

BYLAW NO 945/DEV/2018

BEING A BYLAW OF THE MUNICIPAL DISTRICT OF FAIRVIEW NO. 136, IN THE PROVINCE OF ALBERTA, TO ESTABLISH A SUBDIVISION AND DEVELOPMENT APPEAL BOARD FOR THE MUNICIPAL DISTRICT OF FAIRVIEW NO. 136 AND PROVIDE FOR THE ADMINISTRATION OF SAME

WHEREAS, the Council of the Municipal District of Fairview No. 136 wishes to establish a Subdivision and Development Appeal Board, as required under the provisions of the *Municipal Government Act*, RSA 2000, Chapter M-26 as amended; and

WHEREAS, the Council of the Municipal District of Fairview No. 136 wishes to delegate the Subdivision Appeal Board powers and duties of the Municipal District of Fairview No. 136 to an Intermunicipal Subdivision Appeal Board, as allowed under section 627 of the *Municipal Government Act*, RSA 2000, Chapter M-26;

NOW THEREFORE, the Council of the Municipal District of Fairview No. 136, duly assembled, enacts as follows:

SECTION I – PURPOSE, NAME AND DEFINITIONS

Purpose

1. The purpose of this Bylaw is to establish a Development Appeal Board for the MD of Fairview No. 136.

Name

2. This Bylaw may be cited as the "Development Appeal Board Bylaw".

Definitions

3. In this Bylaw,
 - a) "Act" means the *Municipal Government Act*, RSA 2000, as amended.
 - b) "ALSA Regional Plan" means a regional plan as defined in the Alberta Land Stewardship Act.
 - c) "Appellant" means the person who has served written notice of an appeal to the Development Appeal Board from a decision or order of the Development Authority.
 - d) "Board" means the Development Appeal Board of the Municipal District of Fairview No. 136.
 - e) "Chair" means the person appointed pursuant to section III (13) of this Bylaw.
 - f) "Council" means the duly elected municipal Council of the Municipal District of Fairview No. 136.
 - g) "Clerk" means a designated officer appointed by Council to act as clerk of the Development Appeal Board under section IV(1) of this Bylaw.
 - h) "Development Authority" means the person(s) appointed pursuant to the Development Authority Bylaw and any amendments thereto.
 - i) "Land Use Bylaw" means the Municipal District of Fairview No. 136 Land Use Bylaw # 791 and any amendments thereto.
 - j) "Member" means a member of the Development Appeal Board of the Municipal District of Fairview No. 136, as appointed by the Council of the Municipal District of Fairview No. 136.
 - k) "Municipal District or MD" means the corporation of the Municipal District of Fairview No. 136.
 - l) "Panel" means the members of the Development Appeal Board of the Municipal District of Fairview No. 136 convened to hear and decide upon an appeal.
 - m) "Subdivision Authority" means the Subdivision Authority as established pursuant to the Subdivision Authority Bylaw No. 798.
 - n) All other terms used in this Bylaw shall have the meaning assigned to them by the *Municipal Government Act*, RSA 2000, Chapter M-26, as amended, to the extent that said meaning differs from the ordinary meaning of such terms.

SECTION II - ESTABLISHMENT AND POWERS

Establishment

1. The Development Appeal Board for the MD of Fairview No. 136 is hereby established.

Powers

2. The Board shall deal with development and stop order appeals, in accordance with the provisions of the Act and shall exercise any other powers, duties and functions given to it by any other Bylaws of Council.

Subdivision Appeal Board

3. The Mackenzie Intermunicipal Subdivision Appeal Board shall act as the Subdivision Appeal Board on behalf of the MD of Fairview No. 136.

