

LAC STE. ANNE COUNTY

SUBDIVISION AND DEVELOPMENT
APPEAL BOARD HANDBOOK

A Guide to the Appeal Process

This handbook is to provide basic information regarding Subdivision and Development Appeal Board (SDAB) Hearings. Please be advised that the information contained within has no legal status and should not be used as an official interpretation of Provincial or Municipal Acts, Legislations or Bylaw.

This is to be used as a guideline only. Questions regarding appeals specific to Lac Ste. Anne County, as well as guidance on the Appeal process, can be directed to the Lac Ste. Anne County SDAB Secretary. Information within this handbook may change from time to time.

The purpose and operation of the Subdivision and Development Appeal Board (SDAB) is to consider all subdivision and development appeals as well as Stop Orders issued under Section 645 in the *Municipal Government Act*.

The operating principles of the SDAB are to ensure that parties have a fair opportunity to be heard, to understand and to respond to one another's position. Parties are also encouraged to resolve as many issues as possible through informal discussions before the hearing.

Meetings are held within thirty (30) days of the receipt of a completed "Notice of Appeal" by the SDAB Secretary, unless an Adjournment/Postponement is granted by the SDAB.

WHAT CAN BE APPEALED

1. Decisions of the Development Authority or Subdivision Authority.
2. Conditions of approval attached to such decisions.
3. An Order of the Development Authority when they find that a development, land use or use of a building contravenes:
 - a. The *Municipal Government Act*,
 - b. A Development Permit or Subdivision Approval,
 - c. The Land Use Bylaw or Regulations.
4. A deemed refusal – when a decision is not made by the Development Authority within forty (40) days, or the Subdivision Authority within sixty (60) days, of receipt of a complete application.

WHO CAN APPEAL

1. Subdivision Appeals – The decision of a Subdivision Authority on an application for subdivision approval may be appealed:
 - a. By the Applicant,
 - 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 Authority 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. Development Appeals – the decision of a Development Authority on an application for development permit approval may be appealed:
 - a. If a Development Authority:
 - i. Fails or refuses to issue a development permit to a person,
 - ii. Issues a development permit subject to conditions, or
 - iii. Issues an order.The person applying for the permit, or affected by the order, may appeal to the Subdivision and Development Appeal Board.
 - b. In addition to an Applicant, any person affected by an order, decision or development permit made or issued by a Development Authority may appeal to the Subdivision and Development Appeal Board.
 - c. Despite subsections (a) and (b) above, no appeal is allowed in respect of the issuance of a development permit for a permitted use, unless the provisions of the Land Use Bylaw were relaxed, varied or misinterpreted.
3. Stop Order Appeals – the decision of a development Authority to issue a Stop Order under Section 645 of the *Municipal Government Act* (MGA) may be appealed:
 - a. By the person(s) who receives the notice issued under Section 645 of the MGA.

PROCEDURE FOR APPEALING

1. Notice of Appeal Form

Appeals must be lodged with the SDAB Secretary using the applicable Lac Ste. Anne County Appeal Form obtainable from the County office or the County website www.lzac.ca.

If the SDAB Secretary determines that the appeal should have been filed with the Municipal Government Board (MGB), the Secretary will notify the appellants prior to referring the appeal to the MGB.

2. Appeal Witnesses

- a. The appellant or any person acting on behalf of the appellant,
- b. The development authority from whose order, decision or development permit the appeal is made, or a person acting on behalf of the development authority,
- c. Any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person, and
- d. Any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.

3. Appeal Costs

Lac Ste. Anne County Council establishes appeal fees. The Appeal fees are \$200.00. appeal fees must accompany the appeal request. **Non-payment or late submissions will result in no appeal being scheduled before the Board.**

4. Deadline for Filing

- a. Development Appeals: if the development permit was approved, the applicant and affected person(s)* have 14 calendar days from the date they were notified of the approval. If the development permit was refused, the applicant or owner of the property has 14 calendar days to file the appeal, based on the date they were notified of the refusal.
- b. Subdivision Appeals: Only the applicant can file an appeal with respect to a refusal of a subdivision application or on the conditions of approval of the application. The appeal must be filed within 14 calendar days after receipt of the written decision. An affected person cannot file an appeal.
- c. Stop Order: the owner of the land, the person in possession of the land or building, the person responsible for the contravention or any person considered affected by the Order can file an appeal within 14 calendar days from the date the person was notified of the Order.

