

Municipal Government Board

PREPARING FOR A SUBDIVISION APPEAL BEFORE THE MGB THE LEGISLATIVE REQUIREMENTS

INTRODUCTION

In many subdivision appeals the Municipal Government Board (MGB) has observed that the information provided by parties (the landowner and the municipality's subdivision authority), in advance of and at hearings, has been incomplete. The purpose of this bulletin is to help parties understand what is needed at a subdivision appeal hearing before the MGB. The *Municipal Government Act* (Act) and the *Subdivision and Development Regulation* (Regulation) set out very specific criteria that the MGB must consider when deciding a subdivision appeal. Therefore, parties have responsibilities in presenting information to assist the MGB to appropriately address these legislative requirements.

RESPONSIBILITIES OF THE MGB

Section 680(2) of the Act outlines the responsibilities of the MGB when deciding an appeal.

It requires the MGB to

- ✓ be consistent with the Provincial Land Use Policies (s. 622(3))
- ✓ consider the requirements in any statutory plans, including Municipal Development Plans and Area Structure Plans (s. 616(dd))
- ✓ conform with the uses of land within the land use bylaw, and
- ✓ consider the requirements of the Regulation.

RESPONSIBILITIES OF THE PARTIES

1. The parties must be able to demonstrate before the MGB how decisions of approval, varied conditional approval or refusal will result in a consistent application of the Provincial Land Use Policies.
2. The parties have the responsibility to clearly outline
 - (a) how the subdivision does or does not meet the requirements of the various municipal plans,
 - (b) how the subdivision does or does not meet the requirements of the *Subdivision and Development*

Regulation,

- (c) if the subdivision is inconsistent with the municipal plans and the Regulation what planning rationale supports the subdivision being approved, conditionally approved or refused.
3. Parties to an appeal must provide the MGB with the relevant land use bylaw district, its purpose and provisions. The parties must also clearly outline if the proposed use complies with the uses, intent and purpose of the applicable land use bylaw district.
4. Parties to an appeal must be prepared to address the merits of the entire subdivision application and must be able to demonstrate before the MGB that the subject lands are suitable for the proposed subdivision.
5. It is the responsibility of the parties to ensure the MGB has all the information needed to make an appropriate decision which meets the purpose of the Act.

Provincial Land Use Policies

Since every action of the MGB must be consistent with the Provincial Land Use Policies (s. 622(3) of the Act). **The parties must be able to demonstrate before the MGB how decisions of approval, conditional approval or refusal will be consistent with the Provincial Land Use Policies.**

Having Regard for Any Statutory Plan

A statutory plan includes Municipal Development Plans, Area Structure Plans, Area Redevelopment Plans and Inter-municipal Development Plans. **The MGB must have regard for each of the plans in place** (s. 688(2)(a)). **It is the responsibility of the parties before the MGB to clearly identify what plans apply and the specific policies in these plans that are relevant to the appeal before the MGB.** The parties should always ensure that they have reviewed such documentation in advance of the MGB hearing.

Having regard does not mean the MGB can ignore the plans, but rather it must give full consideration to the contents of each of the plans, the planning rationale and determine if the proposed subdivision fits, or does not fit, within the plans and the associated planning rationale. The contents of the plans are relevant planning considerations. **The parties have the responsibility to clearly outline how the subdivision does or does not meet the requirements of the various plans and, if not, what planning rationale supports an approval, with or without conditions, or refusal.**

Must Conform to the Uses in a Land Use Bylaw

A land use bylaw is a requirement of all municipalities; it may prohibit or regulate and control the use and development of land and buildings in a municipality. The Courts (*Wetaskiwin*

(County No. 10) v. Alberta (Planning Board), 1982; *Foothills (Municipal District No. 31) v. Alberta (Planning Board)*, 1984; and *Sturgeon (Municipal District No. 90) v. Alberta (Planning Board)*, 1994 has clarified that conforming with the uses of a land use bylaw requires an examination of the purpose of the district, the uses listed and the rules in the district to determine what uses are permitted.

Parties to an appeal must provide the MGB with the relevant land use bylaw district, its purpose and provisions and clearly outline if the proposed use complies with the uses, intent and purpose of the applicable land use bylaw district.

Must Have Regard but is Not Bound to the Subdivision and Development Regulation

The Regulation considers many different relevant planning factors; contents for an application for subdivision, site suitability, road access, location adjacent to landfills, waste sites and highway considerations are a few of the planning factors considered before the MGB.

