

## **SOMEONE ELSE APPEALED MY SUBDIVISION**

### **SUBDIVISION APPEAL BULLETIN NO. 5 – 2012**

**DISCLAIMER** This bulletin provides general guidance only and is not offered as legal or land planning advice. Each appeal is unique. The details in this bulletin may not apply to every case, or to future decisions of the Board. Please contact the MGB office if you have any questions.

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### **INTRODUCTION**

In the majority of subdivision appeals heard at the Municipal Government Board (MGB), the landowner or the landowner's agent is the one who lodged the appeal (and is therefore referred to as an appellant). However, in some cases, other organizations lodge appeals. This bulletin provides information on situations where the landowner is not the appellant at an MGB subdivision appeal.

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### **BACKGROUND**

When a landowner or someone authorized by the landowner applies for subdivision (the Applicant), a subdivision authority (SA) generally responds with one of three decisions: approve, approve with conditions, or refuse. The [Municipal Government Act](#)<sup>1</sup> (Act) provides that the decision of an SA, whatever it may be, may be appealed by the Applicant or:

- A provincial government department, if it is entitled to a referral of the application;
- The municipal council, if not an SA; or
- A school authority, respecting school reserves only.

There are specific conditions required for each organization's appeal. These are discussed in this bulletin.

Adjacent landowners have no right to appeal a neighbour's subdivision. However, they may make presentations at a subdivision appeal hearing.

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### **PROVINCIAL GOVERNMENT DEPARTMENTS**

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<sup>1</sup> RSA 2000, c M-26 – See section 678(1).

A provincial government department may appeal an SA's decision if the [Subdivision and Development Regulation](#)<sup>2</sup> (Regulation) requires that the application for subdivision be referred to that department. The Regulation provides that the following provincial ministries must receive referrals of subdivision applications in certain situations (see section 5(5) of the Regulation for details):

- Environment<sup>3</sup> and Sustainable Resource Development;<sup>4</sup>
- Transportation;<sup>5</sup>
- Tourism, Parks and Recreation;<sup>6</sup> and
- Culture.<sup>7</sup>

These departments are also each entitled to copies of SA decisions.<sup>8</sup> When any of these government departments are involved, they are entitled to appeal SA decisions.<sup>9</sup>

The Regulation also provides that a notice to a government department is not required if the land is contained within an area structure plan (ASP) or a conceptual scheme that was already referred to the persons who are entitled to referrals.<sup>10</sup>

However, in the decision *Alberta Transportation v Parkland County* (Subdivision Authority), MGB 118/03, the MGB found that the provision that states notice is not required when there is an existing ASP *did not* remove the right of appeal of a government department. In this case, the MGB found that AT had standing despite not getting full notice of the application. The MGB said:

... the MGB must look to the intent of the legislature when it included these particular provisions in the Regulation. In order for any statutory plan to be effective, all rezoning, subdivision and development decisions that are subject to that plan must comply with that plan. In the MGB's view, the legislature did not intend to take away the right of appeal for AT if the circumstances show that the SA was issuing approvals that did not comply with the plan. Thus, the rider in the Regulation that an ASP must be to the satisfaction of the Minister of Transportation. In the MGB's opinion, a situation of issuing approvals that do

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<sup>2</sup> Alta Reg 43/2002.

<sup>3</sup> See Regulation, s.5(5)(b, h & i).

<sup>4</sup> See Regulation s.5(5)(e & f) the Minister responsible for *Public Lands Act: Designation and Transfer of Responsibility Regulation*, Alta Reg 80/2012, s.8. Environment and Sustainable Resource Development are now one ministry, but Environment is named in section 5(5)(b, h & i) of the Regulation, while section 5(5)(e & f) refers to the 'minister responsible'.

<sup>5</sup> See Regulation, s.5(5)(d).

<sup>6</sup> See Regulation s.5(5)(e & f) the Minister responsible for *Public Lands Act: Designation and Transfer of Responsibility Regulation*, Alta Reg 80/2012, s.8.

<sup>7</sup> See Regulation s.5(5)(j) the Minister responsible for the *Historical Resources Act: Designation and Transfer of Responsibility Regulation*, Alta Reg 80/2012, s.4.

<sup>8</sup> See section 679 of the Act.

<sup>9</sup> See section 678(1) of the Act.

