjacent landowners have no right to appeal subdivision decisions and can only participate if someone else files an appeal. The LUB may contain provisions to help identify land considered as adjacent for notification purposes.

The extent of an adjacent landowner's participation in a development appeal will likely depend on whether they are appearing as appellant or as another interested party. Either way, they should explain how the application affects the use and value of their property and how it may or may not meet requirements in the relevant planning documents and legislation.

(E) Other Affected Persons

Sometimes, a member of the public who is not a party or adjacent landowner asks to speak at a hearing. SDABs are generally flexible when determining whether a person has an interest in a planning and development matter and tend to be more inclusive. The SDAB may decide not to hear a person if the SDAB determines the decision will not affect them or may limit the scope and length of their presentations.

(F) Agents or Representatives

Parties often rely on others to speak for them. These agents may include lawyers, consultants (planner, engineer, architect, appraiser, surveyor or real estate agents), or others who can speak for the party they represent.[153] In many cases, representatives will both advocate for a party and provide factual or opinion evidence to support their position.

A complication sometimes arises when one party retains legal representation shortly before the hearing. In such cases, other unrepresented parties often ask for a postponement so they can also retain legal counsel. The clerk can help to avoid such delays by letting parties know when legal representation has been retained.

(G) SDAB Legal Counsel

The SDAB may retain a lawyer to provide training, facilitate panel deliberations, give procedural advice, assist with decision drafting, review decisions, or provide other similar services. This lawyer should be independent from counsel for the municipality (and other parties too). SDAB panels may seek advice from counsel at any time, and counsel may attend hearings to advise panels on issues as they arise. Given the associated expense, most SDABs do not retain counsel for every hearing; however, many find it useful to have a process for panels to access a lawyer familiar with planning and development matters when the need arises.

When counsel is retained to advise on a specific appeal, the panel assigned to hear it must still conduct the hearing and make the decision. In other words, the SDAB must not delegate or abdicate its role or responsibilities to legal counsel (or anyone else). Similarly, SDAB administration should not impose a rigid policy requiring legal review despite the panel's wishes.

Advice from counsel is covered by solicitor-client privilege. As such, panels do not have to disclose advice they receive about specific appeals. However, if the advice raises a material issue the parties have not addressed, the panel should identify the issue for the parties and give them an opportunity to comment. Also, parties should be advised of SDAB counsel's role if counsel attends the hearing.

[153] See Guidebook – s. 1.2.1

5.5.7 Presentations at the Hearing

The SDAB must hear from the SA or DA, and any person entitled to notice of the appeal.[154] It may also hear from persons not entitled to notice if persuaded they have a material interest in the outcome of the decision.

While presentations vary in sophistication, most will be a mix of opinions, factual evidence, and argument. The SDAB must listen to each presentation to determine whether the evidence establishes facts relevant to the decision it must make. Whether a fact is relevant will depend on whether it helps show the legal requirements required to obtain a subdivision or development have been fulfilled, including whether a condition of approval is appropriate – in the land use planning context, these requirements are established under the *MGA*, statutory plans, LUBs, etc. Parties should be able to explain how their evidence relates to the legislative framework.[155]

Where parties introduce evidence about relevant facts, panels must decide whether the evidence is sufficiently persuasive to accept the alleged facts as true. For example, parties may make conflicting claims about the effect development will have on adjacent property values. A simple allegation that values will decrease would be less persuasive than a claim supported by evidence about how similar developments have affected surrounding property values in the past: e.g., sales evidence, evidence about increased traffic, loss of privacy, etc.

(A) Written Submissions

Some SDABs read shorter submissions aloud at the hearings; alternatively, the chair may simply acknowledge the written submissions at the hearing and ensure all parties have received a copy. It is good practice for the panel to review presentations before the hearing to understand the issues. However, a prehearing review of submissions must not become prejudgment. Panel members must keep an open mind and allow the parties to use their best efforts to persuade them during the hearing.

(B) Technical Information

If technical information the SDAB needs to make a decision was not presented by the parties at the hearing, the SDAB could either refuse the application or adjourn the hearing and request the information be produced. The report or information would be circulated to all parties for comment and rebuttal. The panel would generally review the

[154] *MGA* ss. 679(1)(b), 680(1)(a) and 687

[155] See this Guidebook at section 1.1.1 for some examples of irrelevant facts sometimes raised at a hearing

submissions prior to reconvening, at which point the technical expert should ideally present their report and be available for questions.

In theory, the SDAB could also retain the services of an outside consultant for assistance in interpreting the evidence; in such cases, the SDAB must still make the decision and not simply delegate its responsibility to the expert. If the expert produces a report, it must be provided to the parties for comment and rebuttal.

(C) Questions

At the hearing, parties can ask questions of other parties. Generally, questions should be asked through the chair so the chair can maintain control and discourage confrontational or accusatory questions.

5.5.8 Preliminary Issues

Before getting to the merits of a case, an SDAB may have to decide how a hearing is to proceed or what evidence is to be admitted (procedural issues), or if it has the power to deal with the appeal at all (jurisdictional issues). Preliminary issues should be decided as early as possible to avoid wasted time and confusion.

A few common examples of preliminary issues are:

- the appeal was filed late;
- 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 if the appellant has a right to appeal;
- standing of interested persons;
- adjournment requests (often to add or review disclosure or to accommodate availability of parties);
- objection to a member because of reasonable apprehension of bias;
- to address quorum requirements;
- to determine if the SDAB is the proper board to hear the appeal; and
- other jurisdictional issues (for example, SDAB's ability to make decisions about permitted uses or development in direct control districts)

If the SDAB becomes aware of an important preliminary issue the parties have not identified (e.g., jurisdiction or lateness), it should alert the parties as soon as possible so they can prepare submissions.

5.5.9 Limits to What SDABs Can Do

The SDAB has no jurisdiction to change bylaws, and must use the LUBs and statutory plans in effect as of the date the decision. It is municipal council's role to create and amend statutory plans and bylaws in accordance with the procedures established in the *MGA*.[156]

As discussed in Section 2 of this Guidebook, land planning involves many interrelated statutes, regulations, regulatory bodies, and decision-makers. It is important to understand which rules or decisions take precedence in cases where there would otherwise be conflict. A few examples of such cases are:

- The *MGA* exempt highways, roads, wells or batteries, pipelines, and confined feeding operations from Part 17 of the *MGA*.[157] Accordingly, the SA, DA, and SDAB play no role in the development and subdivision process for such uses or improvements.
- 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, LUB, or municipal subdivision or planning decisions.[158] Examples of developments under the jurisdiction of these regulatory boards include confined feeding operations, sulphur storage and processing facilities, and power plants, including wind turbines.
    - The SDAB can consider applications for the above and issue a decision, but it cannot override the provincial decision. It can add conditions to address other relevant planning considerations that were not part of the previous approval.[159]
- A condition of a license, permit or authorization granted by the Lieutenant Governor in Council, a Minister or a provincial agency prevails over any conflicting condition of a development permit.[160]

[156] *MGA* Part 13, division 3 covers applications to the Court of King's Bench regarding challenges to bylaws and resolutions

[157] *MGA* s. 618

[158] *MGA* s. 619(1)

[159] See for example *Borgel v Paintearth (Subdivision and Development Appeal Board)*, 2020 ABCA 192

[160] *MGA* s. 620

- Subdivision and development appeals where the land is subject to a provincial interest go to the LPRT rather than the SDAB.[161] An SDAB that receives an appeal within the LPRT's jurisdiction must forward it there, and vice versa.
- Some developments and subdivisions fall under federal authority and do not require municipal approvals. The most common examples are cellular telephone towers, federal railways, or airports and related facilities, which are entirely under federal jurisdiction.
- The SDAB's authority over development permit appeals for direct control district lands is limited when council is the decision-making authority.
- Development permit appeals for a permitted use is limited to cases where the LUB is relaxed, varied, or misinterpreted.

5.5.10 Evidence at Hearings

SDAB hearings are *de novo*, meaning the SDAB is not restricted to reviewing and assessing the SA or DA decision for errors apparent from the record. Rather, it hears and weighs evidence to reach its own conclusion. The evidence may include new material not presented to the SA / DA. The *de novo* nature of the SDAB hearing means it can cure almost all errors that might have occurred at the development officer stage, without having to review the development officer's decision or remitting the decision if there is an error.[162]

SDABs can accept any evidence they consider proper and are not bound by the strict rules of evidence that courts apply.[163] However, there are limits to what the SDAB can admit. For example, evidence must come from the parties, and not the panel, since the panel's role is to listen to evidence and weigh it – not to act as both judge and witness by relying on evidence they gathers themselves. This rule does not prevent the SDAB from asking parties for additional evidence to ensure the application meets legislated requirements, nor does it prevent the panel from relying on its expertise to weigh or interpret the evidence provided.

