



Subdivision
& Development
APPEAL BOARD

**Calgary Subdivision
and
Development Appeal Board
Procedural Guidelines**

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PART A: INTRODUCTION

1. The Board is an independent quasi-judicial tribunal. Within the mandate of the *Municipal Government Act*, RSA 2000, c M-26, as amended, and Bylaw 25P95 (the Subdivision and Development Appeal Board Bylaw), as amended, the Board controls its own process and procedure at all times.
2. The Board has established a process as set out in these Guidelines that will better enable the Board to effectively and efficiently decide appeals. The Board may, however, deviate from these Guidelines when hearing a particular appeal with or without notice to the parties.
3. If these Guidelines contradict any statute or bylaw, the statute or bylaw will prevail.
4. These Guidelines should not be construed as legal advice.

PART B: BEFORE THE HEARING OPENS

Commencing Appeals

5. An appeal is commenced by filing a notice of appeal form and paying the applicable filing fee.
6. There are strict timelines for starting an appeal. Appeals must be started within 14 days (for subdivision appeals) or 21 days (for development appeals) of notice or deemed refusal by the Subdivision or Development Authority. Appellants are encouraged to file as soon as possible within the appeal period.
7. The notice of appeal form should be filled out completely, including a summary of the reasons for the appeal.
8. Once an appeal has been started, other people may have the opportunity to participate in the hearing and make submissions to the Board. If the appeal is withdrawn or struck, they will lose that opportunity. Therefore, parties who wish to appeal a decision are encouraged to file their own appeals rather than relying on the appeals filed by others.

Scheduling a Hearing

9. Once an appeal has been commenced, the Board will schedule the hearing to begin within 30 days, and will issue notice of the date and time of the hearing.

Agents and Lawyers

10. A person can file an appeal on their own behalf or can authorize an agent, lawyer or other representative to do so on their behalf.
11. If a person is filing an appeal on behalf of someone else, this must be stated in the notice of appeal form. The “appellant” in the notice of appeal form is the person who has the right to appeal, and the “agent” in that form is the person filing on the appellant’s behalf.
12. If a person is representing someone else, they may be asked to provide written authorization from the person they represent. This applies to any person acting as a representative of an individual, company, society, community association or any other organization.

PART C: MATERIALS AND EVIDENCE

Evidence

13. There are rules of evidence which typically apply to court processes. The Board is not bound by these rules of evidence.
14. The Board does not seek evidence nor advocate for any party to an appeal. The Board relies on the evidence submitted by the parties. Each party is responsible for assembling and presenting evidence to support that party’s case.
15. Despite the preceding clause, the Board may request that parties submit relevant documents and materials respecting the appeal.

Disclosure

16. Parties are encouraged to exchange their evidence and arguments with one another and submit written materials to the Board before the hearing begins. This advance disclosure helps ensure that the appeal proceeds as efficiently as possible.
17. Examples of materials which should be disclosed in advance include:
 - (a) A summary of the party’s intended arguments;
 - (b) Any documents upon which the party will be relying;
 - (c) Any legal issues which have been identified;

- (d) A list of witnesses each party intends to call, including the identities of those witnesses and a summary of the evidence anticipated from those witnesses;
 - (e) If any witnesses are being proposed as experts in a particular field, the qualifications of those witnesses;
 - (f) Any relevant statutes, bylaws, planning documents, articles, court cases, or other authorities; and
 - (g) An estimate of the amount of time each party expects needs to present their case.
18. Parties are encouraged to send written notice to the other parties to an appeal and to the Board of any preliminary matters, such as requests for procedural directions or notice of jurisdictional matters, as soon as possible. Submission deadlines do not apply to disclosure of preliminary matters before the hearing.
19. Failure to provide advance disclosure of information and materials could result in a hearing being adjourned or in other consequences.

