

## WHAT TO EXPECT AT A SUBDIVISION APPEAL HEARING

### SUBDIVISION APPEAL BULLETIN NO. SUB-3-2018

**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

This Bulletin describes what to expect at a typical MGB subdivision appeal hearing for those preparing to speak at a hearing, or those observing. To prepare for a hearing, review the MGB's [Rules of Procedure for Subdivision Appeals](#). You can contact an MGB case manager for more information if needed.

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#### ARRIVING AT AN MGB HEARING

The hearing room is typically closed until just before the hearing begins. The MGB will invite parties to come into the hearing room when the panel is ready. You will be given enough time to set up and get comfortable before the hearing begins.

Everyone attending a hearing will be asked to sign in.<sup>1</sup>

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##### *Things to remember:*

- Arrive fifteen minutes before the hearing is scheduled to begin.
- Please do not enter the hearing room until invited to do so by the MGB.
- Hearings often last 1 – 2 hours before a recess. Please prepare accordingly.
- The MGB does not have electronic or other audio-visual equipment available for presentations unless prior arrangements were made with the case manager. Talk to the case manager if you are considering bringing your own equipment or need assistance.

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#### WHAT TO EXPECT IN THE HEARING ROOM

Tables will be set up for each of the parties to sit at during the hearing. Parties in attendance usually include the landowner, a representative of the Subdivision Authority (SA), representatives of any affected government departments (e.g. Alberta Transportation or Alberta Environment and Parks), and adjacent landowners.

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<sup>1</sup> This information is used by the MGB panel to know who is present at the hearing. MGB administration also uses contact information provided to ask people who have attended hearings to respond to a satisfaction survey.

A panel of three MGB members will sit at the head of the room to hear the parties' presentations.<sup>2</sup> The panel member seated in the middle is the Presiding Officer. He or she will give any instructions necessary to keep the hearing moving fairly and efficiently and let participants know when to speak. All MGB members are appointed by [Alberta's Cabinet](#) and their [Biographies](#) are available on the MGB website.

In addition to the panel, an MGB case manager may attend a hearing as well. The case manager will sit to one side of the panel to record the hearing, keep track of evidence and support the panel as needed. The case manager is there to provide support and not to make the decision. MGB hearings are public, so there may also be members of the public in the room while presentations are made.

***Things to remember:***

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- Please let the MGB case manager know beforehand if you need to make any special arrangements.
- If you need to communicate with the MGB either before or after the hearing, please do so through the MGB case manager.
- Address the Presiding Officer as "Mister Chair" or "Madam Chair" as the case may be.
- Panel members may be addressed as "Sir" or "Mr. \_\_\_, and "Madam" or Ms. \_\_\_.
- Hearings are open to the public.

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## **THE HEARING PROCESS – PART I: GETTING STARTED**

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***Introductions and the Oath***

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At the outset of the hearing, the case manager or Presiding Officer will ask everyone in the room to introduce themselves and indicate whom they represent (if anyone). See also: [Mandatory Electronic Recording of Hearings](#). The panel may also request all those who intend to give evidence during the hearing to swear or affirm that they will tell the truth.

***Preliminary Issues***

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Raise preliminary issues at the beginning of the hearing if you have any. A preliminary issue is any matter that needs to be dealt with before the MGB hears the merits of an appeal. Examples include:

- Postponement and rescheduling requests;
- Whether an appeal was filed on time;
- Whether the MGB has jurisdiction to hear an appeal;
- Whether a Subdivision Authority made a valid decision (e.g. within the legislated timeframe or authority);

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<sup>2</sup> Under section 489 of the *Municipal Government Act*, RSA 2000, c M-26 (Act), two MGB members constitute a quorum and two of the three members can continue a hearing if one is unavailable.

- Objections to a panel member;
- Whether a person at the hearing has standing to make a presentation;
- Requests for someone to produce evidence.

### ***Marking the Exhibits***

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The Appellant, the SA, and affected government departments are usually sent an information package, including the SA's file, before the hearing. This information package is usually marked as exhibit #1. Other exhibits are usually marked as they are received at the hearing, or as otherwise directed by the Presiding Officer at the beginning of the hearing.

### ***Things to remember:***

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- If you know ahead of time that a preliminary issue is likely to arise, let the case manager know as soon as possible so that arrangements can be made to avoid unnecessary surprises or delays.
- Certain preliminary issues, such as asking for the postponement of a hearing should be made to the MGB in writing before the hearing.
- To avoid unnecessary delays, make sure any technical reports you wish to have considered are provided to the MGB before the hearing, to share with other parties.
- Bring enough copies of your evidence for all parties – usually 10 copies.
- Number the pages of any additional submissions you wish to enter as exhibits.

## **THE HEARING PROCESS – PART II: PRESENTATIONS & QUESTIONS**

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### ***Presenting the Merits of a Subdivision Appeal***

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Parties generally make their presentations in the order below. However, a panel may decide on a different order of presentation if it will be more fair or efficient in a given set of circumstances.

1. The Subdivision Authority (SA):<sup>3</sup>
  - The SA provides the MGB with the background information of the subdivision application;
  - The SA discusses its decision and the evidence in support of that decision;
  - The Appellant(s) and other parties have the opportunity to ask the SA questions, through the Presiding Officer;
  - The MGB panel has the opportunity to ask questions.
2. Other parties with standing:
  - Other parties explain their position with respect to the subdivision appeal.

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<sup>3</sup> SAs regularly appear at MGB subdivision appeals to defend and support the decisions being appealed from. There is a discussion of the SA's role on appeal in [Rasmussen v MD of Foothills \(Subdivision Authority\)](#), MGB 181/98.

- Parties include Alberta Transportation, Alberta Environment and Parks, and adjacent landowners.
  - The Appellant(s), the SA, and other parties have the opportunity to ask questions, through the Presiding Officer;
  - The MGB panel has the opportunity to ask questions.
3. The Appellant(s):
    - The Appellant(s) presents information and evidence as to why the MGB should change the SA's decision;
    - The SA and other parties have the opportunity to ask the Appellant(s) questions, through the Presiding Officer;
    - The MGB panel has the opportunity to ask questions.
  4. The SA and other parties will then give their final summations in the same order as the original presentations.
  5. The Appellant(s) will then give a final summation.

***Things to remember:***

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- Bring a note pad to write down ideas as come to mind during the hearing, such as other parties' points to speak to, or questions to ask.
- Prepare and bring an outline of your presentation to avoid forgetting important points. See also [How to Prepare for an MGB Hearing: Legislation](#).
- If you need an unscheduled break to leave the room, review documents, or some other reason, you can raise your hand and wait for the Presiding Officer to ask what is needed.

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## **CLOSING THE HEARING**

After the parties have completed their final summations, the panel will adjourn the hearing and allow the parties to leave. Generally the MGB will not consider material filed after it has adjourned a hearing<sup>4</sup>. In some cases, the panel may decide it needs more information after adjournment. If this happens, the case manager will contact the parties and give instructions to provide further information. If the panel determines it does not need any further information, it will close the hearing and notify the parties writing. The MGB will then issue its decision, in writing, within 15 days of closing the hearing.<sup>5</sup>



**RETURN TO - [MGB Home](#).**

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<sup>4</sup> See Rule 11.4 of the MGB Subdivision Appeal Procedure Rules.

<sup>5</sup> Pursuant to section 680(4) of the Act.