It is common practice for the clerk to provide the panel with an appeal package before the hearing including the original application to the SA or DA, the decision appealed, the notice of appeal, the DA or SA's report, and any written submissions or correspondence

[161] See *MGA* s. 678 and Chapter 5, Figure 7 as well as s. 685

[162] *Mahal & Sons Inc v Edmonton (City of)*, 2022 ABCA 22. The matter need only be remitted to the SA or DA in very rare cases, such as where SA or DA's decision is tainted by bias, or where the SDAB decision would inevitably perpetuate an error made by the SA or DA.

[163] *MGA* s. 629

about the hearing. The clerk should also make this material available to the parties before the hearing to ensure procedural fairness and so they can prepare effectively.[164]

5.5.11 Entering Exhibits

The panel enters the appeal package as an exhibit at the beginning of the hearing. The parties then present all the evidence relevant to the appeal, which may include additional evidence the SA or DA did not have when it made the original decision. If additional documentation is brought forward, the SDAB should mark and enter it as an additional exhibit(s). The usual practice is to mark exhibits sequentially, often with a prefix or suffix to denote which party submitted it (e.g., A for appellant, R for respondent, etc.).

5.5.12 Keeping the Record Clear

The chair should control proceedings to prevent participants from speaking over each other so that comments are clear and easily recorded. Although the chair is responsible for controlling the proceedings, the clerk is responsible for keeping the record. Therefore, the clerk may need to intervene during the proceeding – e.g., to ensure names are spelled accurately for the record or exhibits are marked properly. If there is no recording, the minutes prepared by the clerk should accurately communicate what occurred at the hearing. The clerk should ensure there is a copy of each exhibit free of any comments or marks made by the panel or clerk other than marking the exhibit number.

5.5.13 Panel Member Questions

Members can and should ask parties for clarification about evidence if it seems unclear or its purpose is not apparent. The SDAB must also be satisfied sites are suitable for their intended purpose before subdivision and ensure safe and orderly development. Therefore, if the parties have not addressed circumstances that bring these issues into question, the panel may ask for additional information. In the development context, the panel should also be satisfied the intended use meets definitions of discretionary or intended uses in the LUB, and that important public interests (e.g., safety) have been addressed.

Having said this, questions can be disruptive and may result in a perception that members are making the case for one of the parties. Therefore, members should consider deferring questions if it is likely that one of the parties will provide the information later in the proceedings. If questions from the panel bring out new evidence

[164] *MGA* s. 686(4) requires development and stop order appeals materials to be made available before the hearing for public inspection. A similar procedure is good practice for subdivision appeals.

or issues that may affect its decision, all parties should be given a fair opportunity to comment and respond.

The following are reasons to ask questions:

- clarify the information presented;
- assist in understanding the information presented;
- obtain information about a material issue; and
- minimize presentation of repetitive or irrelevant material.

Questions should be open-ended, project a neutral and respectful tone, and be relevant to the matter before the board.

Open-ended questions Good questions help clarify facts and evidence the parties have led rather than expressing members' opinions or suggesting the answer the member expects to hear. For example:

Closed (leading) questions	Open-ended questions
Is the subdivision for Agricultural purposes?	What is the purpose of the subdivision?
Will the development increase traffic to unsafe levels?	How will the development affect traffic?
Do you want the permit refused?	What remedy are you proposing?

Respectful questioning Members may hear similar presentations from many appellants and respondents; however, each case has unique importance for the parties involved and must be treated with respectful attention. SDAB members should listen attentively to each individual case to understand the perspectives presented before reaching conclusions. Respectful questioning helps members clarify parties' positions without presupposing anything. To create a respectful tone:

- ask questions in a way that does not appear to be critical of the party's knowledge or issue under appeal – and then listen to the answer given;
- listen to questions already asked and answered to avoid repetition;
- refrain from "showboating" by injecting your own knowledge and experience into a question;
- address participants by Mr., Mrs., Ms., Dr., or other title; and
- use appropriate body language and tone of voice to convey interest and attention, such as:

- face the person who is speaking and make eye contact; and
- avoid any gestures, such as scowling, yawning, raising your eyebrows, that could suggest boredom, surprise, agreement, or disagreement.

Relevant questions Members should only ask questions that are relevant to the issues under appeal and should not seek information of a non-planning nature, such as personal information or business practices.

5.5.14 Site Visits

Planning and development staff often make site visits or inspections either as part of the initial application or after an appeal has been filed. 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. Appellants and other parties in the appeal may do the same to illustrate how the item under appeal affects them.

Parties sometimes ask SDAB panels to conduct a site visit or “take a view”; however, this practice should be avoided. Photographs, videos, maps, and similar documentation can convey the necessary information more efficiently than site visits. Site visits also raise procedural risks that could result court challenges. If a panel does conduct a site visit, it must ensure all parties are present and have an equal opportunity to comment and respond to comments made by the other parties and that panel members remain together. In addition, precautions must be taken to ensure safety of all participants.

5.5.15 Difficult Situations During Hearings

Throughout the appeal process, members and clerks may encounter difficult situations when individuals become defensive, aggressive, frustrated, or angry. Participants may also attempt to influence the SDAB by appealing to emotions rather than the law, relevant facts, and planning considerations. Panels and particularly panel chairs may need to manage parties’ emotions or inappropriate behaviour to ensure the hearing proceeds in fairly and efficiently.

Some things to look for include:

- body language (e.g., red face, gesturing, leaving one’s seat);
- voice (e.g., the raising of pitch or volume);
- abusive or threatening language (e.g., insults, sarcasm, profanity, threats); and
- emotional outbursts.

Recognizing such behaviour early increases the ability to respond professionally. Some techniques to manage difficult hearing participants include:

- acknowledging feelings to make parties feel understood and enable them to move on to relevant submissions – e.g., “I hear what you are saying and appreciate your perspective”;
- providing clarifying information about the SDAB’s jurisdiction and procedures – e.g., “You will be given a chance to question representatives at the end of the presentation”;
- taking a break so the parties can refocus – e.g., “Let’s take a five-minute break. When we come back, we will continue to hear the submissions about ___”;
- adjourning the hearing to another date to allow parties to cool off and collect themselves – e.g., “Given the submissions we have received so far, I think it would be beneficial to adjourn until tomorrow. When we reconvene, the panel will be expected to hear submissions about ___”; and
- although leading questions should usually be avoided, it may help to recast a party’s request or position when they appear off track – e.g., “Do I understand correctly that you want the SDAB to allow the service road to be provided by easement instead of plan of survey?”

On rare occasions, more serious situations may arise that threaten safety of participants. If such a situation should occur, the panel should be familiar with any policies and procedures the SDAB may have in place – e.g., panic buttons, evacuation procedures, and security protocols.

If the clerk or members expect someone to attend the hearing who may be disruptive, precautions should be taken ahead of time to ensure security, such as arranging for security, bylaw officers, or police to be present at the hearing. Members and clerks should also watch for unusual or suspicious circumstances such as unexpected bags or clothing that could conceal weapons, e.g., long coat in summer.

5.6 POST-HEARING PROCEDURES

This section of the guidebook deals with making and writing decisions.

5.6.1 Making Decisions

The SDAB must first determine whether it has the legal authority or jurisdiction to make a decision. Assuming the answer is yes, the SDAB must weigh the evidence and planning merits to determine whether the decision is appropriate. In other words, SDAB members have to answer the question **“Can you?”** to fulfil the legislative requirements and **“Should you?”** to answer the planning considerations of a proposal.

For both these questions, members must be able to explain to the parties – particularly to the losing party – **Why** it reached the conclusions it did. A thorough decision-making

process will help the panel identify and discuss all relevant issues and ground the decision in reasons the parties can understand and accept, even if they do not agree with the outcome.

(A) Type of Decision

As discussed in Chapter 4, the SDAB's authority depends in part on what type of decision is required: subdivision, development permit, or stop order.

i. Subdivision Appeals

A distinguishing feature of subdivision appeals is that the SDABs need only "have regard for" statutory plans and are not strictly bound to comply with their provisions. When the SDAB makes a decision that does not comply with the statutory plans (or an LUB standard), the reasons for departure should be reflected in the decision.

