

2020

DEVELOPMENT APPEALS BOARD Policy and Procedures



Development Appeals Board

City Clerk's Office

1/1/2020

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NOTE: All references to *Legislation* in this document refers to *The Planning and Development Act, 2007*

PART A: GUIDING PRINCIPLES

Composition

The Saskatoon Development Appeals Board is appointed by resolution of City Council. Council shall appoint five members to hear and determine appeals in accordance with Section 49, and Sections 213 to 227 inclusive of *The Planning and Development Act, 2007*. A member of council or an employee of a planning commission or of a municipality is not eligible to be appointed as a member of the Board [Section 215(1) of the Act].

Members are appointed for a two-year term and can be re-appointed. Except in unusual circumstances, a member may not serve more than six years.

Jurisdiction

The Saskatoon Development Appeals Board adjudicates appeals under the provisions of Sections 67, 86, 176, 219, 228 and 242 of *The Planning and Development Act, 2007*. These sections deal with appeals regarding minor variances, demolition control districts, architectural control districts, misapplication of the Zoning Bylaw in issuing a development permit, refusal to issue a development permit because it would contravene the Zoning Bylaw, refusal of subdivision application, and any of the conditions of a Zoning Order issued on the property.

(See Appendix A for the relevant sections of *The Planning and Development Act, 2007*.)

Remuneration

Bylaw No. 7804, passed by City Council on November 30, 1998, effective January 1, 1999, provides for each member of the Development Appeals Board to receive payment of \$25.00 for each meeting attended by the member; and in addition, the member who writes the decision of the Board shall receive a further \$25.00 for each decision written by the member.

PART B: STRUCTURE

Chairperson

The duties and responsibilities of the Chair are to:

- ◇ Assume responsibilities January 1 to December 31 of the year appointed.
- ◇ Provide leadership and attend to all matters necessary for the proper operation of the Development Appeals Board, ensuring that the City's obligations are met in accordance with the legislative requirements contained in *The Planning and Development Act, 2007*.
- ◇ Ensure legal counsel is provided in the areas relevant to the jurisdiction of the Development Appeals Board and in the procedures of administrative tribunals, as required.
- ◇ Take responsibility for training/orientation of Board members regarding hearings, rules of evidence, decision-making and decision-writing of an administrative tribunal or quasi-judicial board.
- ◇ Serve as Chair at the hearings.
- ◇ Review and sign decisions of the Board.
- ◇ Ensure Board directives, policies and appropriate conduct are adhered to at the hearings.
- ◇ Carry out the responsibilities of members as set out below.
- ◇ Prepare an annual report for City Council containing a summary of the Board's activities (i.e. number of appeals, disposition, etc.)

Members

The duties and responsibilities of the members are to:

- ◇ Attend hearings and advise the Secretary of the Board if they are unable to attend or anticipate arriving late.
- ◇ Be familiar with hearing procedures.
- ◇ Review the hearing documents prior to the hearing.

- ◇ Contribute at the hearing by asking questions and participating in discussion/deliberation and decision-making in accordance with established procedures.
- ◇ Declare any conflict of interest with respect to appeals and inform the Secretary of the Board of any potential conflict of interest well in advance of the hearing.
- ◇ Render a decision in writing, together with reasons, within 30 days of the conclusion of the hearing [Sec. 225(1)]

Secretary

The Secretary is responsible for all administrative and operational matters of the Board to ensure compliance with relevant sections of *The Planning and Development Act, 2007*.

The duties and responsibilities of the Secretary are to:

- ◇ Serve notice of hearing at least 10 days prior to the sitting of the Board, on the appellant; the owner of the property; where different from the appellant; the council and each assessed owner within a 75 metre radius of the property [Section 222(3)].
- ◇ Collect appeal fees.
- ◇ Schedule hearings and produce hearing documentation for Board members.
- ◇ Process requests for recording of hearings and production of a transcript.
- ◇ Assist in preparation of decisions and sign decisions of the Board.
- ◇ Distribute written decisions to the appellant, the municipality, the minister and all persons who made representations at the public hearing, by registered mail, within 10 days of the date on which the decision is made. [Section 225(5)], including instructions regarding appeals to the Saskatchewan Municipal Board, Planning Appeals Committee.
- ◇ Transmit appealed records to the Saskatchewan Municipal Board, Planning Appeals Committee, within 10 days of notice of appeal [Section 227].

Legal Counsel

The Board may retain the services of consultants that may be necessary to assist it in the discharge of its responsibilities, and council is responsible for any costs incurred by the board in respect of those appointments [Section 216(4)]. The Chair will recommend legal counsel or other consultants required and have the recommendation ratified by the Board members.

Board Meetings

The Secretary of the Board shall ensure that at the first meeting of the Board each year, members elect a Chair for the year and they may also elect a Vice-Chair.

The Secretary shall schedule hearing dates for the year, and this schedule shall act as a guideline. There may be times when hearings will need to be held between scheduled hearing dates. This may occur when there are a number of hearings for the scheduled date or in the case of not being able to meet the 30-day requirement under Section 222(1) of the *Act*.

Meetings will be conducted in accordance with Robert's Rules of Order.

Issues/Roles

Role of a development appeal board member vs. other positions

Development appeal board members are appointed for their knowledge and expertise in various development related topics. Many board members hold other positions in the community that should be kept separate from their role as board member. This does not mean that members cannot rely upon their general knowledge of development-related matters, but it does mean that if members rely upon any specific knowledge of a matter that they gained outside the hearing, they must disclose the point to the parties so they have an opportunity to respond. If in doubt, the safest course of action is to disclose.

Independence and impartiality: the rule against bias

Development appeal board members have a responsibility to look at the way they conduct themselves not from their own points of view, but from the perspective of others. Board members must act independently and impartially, much like judges. A decision maker must hear a complaint with an open mind and without being influenced by external forces. A bias exists when a decision is influenced by a monetary or

personal interest, or anything else that would influence the decision. Bias can arise from things a board member may have written or said about the case or about the parties.

Decision makers must not only avoid bias, but also avoid creating a perception of bias. A party challenging a board decision in court does not have to prove actual bias; a reasonable perception of bias is enough. A perceived bias exists when the circumstances suggest to a reasonable observer that there may be bias, even though the board member is not actually biased.

The perception that persons other than board members have been actively involved in the decision making process is a common source of bias allegations. The “test” is whether a reasonable observer would think that, in the circumstances, a fair hearing is possible.

Out-of-hearing conduct

In avoiding a perception of bias, board members should keep discussions with individuals from any of the parties inside or outside the hearing room to a minimum. Board members should be cautious during breaks and avoid mingling with any party involved in a complaint.

Board members should remember that few places are totally private and any discussion between board members should take place in a private area. No discussion of the hearing should take place outside the hearing room, except with fellow board members.

In-hearing conduct

All board members have a responsibility not only to be fair, but also to appear fair. This includes not acting inappropriately (rudeness, overly aggressive conduct, lack of impartiality, indiscretion, or closed-mindedness). This has two implications:

- Board members have a responsibility to look at the way they conduct themselves, not only from their point of view, but also from the perspective of others
- Board members should not take criticisms, comments, or advice on the issue of fairness as an affront to their dignity. It may be that a member created an unintended impression.

Body language and tone of voice can convey a wrong message to a complainant. Lack of eye contact, raised eyebrows, an angry, sympathetic, incredulous, or impatient tone of voice can conflict with the words a board member uses. All actions and expressions contribute to the appearance of fairness.

Parties are often willing to accept bad news if they feel that they have been heard through a fair process by an open-minded board. But an air of impatience, indifference, or hostility can ruin that impression. Try to look at the proceedings through the eyes of the parties who may be directly and personally affected by your board's decision.

Conflict of Interest

Section 218 of the *Act* provides that where any member of the Board has a conflict of interest or a financial interest, the member shall declare his interest and take no further part in the proceedings and the member is not entitled to vote on that matter. The Board has expanded this to include instances where a Board member receives a Notice of Hearing for a neighbouring property.