NOTICE OF HEARING

1. Subdivision Appeals – the Board hearing an appeal must give at least five (5) days’ written notice of the hearing to:
 - a. The applicant for subdivision approval,
 - b. The Subdivision Authority that made the decision,
 - c. If land that is the subject of the application is adjacent to the boundaries of another municipality, that municipality,
 - d. Any school authority to whom the application was referred, and
 - e. Every Government department that was given a copy of the application pursuant to the subdivision and development regulations.
2. Development Appeals – the Board hearing an appeal must give at least five (5) days’ written notice of the hearing to:
 - a. The appellant,
 - b. The Development Authority whose order, decision or development permit is the subject of the appeal, and
 - c. Those owners required to be notified under the Land Use Bylaw and any other person that the Subdivision and Development Appeal Board considers to be affected by the appeal and should be notified.

* “Affected person” is not defined in the Municipal Government Act (MGA); therefore the Board will determine *affected persons* on a case-by-case basis. The onus is on the person to show they are affected by the proposed development.

3. Stop Order Appeals – the Board hearing an appeal must give at least five (5) days’ written notice of the hearing to:
 - a. The appellant,
 - b. The Development Authority whose order is the subject of the appeal, and
 - c. Those owners required to be notified under the Land Use Bylaw and any other person that the Subdivision and Development Appeal Board considers to be affected by the appeal and should be notified.

All relevant documents and material respecting the appeal are available for public inspection the day before the scheduled appeal at the County office. Please contact the SDAB Secretary to arrange a time to inspect any of the documents or materials.

The Board may set disclosure deadlines for the submission of documents and materials for the appeal.

All communication with the Board prior to the hearing date, shall be done through the SDAB Secretary.

Appellants and affected parties of the hearing are not to contact members of the Board regarding their appeal, as this will disqualify members from participating in the hearing. Board member do not discuss appeals with the Development Authority prior to the hearings.

HEARING PROCEDURE

Lac Ste. Anne County SDAB hearings are held at the County Administration office located at 56521 Range Road 65, Lac Ste. Anne County, Alberta, unless otherwise notified.

The Chair announces the appeal and calls upon the Development Authority representative to make its presentation. The Chair will then ask for the Appellant to speak and then other affected parties. The Chair will endeavor to have speaker who are in favour of the appeal (persons who filed the appeal or support the position of the appellant) to speak first and then speaker opposed to the appeal (persons who oppose the position of the appellant). Questions from the Board will be allowed and then the Chair will allow rebuttal comments from the appellant. Submissions may be made verbally, written or visual presentation. All submissions received for the appeal will be reviewed and considered on the same merit during the appeal, and the Board will determine which submissions are relevant to the appeal.

Submissions accepted:

1. Written Submissions – can be provided in advance of the hearing to the SDAB Secretary. If the submissions are presented at the time of the appeal, ten (ten) duplicate copies are required to be provided.

2. Oral Presentations – persons wishing to speak at the hearing are requested to:
 - Advise the Secretary by stating their name and address at the hearing,
 - Indicate whether speaking on their own behalf or that of another named person, group of citizens, organization or clients, such as a corporation, and
 - Shall direct all comments to the Chair.

Oral Presentations will be heard from:

- a. Persons who have submitted a written submission as a private citizen on their own behalf,
- b. Person who have not submitted a written submission and who wish to be heard as a private citizen on their own behalf,
- c. Persons speaking on behalf of another person not intending or able to attend the hearing, and
- d. From any other person deemed to be affected who wishes to be heard.

It is recommended that a representative speak on behalf of a group, rather than each member of the group speaking and repeating the same information or reasons for the appeal.

The Chair may stop repetitive presentations and abusive and intemperate language will not be permitted. Evidence and submissions must be relevant to the appeal.

All speakers will have the opportunity to present rebuttal evidence during the hearing, i.e. respond to any new evidence raised during the hearing. Rebuttal is not an opportunity to re-argue the case.

The Board relies on the written evidence presented, and the verbal submissions provided at the hearing to determine a decision. They will not, on their own accord, seek information or evidence nor will they consider precedent when making a decision. Each hearing will be judged on its own merits. It is the onus of those affected by or attending the hearing to ensure sufficient evidence is presented to support their respective positions.