One question the SDAB must address when deciding a subdivision appeal is, "Is the site suitable for this subdivision?" Section 9 of the *Regulation* identifies considerations for the SDAB in determining whether a site is suitable – e.g., topography, soil characteristics, potential for flooding, etc. The SDAB must provide reasons for finding the site is suitable for the purpose of the subdivision and for any conditions that may be imposed.

ii. Development Permit Appeals

The SDAB must decide if the land use applied for is a permitted or discretionary use. If the use is permitted, the next step is to determine whether the proposed development complies with the standards and regulations. If so, the SDAB must grant the permit; if not, the SDAB may refuse to grant the permit or impose conditions requiring compliance.

If the intended use is discretionary, the SDAB must consider whether that use is appropriate given the context of the application and surrounding uses. If the use is not appropriate, the SDAB can refuse the permit; otherwise, it may grant the permit subject to appropriate conditions. In both cases, the reasons should explain why the panel reached the conclusions that ground its decision.

Statutory plans bind SDABs on development appeals, but they can still vary LUB standards if they are of the opinion that the variance will not unduly interfere with neighbourhood amenities or materially interfere with the use, enjoyment or value of neighbouring land[165]. If a variance is requested, the SDAB should take care to explain in its reasons how the request either meets or fails to meet these criteria. Of course, the

[165] *MGA* s. 687(3)(d)

SDAB's decision must still comply with the *MGA*, other provincial and federal legislation, the LUP, any of the municipality's statutory plans, and the use provisions in the LUB (see Figure 6).

iii. Stop Order Appeals

The SDAB has less discretion for stop order appeals and is confined to deciding whether:

- the order was properly issued; or
- a breach of the LUB, development permit, or subdivision approval occurred.

The SDAB can only revoke a stop order if it was not properly issued, or a breach has not occurred. In other words, the SDAB has no jurisdiction to vary the underlying LUB provisions, subdivision approval or development permit to overturn a stop order. Similarly, the SDAB's has no power to vary a stop order except to allow more time to meet conditions or to apply for a new development permit or subdivision.[166]

(B) Legislative Considerations

SDAB decisions must be grounded in the relevant legislation. The following factors may be considered:

- Provincial and federal legislation other than *MGA*
  - *Water Act*
  - *Gaming, Liquor and Cannabis Act*
  - *Highways and Protection Act*
  - *Historical Resources Act*
  - *Public Lands Act*
- *MGA* Part 17 and 17.1
  - Regional plans adopted under *ALSA*
  - The LUP
  - *Regulation*
    - The suitability of the land for the proposed use
    - The adequacy of access to the site

[166] Caselaw provides additional direction – see for example *Site Energy Services Ltd. v Wood Buffalo (Regional Municipality),* 2015 ABCA 106 and *Legacy Inc v Red Deer (City),* 2020 ABCA 105.

- The provision of services and utilities
- Existing and future surrounding land uses

- Any other regulations under the *MGA*
- Growth plans adopted under Part 17.1 of the *MGA*
- Applicable statutory plans (IDP/MDP/ASP/ARP)
- LUB (land use and standards/regulations)
- Municipal bylaws, policies, procedures, and standards

➢ Environmental considerations

- Sedimentation, erosion, potential for flooding, cumulative effects, air quality, water quality, etc.

(C) Precedent

Precedents are previously decided cases that guide future decisions.[167] The idea that decision makers should keep following directions established in previous cases is sometimes called *stare decisis* (literally, "to stand by things decided").

Precedents issued by a supervising court are legally binding on lower courts and tribunals, which means the SDAB **must** follow relevant legal principles or interpretations established by the Alberta courts. In contrast, the SDAB is not bound to follow its own previous decisions since they are not decisions of a supervising court. Fairness dictates, however, that parties in similar situations should be treated similarly. Therefore, the SDAB should strive to be consistent with its own previous interpretation of legal principles even though it is not bound to do so. Similarly, if an SDAB panel chooses a new course, its reasons should explain clearly why it has done so – for example, it may be the different result is driven by specific facts of the case that different in a material way from those in the previous cases.

Court cases and many SDAB decisions can be found online at www.canlii.org (Canadian Legal Information Institute) or municipal websites.

(D) Evaluating Evidence

The SDAB must base its decision on evidence relating to legitimate land use planning considerations. SDABs are not bound by the formal rules of evidence that apply to court proceedings and normally admit any evidence that appears potentially relevant. During

[167] See Resource Manual for a selection of commonly referenced Planning Caselaw.

decision meetings, the SDAB must take care to separate relevant from irrelevant evidence and to assign relevant evidence appropriate weight.

(E) Decision Meeting

Decision-making is a collegial and co-operative exercise, and disagreement should not be taken personally. Thorough, respectful discussion of the issues and relevant evidence usually results in consensus and always yields a deeper understanding of the issues in dispute.

Decision-making and writing will go more smoothly if panel members meet soon after the hearing while submissions are still fresh. It is good practice to identify a facilitator and an author before the hearing – or at least before deliberation begins. The facilitator's role is to help the panel work through the process methodically as a group. If the author knows ahead of time they will be responsible for writing, they will likely pay more attention to ensure the panel articulates the reasons for its decision fully.

If the clerk is the author, they must ensure the panel's decision and reasons are reflected in the draft - not their own. Similarly, the clerk must respect the role of panel members as the decision-makers and not introduce their own opinions or reasoning into the panel's deliberation.

i. Model Decision-Making Process

A decision-making model similar to the one outlined in this section uses a methodical series of steps to ensure the panel identifies the appropriate issues and analyzes the party positions with respect to each issue.[168] Used conscientiously, the model will yield results that are easy to convert to clear, logical, well-supported written decisions.

1. Identify relevant legislation.
2. Identify the issues.
3. Sort the evidence and argument by relevance to each issue.
4. In relation to each issue, evaluate the evidence, make findings, and explain how the finding is supported by the evidence.
5. Apply the findings of fact to the legislated tests.
6. Reach the decision.

[168] See Appendix 3 in the Resource Book for a tabular version

1. Identify the relevant legislation

Identify any relevant legislative provisions and make a list of any legal tests, conditions, standards, or pre-requisites you need to decide the case. The legal test is a requirement or set of requirements that must be fulfilled for the board to grant the requested decision. The requirements may be set out in case law or in a legislative provision.

For example, consider an LUB that says subdivision may be granted on a second parcel out of a quarter, but only if the land to be subdivided is fragmented from the remainder. If the LUB were to define fragmentation as “separated from the remainder by an impassable watercourse or other impassable natural feature”, the SDAB would have to determine whether the applicant had proved the facts actually meet this legal test before granting subdivision.

2. Identify the issues

This step seeks identify where the parties have *fundamental* disagreements, and what *specific* questions the board must answer to reach a decision.

For example, the appellant may have written “the development will affect the use and enjoyment of adjacent properties” on the appeal form; however, if the real concern is about increased traffic, the issue could be captured more precisely by “Will the development increase traffic to an extent that will materially affect the use, enjoyment or value of neighbouring properties?”

Issues may reflect disagreements about facts, legal interpretations, or both. In complicated cases, there may be several root issues to decide. If so, order the issues logically. For example, if the board’s jurisdiction has been questioned, it would be logical to deal with that issue first.

In cases where the parties do not fully appreciate a legal requirement that must be fulfilled to grant an approval or permit, the panel may need to identify the requirement as an issue and ask for submissions if the answer is not readily apparent. For example, it may be unclear whether a development proposal meets the definition of an allowable use in the LUB.

3. Sort the evidence and argument by relevance to each issue

Review all the evidence from the hearing and decide how each piece relates to each issue identified in the last step. If evidence is not relevant to any issue, say why. Similarly, review the legal arguments and any caselaw the parties presented and decide how they relate to each issue.

4. Evaluate the evidence and make findings in relation to each issue

Analyze and weigh the evidence you sorted by issue and see what findings they support. Make sure the findings are justified by explaining how the panel evaluated the evidence. Where evidence conflicts, explain why the panel prefers some evidence over the rest.

Some considerations that may help when weighing and evaluating the evidence include:

- How does the evidence relate to other evidence on this point? Is it consistent?
- Is the oral evidence supported by the documentary evidence?
- Does the evidence prove something directly, or is it circumstantial?
- Did the other parties have a chance to test the evidence – e.g., by questioning?

