

# Guide to the Calgary Subdivision and Development Appeal Board

*Jointly created by*



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## **Introduction**

This guide explains the development and subdivision appeal process. It is always best to resolve issues with development and subdivision applications during the application review process, and try to achieve a project and an approval that all affected parties can support, though sometimes this is not possible. Community Associations are encouraged to educate and guide affected residents regarding a specific development application whether this effort leads to filing an appeal or not. (Note: affected persons cannot file an appeal against a subdivision application.) Appeals can be filed to potentially resolve issues. Individuals who are affected and/or the community association may file an appeal to of a Development Authority approval to the Subdivision and Development Appeal Board (SDAB), or speak to an appeal filed by other parties. Community Associations can generally appeal any development approval within their respective communities. Home owner associations do not necessarily have the same ability to appeal.

### ***What is the Calgary Subdivision and Development Appeal Board?***

The Calgary SDAB is a quasi-judicial board established in accordance with the [Municipal Government Act](#) of the Province of Alberta and City of Calgary [Bylaw 25P95](#). The SDAB is independent from The City of Calgary Planning Department. The Board assumes the role of the Development Authority and makes final decisions related to appeals regarding development permits, subdivision applications, and enforcement orders. The SDAB convenes hearings and determines facts based on written and verbal evidence and can approve, reject or vary development permit applications. The SDAB must make impartial decisions founded on established provincial and municipal legislation, bylaws and policies.

### ***SDAB Composition***

The SDAB is comprised of citizens that bring a wide range of experience including building and development, architecture, community involvement, planning, engineering, project management and law.

The Calgary SDAB is appointed by resolution of City Council annually for one- or two-year terms. The SDAB consists of a minimum of 15 to a maximum of 25 citizen members. Members cannot serve more than a cumulative maximum period of 10 years unless otherwise determined by Council. Also, members cannot be employees of The City of Calgary or someone who carries out subdivision or development powers, duties and functions on behalf of The City, or members of the Calgary Planning Commission or a member of Council. For a complete list of the current SDAB members please visit [www.calgarysdab.ca](http://www.calgarysdab.ca)

The SDAB meets in groups called panels. Panels usually consist of a minimum of three members to a maximum of seven, although in some instances a panel can be

as few as one member. The SDAB hears appeals regarding decisions made by the Development Authority or Subdivision Authority on development and subdivision applications and renders decisions based on relevant planning matters. It also hears appeals regarding enforcement orders, although the SDAB can only render decisions based on whether or not the Development Authority correctly issued the order.

The Calgary SDAB is independent from the Development and Subdivision Authority. The SDAB makes decisions in an impartial manner and applies the principles of natural justice and procedural fairness, which includes but is not limited to:

- The right to a public hearing
- A duty to be fair
- The right to be heard by an unbiased, independent and impartial decision maker
- The right to have the opportunity to state your case
- The right to request an adjournment
- The right to be represented by legal counsel or an agent

### ***What is the Mandate of the Calgary SDAB?***

The Calgary SDAB meets when there are appeals to various decisions made by the Subdivision Authority or Development Authority. These decisions include:

- A decision of the Development Authority (including the Calgary Planning Commission) regarding a development permit approval, conditions of approval, or a refusal.
- A decision of the Subdivision Authority regarding a subdivision application, conditions, or refusal.
- An enforcement order issued by the Development Authority.
- A deemed refusal of a development permit application or subdivision application, when a decision is not made within the legislated timelines of receipt of an application.

Individuals and community associations who are affected by a development permit approval can appeal that approval. Applicants themselves might also appeal an approval based on disagreement with the conditions of approval. Further, the person who is the subject of an enforcement order may appeal that order.

In addition to the applicant and appellant, any person who feels they will be affected by the proposed development has the right to appear before the SDAB and explain why they are affected. The SDAB will then make a determination as to whether or not that person is an “affected person” with respect to the proposed development. The SDAB determines whether or not persons are affected on a case-by-case basis as part of the hearing process. Further, any person to whom the SDAB gives notice of an appeal has the right to make submissions to the SDAB.

Matters approved by City Council (e.g. on land use) cannot be appealed to SDAB.