The onus is on each Board member to make immediate disclosure to the Secretary of the Board, upon becoming aware that they are or may be in a conflict of interest in connection with an appeal. Where the possibility of a conflict exists, a member must not sit in on that hearing. If the member becomes aware of a conflict during a hearing, the member must immediately advise the Chair, excuse himself/herself from the remainder of the hearing, and take no part in deliberations on the Decision.

Where there is merely a possibility of a conflict, the best course of action is always to withdraw from the hearing. It is costly for all concerned if Board decisions are challenged on the basis of perceived bias, and a reasonable perception of bias (rather than actual proof of bias) is all that need be shown to invalidate a Board decision.

It is not possible to outline all circumstances where conflicts of interest might arise for Board members, but the following examples represent clear instances where a Board member should disclose a potential conflict:

- The member is a director or officer or shareholder, or has some other material interest in any "person" (including a corporation or partnership) that has a direct interest in the appeal. "Material interest" will include the existence of a material contract between the appellant and the "person" in which the member has a material interest.
- The member is a director of officer or shareholder, or has some other material interest in any "Person" (including a corporation or partnership) that is a direct business competitor with the appellant.
- The member is a director or officer or shareholder, or has some other material interest in any "person" (including a corporation or partnership) that has a direct interest in the appeal.
- The member has any other pecuniary interest in the outcome of the appeal.

- The appellant is a member of the member's family, or is a friend of the member.
- The member bears personal antipathy towards the appellant.
- There is, for some other reason, a reasonable basis for believing that the member may not act impartially towards one of the parties.
- The member has received a copy of the Notice of Hearing as a neighbouring property owner.

"Pecuniary interest" is defined under Section 115 of *The Cities Act*, as follows:

"pecuniary interest" means an interest that a member of a council has in any matter if:

(1) Subject to subsection (2), a member of council has a pecuniary interest in a matter if:

- (a) the member or someone in the member's family has a controlling interest in, or is a director or senior officer of, a corporation that could make a financial profit from or be adversely affected financially by a decision of council, a council committee or a controlled corporation; or
- (b) the member of council or a closely connected person could make a financial profit from or be adversely affected financially by a decision of council, a council committee or a controlled corporation.

(2) A member of council does not have a pecuniary interest by reason only of any interest:

- (a) that the member or a closely connected person may have as an elector, taxpayer or public utility customer of the city;
- (b) that the member or a closely connected person may have by reason of being appointed:
 - (i) by the council as a director of a company incorporated for the purpose of carrying on business for and on behalf of the city; or
 - (ii) as the representative of the council on another body;
- (c) that the member or a close connected person may have with respect to any allowance, honorarium, remuneration or benefit to which the member or person may be entitled by being appointed by the council to a position described in clause (b);
- (d) that the member may have with respect to any allowance, honorarium, remuneration or benefit to which the member may be entitled by being a member of council;

- (e) that the member or a closely connected person may have by being employed by the Government of Canada, the Government of Saskatchewan or a federal or provincial Crown corporation or agency, except with respect to a matter directly affecting the department, corporation or agency of which the member or person is an employee;
 - (f) that someone in the member's family may have by having an employer, other than the city, that is monetarily affected by a decision of the city;
 - (g) that the member or a closely connected person may have by being a member or director of a non-profit organization as defined in Section 125 or a service club;
 - (h) that the member or a close connected person may have:
 - (i) by being appointed as the volunteer chief or other volunteer officer of a fire or ambulance service, emergency measures organization or other volunteer organization or service; or
 - (ii) by reason of remuneration received as a volunteer member of any of those voluntary organizations or services;
 - (i) that the member of a close connected person may hold in common with the majority of electors of the city or, if the matter affects only part of the city, with the majority of electors in that part;
 - (j) that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member of council;
 - (k) that a member may have by discussion or voting on a bylaw that applies to businesses or business activities when the member or a closely connected person has an interest in a business, unless the only business affected by the bylaw is the business or the member or closely connected person; or
 - (l) that the member may have by being the publisher of a newspaper who publishes advertisements for or on behalf of the city in that newspaper, as long as only the regular advertising rate is charged and the advertisement before council for consideration is for a notice or other matter required by statute or regulation to be published in a newspaper.
- (3) Clause (2)(g) and (h) do not apply to a member of council who is an employee of an organization, club or service mentioned in those clauses.

A suggestion by a party to an appeal that a member may be in a conflict of interest, or that there is reason to believe that the member is biased or will not be impartial,

must never be dismissed out of hand. The Board should always take the time to consider whether there is a reasonable apprehension of bias. The Board Chair may wish to consult with counsel to the Board if need be. Where the allegation of conflict or bias is clearly unfounded, then after deliberation, the Board may proceed as originally constituted. If there is real doubt, the simple and sensible solution is to, as the member, to remove herself/himself from participating in that particular hearing in order to avoid future challenges.

Bear in mind that the Board must consider not only actual bias, but the perception of bias.

PART C: BEFORE HEARING

Receipt of Appeal Applications

A notice of appeal must be received within **30 days** after the date on which the Development permit was issued or denied, or from the date of the issuance of the Order to Remedy Contravention [Section 219].

A notice of appeal can be made by completion of an application form provided by the Community Services Department, by written request, or by completion of the Notice of Appeal provided with the Order to Remedy Contravention.

The Notice of Appeal shall contain the following information:

- ◇ reasons for appeal
- ◇ summary of supporting facts for each reason
- ◇ an indication of the relief sought
- ◇ the prescribed fee

Appeal Fees

An appeal fee of \$50.00 is required to file an appeal [Section 220(1)(d)]

Non-Compliance with Appeal Deadline Date

The Secretary shall determine whether the Notice of Appeal has been received from the Appellant within the 30-day appeal deadline outlined in Section 219(4). If the Notice regarding an appeal has been received late, the Community Services Department will be contacted regarding the issuance of a subsequent letter of denial of a development permit.

There is no provision to extend the 30-day appeal deadline for receipt of a late Notice of Appeal for an Order to Remedy Contravention, as the Order stipulates dates on which certain action must be taken.

Materials and Evidence

Section 223(1) of the *Act* requires that the Appellant shall, not later than five days before the date fixed for hearing the appeal, file with the Secretary of the Board all supporting documentation which may include maps, plans, drawings, written material, photos and videos that are intended to be submitted in support of the appeal.

Section 223(2) requires that where required by the board, the council, or anyone acting for and on behalf of the council, shall transmit to the Board, not later than five days before the date fixed for hearing the appeal, the original or true copies of supporting documentation in its possession relating to the subject matter of the appeal.

Late materials from the appellant and/or the City will be submitted to the Board at the hearing. The Board is not obliged to accept or consider these late materials; however, if there is no objection from either party to the appeal, the material will be entered as evidence and marked as an Exhibit (Exhibit A- or R-).

The Secretary will accept written materials from neighbouring property owners. There is no provision in the *Act* regarding a deadline date for acceptance of this material. Any written material from neighbouring property owners will be forwarded to the Board and will be marked for identification as a "B" item. The Board is not obliged to accept or consider this material. If there is no objection to submission of this material from either the appellant or the respondent, the material will be entered as an Exhibit (B-). If there is an objection by either party to the appeal, the Board will rule on its acceptance based on the content of the objection. If the objection holds, the document will not be entered as an official Exhibit; however, it will remain on file as an official record.

The Secretary shall forward a copy of any additional material received from the Appellant, the City and/or neighbouring property owners, to the Appellant and/or the City, as soon after receipt as possible.

Any material received by the Secretary and rejected as an exhibit at the hearing, will be identified as "information only" and become part of the file, but not included as evidence or marked as an Exhibit.

In the event that the Appellant and/or the City has supplemental material to be presented at the hearing, in response to a submission from either party or a neighbouring property owner, the material will be received by the Secretary and submitted as additional documentation to the Board at the time of the hearing. The Board is not obliged to accept or consider this material. If the Board agrees to accept the material and there is no objection from either party to the appeal, the material will be marked as an "Exhibit".

Scheduling of Appeals

The Secretary shall schedule all appeals with due consideration for the Board members, the Administration and the appellants.