<sup>10</sup> See Regulation, s.5(7). See section 633 of the Act for information on what ASPs contain and section 653(4.4) of the Act and section 4(3) of the Regulation for more information conceptual schemes.

not comply with the ASP, automatically negate the effectiveness of the plan, leaving AT issues outstanding and the appeal process open.

The MGB also noted in [Alberta Transportation v Leduc County \(Subdivision Authority\) re: Gardner, MGB 027/11](#), that a provincial government department may take a different position on its appeal from its original submissions to a subdivision authority:

A referral agency's failure to object early in the subdivision application process should not eliminate its right to appeal, since this may both freeze in poor planning decisions based on limited information and also chill early co-operation between referral agencies and other parties.

Similarly, Provincial departments may change their position on a subdivision appeal from their original position on the application, even if they did not appeal the original decision.<sup>11</sup>

### Further Reading

MGB decisions that resulted from appeals lodged by AT include: [MGB 027/11](#); [MGB 001/11](#); [MGB 118/10](#); [MGB 049/09](#); [MGB 076/08](#); [MGB 072/08](#); [MGB 052/08](#); [MGB 027/08](#); [MGB 005/08](#); and [MGB 136/07](#), and a decision letter - [DL 088/08](#).<sup>12</sup>

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## MUNICIPAL COUNCILS

Each municipal council must create a bylaw establishing a subdivision authority.<sup>13</sup> The authority may be some or all members of council, a designated officer, a municipal planning commission, or any other person or organization.

If the municipal council has established the subdivision authority as 'any other person or organization', the municipal council may appeal an SA decision. Otherwise, if the SA is the council, a designated officer of the municipality, or a municipal planning commission,<sup>14</sup> a municipal council may not lodge an appeal.<sup>15</sup>

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## SCHOOL AUTHORITIES

A school authority is a board of trustees of a school district, school division or regional division.<sup>16</sup> School authorities have a stake in the subdivision process because SAs may require land or money (or a combination of both) to be provided as a condition of

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<sup>11</sup> See [Hopewell Development \(Leduc\) Inc. v. Alberta \(Municipal Government Board\)](#), 2011 ABCA 68.

<sup>12</sup> This is not a comprehensive list. In particular, this list does not include any MGB decisions prior to November 2007.

<sup>13</sup> See section 623 of the Act.

<sup>14</sup> The Court of Appeal considered a county's attempt to appeal the decision of its intermunicipal planning commission that acted as its SA in [Albert Snyders Holdings v. Newell \(County No. 4\) Subdivision and Development Appeal Board, 2002 ABCA 282](#).

<sup>15</sup> See section 678(1)(c) of the Act.

<sup>16</sup> See section 616(bb) of the Act.

subdivision for reserve land purposes.<sup>17</sup> A portion of land taken for school purposes is called a school reserve. A school authority may appeal a SA's decision with respect to:

The allocation of municipal reserve and school reserve (or money in place of the reserve);

The location of the school reserve allocated to it; and

The amount of school reserve (or money in place of reserve).<sup>18</sup>

For more information as to when school reserves may be required, the amounts of land (or money) which may be taken as a school reserve, whether the reserve may be deferred, and the allocation of land between municipal and school reserves, see sections 663 and 666-670 of the Act.

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### **MAY ANYONE ELSE APPEAL MY SUBDIVISION APPROVAL?**

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The right to appeal an SA decision is limited to the list in the Act.<sup>19</sup> In [Alberta Transportation v Leduc County \(Subdivision Authority\) re: Gardner, MGB 027/11](#), Strathcona County attempted to appeal the decision of an SA, in a neighbouring municipality. The MGB found Strathcona County was not permitted to lodge an appeal:

Strathcona is not the municipality where the land to be subdivided is located, and the Act does not give an adjacent municipality standing to appeal. Therefore, Strathcona cannot appeal the SA's decision, even though it is the road authority for the road giving access to the proposed subdivision.

Nonetheless, Strathcona County was permitted to make representations to the MGB during a hearing resulting from AT having appealed the subdivision.

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### **THE ROLE OF THE LANDOWNER AS A RESPONDENT ON APPEAL**

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In all subdivision appeal hearings, the landowner should be prepared to explain why the Board should grant the subdivision application. This does not vary between cases where the landowner is the appellant or not the appellant.

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<sup>17</sup> See section 666(1) of the Act.

<sup>18</sup> See section 678(1)(d) of the Act.

<sup>19</sup> See section 678(1) of the Act.