

WHAT IS A SUBDIVISION APPEAL?

SUBDIVISION APPEAL BULLETIN NO. SUB-1-2018

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

INTRODUCTION

Landowners in Alberta must obtain approval from their local subdivision authority (SA) to subdivide land in most cases.¹ SA decisions may be appealed to one of two appeal boards: the provincial Municipal Government Board (MGB) or the local Subdivision and Development Appeal Board. Which board hears the appeal depends on the location and features of the land to be subdivided (See “Where to File a Subdivision Appeal” bulletin for details on where appeals are filed).

BACKGROUND

SAs must consider a number of factors before making their decisions, including various legal rules and comments from the landowner and various other affected stakeholders.² The rules for the subdivision of land are found in Alberta legislation, regulations, and municipal bylaws and plans (See “Frequently Cited Legislation in Subdivision Appeals” bulletin for more information).

An SA may approve a subdivision application, approve it with conditions, or refuse it altogether. On occasion, an SA does not make a decision on a subdivision application at all (or takes longer to make a decision than is allowed in the legislation). If no decision is issued within the legislative time frame, the SA is deemed to have refused the subdivision application.³ In rare cases, an SA may approve a subdivision application that the SA was legally required to refuse. If an SA makes a decision that was beyond its authority, that decision has been treated as a ‘deemed refusal’ by the MGB.⁴

¹ ‘Subdivision’ is the division of a parcel of land by an instrument, under section 616(ee) of the *Municipal Government Act*, RSA 2000 c M-26 (*Act*). See section 652 of the *Act* for exceptions where SA approval is not required.

² See section 654 of the *Act*. See section 5 of the *Subdivision and Development Regulation*, Alta Reg 43/2002, (*Regulation*) for information on who is entitled to notice of an application for subdivision.

³ See section 681 of the *Act*.

⁴ For information on invalid decisions being deemed refusals, see for example *Alberta Transportation v Leduc County (Subdivision Authority) re: Stadler*, MGB 001/11.

Any SA decision may be appealed but only by those who are permitted to under section 678 of the *Municipal Government Act*. The parties that can appeal are:

- The applicant for subdivision,
- A Government department if the application is required to be referred to that department,
- The council of the municipality in some circumstances, and
- A school board with respect to reserves.

MGB APPEAL

After an appeal is submitted, the MGB obtains the SA's record and forwards it to parties⁵ along with any additional information or documentation the parties wish to submit. The MGB also provides parties the opportunity to make submissions in person at appeal hearings. **The object is to ensure all parties have a fair opportunity to be heard and comment on one another's positions.** The MGB panel may also ask questions or request further material they feel is needed to make a decision. Usually the additional information is to ensure the proposed subdivision meets all the legislated requirements and is suitable for its intended use.

When the MGB makes a decision, it must consider the entire application, not only the issue(s) being appealed. The MGB's decision on a subdivision appeal is issued in writing following the hearing and replaces the SA's decision. It is valid for one year.⁶

For more information about the MGB's appeal process, please see the Subdivision Procedure Rules and bulletins on the MGB's [Subdivision Appeals](#) Page.

⁵ Parties at the appeal hearing may include the owner of the land to be subdivided, the municipality, the Subdivision Authority (if it is not the municipality), any government departments, and adjacent landowners.

⁶ The endorsement period can only be extended by the municipality's council under section 657(6) of the *Municipal Government Act*.