A Notice of Hearing must be served not later than 10 days before the date fixed for hearing the appeal. Notice must be served by personal service, ordinary mail or registered mail, to the appellant, the owner where the owner and the appellant are not the same person, the council, and each assessed owner of adjacent property or property within a radius of 75 metres from the boundary of the appellant's land that is the subject of the appeal.

Section 222(4) stipulates that unless a person to whom the notice is sent proves otherwise, any notice served by ordinary mail is deemed to be served, delivered or received:

- a) where the delivery is within the municipality, on the third day following the day on which the letter or envelope containing the notice was mailed; or
- b) where the delivery is not within the municipality, on the fourth day following the day on which the letter or envelope containing the notice was mailed.

Therefore, notices sent by ordinary mail within the municipality must be sent 10+3 days prior to the hearing date, and notices outside the municipality must be sent 10 + 4 days prior to the hearing. Notices to appellants will include a copy of Section 221 of *The Planning and Development Act, 2007*, as well as a copy of an "Information Sheet" (Appendix A)

As a matter of practice, the Notice of Hearing to the appellant is sent by registered mail. Registered mail is deemed to be received on the 5th day following mailing. Therefore the notice to the appellant must be sent 10 + 5 days prior to the hearing date.

As a standard practice, it is expected that the appellant will attend on the scheduled hearing date. There may be some instances where the appellant does not wish to attend and provides the Board with the authority to proceed in the appellant's absence. The Secretary will be required to relay this message to the Board, either in writing prior to the hearing or verbally at the hearing.

In cases where the appellant does not show up at the hearing without prior notice, the Board will be required to make a decision as to whether it will proceed in the appellant's absence. The Board will only proceed on those appeals which are simple setback deficiencies that have been in place for a period of time. Any other appeals will be adjourned to an alternative date in order to ensure that the appellant or a representative is in attendance to present evidence and answer questions of the Board. Once a hearing has been adjourned and rescheduled to a later date, the Board will proceed with the hearing on the rescheduled date whether the appellant is in attendance or not, unless special circumstances arise.

Requests for postponements will be considered and will be at the discretion of the Board. Such requests will generally be granted unless they are recurrent and deemed by the Board to be unreasonable and/or stalling the process. Requests for a postponement received prior to the distribution of the Notice of Hearing will be accommodated and the Notice of Hearing will reflect the change. Requests for postponements received after distribution of the Notice of Hearing must be placed before the board for consideration of a postponement to a suitable date.

Hearings will be scheduled twice per month commencing at 4:00 p.m. The Board may hear anywhere from one to four appeals at a meeting. A docket outlining the order of the hearings will be provided to the Chair and posted on the door of the meeting room prior to the start of the hearings. An effort will be made by Board members to keep each hearing to a maximum of 30 minutes, however, there may be special circumstances where more time is required.

Withdrawal of Appeals

Written requests to the Secretary of the Board to withdraw an appeal can be accommodated at any time prior to the hearing. However, a withdrawal request should be provided as soon as possible in order to provide timely notice to all of the affected parties.

Appeal fees can only be refunded if the appeal is withdrawn before hearing notices are distributed (typically at least 15 days prior to the hearing).

Where the withdrawal notification has been received after the documents have been distributed to the affected parties, and the docket has been prepared, the Secretary shall make a notation on the docket that the appeal has been withdrawn.

PART D: THE HEARING

Hearings of the Development Appeals board are open to the public and the media may attend. Section 224(1) of the Act requires that the Board hear any of the parties, being the appellant, City, and any other person who wishes to be heard in support of or objecting to the application.

Scope of the Appeal

The scope of the appeal will be the issues outlined by the Community Services Department in their letter denying a Development Permit, on the Order to Remedy Contravention or in the Report to City Council recommending that a Subdivision Application be denied.

Hearing Documents

Hearing documents will be prepared for each board member and forwarded prior to the hearing date. The documents will include the letter from the Community Services Department denying a Development Permit or the Order to Remedy Contravention or the Council Report regarding a Subdivision Application which was denied. Also included will be copies of the Notice of Appeal from the Appellant, the Notice of Hearing, as well as any additional evidence submitted by the Appellant, the City, or any neighbouring property owners. The hearing documents will be provided to the five board members, the City (Community Services Department) and the Appellant. The Secretary will keep the original copies of all documents on file.

All documents will be stamped "For Identification Only" followed by an A (Appellant), R (Respondent) or B (Board) designation and a consecutive number. Materials received from the Appellant will be marked "A"; materials from the City will be marked "R" and materials provided by the Board Secretary such as the Notice of Hearing and letters from neighbouring property owners will be marked "B". For example the Notice of Appeal will be marked A.1. All privacy information outlined in the FOIP Act will be redacted. 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.

A docket outlining the order of the hearings will be available to the Chair and also posted outside the meeting room door prior to commencement of the hearings.

Quorum

A majority of the members of the Board constitutes a quorum for the purpose of a meeting or a hearing. This would mean that three out of the five Board members must be present.

A decision of the majority of the members of the board present and constituting a quorum is a decision of the board, but in the case of a tie vote, the vote is deemed to be a negative vote [Section 225(3)].

Recording of Hearings

The Development Appeals Board, on September 14, 1998, resolved that there shall be no taping of hearings on a regular basis for the official record.

A party may request that a hearing or a part of a hearing be recorded and a party may also request that a transcript be prepared. Where such a request is made to the Secretary of the Board at least two full working days before the hearing, the Chair of the Board shall issue an Order (Appendix B), in writing, that the recording be made by an official court reporter. The costs of the recording will be charged against the requesting party. If a transcript is not requested at the time that the recording is requested, then the transcript may be requested by either party at a later date. In any event, the party requesting the transcript will bear the cost of such request.

In the event that the Board determines that it wishes to record a hearing for its own internal purposes, such recording will not be provided to the parties, nor to the Planning Appeals Committee. Access to the recording tapes will be limited to the Board members and the Secretary of the Board.

A summary of proceedings (hearing notes) for the use of Board members and the Secretary only will be recorded in written form by the Secretary of the Board, in keeping with the categories outlined on the Record of Decision form.

Conducting the Hearing

- The Chair of the Board will read the opening statement to commence the session.
- The Chair will introduce the Board members, Board Secretary and Court Reporter (if present)
- The Chair will ask the City's representatives to introduce themselves and any other representatives of the City present.

- The Chair will call the Appellant forward to state their name for the record and introduce any other representatives present on their behalf.
- The Chair will review the documents received to date, and if there are no objections from either party, the documents will be marked as official Exhibits.
- The Chair will ask the Appellant to and City Representative (Respondent) to take the affirmation and present the evidence.

Affirmation (ask the following question) to both City and Appellant

Do you solemnly affirm that the evidence you are about to give in this matter is the whole truth and nothing but the truth?

- The Chair will ask the City's representative to take the affirmation (this need be done only once if the same representatives of the City will be in attendance for additional hearings), and present evidence.

Affirmation (ask the following question)

Do you solemnly affirm that the evidence you are about to give in this matter (and the hearings which follow) is the whole truth and nothing but the truth?

- **Note:** The City's representative can affirm once at the beginning of the hearing if in attendance for additional hearing.
- Following presentation of evidence, the Chair will ask both parties if they have any questions of each other.
- The Chair will ask if any neighbouring property owners wish to be heard. If so, they must identify themselves and take the affirmation prior to making a submission.
- The Chair will ask the Appellant if there is any further evidence to present, based on matters raised by the City's representative or neighbouring property owners (rebuttal evidence). This evidence should be different from what has already been presented and must be related to the matters raised by the City (or neighbours). This is not an opportunity for the appellant to repeat the evidence already presented.
- The Chair will close the hearing and indicate that the Board will render a written decision within 30 days of the hearing, which will subsequently be provided to the appellant by registered mail within 10 days of the date of the decision.

Failure to Appear

If an appellant is not present at the hearing, the appeal will be moved to the end of the agenda. If an appellant is still not in attendance at the end of the hearing, the board will make a decision on whether to proceed in the appellant's absence or to postpone the hearing.

Proceed: If the Board decides to consider the appeal in the absence of the appellant, then any written materials filed by the appellant will be reviewed and the City's representative will be given an opportunity to respond and/or make a recommendation. If the appellant has not filed written materials, then the Board will ask the City's representative if there is a recommendation. If there is a recommendation from the City's representative, the Board will consider it.