When dealing with competing experts, consider:

- What factual assumptions did the experts make? On what grounds?
- Which expert has the most relevant education and experience?
- Which expert used the most up-to-date information?
- Did the expert cite journal articles/expert literature in support? If so, were the sources cited properly so the other party's expert could respond?
- Which expert is best able to explain their opinion and the basis for the opinion?
- How independent is the expert? Are they an employee of one of the parties?

5. Apply any factual findings to the legislated tests

Explain how the findings apply to any legal tests or requirements. If there is a question about interpretation, explain how the legislation was interpreted and why. If caselaw was provided, explain how it applies to the subject case or why it does not apply.

6. State the final decision

Once the panel has made findings for each issue and applied the legal tests, the overall decision should be obvious. List any applicable conditions.

5.6.2 Writing Decisions

Like decision-making, written decisions focus on the deep issues behind the appeal. For each issue identified, the decision should record the parties' positions, the panel's findings, and the reasons for those findings. The written decision also records the panel's final decision and the background information for readers unfamiliar with the context.

The *MGA* requires the SDAB to give its decision in writing within 15 days of the conclusion of a hearing,[169] so panels must work quickly. Writing styles may differ, and decisions need not be models of literary perfection. Despite the time constraints, it is worthwhile to ensure the rationale is clearly articulated since good quality reasons:

- Help the parties accept the panel's conclusions, making them less likely to appeal.
- Minimize the chance of arbitrary decisions by forcing the panel to evaluate all the evidence and issues.
- Allow a reviewing court to understand the basis for the decision.
- Reduce the likelihood of being overturned for lack of sufficient reasons.[170]
- Establish useful precedents.

The written decision should follow a logical order so the reader can understand how the panel arrived at its decision based on the evidence and relevant legal and planning considerations. One way to achieve this objective is to use an outline that includes the following elements:

- Issues (should have been identified at the decision meeting already).
- Findings for each issue.
- Reasons that explain each issue. For example, is not enough to find a given development did not "adversely affect the amenities of the neighbourhood" without identifying why there was no adverse effect. Reasons should refer to:
  - the evidence considered and the weight assigned to it, as well as the factual conclusions drawn;
  - the planning documents considered, including statutory plans, the LUB, provisions in the *MGA*, *Regulation*, *ALSA* Plan, etc. and the relevant provisions of each document;
  - each party's position, including the evidence and argument they relied on and the remedy requested;
  - an explanation as to how the factual conclusions met or did not meet the tests or requirements set out in the planning documents; and

[169] *MGA* ss. 680(3) and 687(2)

[170] See *Cowan v Grande Prairie No 1 (County of),* 2020 ABCA 399, which identifies benefits of reasons and returned an SDAB decision because its conclusions were insufficiently supported

- an explanation as to why the panel preferred one party's argument and evidence and rejected argument and evidence from other parties.

- The final decision to refuse, approve, or approve with conditions.

Most municipalities have a decision template that includes headings that reflect the elements described above. If no standard template is available, the decisions of the larger municipal SDABs are available through their websites or CANLII, and can serve as guides.

5.7 POST-DECISION MATTERS

After the SDAB has issued its decision, the SDAB cannot re-open the hearing or make alterations except to fix non-controversial or typographical errors. A party who is dissatisfied with a decision must seek relief from the courts.

5.7.1 Sending out the Decision

After the panel reviews and signs off on the written decision, the clerk will send it to all interested parties. The sign-in sheet prepared and maintained by the SDAB clerk during a hearing can be a useful tool for this purpose.

5.7.2 Dealing with the Community

SDAB decisions can be contentious, so members or clerks are sometimes approached to account for a decision. This situation is particularly difficult in smaller communities where many people know each other personally.

Members and clerks should avoid debating the merits or details of SDAB decisions, but may point out that the SDAB must determine each case based on the evidence and argument before it. In addition, they may explain their roles and general obligations in context of legislated requirements.

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 understand the basis for a decision and feel they have been treated fairly by the process, they will be able to agree to disagree even though they dislike the decision.

5.7.3 IMPLEMENTING THE DECISION

The SDAB cannot change a decision it has already issued or follow up to ensure conditions are implemented. Ensuring compliance is a responsibility of the municipality and their regulatory and enforcement personnel.

5.8 APPEALS OF SDAB DECISIONS

An application for leave to appeal an SDAB decision may be filed with the Alberta Court of Appeal within 30 days after the decision is issued.[171] Appeals are only possible for questions of law, and most legal challenges of SDAB decisions fall into two categories

1. The decision is wrong in law – for example, the SDAB wrongly interpreted a statute, regulation or bylaw, or common law rule, or acted outside its legal authority.
2. The procedure the SDAB used to come to its decision was unfair – for example, a violation of the rules of natural justice.

If the Court of Appeal gives permission to appeal, the SDAB clerk must forward to the Court its transcript (if available) and record within 30 days from the date leave is obtained. On appeal, the Court may confirm, vary, reverse or cancel the SDAB decision and return it to the SDAB with directions to rehear it.

[171] *MGA* s. 688

APPENDICES

Appendix 1 – Glossary

These definitions are to facilitate an understanding of the training materials and for the purposes of the training exercises. The *MGA* and other pieces of legislation include definitions of certain terms. 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	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	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	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 – see *Regulation* section 5 for examples
Affected Person	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	a person authorized to act on behalf of another
Appeal	the review of a decision by a higher body
Appellant	the party appealing a decision to a higher body
Applicant	a person making a request – could be a development permit, subdivision application, or a preliminary application on an appeal
Approving Authority	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 Redevelopment Plan (ARP)	a statutory plan relating to an existing, developed area within a municipality to provide detail with respect to the future redevelopment or re-use of the lands under s. 634 of the *MGA*

Area Structure Plan (ASP)	a statutory plan relating to a specific area within a municipality to provide detail with respect to future development or general use of the lands under s. 633 of the *MGA*
Chair	the person who presides over a meeting, committee, or board
Clerk	the person operating in the capacity of clerk as defined and appointed by the SDAB bylaw
Council	the members elected to sit on the council of the municipality
Counsel	lawyer providing legal advice or representing a party
Development	broadly defined in s. 616(b) of the *MGA* to include excavation, buildings, repairs, changes of use or intensity, etc.
Development Authority	the municipal authority makes decisions about development applications and stop orders and is established by bylaw pursuant to s. 623 of the *MGA*
Development Officer	a person who carries out responsibilities on behalf of the development authority for a municipality, with the powers and responsibilities established by bylaw
Direct Control District	an area within the municipality that has been designated a direct control district in accordance with s. 641 of the *MGA*
Discretionary Use	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
Growth Plan	means a growth plan adopted by a growth management board under Part 17.1 of the *MGA*
Intermunicipal Development Plan (IDP)	a statutory plan prepared by neighbouring municipalities to ensure development in either jurisdiction reflects mutual and individual interests of the parties involved
Jurisdiction	the decision maker's power or authority to make a decision

Land and Property Rights Tribunal (LPRT)	an appeal body that took over the land use planning jurisdiction of the Municipal Government Board (MGB) following its amalgamation with the Alberta Surface Rights Board and Land Compensation Board. The LPRT has jurisdiction under s. 488 of the *MGA* to hear appeals from SA or DA decisions in cases where there is a provincial interest affecting the land identified in *MGA* ss 678(2) and 685(2.1) 17 and s. 27 of the *Regulation*.
Land Use Bylaw (LUB)	a document required by s. 640 of the *MGA* for each municipality that regulates and controls the use and development of land and buildings within the municipality
Merit Hearing	a hearing or portion of a hearing where a panel receives submissions on substantive issues to determine the outcome of the appeal (as opposed to a preliminary hearing, where parties make submissions about procedural or jurisdictional issues)
Municipal Development Plan (MDP)	a statutory plan required by s. 632 of the *MGA* for each municipality to establish its planning vision
Municipal Government Act (*MGA*)	the *Municipal Government Act*, RSA 2000 c. M-26, being an act under which all Alberta municipalities are empowered and governed in their actions
Municipal Planning Commission (MPC)	a commission established by a municipality in accordance with the *MGA* to deal with subdivision and/or development decisions
Non-conforming Use	the use of land as described in s. 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 an LUB within the municipality, and does not comply with the new LUB
Permitted Use	the use of land or a building listed in an LUB for which a development permit shall be issued once conditions required by the development authority are satisfied