## ***How do I File an Appeal?***

Appeals can be filed online or a Notice of Appeal form can be obtained from the SDAB office or downloaded from the [SDAB website](http://www.calgarysdab.ca) (www.calgarysdab.ca). If a development permit appeal is filed by the applicant, it must be filed on or before 21 calendar days after the date the written decision was issued by the Development Authority. If the appeal is filed by an affected neighbour other than the applicant, it must be filed on or before 21 calendar days from the date it is advertised on The City Public Notice webpage (www.calgary.ca/publicnotices). The appeal deadline for an Enforcement Order is 21 calendar days from the date the order is made while the deadline for a Subdivision application is 14 calendar days from the date the owner or applicant was notified of the decision. There is a fee associated with filing an appeal which is set by Council. The notice of appeal and the filing fee must both be received on or before the final date of the appeal period for it to be considered by the SDAB. The filing fee is refundable if the appeal is withdrawn prior to the commencement of the hearing, or at the discretion of the Board if the hearing has commenced.

People are encouraged to file their own appeals. If an individual files an appeal and for procedural or jurisdictional reasons the appeal is struck, or that individual withdraws the appeal then those who may be truly affected would not be able to voice their concerns since the appeal no longer exists.

The Calgary SDAB keeps a list of individuals who have been authorized to file appeals and speak on behalf of community associations at SDAB hearings. It is important to keep the list up to date so that the SDAB is confident that the appellant/speaker is actually representing the community association. To be sure that the information is correct, contact the SDAB administration.

## ***What Happens After an Appeal is Filed?***

Once an appeal is filed, it will be scheduled for a hearing within 30 days. The hearing date is advertised on the SDAB website a minimum of one week before the hearing. The appellant, applicant, owner of the property, community association and persons the SDAB considers may be affected persons will receive written notification of the hearing date at least five days prior to the hearing in accordance with the *Municipal Government Act*, RSA 2000, c M-26. The notice of hearing letter will include the date and time of the hearing.

Reports are prepared for each item scheduled on the agenda. These reports are sent to the SDAB members prior to the hearing and are available to the public. A copy of the report for any item can be downloaded from the SDAB website or obtained from the SDAB office prior to the hearing. Please contact the SDAB office for availability.

## ***Procedural and Jurisdictional Matters***

In an effort to minimize delays and increase the effectiveness of the hearing process, the SDAB may determine procedural or jurisdictional matters, or both, at the commencement of some appeal hearings.

The process is designed to manage scheduling and prevent delays (including additional adjournment requests) by ensuring the SDAB and the parties are aware of:

- Who will be party to a hearing;
- If agents or witnesses will be contributing to the hearing;
- Which issues will be raised;
- The nature and scope of evidence and arguments which will be presented; and
- The anticipated time required to hear the appeal

In addition, the SDAB may determine jurisdictional matters such as whether an appeal has been filed on time.

If an appeal is selected for the procedural and jurisdictional process, the hearing will start with the SDAB identifying who the participants are and the length of time the hearing is likely to take. The SDAB will also give guidance to the parties present about the filing of materials and evidence for the appeal. The SDAB may also deal with preliminary issues regarding the appeal. This process is typically short in duration. In most cases, the SDAB will schedule a later date to hear the merits of the appeal, taking into account the scheduling requests of parties.

All of this means that parties to the matter may have to appear more than once; however, it also provides greater certainty about the specific hearing date and time for the appeal, potentially eliminating further delays.

Any of the parties may request that the SDAB deal with some issues or hear the entire appeal on the date scheduled. The Board may agree to do so, in its discretion. For this reason, it is important to come to the first session prepared to present your case. The SDAB also has authority to determine procedural and/or jurisdictional issues at any time during the appeal hearing, not just at the outset.

### ***Can I Discuss an Appeal with a Member of the SDAB?***

The SDAB speaks only through its written decisions. The public should not contact any SDAB member with respect to the merits or outcome of an appeal. If a SDAB member is contacted regarding an appeal matter, that member would be unable to participate in the appeal proceedings due to potential bias. It is recommended to direct all inquiries to the SDAB administration; however, any response provided by the administration is informational only, it is not a decision of the SDAB and does not constitute a legal advice.

