

WHERE TO FILE A SUBDIVISION APPEAL AND WHAT HAPPENS IF THE APPLICATION IS FILED AT THE WRONG BOARD?

SUBDIVISION APPEAL BULLETIN NO. 1 – 2013

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INTRODUCTION

This Bulletin is designed to assist landowners, agents, municipal staff, subdivision authorities and other stakeholders to determine where an appeal should be filed. Secondly, this Bulletin describes what happens if an appeal is filed at the wrong board.¹

BACKGROUND

Any decision of a Subdivision Authority (SA) may be appealed.² Appeals are heard by either the Municipal Government Board (MGB) or the local Subdivision and Development Appeal Board (SDAB).³

WHEN SHOULD APPEALS BE FILED AT THE MGB?

The question of where to file an appeal is determined by the location and characteristics of the land to be subdivided. Appeals should go to the MGB if the land that is the subject of the application:

- Is within the [Green Area](#) (the Green Area is shown on [this map](#));⁴
- Is within the following specified distances:⁵
 - Within 800 metres of the centre line of a [Highway](#)⁶ where the speed limit is 80 kilometres per hour or greater;⁷
 - Adjacent to a body of water, or containing a [body of water](#);⁸

¹ Section 678 of the [Municipal Government Act](#), RSA 2000, c M-26. (the Act) sets the appeal jurisdiction and is reproduced for reference in the appendix to this Bulletin.

² See section 678(1) of the Act, which states who is allowed to file a subdivision appeal.

³ See sections 678(2) and 678(2.1) of the Act, which state where an appeal should be filed.

⁴ For more information on the boundaries of the Green Area, contact Alberta Sustainable Resource Development Lands Division by phone at 780-427-3570 or by fax at 780-427-1185.

⁵ These distances are set out in the [Subdivision and Development Regulation](#), Alta Reg 43/2002 (the Regulation).

⁶ “Highway” is defined in Section 1(1)(l) of the [Highways Development and Protection Act](#), SA 2004, c H-8.5.

⁷ See sections 5(5)(d)(ii) and 22 of the Regulation.

⁸ See section 5(5)(e) of the Regulation.

- Within 300 metres of a [wastewater treatment plant](#),⁹
- Within 450 metres of the working area¹⁰ of an operating [landfill](#);¹¹
- Within 300 metres of the disposal area¹² of any landfill;
- Within 450 metres of the disposal area of a non-operating [hazardous waste management facility](#);¹³
- Within 300 metres of the working area of a non-hazardous waste [storage site](#).¹⁴

WHAT IS “ADJACENT”?

The Subdivision and Development Regulation defines the term “adjacent” differently for situations adjacent to a highway and to a body of water:

- For the purposes of a highway “adjacent” means contiguous or would be contiguous if not for a river, stream, railway, road or utility right of way or reserve land.¹⁵
- For the purposes of a body of water “adjacent” means contiguous or would be contiguous if not for a railway, road, utility right of way or reserve land.¹⁶
- The definition of “reserve land” is found in the Act and includes: environmental reserve, municipal reserve, community services reserve, school reserve or municipal and school reserve.¹⁷

WHEN SHOULD APPEALS BE FILED AT A SDAB?

Subdivision Appeals should be filed with a municipal SDAB:

- In all cases where the MGB does not otherwise have jurisdiction;
- The affected Government department agreed in writing to vary the specified distance requirement.¹⁸

⁹ “Wastewater treatment plant” is defined in section 1(1)(t) of the [Wastewater and Storm Drainage Regulation](#), Alta Reg 119/1993.

¹⁰ “Working area” is defined in section 13(1)(b) of the Regulation.

¹¹ “Landfill” is defined in section 1(1)(z) of the [Waste Control Regulation](#), Alta Reg 192/1996.

¹² “Disposal area” is defined in section 13(1)(a) of the Regulation.

¹³ “Hazardous waste management facility” is defined in section 1(1)(w) of the Waste Control Regulation.

¹⁴ “Storage site” is defined in Section 1(1)(ii) of the Waste Control Regulation.

¹⁵ See section 5(1) of the Regulation.

¹⁶ See section 5(2) of the Regulation.

¹⁷ Section 616(z) of the Act defines “reserve land”.

¹⁸ The Regulation states which government departments can agree to vary the specified distance requirements.

SA NOTIFICATION OF APPEAL LOCATION NOT BINDING

An SA's decision must state whether an appeal should go to the MGB or a local SDAB;¹⁹ however, the SA's statement is not binding.²⁰ The decision as to whether the appeal is properly before it lies with the appeal board considering the appeal.

If there is a question about which appeal board has jurisdiction, it should be raised as a preliminary matter before the hearing with MGB administration or at the beginning of the hearing.

WHAT IF AN APPEAL IS FILED WITH THE WRONG BOARD?

If an appeal is wrongly filed with the MGB, the MGB must refer the appeal to the local SDAB.²¹ If a landowner wrongly files an appeal with the SDAB, the SDAB must refer the appeal to the MGB.²² In either case, the appropriate Board must hear the appeal as if the notice of appeal had been filed with it.²³ Therefore, filing an appeal with the wrong Board does not invalidate the appeal.

In [Astle v. Municipal District of Big Lakes \(Subdivision Authority\), MGB 044/07](#), the MGB noted that:

The MGB only has jurisdiction on matters given to it by the legislation and not by the consent of other parties. According to section 678(5), this appeal is referred to the local SDAB.

WHY DOES IT MATTER WHICH BOARD TAKES JURISDICTION?

The MGB and SDABs derive their legal authority from the Act. If an appeal board makes a decision that is unauthorized by the Act, the validity of the decision could be challenged through the courts.²⁴

 **RETURN TO** – [MGB Home](#).

¹⁹ See section 656(2)(a) of the Act.

²⁰ For example, in [Poelman v Municipal District of Foothills No. 31 \(Subdivision Authority\)](#), MGB 027/12, the SA stated the appeal should be heard by the SDAB. However the landowner appealed to the MGB. The MGB determined it had jurisdiction and that the SA's statement on where to file an appeal was incorrect.

²¹ Some examples of where the MGB sent the appeals to a SDAB include [River Canyon Enterprises Inc. v. Municipal District of Foothills \(Subdivision Authority\)](#), MGB 035/11, [Hambrook v. Red Deer County \(Subdivision Authority\)](#), MGB 009/09, [Lemire v Sturgeon County \(Subdivision Authority\)](#), MGB 104/08, and [Historical Chapelle Society of Plamondon v. Lakeland County \(Subdivision Authority\)](#), MGB 007/07.

²² Some examples include [Bates v Red Deer County \(Subdivision Authority\)](#), MGB 081/11, [Siemens v Grande Prairie \(Subdivision Authority\)](#), MGB 094/09, [United Communities Ltd. v Edmonton \(Subdivision Authority\)](#), MGB 017/09, and [Spring Creek Dairy Ltd v Lacombe County \(Subdivision Authority\)](#), MGB 110/10.

²³ See section 678(5) of the Act.

²⁴ See section 688(1) of the Act.

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

- (a) by the applicant for the approval,
- (b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,
- (c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or
- (d) by a school board with respect to
 - (i) the allocation of municipal reserve and school reserve or money in place of the reserve,
 - (ii) the location of school reserve allocated to it, or
 - (iii) the amount of school reserve or money in place of the reserve.

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

- (a) with the Municipal Government Board if the land that is the subject of the application is within the Green Area, as classified by the Minister responsible for the *Public Lands Act*, or is within the distance of a highway, a body of water or a sewage treatment or waste management facility set out in the subdivision and development regulations, or
- (b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 5 days from the date the decision is mailed.

(4) A notice of appeal under this section must contain

- (a) the legal description and municipal location, if applicable, of the land proposed to be subdivided, and
- (b) the reasons for appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

(5) If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.