Preliminary Hearing	a hearing held solely to determine procedural or jurisdictional issues (also called preliminary issues). Substantive issues are then heard later at the “merit” hearing.
Quorum	the minimum number of members that must be present at a meeting or hearing in order for a decision to be valid – for quorum of an SDAB check the SDAB bylaw
Regulation	Matters Related to Subdivision and Development Regulation, Alberta Regulation 43/2002
Reserves	lands dedicated for particular use, purpose, or service as outlined in the *MGA* and include School Reserves, Municipal Reserves, Environmental Reserves, and Conservation Reserves
Respondent	a person or party making a reply to the appellant or applicant
Statutory Plan	a plan adopted by a municipality by bylaw to identifying future plans for development - IDP, MDP, ASP, and ARP are the four statutory plans
Stop Order	a written notice under s. 645 of the *MGA* issued by the development authority, which may order the stoppage of all works or activities on the lands and/or require compliance to ensure uses and structures comply with the requirements of the *MGA,* the LUB, development permit or subdivision approval
Subdivision	the division of a parcel of land by an instrument
Subdivision Authority	a subdivision authority established by bylaw under s. 623 of the *MGA* to consider applications for subdivision

Appendix 2 – Acronyms

Planning literature is full of acronyms. A lengthy but not comprehensive list is below.

ac	Acre – equal to 0.40407 hectares or 43,560 square feet or 4,046.9 square meters
AER	Alberta Energy Regulator. Previously Energy Resource Conservation Board (ERCB) and Energy and Utilities Board (EUB)
AEP	Alberta Environment and Protected Areas. Previously Alberta Environment and Parks
AFPT	Alberta Forestry, Parks and Tourism
AHS	Alberta Health Services
ALSA	*Alberta Land Stewardship Act*
ASP	Area Structure Plan
ATEC (AT/ AIT)	Alberta Transportation and Economic Corridors. Previously Alberta Transportation Alberta Infrastructure and Transportation (AIT)
CMGR	Calgary Metropolitan Growth Region
CMRGP	Calgary Metropolitan Region Growth Plan
CR	Country Residential – often used to refer to a country residential district
CRISP	Comprehensive Regional Infrastructure Sustainability Plan
DA	Development Authority
DC	Direct Control – often used to refer to a direct control district
DO	Development Officer
DRC	Deferred Reserve Caveat
EIA	Environmental Impact Assessment
EMGR	Edmonton Metropolitan Growth Region
EMRGP	Edmonton Metropolitan Region Growth Plan
ER	Environmental Reserve
ERE	Environmental Reserve Easement

ESA	Environmentally Sensitive Area
ESA	Environmental Site Assessment
Ha	Hectare – equal to 2.471 acres or 107,639 square feet or 10,000 square meters
IDP	Intermunicipal Development Plan
LARP	Lower Athabasca Regional Plan
LPRT	Land and Property Rights Tribunal (formerly MGB and other boards)
LUB	Land Use Bylaw
LUF	Land-Use Framework
LUP	Land Use Policies
MDP	Municipal Development Plan
MGA	*Municipal Government Act*
MGB	Municipal Government Board
MPC	Municipal Planning Commission
MR	Municipal Reserve
MSR	Municipal and School Reserve
NE/NW/ SE/SW	These represent quarters in a section and mean north east, north west, south east, and south west, respectively
PUL	Public Utility Lot
PSTS	Private Sewage Treatment System
REF	Regional Evaluation Framework
RPP	Registered Professional Planner
SA	Subdivision Authority
SDAB	Subdivision and Development Appeal Board
SR	School Reserve
SSRP	South Saskatchewan Regional Plan
SWMF	Storm Water Management Facility
SWMP	Storm Water Management Plan
TIA	Traffic Impact Assessment

Appendix 3 – List of Figures

Appendix 4 – Interpreting Legislation

The Legislature passes legislation, but courts and boards have to interpret it. SDAB panels will sometimes hear arguments about what various statutory provisions really mean. A complete description of the principles of statutory interpretation is beyond the scope of this Guidebook, but the following points are useful to keep in mind when interpreting legislative provisions.

Interpretation provisions: Legislation often specifically defines certain words it uses. Such definitions usually occur in a section at the beginning of the enactment or the part or division of the enactment where they apply. For example, section 1 of the *MGA* defines a long list of relevant terms such as "road", which appears at 1(z). The term "road" is used throughout the *MGA*. Similarly, section 616(1) at the beginning of Part 17 lists definitions for terms used in that Part, which relates specifically to land planning and development. These definitions include one for "highway" in 616(1)(h).

Interpretation Act: The Legislature passed the Alberta *Interpretation Act* to establish common meanings for certain terms used across many enactments. The *Interpretation Act* applies unless a contrary intent appears in the specific legislation being interpreted. Section 22 is a particularly useful section of the *Interpretation Act* since it explains how to compute time to determine filing deadlines and other important dates.

IA s. 22

Case Law: In many cases, the courts have already explained a provision's legal meaning. SDABs are bound by decisions of the Alberta Courts and the Supreme Court of Canada and must follow their interpretations of legislative provisions.

Decisions of previous SDAB panels are not binding. However, consistent interpretation of legislative provisions promotes fairness and helps those affected to plan appropriately; therefore, previous SDAB interpretations are still persuasive and should not be abandoned unless overruled by a court or demonstrably wrong.

SDAB panels must apply legislative requirements to the facts before them to reach decisions. Since the outcome in any particular case will also depend on the facts, panels can potentially reach different decisions despite consistent interpretation of legislative provisions.

"Modern Rule" of Statutory Interpretation: Where there is no legislated definition or established legal meaning, you must use the principle of legislative interpretation adopted by the Supreme Court of Canada[172]:

[172] Rizzo v Rizzo Shoes [1998] 1 SCR 27

> *The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.*

This principle asks you to look not only at the plain meaning of the provision itself but also at nearby sections and the Act as a whole. You must also try to identify the purpose the Legislature was trying to achieve through the provision and interpret it consistently with that purpose.

This approach still requires attention to the ordinary meaning of the language used; however, it also recognizes legislation is intended to achieve certain policy objectives. Relevant policy aims, potential consequences for competing interpretations, and past amendments to the legislation may provide clues to identify the meaning intended by the Legislature or other body that passed the provision in question.

Appendix 5 – Legislation Hierarchy and Structure

Introduction

SDAB members must interpret and apply various enactments, including provincial statutes (e.g., the *MGA* and *ALSA*), provincial regulations (e.g., the *Regulation* and the LUP), and municipal regulations, plans, and bylaws (e.g., statutory plans and the LUB). The SDAB clerk also must understand the legislation and how it is to be applied to carry out their duties. Therefore, it is important to understand the principles behind how legislation is organized and cited. The material in this Appendix describes the general features of legislation, including legislative hierarchy and structure.

Hierarchy

Legislation has a hierarchy. The Constitution Acts are at the top. They give the federal and provincial legislatures power to pass laws, or statutes, about various subject matters – one such matter being "municipal government", entrusted to provincial legislatures. The Alberta Legislature exercised this power when it passed the *MGA*.

Statutes are the next level down. In a similar way to how the Constitution Acts let the Legislature pass laws on certain topics, statutes often delegate power to officials or elected bodies to create subsidiary legislation about specific topics. For example, the *MGA* empowers the Lieutenant Governor in Council, the Minister of Municipal Affairs, and Municipal Council to pass regulations and bylaws about certain matters to further the overall policy objectives of the *MGA*. These regulations and bylaws round out the lower levels in the legislative hierarchy.

To sum up, the hierarchy in the land planning context is:

1. Constitution
2. *MGA, ALSA, etc.*
3. Regulations – e.g., the *Regulation*
4. Municipal Plans and Bylaws

Each piece of legislation must be consistent with higher-level legislation and is only legitimate to the extent of that consistency. Occasionally, provisions in two enactments at the same level in the hierarchy may conflict; in such cases, the enactments themselves usually explain which provision should prevail. For example, as explained elsewhere in this Guidebook, the provisions in other provincial statutes generally prevail over planning provisions in the *MGA*. Similarly, the *MGA* creates a hierarchy of statutory plans, with IDPs at the top, followed by MDPs, ASPs, and ARPs. If the enactments do not explain which conflicting provision at the same level prevails, other conventions may help to resolve the question – such as the presumption that specific provisions are

intended to prevail over conflicting general ones in the same enactment. However, a full discussion of these principles is beyond the scope of this appendix.