Having regard does not mean the MGB can ignore the Regulation, but rather it must give full consideration to the contents of each of the sections, their planning rationale and determine if the proposed subdivision does or does not fit within the Regulation.

The parties have the responsibility to clearly outline how the subdivision does or does not meet the requirements of the Regulation. If the proposed subdivision is inconsistent with the Regulation, the parties must clearly identify the planning rationale which supports an approval, a conditional approval or a refusal.

May Confirm, Revoke, etc.

The Act grants the MGB the powers of a Subdivision Authority (SA) (in addition to its other powers), so that it may fulfill its responsibilities (s. 680(2)(f)). The MGB can remove or add to conditions imposed by the SA, or revoke the SA's decision entirely and substitute a decision of its own. This process means that the MGB will examine the entire subdivision application, not just the condition or aspect of the application that is under appeal.

Parties to an appeal must be prepared to address the merits of the entire subdivision application. Even if there are only one or two conditions of approval that are at issue, the parties must be prepared to address the complete subdivision to ensure all the legislative requirements related to an approval have been met.

Exercise the Same Power as the Subdivision Authority (SA)

The Act states that, in addition to the other powers it has, the MGB may exercise the same power as a subdivision authority is permitted to exercise (s. 680(2)(f)). Section 654(1)(a) of the Act outlines the responsibilities of an SA which includes that an SA shall not approve a subdivision application unless the land that is proposed to be subdivided is, in the opinion of the SA, suitable for the purpose for which the subdivision is intended.

Land Must Be Suitable for the Proposed Subdivision

The MGB will not approve a subdivision unless satisfied that the site is suitable for the intended use (s. 654(1)(a)). Section 7 of the Regulation provides the relevant planning factors that are to be considered when determining site suitability.

Section 7 of the Regulation states that when making a decision as to whether to approve an application for subdivision, the subdivision authority must consider, with respect to the subject land,

- (a) *its topography,*
- (b) *its soil characteristics,*
- (c) *storm water collection and disposal,*
- (d) *any potential for the flooding, subsidence or erosion of the land,*
- (e) *its accessibility to a road,*
- (f) *the availability and adequacy of a water supply, sewage disposal system and solid waste disposal,*
- (g) *in the case of land not serviced by a licensed water distribution and wastewater collection system, whether the proposed subdivision boundaries, lot sizes and building sites comply with the requirements of the Private Sewage Disposal Systems Regulation (AR 229/97) in respect of lot size and distances between property lines, buildings, water sources and private sewage disposal systems as identified in section 4(4)(b) and (c),*
- (h) *the use of land in the vicinity of the land that is the subject of the application, and*
- (i) *any other matters that it considers necessary to determine whether the land that is the subject of the application is suitable for the purpose for which the subdivision is intended.*

The parties must be able to demonstrate before the MGB that the subject lands are suitable for the purpose it is intended based on the above criteria and other relevant planning considerations.

Approval of a Proposed Subdivision Even Though it Does not Conform with the Land Use Bylaw

As per s. 654(2), the MGB or the SA can approve an application for subdivision even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

- (a) *the proposed subdivision would not*
 - (i) *unduly interfere with the amenities of the neighbourhood, or*
 - (ii) *materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,*
- and*
- (b) *the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.*

While the MGB is not bound by the provisions of the land use bylaw, with the exception of use, the parties must be able to demonstrate to the MGB, if they are to approve something notwithstanding its non-compliance with the land use bylaw, how it meets the planning rationale above.

SUMMARY

The creation of a subdivision has a permanent impact on the landscape and neighboring lands and has a variety of impacts on a neighborhood or a municipality. The Act requires careful consideration and regard for all stated matters; thus on subdivision appeal, the MGB is required to fulfill certain legislative tests. The MGB must be satisfied that all the requirements of the Act, the Land Use Policies, the Regulation, any statutory plans, and the Land Use Bylaw have been fully addressed and considered. The overall purpose of planning in the legislation is driven by the following:

Section 617 of the Act states that the purpose of the planning and development part of the Act, and the regulations and bylaws thereunder, is to

(a) achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

The creation of a subdivision has a long-lasting and permanent impact; therefore, it is the responsibility of the parties to ensure the MGB has all the information needed to make an informed and appropriate decision that meets the purpose of the Act and the requirements of the Regulation.