Postpone: If a hearing has been adjourned and rescheduled to a later date, it is suggested the board proceed with the hearing on the rescheduled date whether the appellant is in attendance or not, unless they have been made aware of special circumstances.

Expert Witness

Where an appellant, the City's representative, or a property owner served with a Notice (within 75m radius of subject property) wishes to call an expert witness, (i.e., a person who has specialized training and expertise in some or all of the issues in the hearing) they will have to "qualify" the expert before the Board will grant the person expert witness status. This will occur at the beginning of that witness' testimony. The party calling the witness will get the witness to testify about his/her area of expertise, and then will ask the Board to accept the witness "...as an expert in...". The other party will then get an opportunity to cross-examine the witness on his/her expertise. Once that cross examination is complete, the Board will ask the other party if there is an objection to the acceptance of the witness as an expert. If there is an objection, the objections shall be outlined and the parties then can make argument on these points. The objecting party might argue, for example, that the witness is not an expert at all, or that the witness' expertise does not support the description of the expertise put forward by the party calling the witness. The Board must then decide whether to accept the witness as an expert as requested by the party calling the witness (if appropriate, the board might limit the description of expertise more narrowly than put forward).

The expert will generally give opinion evidence and may also give factual evidence. Opinion evidence may be given hypothetically. If this is done, the party calling the witness should set out a hypothetical question stating all of the assumptions necessary for the

expert to give the opinion. Then that hypothetical question can be applied to the facts of the case. Opinion evidence may also be given based on the expert's knowledge of the facts of the case. In that event, the expert should describe the factual bases to support his/her conclusions.

(See Appendix C for Qualification of an Expert Witness)

Procedures for Chairing a Hearing

This is a meeting of the Development Appeals Board. The Board consists of members of this community who have been appointed by City Council to serve a neutral position on the Board. The Board will hear the appellant, the City, and any neighbouring property owners, with the appellant having the final comments. The Board will make a determination based on the evidence presented at the hearing and within Section 219 of *The Planning and Development Act 2007*.

The Chair will be in charge of procedural rulings and any rulings will be final for the purpose of the hearing. Please address all comments and questions through the Chair. *(In the event that the Board chooses to record the proceedings, no one other than Board members or staff will be permitted to access the recording.)*

In all cases the Board will reserve its decision, meaning that it will deliver its decision at a later date. A detailed written decision will be provided by registered mail within 30 days of conclusion of the hearing.

My name is << >>, I am the Chair of the Board. The other Board members are << >>. The Secretary of the Board is << >> of the City Clerk's Office.

I would ask that the City's representative introduce themselves (and anyone else representing the City).

(To the Appellant) Would you please state your name for the record of the Board.

Also, if anyone else is present for this hearing, would you please identify yourself and state your name and interest in the appeal for the record.

I will now review the documents on file which have been identified as follows: <<A.1, being...etc; R.1 being....etc; B.1....etc >>. (Read these from the green sheet).

Does either the appellant or the City have any objection to any one of these documents being formalized as exhibits?

Hearing no objections, the documents will now be formalized as Exhibits.

The Board has established that all persons who give evidence before the board will be required to affirm that the evidence they give will be the truth.

I will now ask the Appellant and City Representative to affirm:

Do you solemnly affirm that the evidence you are about to give in this matter is the whole truth and nothing but the truth?

(To the Appellant) Would you please proceed with your statement with respect to this appeal.

(To the City) Does the City have any questions of the Appellant at this time?

(To Board Members) Do Board Members have any questions of the appellant at this time?

(To the City's representative) Please proceed with your statement on this appeal.

(To the Appellant) Do you have any questions of the City's representative at this time?

(To Board members) Do members of the Board have any questions they wish to ask the City's representative(s) at this time?

(To the Gallery) Is there anyone else present who wishes to address this matter? If so, please identify yourself and take the following affirmation:

Do you solemnly affirm that the evidence you are about to give in this matter is the whole truth and nothing but the truth?

(To the Appellant) Do you have any new additional comments to make or any rebuttal comments, based upon the evidence presented by the City or others who have presented evidence?

(To the Appellant) Prior to concluding the hearing, you may summarize your case or make any closing statements.

(To the Board) Do Board members have any final questions?

This will close the hearing. The Board will review the evidence and make its decision. The Board will render its written decision with reasons within 30 days after the date of the hearing, and you will receive it by registered mail. The Board's written decision is not final for 30 days following the date on the Decision. This is to allow time for any of the parties to appeal to the Planning Appeals Committee. You will have 20 days from receipt of the decision to launch a further appeal. Details regarding an appeal to the Saskatchewan Municipal Board, Planning Appeals Committee will be provided to you with your written decision.

PART E: AFTER HEARING

Decision

The Chair will assist in the preparation of a written decision, providing reasons for each decision, in accordance with an established decision outline (Appendix D).

Members of the Board should take notes during the hearing process. The Secretary will be available to assist the Board during the decision-making process by providing a summary of the proceedings, if necessary, and to document any additional information as well as the Board's decision. The Secretary will provide administrative/secretarial support.

Decisions on appeals shall be signed by the Chair. In the Chair's absence, a decision must be signed by any other board member and the Secretary [Section 225(4)].

The Board must **render its decision in writing, together with reasons, within 30 days of the conclusion of the hearing**. A copy of the written decision is forwarded by the Secretary of the Board by registered mail to the appellant, the municipality, the minister and all persons who made representations at the public hearing **within 10 days of the date of the decision** (10 days less 5 days for receipt of registered mail = 5 days). The Decision will be accompanied with information regarding the right of appeal to the Planning Appeals Committee, Saskatchewan Municipal Board.

In the event an issue arises after the hearing and/or the decision is rendered, the Chair may request additional information/evidence from the appellant and/or the City's representative. In the case where only one party is consulted, the other party will be advised accordingly. If the Board determines that an amendment needs to be made to the Decision, all parties will be advised and the amendment will be made only if there is no disagreement by either party. If there is disagreement regarding a proposed amendment to the Decision, the Board will consult with its legal counsel.

APPENDICES

Appendix A: Sections of The Planning & Development Act

Conflict of interest

218 No member of a board may hear or vote on any decision that relates to a matter with respect to which the member has a conflict of interest or financial interest.

2007, c.P-13.2, s.218; 2018, c 27, s.43.

Right of appeal on zoning bylaw

219(1) In addition to any other right of appeal provided by this or any other Act, a person affected may appeal to the board if there is:

- (a) an alleged misapplication of a zoning bylaw in the issuance of a development permit;
 - (b) a refusal to issue a development permit because it would contravene the zoning bylaw; or
 - (c) an order issued pursuant to subsection 242(4).
- (2) Notwithstanding subsection (1), there is no appeal pursuant to clause (1)(b) if a development permit was refused on the basis that the use in the zoning district for which the development permit was sought:
- (a) is not a permitted use or a permitted intensity of use;
 - (b) is a discretionary use or a discretionary intensity of use that has not been approved by resolution of council; or
 - (c) is a prohibited use.
- (3) In addition to the right of appeal provided by section 58, there is the same right of appeal from a discretionary use as from a permitted use.
- (4) An appellant shall make the appeal pursuant to subsection (1) within 30 days after the date of the issuance of or refusal to issue a development permit, or of the issuance of the order, as the case may be.
- (5) Nothing in this section authorizes a person to appeal a decision of the council:
- (a) refusing to rezone the person's land; or
 - (b) rejecting an application for approval of a discretionary use.

2007, c.P-13.2, s.219.

Application to appeal

220(1) An application for appeal to the secretary of the board must be in writing and must:

- (a) state the reasons for the appeal;
- (b) summarize the supporting facts for each reason;
- (c) indicate the relief sought; and

- (d) include either:
 - (i) the fee prescribed by the Lieutenant Governor in Council in the regulations; or
 - (ii) if no fee is prescribed pursuant to subclause (i), any sum that the board may specify not exceeding \$300.
- (2) For the purposes of subclause (1)(d)(i), the Lieutenant Governor in Council may make regulations:
 - (a) prescribing the fee for an appeal to the board; and
 - (b) for that purpose, establishing categories of appeals and prescribing different fees for different categories.