REQUEST FOR POSTPONEMENT/AJOURNMENT

A request for a postponement/adjournment must be submitted in writing, including the reasons for the request, to the SDAB Secretary as soon as possible. A verbal request may be made at the hearing date.

Postponement/adjournment requests are not automatically granted and the Board will consider these requests based on their own merits, including submissions concerning requests from other affected parties to the appeal.

If an individual is unable to be in attendance at the hearing to speak to the postponement/adjournment request, it is strongly recommended that a representative attend on behalf of the party who will be prepared to discuss the request and/or present evidence to the Board in the event that the postponement/adjournment request is denied.

WITHDRAWAL OF AN APPEAL

A withdrawal request should be submitted to the SDAB Secretary as soon as possible to provide for adequate notification of all parties involved.

DECISIONS OF THE BOARD

In determining an appeal, the Subdivision and Development Appeal Board:

1. Must have regard to any statutory plan,
2. Must conform with the uses of land referred to in the Land Use Bylaw,
3. Must be consistent with the land use policies,
4. Must have regard to but is not bound by the subdivision and development regulations,
5. May confirm, revoke or vary the approval or decision or any condition imposed by the subdivision or development authority or make or substitute an approval, decision or condition of its own, and
6. May, in addition to the other powers it has, exercise the same power as a Subdivision or Development Authority is permitted to exercise.

All evidence must be presented in public. The board may then go “in camera” (closed to the public) to deliberate.

The Subdivision and Development Appeal Board must give its decision in writing together with reasons for the decision within 15 days of concluding the hearing. The decision will be mailed to the same parties that received the Notice of Appeal and anyone who attended the hearing and have requested a copy of the decision.

RECOURSE FROM BOARD DECISION

The decision of the Subdivision Development Appeal Board may be appealed on a question of law or jurisdiction to the court of Appeal. If it is felt that the requirements of the *Municipal Government Act* were not met or that the Subdivision and Development Appeal Board did not have the jurisdiction or acted outside their jurisdiction, a leave to appeal must be made to a judge of the Court of Appeal within thirty (30) days after the issuance of the decision to be appealed.

LAC STE. ANNE COUNTY SDAB SECRETARY CONTACT INFORMATION:

SDAB Secretary
c/o Lac Ste. Anne County
Box 219
Sangudo, AB T0E 2A0

Phone: 780-785-3411 or 1-866-880-5722

Fax: 780-785-2359

Email: lsac@lsac.ca

SUGGESTIONS FOR PREPARING FOR THE HEARING:

- Determine relevant planning issues associated with the appeal,
- Put together relevant legislation and facts to support your evidence including written documents, photos, graphs, or any other pertinent means of providing your presentation,
- Prepare a presentation for the hearing that is clear, concise, logical and to the point,
- Approach neighbors and other parties affected by the development to provide support on your behalf, including written and/or verbal presentations,
- Submit your presentation by the deadline for inclusion in the report to the Board, along with any supporting documentation,
- Any information provided to the SDAB Secretary in advance of the hearing, received by the specified deadline date, will become a part of the agenda package and will not require hard copies to be provided at the hearing,
- If providing materials at the hearing, not previously submitted, ensure you have enough copies to hand out at the hearing (typically 10 copies of materials should be provided unless otherwise noted),
- Typically a copy of the agenda and any materials submitted by the deadline date will be available for review at the County office 24 hours prior to the hearing,
- Review the contents of the SDAB report and be prepared to provide rebuttal information,
- It is in the best interest of the Appellant of an appeal to attend the hearing,
- For individuals wishing to make a submission for a scheduled hearing, please note that it is not mandatory to attend the hearing; however we encourage you to attend to make your presentation.

INDIVIDUALS ARE NOT TO DISCUSS ANY MATTER RELATED TO THE HEARING WITH ANY OF THE BOARD MEMBERS:

- **PRIOR TO THE HEARING**
- **BREAKS HELD DURING THE HEARING (RECESSES OR LUNCH BREAKS, OR**
- **AFTER THE HEARING UNTIL THE DECISION IS ISSUED (WITHIN 15 DAYS OF THE HEARING)**