The Board Report

20. All materials submitted to the Board will be included in a package called a “Board Report”. The Board Report will be updated with new materials when they are received.
21. The Board Report will be posted on the Board’s website (www.calgarysdab.ca) the week before the hearing begins. The Board Report can also be viewed at the Board’s office. Once the hearing is finished, the Board report will be removed from the website. The official version of the Board Report is the one at the Board’s office.
22. Parties should review the Board Report carefully before the hearing and should regularly check for updates to the Board Report.
23. Parties should notify the Board if there are any differences between their submissions and those submissions as they appear in the Board Report.

Submission Deadlines

24. The notice of the hearing sent by the Board will include a deadline for submissions of materials.

25. If a party intends to refer to materials which were not provided to the Board prior to the deadline in the notice of the hearing:
 - (a) The materials should still be provided as soon as possible; and
 - (b) Copies of the materials must be brought to the hearing.
26. The Board may set deadlines for submission of further materials at any time during the hearing.

Requirements for Materials being Submitted

27. Materials filed with the Board, whether in hard copy or electronic format, should be sequentially page numbered. Hard copy materials should be tabbed where appropriate. In the case of materials submitted electronically, sections of materials may be separated by a page containing a tab letter or number in large font where appropriate instead of tabs.
28. Documents that contain multiple parts, such as legal briefs and expert reports with appendices or schedules, should also be bound if they are being submitted in hard copy format.
29. All materials filed with the Board should be clearly printed and legible. Parties are encouraged to highlight relevant passages or sections.
30. Applicants for development permits or subdivision approvals should provide legible copies of the plans on which the Development Authority or Subdivision Authority based its decision. The Board may request that larger copies of plans be submitted for the purposes of legibility.
31. Some plans, maps or drawings are “to scale”, meaning that the size of an item on the page represents its actual size. If any plans, maps or drawings are to scale, hard copy printouts to this scale should be provided.
32. Parties who refer to a portion of a document may be asked to provide context for that portion, which may include:
 - (a) The complete document;
 - (b) The complete section of a bylaw or statute;
 - (c) The complete section of a planning document or policy document;
 - (d) The complete article;

- (e) The complete chapter of a book; or
- (f) The complete decision of a court or administrative tribunal.

Electronic Submissions

- 33. Parties are encouraged to submit their materials electronically.
- 34. Electronic submissions must be in a printable format and in a format that is compatible with the Board's computer systems.
- 35. If electronic submissions are not provided to the Board before the deadline for submissions in the notice of the hearing or public notice, hard copies of the materials must be brought to the hearing.
- 36. The Board Report is printed in black and white. Any materials which are in colour, such as coloured maps, plans, drawings, or photographs, should also be submitted as hard copies at the hearing.

Submissions at the Hearing

- 37. Multiple copies of all materials provided at the hearing (including written presentations) are required. They are distributed to the panel and other participants.
- 38. 12 copies of materials provided at the hearing will be required.
- 39. The Board may require additional copies of materials (beyond the 12 discussed above) to be provided, at the party's expense.
- 40. All presentation materials, including written presentations, photographs, PowerPoint and other slide presentations, and any materials placed on the overhead projector or otherwise presented to the Board during the hearing, must be left with the Board.
- 41. If a PowerPoint or other slide presentation is made to the Board, hard copies of the presentation must be provided at the hearing.

Submissions are Public

- 42. All documents, submissions, and other materials submitted to the Board by the parties, as well as the Board's decision, will be available to the public.

PART D: THE HEARING

The Panel

43. The Board hears appeals in groups of up to seven Board members called “panels”. A decision of the panel is a decision of the Board.
44. Panels of the Board have a minimum number of members. This minimum number of members is called the “quorum”.
45. The quorum for a panel of the Board is either three members (“small panels”) or five members (“large panels”). Whether a small panel or a large panel is required depends on the type of appeal being heard.
46. Members of the Board are listed on the Board’s website (www.calgarysdab.ca). Any concern about the makeup of a panel for a particular appeal must be raised at the beginning of the hearing or as soon as possible.
47. A different panel might set the date for the hearing to continue or provide some procedural directions. Once a panel starts hearing the merits of an appeal, that panel will remain the same throughout the hearing.
48. If for any reason a member of the panel cannot continue to participate in a hearing, the hearing may proceed without that member but only if enough other members are present to still achieve quorum. If not, the hearing will be adjourned and may be re-heard by a new panel.