Determining an appeal

221 In determining an appeal, the board hearing the appeal:

- (a) is bound by any official community plan in effect;
- (b) must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;
- (c) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and
- (d) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:
 - (i) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;
 - (ii) amount to a relaxation so as to defeat the intent of the zoning bylaw; or
 - (iii) injuriously affect the neighbouring properties.

2007, c.P-13.2, s.221.

Requirements of board in setting down appeal

222(1) Subject to subsection (2), within 30 days after the receipt of a notice of appeal, the board shall hold a public hearing respecting that appeal.

(2) If a board holds regularly scheduled meetings at least once each month, the board may hold a public hearing respecting the appeal at the first or second regularly scheduled meeting following the receipt of the notice of appeal.

(3) The board shall, not later than 10 days before the date fixed for hearing the appeal, give notice by personal service, ordinary mail or registered mail to:

- (a) the appellant;
 - (b) the owner, if the owner and the appellant are not the same person;
 - (c) the council;
 - (d) the assessed owners of property within 75 metres of the boundary of the appellant's land that is the subject of the appeal; and
 - (e) other owners of property required to be notified pursuant to the zoning bylaw of the municipality.
- (4) Unless the person to whom the notice is sent proves otherwise, any notice served by ordinary mail pursuant to subsection (3) is deemed to be received:
- (a) if the delivery is within the municipality, on the third day following the day on which the letter or envelope containing the notice was mailed; or
 - (b) if the delivery is not within the municipality, on the fourth day following the day on which the letter or envelope containing the notice was mailed.
- (5) In proving service pursuant to subsection (4), the secretary of the board shall file with the board a statutory declaration stating:
- (a) that the letter or envelope containing the notice was properly addressed and mailed with the postage paid; and
 - (b) the date on which the notice was mailed.

2007, c.P-13.2, s.222.

Additional material considered on appeal

223(1) The appellant shall, not later than five days before the date fixed for hearing the appeal, file with the secretary of the board all supporting documentation, which may include items such as maps, plans, drawings, written material, photos and videos that are intended to be submitted in support of the appeal.

(2) If required by the board, the council, or anyone acting for and on behalf of the council, shall transmit to the board, not later than five days before the date fixed for hearing the appeal, the original or true copies of supporting documentation in its possession relating to the subject-matter of the appeal.

(3) The board shall make available for public inspection before the commencement of the hearing of the appeal all relevant documents and materials respecting the appeal, including all of the material required to be submitted pursuant to subsections (1) and (2).

2007, c.P-13.2, s.223.

Conduct of hearing

224(1) The hearing of the appeal must be open to the public, and the board shall hear any of the parties mentioned in subsection 222(3) and any other person affected by the appeal who wishes to be heard in favour of or against the appeal.

(2) The chairperson of the board or, in the chairperson's absence, the acting chairperson may administer oaths and affirmations.

(3) The board may adjourn any hearing or reserve its decision as it considers advisable.

(4) The board shall make and keep a written record of its proceedings, which may be in the form of a summary of the evidence presented to it at the hearing.

(5) The written record mentioned in subsection (4) is a public record.

2007, c.P-13.2, s.224.

Decision of board

225(1) The board shall render its decision in writing, together with reasons for the decision, within 30 days after the conclusion of the hearing.

(2) Every decision of the board approving a proposed development is subject to the following terms and conditions:

(a) the board's approval lapses on the expiration of the period for which the development permit is valid unless the municipality issues a new development permit in accordance with the board's decision;

(b) the board's decision is specific to the proposed development as outlined in the material and plans submitted to the board.

(3) A decision of the majority of the members of the board present and constituting a quorum is a decision of the board, but in the case of a tie vote, the vote is deemed to be a negative vote.

(4) A decision of the board must be signed by:

(a) the chairperson; or

(b) in the chairperson's absence, any other board member and the secretary.

(5) Within 10 days after the date on which the decision is made, the board shall forward a copy of its decision by personal service or registered mail to the appellant, the municipality, the director and all persons who made representations at the public hearing.

(6) Subject to section 226, a decision of the board does not take effect until the expiration of 30 days from the date on which the decision is made.

2007, c.P-13.2, s.225; 2018, c 27, s.45.

Appeal from decision of board

226(1) The minister, the council, the appellant or any other person may, within 30 days after the date of receipt of a copy of the decision of the board, file with the Saskatchewan Municipal Board a notice of appeal, in the form and manner established by the Saskatchewan Municipal Board, setting out all the grounds of appeal.

(2) If a decision of the board is appealed pursuant to subsection (1), that decision has no effect pending determination of the appeal by the Saskatchewan Municipal Board.

(3) In determining an appeal pursuant to this section, the Saskatchewan Municipal Board may:

(a) dismiss the appeal; or

(b) make any decision with respect to the appeal that the board could have made.

(4) The terms and conditions set out in subsection 225(2) apply, with any necessary modification, to a decision of the Saskatchewan Municipal Board made pursuant to clause (3)(b).

2007, c.P-13.2, s.226; 2018, c 27, s.46.

Enforcement

242(1) A development officer may, at all reasonable times, and with the consent of the owner, operator or occupant, enter any land, building or premises for the purposes of inspection if the development officer has reasonable grounds to believe that any development or form of development on or in the land, building or premises contravenes any provision of this Act, any regulations, any bylaw or any order made pursuant to this Act.

(2) A justice of the peace or a judge of the Provincial Court of Saskatchewan may issue a warrant authorizing a development officer to enter any land, building or premises if satisfied, by information given under oath, that:

(a) there are reasonable grounds to believe that the development or form of development on or in the land, building or premises contravenes any provision of this Act, or any regulations, bylaw or order made pursuant to this Act; and

(b) the owner, operator or occupant of the land, building or premises has refused consent to the development officer to enter the land, building or premises.

(3) A development officer may, with a warrant issued pursuant to subsection (2), enter any land, building or premises named in the warrant.

(4) If, after inspection, the development officer determines that the development or form of development contravenes any provision of this

Act, any regulations, any bylaw or any order made pursuant to this Act, the development officer may issue a written order to the owner, operator or occupant of the land, building or premises on or in which the development or form of development is located.

- (5) In a written order made pursuant to subsection (4), the development officer:
 - (a) shall specify the contravention;
 - (b) may direct the person to whom the order is issued to do all or any of the following:
 - (i) discontinue the development or form of development;
 - (ii) alter the development or form of development so as to remove the contravention;
 - (iii) restore the land, building or premises to its condition immediately before the undertaking of the development or form of development;
 - (iv) complete all work necessary to comply with the zoning bylaw;
 - (c) shall set a time in which a direction made pursuant to clause (b) is to be complied with; and
 - (d) shall advise of the right to appeal the order to the Development Appeals Board.
- (6) An order made pursuant to subsection (4) may be delivered by:
 - (a) registered mail; or
 - (b) personal service.
- (7) The development officer may register an interest based on an order made pursuant to subsection (4) in the land registry against the affected title.
- (8) If an interest has been registered against a title pursuant to subsection (7), the order runs with the land and is binding on the registered owner and on any subsequent registered owner of that land.
- (9) If an interest has been registered against a title pursuant to subsection (7) and the order made pursuant to subsection (4) has been complied with, the development officer shall discharge that interest.
- (10) If a person who is required to comply with a direction contained in an order made pursuant to this section, or by the Development Appeals Board or the Saskatchewan Municipal Board on an appeal of an order made pursuant to this section, fails to comply with the direction within the time set out in the order, and the time for an appeal has expired, a development officer may apply to the Court of Queen's Bench to order the person to comply with the direction within a time set by the Court of Queen's Bench.
- (11) No person to whom an order is made pursuant to subsection (10) shall fail to comply with the order within the time set out in the order.

2007, c.P-13.2, s.242.