## ***Can I Discuss an Appeal with the Applicant?***

Sometimes development proponents (as applicants) and individuals or community associations (as appellants) discuss the issues that led to the appeal and attempt to find common ground before the appeal is heard. The SDAB encourages everyone involved in an appeal to discuss the issues prior to the hearing and throughout the appeal process. Such discussions can clarify the issues and may result in a resolution or an agreement between the parties. However, it is best to have the SDAB make a ruling on the revisions to the approved plans to help ensure that the applicant will abide by any agreements. If you come to a resolution or agreement, please advise the SDAB administration as soon as possible.

## ***What Happens at a Hearing of the SDAB?***

Appellants (persons who file an appeal) are encouraged to make a verbal presentation to the SDAB. Persons who have been notified of the appeal also have the right to present a verbal, written and/or visual presentation to the SDAB. Parties may have someone speak on their behalf, but must submit a letter of authorization to the SDAB. If a number of appeals are filed on the same development, it is helpful to select a spokesperson and to organize presentations so that evidence is not repetitive.

The Chair announces each appeal and, if present, calls a representative of The City of Calgary Development Authority to present the application or order (i.e., where the site is located, the proposed development and the reasons for the Development Authority's decision).

The Chair will then ask for:

- All speakers in favour of the appeal (persons who filed an appeal or support the position of the appellant) starting with the appellant.
- All speakers opposed to the appeal (persons who oppose the position of the appellant)

When presenting an appeal, keep in mind that the SDAB does not consider precedent when making its decision. Each application is judged on its own merits.

In accordance with the legislation that governs the SDAB, the SDAB can only consider relevant planning matters when rendering its decision. Some examples of planning matters include design, parking, traffic, compliance with planning legislation and impact on neighbouring properties. Matters not related to planning include comments regarding a person's character, commercial competition or tenure (e.g. owner-occupied vs. renter-occupied). If persons stray from planning matters, the Chair will advise accordingly.

After the representative(s) summarize their presentation, SDAB members may ask questions of any speaker(s) relative to the planning aspects of the appeal.

After all parties have spoken in favour or opposition to the appeal, they will be given the opportunity to present rebuttal information. Rebuttal is not an opportunity for parties to re-argue their case but rather to speak to new evidence raised that could not have reasonably been anticipated.

The SDAB agendas are usually quite large. Some agenda items take longer to review and the withdrawal and adjournment of items makes it difficult to predict the exact time that an item will be heard.

### ***Requesting an Adjournment***

If the appellant, property owner, Development Authority, or applicant is unable to attend the hearing or need time to prepare for a hearing, a written request for an adjournment (postponement) can be made in advance of the hearing. An adjournment request can also be made verbally at the hearing. Sometimes applicants, appellants and affected persons jointly ask for an adjournment if they are in discussions that might result in a resolution or agreement that would end the appeal. Adjournment requests are not granted automatically. It is important that someone attend the hearing and be prepared to discuss the request for adjournment and/or present evidence to the SDAB in the event the request is denied. When considering an adjournment request, the Board must weigh the fact that all parties have a right to be heard against the need to resolve matters in a timely fashion without undue delay.

### ***Withdrawal of an Appeal***

Should an appellant decide not to proceed with an appeal, a written letter of withdrawal should be forwarded to the SDAB as soon as possible. The filing fee is refunded if the appeal is withdrawn prior to the commencement of the hearing or at the discretion of the SDAB if the hearing has commenced.

### ***Decision of the SDAB***

The SDAB deliberates the outcome of all appeals in private. At the conclusion of the hearing, the SDAB may render a verbal decision immediately with a summary of the reasons and issue a written decision in due course. Alternatively, the SDAB may decide to reserve its decision and issue a written decision in due course. The verbal announcement is a courtesy only, and the written decision can be different from what is verbally announced. It is not official, nor can it be acted upon, until a written decision is issued. Development permits will not be released until the written decision has been issued.

Written decisions are posted and archived in a searchable database at [www.calgarysdab.ca](http://www.calgarysdab.ca) or CanLII [www.canlii.org/en/ab](http://www.canlii.org/en/ab). These can be useful resources when preparing an appeal. The SDAB is not bound by past decisions, as each appeal is unique and evaluated on its own merits. You should exercise caution when reviewing



past decisions and making generalized conclusions. However, past decisions may be useful in understanding the factors the SDAB considers when rendering its decision.