SECTION III - ADMINISTRATION

Membership, Training, Term and Conditions of Service

1. The Board shall consist of four (4) members, comprising one (1) member of Council and three (3) members at large.
2. Appointment of the members of the Board shall be made by resolution of Council annually at their organizational meeting, excepting for the first appointment which shall be made at the time of the passage of this Bylaw.
3. A person appointed as a member of the Development Appeal Board shall complete a mandatory training program set or approved by the Minister of Municipal Affairs within one year of their appointment.
4. A member of the Development Appeal Board who serves for a period exceeding three (3) years shall complete a refresher training program set or approved by the Minister of Municipal Affairs every three (3) years, unless appointment is terminated or resignation from the Board is received.
5. The length of a person's appointment to the Board shall be at the discretion of Council, and shall be renewed on an annual basis.
6. Vacancies on the Board shall be filled by appointment by Council.
7. The members of the Board shall be entitled to such remuneration, travelling and living expenses, as may be fixed by Council from time to time.

Eligibility

8. A member of the Board shall not include:
 - a) a member of the Municipal Planning Commission; or
 - b) a person who carries out subdivision or development powers, duties and functions on behalf of the MD; or
 - c) an employee of the MD .
9. A member of Council's appointment to the Board terminates upon the person ceasing to be a member of Council.
10. Members of the Board shall not include non-residents of the MD of Fairview No. 136, unless:
 - a) the member is currently a member of the Board, but in that event, that membership shall not be renewed or extended unless their membership falls within the requirements of sub-paragraph 10(b) below;
 - b) there would be no more than one (1) non-resident member, who shall have a substantial connection to the MD of Fairview No. 136 by virtue of either owning property or operating a business within the MD's municipal boundaries, or Council otherwise deems a substantial connection for good and sufficient reason.

Quorum

11. Three (3) members of the Board shall constitute a quorum for the purpose of a meeting or public hearing.
12. A panel of the Board hearing an appeal cannot have more than one (1) councillor.

Chair

13. The members of the Board shall elect one of themselves as Chair.
14. The Chair shall retain this position for one year, elected or re-elected yearly from among the members of the Board.

Absent Members

15. A member of the Board who for any reason is unable to attend the whole or a part of any hearing of an appeal, shall not participate in the deliberations or decision made by the Board upon that appeal.
16. In the event of the absence of, or the inability to act as, the Chair at a hearing or meeting of the Board, the members of the Board present at the hearing or meeting shall elect a member to act as Chair at that hearing or meeting.

Signing Authority

17. An order, decision, approval, notice or other things, made, given or issued by the Board may be signed on its behalf by its Chair or another member of the Board authorized to sign on its behalf.

Meetings and Public Hearings

18. In accordance with the *Municipal Government Act*, the Board may establish panels of the Board.
19. The hearing of an appeal shall be held in accordance with the provisions of the *Municipal Government Act*.
20. Within thirty (30) days of receiving written notice of an appeal that is in accordance with the provisions of the *Municipal Government Act*, the Board shall hold a public hearing to hear an appeal of:
 - a) a decision of the Development Authority; or
 - b) the Development Authority's refusal or failure to make a decision within the time period allowed for a decision, as established by the *Municipal Government Act*; or
 - c) a stop order issued by the Development Authority.
21. Upon receipt of a notice of appeal duly filed pursuant to the provisions of the *Municipal Government Act* and of this Bylaw, the Clerk may convene a special meeting of the Board to consider what persons are affected by the appeal and should be notified thereof.
22. The Chair or Acting Chair shall be responsible for the conduct of a public hearing.
23. The hearing of an appeal by the Board shall be held in public, but the Board may deliberate and make its decision in a meeting closed to the public, in accordance with Section 197 of the *Municipal Government Act*.
24. In accordance with section 629 of the *Municipal Government Act*, the Board may accept any oral or written evidence that it considers, whether admissible in a court of law or not, and is not bound by the laws of evidence applicable to judicial proceedings.
25. The Board must make and keep record of its proceedings, which may be in the form of a summary of the evidence presented at a hearing, in accordance with the section 629 of the *Municipal Government Act*.
26. The Board may adjourn to a specific time and date upon its own volition to request technical information, legal opinions or other information desired by the Board.
27. A request for adjournment of a public hearing may be granted at the discretion of the Board, but any adjournment must be to a specific time and date.
28. The Board may refer to the MD of Fairview No. 136 Procedural Bylaw or the *Municipal Government Act* for matters not covered in this Bylaw.