DIVISION 2

Subdivision Appeals

Right of appeal

228(1) Subject to subsection (3), an applicant may appeal the following by filing a notice of appeal with the Saskatchewan Municipal Board in the form and manner established by the Saskatchewan Municipal Board:

- (a) a refusal of an application for a proposed subdivision;
- (b) an approval in part of an application for a proposed subdivision;
- (c) an approval of an application for a proposed subdivision subject to specific development standards issued pursuant to section 130;
- (d) a revocation of approval of an application for a proposed subdivision;
- (e) a failure to enter into an agreement pursuant to subsection 172(3) within the specified time limit;
- (f) an objection by the applicant for subdivision approval to producing any information requested by an approving authority, other than information that is required by the subdivision regulations to accompany the application;
- (g) in the case of the circumstances described in clause (e), the matter of the terms and conditions of an agreement.

(2) In the case of an appeal pursuant to clause (1)(a), (b), (c) or (d), the person shall file the person's appeal within 30 days after the date on which the person is served with a copy of the decision of the approving authority.

(3) If the council is the approving authority, the applicant shall appeal in the first instance to the Development Appeals Board and may appeal further to the Saskatchewan Municipal Board in accordance with section 226.

(4) The council may appeal a decision of the Development Appeals Board as a result of an appeal pursuant to subsection (3) to the Saskatchewan Municipal Board in accordance with section 226.

2007, c.P-13.2, s.228; 2018, c 27, s.48.

Reapplication of appealed proposal

229 If an appeal is made pursuant to section 228 with respect to the refusal by an approving authority and the decision of the approving authority is upheld on appeal, no subsequent unaltered application for a proposed subdivision of the

same land shall be made within six months after the date of the appeal decision.

2007, c.P-13.2, s.229.

Notice of hearing of appeal

230(1) If a notice of appeal pursuant to section 228 is filed, the board receiving the notice shall hold a hearing into the appeal and shall give reasonable notice of the hearing to:

- (a) the appellant;
- (b) the approving authority concerned;
- (c) the municipality in which the land proposed to be subdivided is situated, except where the council is the approving authority; and
- (d) any other person that the board considers may be affected by the proposed subdivision and should be notified.

(2) If the appeal pursuant to section 228 is to be heard by the Development Appeals Board, that board shall hold a hearing on the appeal within 30 days after receiving the notice of the appeal.

2007, c.P-13.2, s.230.

Determining an appeal

231(1) Section 221 applies, with any necessary modification, in determining an appeal to the board.

(2) Notwithstanding subsection (1), in the case of an appeal to the board relating to the terms and conditions of a servicing agreement described in subsection 172(3), section 176 applies, with any necessary modification.

2007, c.P-13.2, s.231.

Endorsement of subdivision plan

232(1) If on appeal the board hearing the appeal approves an application for subdivision approval, the applicant shall submit the plan of subdivision or other instrument to the approving authority from which the appeal was made for endorsement by the approving authority.

(2) If an approving authority fails or refuses to endorse a plan of subdivision or other instrument submitted to it pursuant to subsection (1), the chairperson of the board that heard the appeal may endorse the plan or other instrument.

2007, c.P-13.2, s.232.

Appeals on development levy or servicing agreements

176(1) If a council intends to request a payment of a development levy imposed pursuant to section 169 or a fee provided in a servicing agreement entered into pursuant to section 172, that request must be in writing.

(2) Unless a request for payment pursuant to subsection (1) is made pursuant to a development levy agreement, an applicant, within 30 days after receiving a request pursuant to subsection (1), may appeal the request to the Saskatchewan Municipal Board on any of the following grounds:

- (a) that the capital work or project for which the development levy or fee is to be collected does not directly or indirectly serve the proposed development or subdivision;
- (b) that the development levy is not for capital costs;
- (c) that the calculation of the development levy is incorrect;
- (d) that the levy or its equivalent amount has already been paid with respect to the proposed development.

(3) On an appeal pursuant to subsection (2), the Saskatchewan Municipal Board may:

- (a) dismiss the appeal;
- (b) grant the appeal; or
- (c) vary the amount of the development levy or fee requested by the municipality or vary the terms of the development levy agreement or servicing agreement.

(4) If a municipality requires an applicant or owner of the land to enter into a development levy agreement pursuant to section 171 or a servicing agreement pursuant to section 172 and the municipality and the applicant or the owner of the land are unable to enter into an agreement within 90 days after the date of the application for the development permit or proposed subdivision of land, the applicant or the owner of the land may apply to the Saskatchewan Municipal Board for a decision respecting all or any of the following:

- (a) whether or not a development levy agreement or servicing agreement is necessary;
- (b) the proposed terms and conditions of the development levy agreement or servicing agreement;
- (c) whether or not the application for the development permit or proposed subdivision of land is incomplete.

(5) The council and the applicant or the owner of the land may agree to extend the periods for making appeals pursuant to this section.

(6) Notwithstanding subsection (2) or (4), if the council has been declared an approving authority pursuant to subsection 13(1), any appeal by the applicant or the owner of the land pursuant to subsection (2) or (4) must be made, in the first instance, to the Development

Appeals Board.

(7) A decision of the Development Appeals Board pursuant to subsection (6) may be appealed to the Saskatchewan Municipal Board in accordance with section 226.

2012, c.28, s.33.

Development levy bylaw

169(1) If a council has adopted an official community plan that authorizes the use of development levies, the council may, by bylaw, establish development levies to recover the capital costs of services and facilities as prescribed in subsections (2) and (3).

(2) If a development does not involve the subdivision of land, a council may impose development levies for the purpose of recovering all or a part of the municipality's capital costs of providing, altering, expanding or upgrading the following services and facilities associated, directly or indirectly, with a proposed development:

- (a) sewage, water or drainage works;
- (b) roadways and related infrastructure;
- (c) parks;
- (d) recreational facilities.

(2.1) If the subdivision of land is involved, development levies must not be used as a substitute for servicing agreement fees.

(3) The development levy bylaw shall only permit development levies to be imposed if the municipality will incur additional capital costs as a result of the proposed development.

(4) The levies in the development levy bylaw must be based on:

- (a) a study or studies that determine the capital costs of municipal servicing and recreational requirements that service the area for which the levy is applied; and
- (b) consideration by council of future land use patterns and development and the phasing of public works.

(5) The development levy bylaw must specify the levies to be made for services and facilities and may vary those levies having regard to:

- (a) zoning districts or other defined areas;
- (b) land uses;
- (c) capital costs as they relate to different classes of development as established in the bylaw; or
- (d) the size or number of lots or units in a development.

(6) The development levy bylaw must provide that similar levies be imposed for developments that impose similar capital costs to the municipality.

(7) The development levy bylaw may exempt land uses, classes of

development, zoning districts or defined areas specified in the bylaw from the levies.

(8) The development levy bylaw may delegate to a development officer the authority to exercise all or any part of the council's powers, and to carry out all or any of the council's duties, pursuant to this section, section 171, and sections 173 to 176 of this Act and the bylaw, other than the power to enter into development levy agreements with an applicant or owner.

(8.1) Notwithstanding subsection (8), a development levy bylaw adopted by a council that has been declared an approving authority pursuant to subsection 13(1) may delegate to a development officer the power to enter into development levy agreements with an applicant or owner.

(9) Adoption of a development levy bylaw must be in accordance with the public participation requirements of Part X.

(10) Subsection (9) does not apply if a council that has been declared an approving authority pursuant to subsection 13(1) has adopted provisions related to development levy bylaws in a public notice bylaw pursuant to section 24;

(11) If providing, altering, expanding or upgrading of services mentioned in subsection (2) will result in capital costs for facilities located outside the municipality in which the proposed development is to occur, the development levy bylaw may require:

- (a) payment to the other municipality that will bear those capital costs; and
- (b) submission to the municipality of an agreement that satisfies the municipality that the other municipality will provide, alter, expand or upgrade those services and bear those capital costs.

2007, c.P-13.2, s.169; 2012, c.28, s.29;
2018, c 27, s.32.

Development levy agreement

171(1) If a person applies for a development permit, a council that has passed a development levy bylaw pursuant to section 169 may require the applicant or the owner of the land to pay any applicable development levies in accordance with that bylaw.