Participating in a Hearing

49. The usual order of presentation in a hearing when a development permit or subdivision decision is being appealed is:
 - (a) Introduction by the Board;
 - (b) Preliminary matters (if any);
 - (c) In some instances, presentation by the Development Authority or Subdivision Authority;
 - (d) Presentation by the appellant;
 - (e) Presentations in favour of the appeal;
 - (f) Presentations against the appeal;

- (g) Response by the Development Authority or Subdivision Authority; and
 - (h) Rebuttal by the appellant and other parties.
50. The usual order of presentation in a hearing when an enforcement order is being appealed is:
- (a) Introduction by the Board;
 - (b) Preliminary matters (if any);
 - (c) Presentation by the Development Authority;
 - (d) Presentations in favour of the enforcement order (against the appeal);
 - (e) Presentations in favour of the appeal (against the enforcement order);
 - (f) Response by the Development Authority; and
 - (g) Rebuttal by the appellant and other parties.
51. Board members may ask questions of the parties at any time during the hearing.
52. “Rebuttal” is the opportunity to respond to new issues which came up during the hearing and which could not have been reasonably anticipated. It is not an opportunity to raise new issues or repeat evidence and arguments that have already been made.
53. Only those parties who made written or verbal submissions to the Board before or during the hearing will be allowed to present a rebuttal.
54. There are limits on who is entitled to participate in a Board hearing. Persons who want to participate in an appeal on the basis that they are affected by its outcome must be prepared to explain why they are affected, including providing their addresses.
55. Appeals to the Board are “hearings de novo”. This means that the Board can consider new evidence and arguments the Development Authority or Subdivision Authority did not consider in reaching its decision.
56. Parties are encouraged to be prepared to speak to all aspects of the proposed development or subdivision or other matter before the Board, not just those aspects identified in the notice of appeal.
57. The Board’s hearings are public and conducted in person at the Board’s office.

58. The Board's hearings are conducted in English. The Board does not provide interpreters. Parties may provide their own interpreters at their own expense.
59. If a person fails to attend a scheduled hearing, the Board may decide the appeal in that person's absence.
60. Any concerns about the Board's hearing processes should be drawn to the Board's attention as soon as possible.
61. Only one person should speak at a time during the Board's hearing. The Board will provide directions about the order of the speakers or presenters.
62. The Board may give other directions to parties presenting during the hearing to facilitate the hearing process. These directions may include advising parties that their submissions or arguments are outside of the scope of the things the Board can consider in the appeal.

Procedural Directions

63. The Board may dedicate a time at the beginning of the hearing to determine procedural matters. This is typically a short process. In most cases the Board will book a later date to hear the merits of the appeal.
64. The Board can give procedural directions to help the appeal proceed smoothly and efficiently. Examples of procedural directions include:
 - (a) Setting a date to continue the hearing based on the anticipated length of time required;
 - (b) Providing guidance regarding the filing and exchange of arguments and evidence;
 - (c) Deciding whether to grant procedural requests by the parties such as requests for adjournments; and
 - (d) Any other direction the Board deems appropriate.
65. The Board may give procedural directions at any time during the hearing.

Jurisdictional Issues

66. The Board may consider whether it has the authority to hear an appeal ("jurisdictional issues"). Examples of jurisdictional issues include:
 - (a) Whether the appeal was started in time; and

- (b) Whether the person who filed the appeal was entitled to do so.
- 67. The Board may dedicate a time at the beginning of the hearing to determine jurisdictional issues. In most cases, if the Board finds that it does have jurisdiction, it will book a later date to hear the merits of the appeal.
- 68. The Board may decide jurisdictional issues at any time during the appeal.

