

MUNICIPAL GOVERNMENT BOARD

SUBDIVISION APPEAL BULLETIN NO. 1 – 2008

Date: February 8, 2008

AUTHORITY FOR SUBDIVISIONS ADJACENT TO HIGHWAYS

INTRODUCTION

The *Subdivision and Development Regulation (Regulation)* limits the ability of a municipality **other than a city** to approve subdivisions near a highway. (See sections 14 and 16 of the *Regulation* - attached). Recent MGB decisions have confirmed these limits.

APPLICABLE LANDS

Section 14 of the *Regulation* applies to land that is subject to an application and within 0.8 kilometres of the centre line of a highway where the posted speed limit is 80 km/hr or greater.

LIMITS ON APPROVALS OF SUBDIVISIONS NEAR A HIGHWAY

Section 14 of the *Regulation* provides that with respect to the land described above a Subdivision Authority (SA) shall not approve an application for subdivision unless the land is:

1. for agricultural purposes on parcels 16 hectares or greater,
2. a single parcel with an existing residence from an unsubdivided quarter section,
3. an undeveloped single residential parcel from an unsubdivided quarter that is located 300 metres away from the highway,
4. contained in an area where there is an agreement between the municipality and the Minister of Infrastructure and Transportation and the use is permitted in the agreement, or
5. contained in an Area Structure Plan satisfactory to the Minister of Infrastructure and Transportation.

VARIANCE/WAIVER

A waiver to these limitations may be granted by the Minister of Alberta Infrastructure and Transportation (AIT) under section 16 of the *Regulation*.

DUTY TO COMPLY

According to section 208(1)(o) of the *Municipal Government Act (Act)*, the Chief Administrative Officer must ensure a municipal council is advised of its legislative responsibilities under the *Act*. In this case, the SA of a municipality (other than a city) has a responsibility not to approve certain subdivision applications within 0.8 kilometres of a highway unless the proper approval has been given by AIT.

APPEALS BY AIT

The *Act* authorizes AIT to file appeals with the MGB when a proposed subdivision is near a highway. Recent MGB decisions (e.g., DL 059/07, DL 155/07) have interpreted sections 14 and 16 of the *Regulation* as a result of appeals filed by AIT.

BOARD DECISIONS

In DL 059/07 and DL 155/07, the MGB found the municipalities had no authority to approve subdivisions near a highway for uses not listed by section 14 without a variance from AIT. Approvals made without authority were contrary to the *Regulation* and the applications were therefore “deemed refused”. Correspondence from AIT must be very clear that a variance has been granted. To date the MGB has treated approvals made without authority as “deemed refused”. Section 681 of the *Act* provides for a deemed refusal if a subdivision decision is not made within the time limit in section 6 of the *Regulation*.

APPEAL OF DEEMED REFUSALS

Subdivision applicants have a right to appeal refusals. Where the MGB has deemed an application refused because of the absence of a variance from AIT, it has permitted applicants to proceed as appellants if they wish to pursue their subdivision application. If requested, the MGB may also permit the applicant (as appellant) an adjournment to allow them to prepare their case and to explain how their application meets the legislated requirements. This process allows the appeal to proceed fairly and efficiently.

SUMMARY

Appellants and municipal approving authorities other than in cities should be aware that:

- SAs must observe the limits set out in sections 14 and 16 of the *Regulation*;
- AIT may appeal approvals granted without a waiver contemplated under section 16 of the regulation;
- Approvals granted by an S.A. without regard for the limitations outlined in section 14 of the *Regulation* and without a clear variance from AIT have been treated as deemed refusals by the MGB;
- Where an unauthorized approval results in a deemed refusal, the subdivision applicant may take on the role of appellant at an MGB hearing. In such cases, the applicant (new appellant) should be prepared to explain how their application meets the relevant legislated requirements.

Sections 14 and 16 of the Regulation

Distance from highway

14 Subject to section 16, a subdivision authority shall not in a municipality other than a city approve an application for subdivision if the land that is the subject of the application is within 0.8 kilometres of the centre line of a highway right of way where the posted speed limit is 80 kilometres per hour or greater unless

- (a) the land is to be used for agricultural purposes on parcels that are 16 hectares or greater,
- (b) a single parcel of land is to be created from an unsubdivided quarter section to accommodate an existing residence and related improvements if that use complies with the land use bylaw,
- (c) an undeveloped single residential parcel is to be created from an unsubdivided quarter section and is located at least 300 metres from the right of way of a highway if that use complies with the land use bylaw,
- (d) the land is contained within an area where the municipality and the Minister of Transportation have a highway vicinity management agreement and the proposed use of the land is permitted under that agreement, or
- (e) the land is contained within an area structure plan satisfactory to the Minister of Transportation and the proposed use of the land is permitted under that plan.

Waiver

16(1) The requirements of sections 14 and 15 may be varied by a subdivision authority with the written approval of the Minister of Transportation.

(2) An approval under subsection (1) may refer to applications for subdivision generally or to a specific application.