(2) If, in the opinion of the council, it is necessary to do so, the council or development officer may require the applicant or owner mentioned in subsection (1) to enter into a development levy agreement with the municipality respecting the payment of the development levies.

(3) Subject to subsection 169(3), a council may assess only one development levy on one development.

2007, c.P-13.2, s.171.

Servicing agreement

- 172(1) If there is a proposed subdivision of land, the municipality in which the subdivision is located may require a subdivision applicant to enter into a servicing agreement to provide services and facilities that directly or indirectly serve the subdivision.
- (2) Subdivision applicants shall not receive a certificate of approval from the approving authority if a servicing agreement is required by the municipality and has not been signed by the parties to the agreement.
- (3) Servicing agreements may provide for:
- (a) the undertaking by the applicant to install or construct within the proposed subdivision, and in accordance with the specifications stated in the agreement, any storm sewers, sanitary sewers, drains, watermains and laterals, hydrants, sidewalks, boulevards, curbs, gutters, street lights, graded, gravelled or paved streets and lanes, connections to existing services, area grading and levelling of land, street name plates, connecting and boundary streets, landscaping of parks and boulevards, public recreation facilities or other works that the council may require;
 - (b) if council can reasonably demonstrate costs associated with the proposed subdivision, the payment by the applicant of fees that the council may establish as payment in whole or in part for the capital cost of providing, altering, expanding or upgrading sewage, water, drainage and other utility services, public highway facilities, or park and recreation space facilities, located within or outside the proposed subdivision, and that directly or indirectly serve the proposed subdivision;
 - (c) time limits for the completion of any work or the payment of any fees specified in the agreement, which may be extended by agreement of the applicant and the municipality;
 - (d) provisions for the applicant and the municipality to share the costs of any work specified in the agreement;
 - (e) any assurances as to performance that the council may consider necessary;
 - (f) the amount and location of any land for a municipal utility pursuant to section 172.1 that the municipality may require for the location of a public work or public utility;
 - (g) if the provision, alteration, expansion or upgrading of services mentioned in clause (b) will result in capital costs for facilities located outside the municipality in which the subdivision is to occur, a requirement that:
 - (i) payment will be made by the applicant to the other municipality that will bear those capital costs; and
 - (ii) there must be submitted to the municipality an agreement

that specifies that the other municipality will bear those capital costs; and

- (h) if the provision of service requires capital costs to connect the development to a provincial highway:
 - (i) the applicant to enter into a transportation partnership agreement with the minister responsible for the administration of *The Highways and Transportation Act, 1997*; or
 - (ii) the payment of fees based on a transportation partnership agreement between the municipality and the minister responsible for the administration of *The Highways and Transportation Act, 1997*.

(4) Servicing agreements shall not provide for the completion of any work by the applicant or the payment of any fees by the applicant that were previously addressed by the payment of development levies or in a development levy agreement pursuant to section 171, unless the municipality will incur additional capital costs as a result of the proposed subdivision.

(5) If required to do so by the municipality, an applicant for subdivision approval shall enter into a servicing agreement within 90 days after the day that the municipality receives the subdivision application.

(6) The period prescribed in subsection (5) may be extended by agreement of the municipality and the applicant for subdivision approval. 2007, c.P-13.2, s.172; 2012, c.28, s.30; 2018, c 27, s.33.



Development Appeals Board
c/o Office of the City Clerk
222 – 3rd Avenue North
Saskatoon SK S7K 0J5

www.saskatoon.ca
tel (306) 975-3240
fax (306) 975-2784

FREQUENTLY ASKED QUESTIONS

HOW DO I APPEAL TO THE BOARD?

A Notice of Appeal can be made by completion of an application form. The Notice of appeal should contain the address of the subject property, name and address of the appellant, nature of infraction, reason for appeal, and grounds for appeal [addressing Section 221(d) of *The Planning and Development Act, 2007*]. Your Notice of Appeal must be received by the Secretary of the Development Appeals Board, City Clerk's Office, City Hall, within 30 days after the date on which the Development Permit was issued or denied, or from the date of the issuance of the Order to Remedy Contravention.

WHEN WILL MY APPEAL BE HEARD?

Your appeal must be heard by the Board within 30 days of receipt of your Notice of Appeal, or at the first or second regularly scheduled meeting following receipt of the Appeal Notice. You will be notified by registered mail of the location, date and time. It is important that you pick up your registered mail.

DO I NEED TO ATTEND THE HEARING?

If you do not wish to attend the hearing, you may send someone to represent you. If you do not attend or are not represented, the Board may proceed with the hearing and make its decision based on your written Notice of Appeal and the information provided by the City's representative.

WHAT HAPPENS AT A HEARING?

The Board members and parties to the appeal will be introduced. Anyone giving evidence before the Board will be asked to affirm that the evidence being presented is the truth. You will be asked to explain the situation to the Board. The City's representative will then be given an opportunity to make its case to the Board. There will be an opportunity for questions from both you and the City's representative. Board members may also have questions of both you and the City's representative. The Board will allow you the opportunity to make any closing statements.

IS THERE ANYTHING ELSE I SHOULD KNOW ABOUT?

Notes are taken by the Secretary of the Board during your hearing and are for the Board's use only. If you wish to have any part of the hearing recorded or wish to have a transcript of the hearing for your own purposes, you must submit your request in writing to the Secretary of the Board at least 2 days prior to the date of the hearing.

The Secretary of the Board will arrange for a certified court reporter to attend the hearing and you will be responsible for any recording or transcription fees. Unless there is a formal Order by the Chair of the Board, no one is allowed to make any recordings of any kind or photograph any portion of the proceedings.

WHEN WILL THE BOARD MAKE ITS DECISION?

The Board will make its decision after the hearing. The Board must render a formal written decision, with reasons, within 30 days of the date of the hearing; however, an attempt is made to provide a decision sooner. The written decision must be provided to you by registered mail within 10 days of the date of the decision. The Board's written decision is not final for 30 days following the date of decision. This is to allow time for any of the parties to appeal the decision.

CAN I APPEAL THE DECISION OF THE DEVELOPMENT APPEALS BOARD?

The Minister, the Council, the applicant or any other person may appeal to the Saskatchewan Municipal Board within 20 days after the date of receipt of the Record of Decision of the Development Appeals Board. Information on how to appeal to the Saskatchewan Municipal Board will be contained in the written decision which you receive from the Development Appeals Board.



Development Appeals Board
c/o Office of the City Clerk
222 – 3rd Avenue North
Saskatoon SK S7K 0J5

www.saskatoon.ca
tel (306) 975-3240
fax (306) 975-2784

REQUEST FOR COURT REPORTER

Date of Request: _____	Requested by: _____
Hearing Date: _____	Hearing Time: _____
Hearing Location: Committee Rm E	Secretary: _____
Board Members: _____	

This will confirm that _____ has requested a court reporter attend the hearing of the Saskatoon Development Appeals Board for the property located at _____ being represented by _____.

ORDER FOR RECORDING OF HEARING

At the request of _____, I hereby order that this hearing, or portion of hearing, be recorded by **Royal Reporting Services Ltd.**, Saskatoon, SK., with or without a transcript copy of the recording. Any costs associated with the recording will be charged against the party requesting the recording. Any party to the appeal may request through the Development Appeals Board that a transcript be produced from this recording and the party making the request for the transcript production will be charged for that service. If a transcript is requested and produced, a copy will be provided to the other party of the appeal and to the Planning Appeals Committee, Saskatchewan Municipal Board, in the event that a further appeal is filed with their office.

Dated at Saskatoon, SK, this _____ day of _____, 20_____.

Chair, Development Appeals Board

CONFIRMATION OF BOOKING

This will confirm that **Royal Reporting Services Ltd.** has been booked to attend the above-noted hearing.

(Name of Reporting Service Employee)

(Signature of DAB Secretary)

QUALIFICATION OF AN EXPERT WITNESS

In the Policy and Procedure Manual, there is a provision dealing with expert witnesses. Either an appellant, the City, or a property owner served with notice (75m radius) may call someone to provide expert testimony. The following will briefly deal with the procedure a Board Chair should use when faced with the prospect of dealing with an expert witness.

1. The witness must be **qualified**. There is a process by which this is done. Once that process has been completed, the Board Chair (in consultation with his/her members) will have to decide if the witness has sufficient expertise to testify as proposed.
2. The witness does not give any expert testimony unless and until he is qualified by the Panel Chair to do so. Whoever is calling that witness goes first. Usually, the witness will have a typewritten resume or curriculum vitae to give to the Panel. If so, it should be recorded as an Exhibit in the appeal hearing, irrespective of whether the witness is ultimately qualified. The Panel Chair should ask for a copy of the resume at the beginning.
3. The Board Chair should ask the other party if the qualifications of the proposed expert are in dispute, or agreed. If agreed, much time will be saved. Next, the party calling the proposed expert asks the expert questions. The witness is put under oath at this time. The witness should confirm (under oath) that all of the information contained in the resume is true. Then, the party calling the witness asks questions exploring the qualifications of that witness.
4. Frequently asked qualification questions will often include:
 - A. Name, address, background**
 - B. Business or Occupation**
 - Description of business or occupation.
 - How long in that business, and in what capacity.
 - Duties in that capacity.
 - Other relevant positions held, description of duties.
 - C. Education**
 - Undergraduate degree/certificate obtained; where and when?
 - Postgraduate degree/certificate obtained; where and when?
 - Any Masters or Ph.D. thesis written?

D. Training

- What courses have been taken that relate to their “expert” opinion?
- Who has the witness trained under?
- When, and for how long?

E. Licenses

- Is a license required (i.e. Appraisal Institute of Canada)?
- When was the license first obtained? Held on a continuous basis?
- Is any upgrading or re-certification required?

F. Professional Associations

- Memberships held?
- Any executive positions held?
- Other related information.
- Teaching positions? Articles or books published? Lectures delivered?
- Consulting work?

G. Court/Tribunal experience

- Has this witness ever been qualified to give expert testimony in another forum? If so, when and where, and who qualified him/her?
- How frequently has this witness testified?
- Has this witness testified for both sides or only one?
- Is the witness being paid for his testimony today? By whom, and how much?

H. Experience in Area of Specialty

- Types of things the witness usually does? How often?
- Methodology used?
- Is the area of expertise previously recognized in law?
- Frequency of use of skill: (i.e. how many appraisals done in the last 12 months? Career)?

5. Once the first side is done, then the opposite party has the right to cross-examine on qualifications. At the end, the Panel Chair can ask questions of clarification.

6. At this point the party trying to use the expert should advise the Panel as to precisely **what** the expert is qualified in. In other words, on what subjects can this witness offer expert opinion testimony? There is often debate about this.
7. It is the **Panel Chair** that must decide both if the proposed expert is qualified, and in what area. The Panel Chair must rule on this point and advise both sides of the ruling, so both sides know how to proceed. This should be done immediately, but if in doubt, adjourn for 10 minutes and contact legal counsel.
8. At some point, the other side should be asked if they want time (an adjournment) to consider their position. They may have been caught by surprise by the expert witness. You must carefully balance each party's rights.
9. Each case is different. An expert should be readily familiar with the matter for which his opinion is being sought.
10. Once all this is done, the appeal proceeds as with any other witness. In other words, the party calling him/her asks questions; the other side cross-examines; the original party rebuts.
11. This is a rough procedural guideline only. It is not exhaustive.

PRELIMINARY ISSUES:

GROUNDINGS AND ISSUES:

THE APPELLANT, _____, filed an appeal under Section 219(1)(b) of *The Planning and Development Act, 2007*, in connection with the City's refusal to issue a Development Permit for _____ at _____, which is located in an _____ Zoning District.

City of Saskatoon Zoning Bylaw No. 7800, Section _____ requires _____. The information submitted by the appellant provided for _____. The Appellant was seeking the Board's approval of _____.

EXHIBITS:

- Exhibit A.1: Application to Appeal received on _____, 20_____.
- Exhibit R.1: Letter dated _____, 20_____, from the Development Services Division, Community Services Department, to _____.
- Exhibit R.2: Site Plan and Location Plan submitted by the Planning and Development Division, Community Services Department,.
- Exhibit B.1: Notice of Hearing dated _____, 20_____.

EVIDENCE AND ARGUMENT OF THE APPELLANT:

EVIDENCE AND ARGUMENT OF THE RESPONDENT:

RULES AND STATUTES:

Section 219, Subsections (1) – (5) of *The Planning and Development Act, 2007* governs the right of appeal, as follows:

- 219 (1) *In addition to any other right of appeal provided by this or any other Act, a person affected may appeal to the board if there is:*
- (a) *an alleged misapplication of a zoning bylaw in the issuance of a development permit;*
 - (b) *a refusal to issue a development permit because it would contravene the zoning bylaw; or*
 - (c) *an order issued pursuant to subsection 242(4).*

- (2) *Notwithstanding subsection (1), there is no appeal pursuant to clause (1)(b) where a development permit was refused on the basis that the use in the zoning district for which the development permit was sought:*
 - (a) *is not a permitted use or a permitted intensity of use;*
 - (b) *is a discretionary use or a discretionary intensity of use that has not been approved by resolution of council; or*
 - (c) *is a prohibited use.*
- (3) *In addition to the right of appeal provided by section 58, there is the same right of appeal from a discretionary use as from a permitted use.*
- (4) *An appellant shall make his appeal pursuant to subsection (1) within 30 days after the date of the issuance of or refusal to issue a development permit, or of the issuance of the order, as the case may be.*
- (5) *Nothing in this section authorizes a person to appeal a decision of the council:*
 - (a) *refusing to rezone the person's land; or*
 - (b) *rejecting an application for approval of a discretionary use.*

Section 221 of *The Planning and Development Act, 2007*, governs the determination of an appeal as follows:

221 *In determining an appeal, the board hearing the appeal:*

- (a) *is bound by any official community plan in effect;*
- (b) *must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;*
- (c) *must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and*
- (d) *may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:*
 - (i) *grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;*
 - (ii) *amount to a relaxation so as to defeat the intent of the zoning bylaw; or*
 - (iii) *injuriously affect the neighbouring properties.*

Section of Zoning Bylaw requires

APPLICATION /ANALYSIS:

In determining the appeal, the Board was governed by Section 221 of *The Planning and Development Act, 2007*.

1. Does the granting of this appeal grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district?

2. Does the granting of this appeal amount to a relaxation of the provisions of the Zoning Bylaw so as to defeat the intent of the Zoning Bylaw?

3. Does the granting of this appeal injuriously affect the neighbouring properties?

DECISION:

DATED AT SASKATOON, SASKATCHEWAN, THIS _____ DAY OF _____,
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CITY OF SASKATOON DEVELOPMENT APPEALS BOARD

, Chair

TAKE NOTICE that in accordance with Section 226(1) of *The Planning and Development Act, 2007*, the minister, the council, the appellant or any other person may appeal a decision of the Development Appeals Board to the Saskatchewan Municipal Board. In the event that no such appeal is made, this Decision becomes effective after the expiry of 30 days from the date of the Decision of the Development Appeals Board.

A notice of appeal form can be downloaded from www.publications.gov.sk.ca (select Saskatchewan Municipal Board from the Ministry list, and select Notice of Appeal to the Planning Appeals Committee). The notice of appeal must be filed, **within 20 days after being served with this Record of Decision**, to:

Planning Appeals Committee
Saskatchewan Municipal Board
4th Floor, Room 480
2151 Scarth Street
Regina, SK S4P 2H8
(Telephone: 306-787-6221; FAX: 306-787-1610; info@smb.gov.sk.ca)

An appeal **fee of \$50** is also required by the Planning Appeals Committee. Cheques should be made payable to Minister of Finance. Your appeal will be considered received on the date the appeal fee and the notice of appeal have both been received.

For additional information, please contact the Planning Appeals Committee, Saskatchewan Municipal Board, at the address and/or telephone number indicated above.

A **copy of the notice of appeal** must also be provided to the Saskatoon Development Appeals Board, c/o The Secretary, Development Appeals Board, City Clerk's Office, City Hall, Saskatoon, SK, S7K 0J5.