Communications with the Board

- 69. A member of the Board will be the presiding officer for each meeting. All submissions and other communications with the Board during the hearing should be directed to that presiding officer.
- 70. The Board does not communicate with the parties regarding the merits of an appeal outside of the hearing.
- 71. After the hearing closes, the Board does not accept any further submissions unless the Board re-opens the hearing. Re-opening the hearing is very rare, is done in the Board's discretion, and is only done in exceptional circumstances.
- 72. Parties should ensure that any submissions made to the Board are copied to all of the parties involved in the appeal. Any response from the Board will be shared with all other parties and will be made available to the public.
- 73. Parties must not attempt to contact Board members to discuss an appeal outside of the hearing. Parties shall not approach Board members before, during, or after a hearing and should instead direct all inquiries to the Board staff. Any response provided by the Board staff is informational only, is not a decision of the Board, and is not legal or other advice.

Adjournments

- 74. The Board can adjourn (suspend) hearings to continue on a later date. This may be on the Board's own initiative or in response to a request by a party.
- 75. Requests for adjournments are not always granted. It is important to attend the hearing in case the request is denied and the hearing proceeds.
- 76. If a party is requesting an adjournment, that request must be made at the earliest opportunity and reasons must be provided. If the request is made before the hearing begins, it should be in writing.
- 77. If a party is opposing an adjournment request, reasons must be provided.

78. Adjournments are discretionary. When considering whether to grant an adjournment request, the Board can consider a number of factors, including the reason for the request and the impact an adjournment might have on any of the parties involved in the appeal.

Withdrawing an Appeal

79. An appellant may withdraw an appeal at any time before the Board issues its decision. A withdrawal of an appeal must be explicit and unconditional.
80. An appellant may withdraw an appeal verbally at the hearing. If the appellant withdraws the appeal before the hearing begins or after the close of the hearing but before the Board issues its decision, the withdrawal must be in writing.
81. If an appeal is withdrawn before the hearing begins, the Board will refund the appellant's appeal fee. If the appeal is withdrawn during or after the hearing, refunds of the appeal fee are at the Board's discretion.

The Public Nature of the Hearing

82. The Board's hearings are open to the public.
83. The Board's hearings are recorded.
84. Transcripts of Board hearings may be ordered at the cost of the person ordering them. Only the complete transcript of a hearing may be requested, partial transcripts are not available.
85. No one is permitted to record, videotape, photograph or otherwise record the Board's hearings or the Board's hearing room without the prior permission of the Chair of the Board.
86. At the end of the parties' submissions, and at any time during the hearing, the Board may meet privately to discuss the appeal. The Board's discussions or deliberations regarding the outcome of the appeal are done during a private meeting.
87. The Board may call the parties back at any time before it issues its written decision to seek clarification from the parties. This will be done with notice to all of the parties in the hearing.

Conduct During the Hearing

88. All persons participating in the Board's processes are required to conduct themselves with courtesy and respect. Disruptive, disrespectful or threatening behaviour will not be tolerated.

PART E: AFTER THE HEARING

Previous Decisions

89. The Board may consider its previous decisions, but it is not bound by them. Each appeal is decided based on its own merits and on the evidence, arguments, and circumstances of the case.

Decisions of the Board

90. The Board's role is to review decisions of the Development Authority or Subdivision Authority by way of a hearing de novo. It may uphold these decisions, reverse these decisions, or change these decisions in part.
91. The Board may verbally state the decision it expects to make at the end of the hearing. This is done as a courtesy only, and it is not a binding decision. The Board's decision may differ from this statement. The Board's decision will be issued as soon as possible after the hearing is over.
92. The Board's decision is final when it is in writing, signed, and issued. Once this has happened, the Board has no more authority over the subject matter of the appeal.

Retention of Evidence

93. The Board retains all documents and electronic submissions it receives in accordance with the Board's retention policies.
94. The Board retains physical evidence such as samples and models for at least 60 days after the decision is issued, or longer if the Board's decision is appealed. These materials will not be returned unless a request is made at the time they are submitted.

Distribution of Board Decisions

95. The Board's decisions are published on the Board's website and by the Canadian Legal Information Institute (www.CanLII.org).
96. The Board sends copies of its decisions to the appellant, the applicant, the Development Authority or Subdivision Authority, and participants in the hearing who have requested a copy of the decision.

Appeal of Board Decisions

97. The Board's decisions may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction.