BIAS IN SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARINGS

Some concerns have been raised with Alberta Municipal Affairs regarding perceived bias in local subdivision and development appeal board hearings. The Department believes that local appeals are generally more effective and efficient than other alternatives. The Department would, therefore, like to remind all municipalities of the importance of ensuring that local subdivision and development appeal board hearings not only continue to operate in an unbiased manner, but are also seen to be unbiased.

Section 627 of the Municipal Government Act establishes rules for the membership of the subdivision and development appeal board. Councilors may not form the majority of the board or the majority of a committee of the board hearing an appeal. Persons who are employees of the municipality or who carry out subdivision or development duties or who are members of the municipal planning commission may not be members of the board. While these measures will assist in avoiding a charge of actual bias, municipalities should avoid the appearance of bias as well. For example, where possible, a subdivision or development officer or secretary of the municipal planning commission should not be the secretary of the subdivision and development appeal board.

Municipalities are encouraged to take every step to avoid bias or the perception of bias in the conduct of their hearings. At the outset of a hearing the board chairman should ask whether anyone objects to the members of the board hearing the appeal. The board should adjourn to discuss any objections. Members should consider excusing themselves from an appeal if they have a bias or there is a reasonable apprehension of bias by people appearing before the board. Remember that if members excuse themselves from a hearing, a quorum must be maintained and council may not constitute the majority of any board hearing an appeal. Supplementary appointments or a special board may be created in advance for extreme cases.

Finally, a board must be careful to base decisions on planning matters. Personal issues such as the length of residence or personal status of the person appealing a decision are not relevant considerations.

With these concerns in mind municipalities should be able to alleviate citizen concerns and minimize legal challenges.