Structure: How Acts and Regulations Are Divided Up

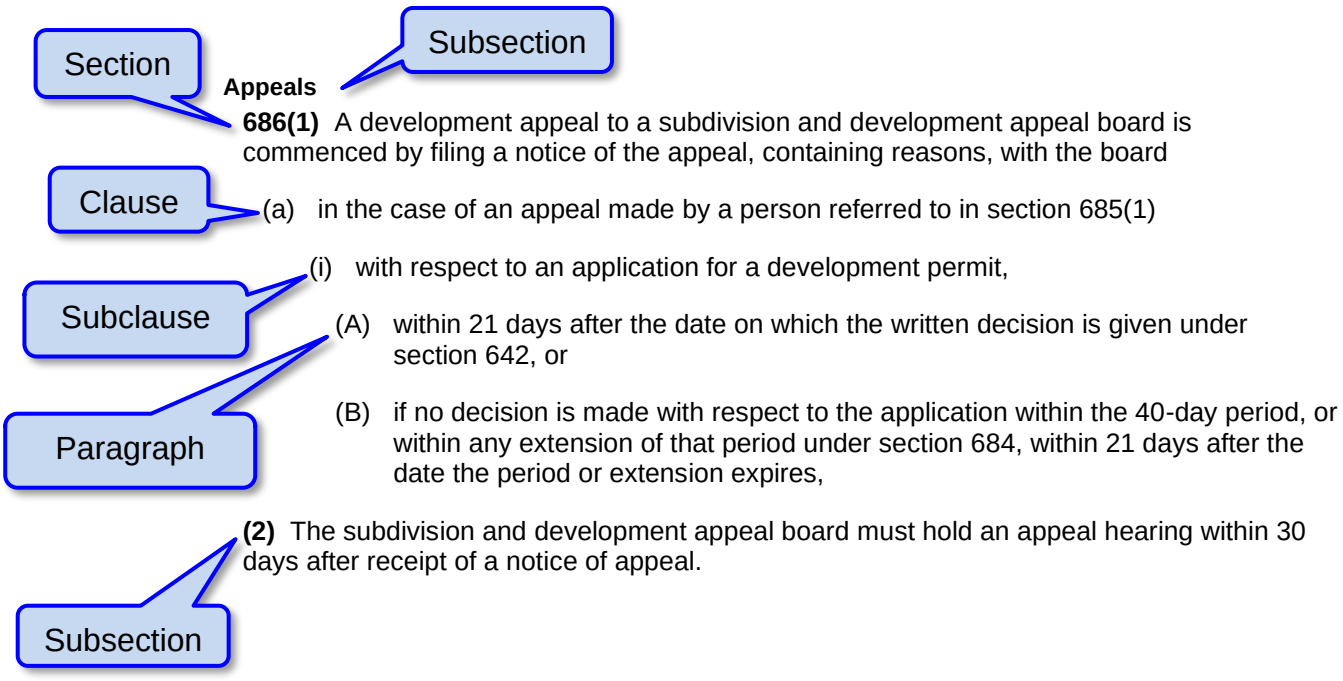
Enactments at all levels of the legislative hierarchy follow the same format in the way they are organized and divided up. Understanding these conventions makes it easy navigate enactments and communicate clearly with others about their contents.

Sections

Looking at the "Table of Contents" at the front of an act or regulation, you will see numbers beginning with 1 along the left-hand side of the page, opposite brief descriptions for each number. These are section numbers – not page numbers. There is no reference to page numbers.

Sections are the basic building blocks of an enactment, and are the most common way to refer to specific directions or rules within an enactment.[173] The index at the back of the act lists various subjects in alphabetical order. Like the table of contents, it only refers to the sections of the act or regulation that deal with that particular subject.

Sections are sometimes broken down into subsections, clauses, subclauses, and paragraphs, as illustrated below.



[173] A single section is usually abbreviated with an "s.". When citing multiple sections the convention is to use "ss.". For example, ss. 616 to 643.

Numbers with Decimals

Sections always appear in numerical order throughout an Act, but the steady progression of integers is sometimes interrupted by decimals. For example,

> **Application for subdivision approval**
> **653(1)** An application to a subdivision authority for subdivision approval
>
> (a) must be…
>
> **Subdivision applications**
> **653.1(1)** A subdivision authority must, within 20 days after the receipt of an application for subdivision approval…

A section number designated by a decimal is a fully fledged section – not a subsection. Decimals are the tool the Legislature uses when it amends an enactment to insert new provisions between existing ones without disturbing the numbering for the rest of the enactment.[174]

The same method is used to insert subsections, clauses, etc., between existing subcomponents of the same level, resulting in decimals there too. For example, section 661 has had an additional subclause added between (a) and (b)

> **Land dedication**
> **661** The owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation,
>
> (a) to the Crown in right of Alberta or a municipality, land for roads and public utilities,
>
> (a.1) subject to section 663, to the Crown in right of Alberta or a municipality, land for environmental reserve, and
>
> (b) subject to section 663, to the Crown in right of Alberta, a municipality, one or more school boards or a municipality and one or more school boards, land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money,

Parts and Divisions

As exemplified in the *MGA's* table of contents, longer enactments are often divided into "Parts" which are themselves divided into "Divisions". Each part or division deals with a broad topic or subtopic within the enactment.

[174] See the small print at bottom right of the inserted provision to find out when and how the amendment was passed.

Coming into Force and Repeal Provisions

The last section of an enactment usually states when it comes into force. If there is no such provision, an act comes into force on the date of Royal Assent (i.e., signed by the Lieutenant Governor), while a regulation comes into force on the date it is filed with the Registrar.

Provisions repealing other enactments are placed near the end of the act, immediately before the coming-into-force section.

Appendix 6 – Ministerial Order

MINISTERIAL ORDER NO. MSL:019/18

I, Shaye Anderson, Minister of Municipal Affairs, pursuant to Sections 2(1) and 2(2) of the Subdivision and Development Appeal Board Regulation (AR 195/2017),

1) Set the training program for Subdivision and Development Appeal Board Clerks as outlined in Appendix 1; and

2) Set the training program for Subdivision and Development Appeal Board Members as outlined in Appendix 2.

Dated at Edmonton, Alberta, this 16th day of May 2018.

Shaye Anderson
Minister of Municipal Affairs

APPENDIX 1 TO MINISTERIAL ORDER NO. MSL:019/18

SUBDIVISION AND DEVELOPMENT APPEAL BOARD (SDAB) TRAINING PROGRAM FOR CLERKS

I. TRAINING PROGRAM OVERVIEW

- This program is intended to enable the design and delivery of training sessions by qualified instructors by outlining training program principles, learning outcomes, minimum requirements for course content, and the format for assessment of learning.
- Methods of instruction shall be considered through training design and may include lectures, tutorials, and small or large group workshops.
- Instructors of the training program must demonstrate education and/or experience in the field of planning and/or administrative law to the satisfaction of the municipality.

II. TRAINING PROGRAM PRINCIPLES

- Fairness and impartiality.
- Transparency in the decision-making process.
- Understanding and acting within the limits of the legislation and principles of administrative law and natural justice.
- Understanding and applying planning considerations and principles.
- Having regard for the roles and interests of developers, members of the public, and the municipality.

III. LEARNING OUTCOMES

- Individuals are required to successfully complete a training program before being appointed as a clerk (the “Initial Training Program”) and successfully complete a refresher training program every three years (the “Refresher Training Program”).
- The learning objectives of the training program are as follows:
  - Recognize the role of municipalities in planning and development in Alberta.
  - Understand the purpose and content of Part 17 of the *Municipal Government Act* (the *MGA*) and the *Subdivision and Development Regulation*.
  - Identify what a SDAB is and what it does.
  - Recognize the composition and membership of SDABs.
  - Understand the source and scope of a SDAB’s authority, the types of appeals heard by SDABs, and appeals that are heard by the Municipal Government Board (Land and Property Rights Tribunal).
  - Determine the application and status of provincial land-use policies and regional plans under the *Alberta Land Stewardship Act* and growth plans under Part 17.1 of the *MGA* where applicable.
  - Understand the difference between statutory plans and land-use bylaws and their roles and application in planning and development processes.
  - Recognize municipal processes for making decisions on applications for subdivision approval and development permits, the issuance of stop orders under the *MGA*, and other decisions of the development and subdivision authority.
  - Understand the pre-hearing requirements set out in the *MGA* and pre-hearing responsibilities of the clerk.
  - Understand the hearing process and the roles and responsibilities of participants in the process.
  - Understand the post-hearing requirements set out in the *MGA* and post-hearing responsibilities of the clerk.
  - Understanding the basic principles of administrative law which apply to SDABs, including the general duty of fairness and the rule against bias.
  - Identify sources of evidence, including oral and written.
  - Learn to determine the relevancy of evidence and what is a proper planning consideration versus what is an irrelevant consideration that should not influence a SDAB’s decision.
  - Consider how to communicate effectively with participants during a hearing, including the role of a chairperson and asking questions of participants.
  - Understand the role of precedent in the decision-making process.
  - Learn to identify issues, evaluate evidence, and apply legislation and planning considerations to facts to write effective written decisions.

- The Initial Training Program must, at a minimum, include the following elements from the Course Outline (Initial Training Program), and upon completion, clerks shall be knowledgeable of:
  - Introduction to Planning and Development in Alberta (Roles and Responsibilities)
  - Legislative and Planning Considerations
  - Planning and Development Processes in Alberta
  - Other Issues
- The Initial Training Program must, at a minimum, include the following elements from the Course Outline (Initial Training Program), and upon completion, clerks shall be proficient in:
  - Appeals to the SDAB
  - Roles and Responsibilities for Clerks
  - Conduct of an Appeal
  - Administrative Law Principles
  - Evidence at Hearings
  - Powers of the SDAB
  - Limitations on the SDAB's Authority
  - Making and Communicating Decisions
- The Refresher Training Program must, at a minimum, include the following elements from the Course Outline (Refresher Training Program), and upon completion, clerks shall be knowledgeable of and proficient in:
  - Appeals to the SDAB
  - Roles and Responsibilities for Clerks
  - Administrative Law Principles
  - Evidence at Hearings
  - Powers of the SDAB
  - Limitations on the SDAB's Authority
  - Making and Communicating Decisions

IV. COMPLETION OF TRAINING

- The training instructor must design a written assessment of learning for clerks and must administer it at the conclusion of the Initial Training Program and the Refresher Training Program.
- The written assessment of learning must consist of a series of open book multiple choice questions and be evaluated. Participants must be provided with the

opportunity to receive feedback on the assessment of learning prior to leaving the training session.

- The training instructor must report to the municipality's Chief Administrative Officer upon the clerk's successful completion of the written assessment of learning.

V. COURSE OUTLINE

(INITIAL TRAINING PROGRAM)

(1) INTRODUCTION TO PLANNING AND DEVELOPMENT IN ALBERTA (ROLES AND RESPONSIBILITIES)

(a) Federal Government
(b) Provincial Government
(c) Municipalities
(d) Subdivision and Development Authorities
(e) SDABs

(2) LEGISLATIVE AND PLANNING CONSIDERATIONS

(a) Land Use Policies
(b) *Alberta Land Stewardship Act* Regional Plans
(c) Growth Management Boards and Plans
(d) Part 17 of the *Municipal Government Act*
(e) Subdivision and Development Regulation
(f) Statutory Plans
(g) Land Use Bylaws
(h) Planning Policies

(3) PLANNING AND DEVELOPMENT PROCESSES IN ALBERTA

(a) Subdivision Applications
(b) Development Permit Applications
    i. Permitted Uses
    ii. Discretionary Uses
    iii. Direct Control District
(c) Stop Orders and Other Decisions
(d) Exempt Developments
(e) Lawful Non-Conforming Uses and Buildings

(4) APPEALS TO THE SDAB

(a) Decisions Subject to Appeal
(b) Status to Appeal
(c) Time for Filing an Appeal
(d) Notice of Hearing
(e) Public Inspection of the Appeal File
(f) Time Limit to Hold a Hearing

(5) ROLES AND RESPONSIBILITIES FOR CLERKS

(a) Pre-Hearing
  i. Appointment to Position of Clerk
  ii. Receiving Notices of Appeal
  iii. Scheduling and Providing Written Notice of Hearings
  iv. Receiving and Responding to Correspondence from the Parties and other Affected Persons
  v. Public Inspection of the Appeal File
  vi. Reporting to the SDAB
(b) Post-Hearing
  i. Role in Preparing Reasons for Decision
  ii. Circulating Reasons for Decision

(6) CONDUCT OF AN APPEAL

(a) Quorum
(b) Roles and Responsibilities
  i. SDAB Members
  ii. Chairperson
  iii. Clerk
  iv. Parties to Appeal
(c) Hearing Procedures

(7) ADMINISTRATIVE LAW PRINCIPLES

(a) Quasi-Judicial Tribunal
(b) General Duty of Fairness
(c) Pecuniary Interest and Rules Against Bias
(d) Adjournments
(e) Representation by Counsel or Agents
(f) Right to a Public Hearing
(g) Disclosure of Information
(h) Opportunity to State Case

(8) EVIDENCE AT HEARINGS

(a) Oral Presentations
(b) Written Submissions
(c) Technical Information
(d) Questions from the SDAB
(e) Questions from Participants
(f) Site Visits

(9) POWERS OF THE SDAB

(a) Completeness of Applications
(b) Development Appeals
    i. Permitted Use
    ii. Discretionary Use
    iii. Stop Orders
    iv. Other Decisions of the Development Authority
(c) Subdivision Appeals
(d) Variance Power
(e) Conditions

(10) LIMITATIONS ON THE SDAB'S AUTHORITY

(a) Relevant Evidence (Proper Planning Considerations)
(b) Addressing Irrelevant Evidence
(c) Fettering Discretion
(d) Improper Sub-delegation

(11) MAKING AND COMMUNICATING DECISIONS

(a) Requirements for SDAB Decisions
(b) Identifying Issues and Applicable Legislation, Plans and Policies
(c) Findings of Fact
(d) Applying Legislative and Planning Considerations
(e) Attaching Conditions to Approvals
(f) Implementation of Decisions

(12) OTHER ISSUES

(a) Appeals from SDAB Decisions
(b) Personal Liability of SDAB Clerks

COURSE OUTLINE
(REFRESHER TRAINING PROGRAM)

(1) APPEALS TO THE SDAB

(a) Decisions Subject to Appeal
(b) Status to Appeal
(c) Time for Filing an Appeal
(d) Notice of Hearing
(e) Public Inspection of the Appeal File
(f) Time Limit to Hold a Hearing

(2) ROLES AND RESPONSIBILITIES FOR CLERKS

(a) Pre-Hearing
  i. Appointment to Position of Clerk
  ii. Receiving Notices of Appeal
  iii. Scheduling and Providing Written Notice of Hearings
  iv. Receiving and Responding to Correspondence from the Parties and other Affected Persons
  v. Public Inspection of the Appeal File
  vi. Reporting to the SDAB
(b) Post-Hearing
  i. Role in Preparing Reasons for Decision
  ii. Circulating Reasons for Decision

(3) ADMINISTRATIVE LAW PRINCIPLES

(a) Quasi-Judicial Tribunal
(b) General Duty of Fairness
(c) Pecuniary Interest and Rules Against Bias
(d) Adjournments
(e) Representation by Counsel or Agents
(f) Right to a Public Hearing
(g) Disclosure of Information
(h) Opportunity to State Case

(4) EVIDENCE AT HEARINGS

(a) Oral Presentations
(b) Written Submissions
(c) Technical Information
(d) Questions from the SDAB
(e) Questions from Participants
(f) Site Visits

(5) POWERS OF THE SDAB

(a) Completeness of Applications
(b) Development Appeals
    i. Permitted Use
    ii. Discretionary Use
    iii. Stop Orders
    iv. Other Decisions of the Development Authority
(c) Subdivision Appeals
(d) Variance Power
(e) Conditions

(6) LIMITATIONS ON THE SDAB'S AUTHORITY

(a) Relevant Evidence (Proper Planning Considerations)
(b) Addressing Irrelevant Evidence
(c) Fettering Discretion
(d) Improper Sub-delegation

(7) MAKING AND COMMUNICATING DECISIONS

(a) Requirements for SDAB Decisions
(b) Identifying Issues and Applicable Legislation, Plans and Policies
(c) Findings of Fact
(d) Applying Legislative and Planning Considerations
(e) Attaching Conditions to Approvals
(f) Implementation of Decisions

VI. TRAINING IMPLEMENTATION

- SDAB training sessions for clerks can be offered at the local or regional level; the province may also offer training sessions.

APPENDIX 2 TO MINISTERIAL ORDER NO. MSL:019/18

SUBDIVISION AND DEVELOPMENT APPEAL BOARD (SDAB) TRAINING PROGRAM FOR MEMBERS

I. TRAINING PROGRAM OVERVIEW

- This program is intended to enable the design and delivery of training sessions by qualified instructors by outlining training program principles, learning outcomes, minimum requirements for course content, and the format for assessment of learning.
- Methods of instruction shall be considered through training design and may include lectures, tutorials, and small or large group workshops.
- Instructors of the training program must demonstrate education and/or experience in the field of planning and/or administrative law to the satisfaction of the municipality.