### ***Appeal of the SDAB's Decision***

An appeal of a decision of the SDAB lies with the Alberta Court of Appeal on a matter of jurisdiction or law (i.e. if the SDAB erred in the way it made its decision rather than the decision itself). If an appeal of the SDAB's decision is being considered, it must be filed within 30 days of issue of the decision. If you are considering an appeal, it is recommended that you consult with legal counsel.

### ***Learning More about SDAB***

Considerable and current information about appeals is on the SDAB website at [www.calgarysdab.ca](http://www.calgarysdab.ca) , or contact the SDAB office directly. A course on Development Appeals is offered annually by the Federation of Calgary Communities and The City through the Partners in Planning certificate program.

### ***Checklist for Presentations to the SDAB***

#### **Filing an Appeal**

- Contact the SDAB office to obtain the proper appeal form or submit an appeal online.

#### **Research**

- Contact the Development Authority/Subdivision Authority, developer and/or applicant to obtain information about the project.
- Obtain a copy of the report from the SDAB website, which contains background information about the development, subdivision or order, appeal(s) filed and any documentation received as a result of the appeal. Copies of the plans that the decision was based on will also be included.
- Review all relevant planning documents Municipal Government Act (MGA), Municipal Development Plan which is the guiding document for planning in the City, Land Use Bylaw, Area redevelopment plan (ARP), Area structure plan (ASP), and other applicable policies (Infill Housing Guidelines, etc.). To access some of these documents, go to The City's website and search for "Planning and Development resource library".
- Host public meetings and document their outcome.
- Carefully document, in chronological order, all meetings, discussions, and phone calls, which took place throughout the application process.

- Identify and document the relevant planning issues.
- Seek advice from the ward councillor and community association.
- Take photographs of the site and neighbouring area (this may give the SDAB a visual perspective of what you are referring to).
- Encourage affected parties to attend and be prepared to speak at the hearing. If an affected party cannot attend the hearing, encourage him or her to write a letter outlining their position or compile a letter of objection signed by affected parties.
- Familiarize yourself with procedures by attending a meeting of SDAB.

## **Presentation**

- Plan your presentation. If you will be presenting your argument by means of an electronic presentation (on a laptop or a tablet) you must leave a hard and electronic copy of your presentation with the SDAB administration. For details call the SDAB office at 403-268-5312.
- Coordinate your presentation with other speakers to avoid duplication of presentation material. The SDAB will NOT listen to the same evidence presented twice.
- If you plan to speak at the hearing, please sign the register located at the entrance of the hearing room.
- Introduce yourself (name and address) and whom you represent.
- Explain how you are an affected party.
- Provide a brief description of the meetings and contacts made with the community, the applicant and the affected neighbours. The SDAB may or may not find this information relevant.
- Provide planning related reasons for why you support/oppose the appeal.
- Show photographs of the site and the surrounding area that are applicable to the appeal. Also, have illustrative material and well-prepared drawings available for your presentation. Exhibits used in your presentation are retained by the SDAB for minimum 60 days and will only be returned after this time frame, if requested.
- You will be provided with an opportunity to rebut any new evidence presented by other parties.

## Presentation Tips

- Focus on the use, not the users – characteristics of the users of the proposed development are not considered admissible and will not be considered in rendering a decision. This rule is also true for issues of economic benefits/losses and property values.
- Precedence is not a planning principle and will not be considered by the SDAB.
- The hearing room is equipped with a document viewer and a projector; you must bring your own laptop computer if you intend to rely on an electronic presentation, as one will not be provided for you. If using visual aids, it is recommended that you have someone assist you with setup ahead of time before the hearing. Contact the SDAB office for more information on the equipment in the hearing room.
- If you will be presenting your arguments by means of an electronic presentation (from a laptop computer or tablet device) you must leave a hard and electronic copy of your presentation with the SDAB administration.
- Practice and time your presentation.
- Remember
  - Be informed
  - Stick to relevant planning matters
  - Be prepared
  - Be fair
  - Be respectful

For more information, please visit the Federation of Calgary Communities' website <https://calgarycommunities.com/> or the Subdivision and Development Appeal Board's website <http://calgarysdab.ca/>

The information contained herein is intended for information purposes only and should not be construed as legal advice. For certainty, you should consult the *Municipal Government Act* and other related statutes and regulations.