Decisions

29. Upon conclusion of a public hearing, the Board may deliberate and make its decision in a meeting closed to the public in accordance with Section 197 of the *Municipal Government Act*.
30. All members present shall vote on every matter placed before the Board unless the member declares a pecuniary interest in the same manner as required of an elected representative pursuant to Sections 169, 170, and 172 of the *Municipal Government Act*. Any member who declares a pecuniary interest shall not participate in any debate or decision concerning the matter. Such pecuniary interest shall be recorded in the minutes.
31. The decision of the majority of the members of the Board present at a public hearing, duly convened, is deemed to be the decision of the whole Board.
32. Where there is a tie vote on an appeal motion, that motion is deemed defeated.
33. The Chair or Clerk of the Board may make a verbal announcement of the decision on an appeal at the conclusion of the public hearing, but in that event, shall notify the parties that the verbal decision is not final or binding, and that parties should not act upon it until it has been reduced to writing and signed.
34. The Board shall give its decision on an appeal in writing together with reasons for the decision within fifteen (15) days of the conclusion of the public hearing.

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35. In determining an appeal, the Board:
- a) must act in accordance with any applicable ALSA regional plan;
 - b) must comply with any applicable land use policies;
 - c) must comply with any applicable statutory plans, subject to section 638 of the MGA;
 - d) subject to clause (g), must comply with the Land Use Bylaw;
 - e) must have regard to but is not bound by the Subdivision and Development Regulations;
 - f) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
 - g) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the Land Use Bylaw if, in its opinion,
 - (i) the proposed development would not,
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
 - (ii) the proposed development conforms with the use prescribed for that land or building in the Land Use Bylaw.
36. Where the Board allows an appeal against the refusal of a development permit by the Development Authority, the Development Authority shall issue a development permit in conformity with the Board's decision, upon receiving notice of the Board's decision.
37. The Board may confirm, revoke or vary any condition imposed by the Development Authority or make or substitute any condition of its own.

Immunity

38. Members of the Development Appeal Board are not personally liable for anything done or omitted to be done in good faith in the exercise or purported exercise of a power, duty or function under Part 17 of the *Municipal Government Act*.
39. No member of the Development Appeal Board is liable for costs by reason of or in respect of an application for permission to appeal or an appeal under Part 17 of the *Municipal Government Act*.

SECTION IV - CLERK

Appointment

1. Council shall appoint the Development Clerk as a Designated Officer in the position of Clerk of the Development Appeal Board annually.

Training

2. The Clerk shall:
- a) complete a mandatory training program set or approved by the Minister of Municipal Affairs within one (1) year of taking office.
 - b) complete a refresher training program set or approved by the Minister of Municipal Affairs every three (3) years, unless appointment is terminated or resignation is received.

Duties and Responsibilities

3. The Clerk shall:
- (a) perform such functions as may be necessary to ensure that the Board is in full compliance with its duties under the *Municipal Government Act* and this Bylaw.
 - (b) attend all meetings and hearings of the Board;
 - (c) not vote on any matters before the Board;
 - (d) notify all members of the Board of the arrangements for the holding of each hearing and other meetings of the Board;
 - (e) make available for public inspection before the commencement of a public hearing all relevant documents and materials respecting the appeal including the application, its refusal and the appeal therefrom, or a stop order of the Development Authority, as the case may be.
 - (f) keep the following records:

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- i. the minutes of all meetings and hearings, which may include a written summary of all evidence presented at a hearing in accordance with Section III (25);
- ii. all applications;
- iii. records of all notices of hearings and of persons to whom they were sent;
- iv. copies of all written representations to the Board;
- v. notes as to each representation;
- vi. the names and addresses of those making representations at a hearing;
- vii. the decisions of the Board;
- viii. the reasons for the decision of the Board;
- ix. the vote of the members of the Board on the decision;
- x. records of all notices of decision and of persons to whom they were sent;
- xi. all notices, decisions and orders made on appeal from the decisions of the Board; and
- xii. such other matters as the Board may direct or the Secretary may determine.