II. TRAINING PROGRAM PRINCIPLES

- Fairness and impartiality.
- Transparency in the decision-making process.
- Understanding and acting within the limits of the legislation and principles of administrative law and natural justice.
- Understanding and applying planning considerations and principles.
- Having regard for the roles and interests of developers, members of the public, and the municipality.

III. LEARNING OUTCOMES

- Members are required to successfully complete a training program before participating in any hearing as a member of a panel of the SDAB (the “Initial Training Program”) and successfully complete a refresher training program every three years (the “Refresher Training Program”).
- The learning objectives of the Training Program are as follows:
  - Recognize the role of municipalities in planning and development in Alberta.
  - Understand the purpose and content of Part 17 of the *Municipal Government Act* (the *MGA*) and the *Subdivision and Development Regulation*.
  - Identify what a SDAB is and what it does.
  - Recognize the composition and membership of SDABs.
  - Understand the source and scope of a SDAB’s authority, the types of appeals heard by SDABs, and appeals that are heard by the Municipal Government Board (Land and Property Rights Tribunal).

- Determine the application and status of provincial land-use policies and regional plans under the *Alberta Land Stewardship Act* and growth plans under Part 17.1 of the *MGA* where applicable.
- Understand the difference between statutory plans and land-use bylaws and their roles and application in planning and development processes.
- Recognize municipal processes for making decisions on applications for subdivision approval and development permits, the issuance of stop orders under the *MGA*, and other decisions of the development and subdivision authority.
- Understand the pre-hearing requirements set out in the *MGA* and pre-hearing responsibilities of members.
- Understand the hearing process and the roles and responsibilities of participants in the process.
- Understand the post-hearing requirements set out in the *MGA* and post-hearing responsibilities of members.
- Understanding the basic principles of administrative law which apply to SDABs, including the general duty of fairness and the rule against bias.
- Identify sources of evidence, including oral and written.
- Learn to determine the relevancy of evidence and what is a proper planning consideration versus what is an irrelevant consideration that should not influence a SDAB's decision.
- Consider how to communicate effectively with participants during a hearing, including the role of a chairperson and asking questions of participants.
- Understand the role of precedent in the decision-making process.
- Learn to identify issues, evaluate evidence, and apply legislation and planning considerations to facts to write effective written decisions.

- The Initial Training Program must, at a minimum, include the following elements from the Course Outline (Initial Training Program), and upon completion, members shall be knowledgeable of:
  - Introduction to Planning and Development in Alberta (Roles and Responsibilities)
  - Planning and Development Processes in Alberta
  - Appeals to the SDAB
  - Other Issues
- The Initial Training Program must, at a minimum, include the following elements from the Course Outline (Initial Training Program), and upon completion, members shall be proficient in:
  - Legislative and Planning Considerations
  - Roles and Responsibilities for Members

- Conduct of an Appeal
- Administrative Law Principles
- Evidence at Hearings
- Powers of the SDAB
- Limitations on the SDAB's Authority
- Making and Communicating Decisions

- The Refresher Training Program must, at a minimum, include the following elements from the Course Outline (Refresher Training Program), and upon completion, members shall be knowledgeable of and proficient in:
  - Appeals to the SDAB
  - Roles and Responsibilities for Members
  - Administrative Law Principles
  - Evidence at Hearings
  - Powers of the SDAB
  - Limitations on the SDAB's Authority
  - Making and Communicating Decisions

IV. MEMBER QUALIFICATIONS AND TRAINING

- Members shall have:
  - Good communication and interpersonal skills;
  - The ability to maintain impartiality, consider arguments, analyze issues and write or contribute to writing decisions;
  - A basic familiarity with the SDAB's jurisdiction and its relationship to the municipality, and;
  - Knowledge and/or experience that will assist the SDAB in determining appeals before it.

V. COMPLETION OF TRAINING

- The training instructor must design a written assessment of learning for members and must administer it at the conclusion of the Initial Training Program and the Refresher Training Program.
- The written assessment of learning must consist of a series of open book multiple choice questions and be evaluated. Participants must be provided with an opportunity to receive feedback on the assessment of learning prior to leaving the training session.

- The training instructor must report to the municipality's Chief Administrative Officer upon the member's successful completion of the written assessment of learning.

VI. COURSE OUTLINE

(INITIAL TRAINING PROGRAM)

(1) INTRODUCTION TO PLANNING AND DEVELOPMENT IN ALBERTA (ROLES AND RESPONSIBILITIES)

a. Federal Government
b. Provincial Government
c. Municipalities
    (i) Subdivision and Development Authorities
d. SDABs

(2) LEGISLATIVE AND PLANNING CONSIDERATIONS

a. Land Use Policies
b. *Alberta Land Stewardship Act* Regional Plans
c. Growth Management Boards and Plans
d. Part 17 of the Municipal Government Act
e. Subdivision and Development Regulation
f. Statutory Plans
g. Land Use Bylaws
h. Planning Policies

(3) PLANNING AND DEVELOPMENT PROCESSES IN ALBERTA

a. Subdivision Applications
b. Development Permit Applications
    (i) Permitted Uses
    (ii) Discretionary Uses
    (iii) Direct Control District
c. Stop Orders and Other Decisions
d. Exempt Developments
e. Lawful Non-Conforming Uses and Buildings

(4) APPEALS TO THE SDAB

a. Decisions Subject to Appeal
b. Status to Appeal
c. Time for Filing an Appeal

d. Notice of Hearing
e. Public Inspection of the Appeal File
f. Time Limit to Hold a Hearing

(5) ROLES AND RESPONSIBILITIES FOR MEMBERS

a. Pre-Hearing
   (i) Appointment to Position
   (ii) Maintaining Impartiality
b. Post-Hearing
   (i) Role in Preparing Reasons for Decision

(6) CONDUCT OF AN APPEAL

a. Quorum
b. Roles and Responsibilities
   (i) SDAB Members
   (ii) Chairperson
   (iii) Clerk
   (iv) Parties to Appeal
c. Hearing Procedures

(7) ADMINISTRATIVE LAW PRINCIPLES

a. Quasi-Judicial Tribunal
b. General Duty of Fairness
c. Pecuniary Interest and Rules Against Bias
d. Adjournments
e. Representation by Counsel or Agents
f. Right to a Public Hearing
g. Disclosure of Information
h. Opportunity to State Case

(8) EVIDENCE AT HEARINGS

a. Oral Presentations
b. Written Submissions
c. Technical Information
d. Questions from the SDAB
e. Questions from Participants
f. Site Visits

(9) POWERS OF THE SDAB

a. Completeness of Applications
b. Development Appeals
   (i) Permitted Use
   (ii) Discretionary Use
   (iii) Stop Orders
   (iv) Other Decisions of the Development Authority
c. Subdivision Appeals
d. Variance Power
e. Conditions

(10) LIMITATIONS ON THE SDAB'S AUTHORITY

a. Relevant Evidence (Proper Planning Considerations)
b. Addressing Irrelevant Evidence
c. Fettering Discretion
d. Improper Sub-delegation

(11) MAKING AND COMMUNICATING DECISIONS

a. Requirements for SDAB Decisions
b. Identifying Issues and Applicable Legislation, Plans and Policies
c. Findings of Fact
d. Applying Legislative and Planning Considerations
e. Attaching Conditions to Approvals
f. Implementation of Decisions

(12) OTHER ISSUES

a. Appeals from SDAB Decisions
b. Personal Liability of SDAB Members

COURSE OUTLINE
(REFRESHER TRAINING PROGRAM)

(1) APPEALS TO THE SDAB

a. Decisions Subject to Appeal
b. Status to Appeal
c. Time for Filing an Appeal
d. Notice of Hearing

e. Public Inspection of the Appeal File
f. Time Limit to Hold a Hearing

(2) ROLES AND RESPONSIBILITIES FOR MEMBERS

a. Pre-Hearing
    i. Appointment to Position
    ii. Maintaining Impartiality
b. Post-Hearing
    i. Role in Preparing Reasons for Decision

(3) ADMINISTRATIVE LAW PRINCIPLES

a. Quasi-Judicial Tribunal
b. General Duty of Fairness
c. Pecuniary Interest and Rules Against Bias
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VII. TRAINING IMPLEMENTATION

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