(g) perform any other duties and functions as the Board may determine.

SECTION V – NOTIFICATION

Notice of Appeal

1. The written notice of appeal shall be made on the MD's official Appeal Form, accompanied by a fee in the amount established by Council from time-to-time, and signed by the appellant.
2. The appellant may serve the appeal form to the Board by EITHER:

a) mailing it to:

The Clerk
Development Appeal Board
Municipal District of Fairview No. 136
P.O. Box 189
Fairview, Alberta
T0H 1L0

by registered mail within twenty-one (21) days after the date the decision, the order, or no decision within the required period, is made by the Development Authority, as:

- i. first published in a newspaper circulating in the area; or
- ii. posted on the site of the property, the subject of the application; or
- iii. received by the appellant,

whichever of these shall occur first.

OR

- b) delivering it in person to the MD Office within twenty-one (21) days after the date the decision, the order, or no decision within the required period, is made by the Development Authority, as:
 - i. first published in a newspaper circulating in the area; or
 - ii. posted on the site of the property, the subject of the application; or
 - iii. received by the appellant,

whichever of these shall occur first.

Proof of the said delivery shall be the official receipt of the Municipal District of Fairview No. 136 Office.

3. For the purposes of subsections 2(a) and 2(b), the date of receipt of the decision is deemed to be seven (7) days from the date the decision is mailed, unless otherwise legislated.

Appeal Fee

4. The Appeal Form shall be accompanied by a fee of an amount established by Council from time to time.
5. Notwithstanding subsection 4, where the Board is of the opinion that an appeal is applicable to and for the benefit of the municipality at-large, the Board may direct that the application fee be returned to the appellant.

Notice of Public Hearing

6. The Clerk, in the name of the Board, shall give at least five (5) days written notice of the time and place of the hearing of an appeal, together with a summary of the application, to:
 - a) the appellant;
 - b) the Development Authority;
 - c) those persons required to be notified under the Land Use Bylaw and any other person that the Board considers to be affected by the appeal that should be notified; and
 - d) any other persons required to be notified in accordance with the *Municipal Government Act*.
7. In the case of the appellant, notice of the appeal hearing shall be sent by mail to the address given on the appellant's appeal form.
8. In the case of those persons referred to in 6(c) above, notice of the appeal hearing shall be sent by mail to the address shown on the last revised assessment roll.
9. In addition to the notice required by 6, the Board may direct that the Clerk publish notice of the hearing in such manner as the Board may determine.
10. Where a hearing is adjourned or the decision is reserved, and the Board does not at the time of adjournment fix a time and place for the further hearing of the application and announce it to those in attendance, it shall be the duty of the Chair to announce to those in attendance that the notice of the time and place for further hearing will be sent to only those persons who leave their name and address with the Clerk; and thereafter, only such persons as do leave their name and address shall be entitled to the notice of the further hearing.

SECTION VI – COURT OF APPEAL

Record of Appeal

1. The Clerk shall keep on file all notices of application made for leave to appeal to the Court of Appeal from decisions of the Board pursuant to the *Municipal Government Act*.

SECTION VII – SEVERABILITY

Severability

1. If any portion of this Bylaw is declared invalid by a court of competent jurisdiction, then the invalid portion shall be severed.

SECTION VIII – REPEAL OF BYLAW

Repeal of Bylaw

1. The Development Appeal Board Bylaw No. 800 is hereby repealed.

SECTION IX – EFFECTIVE DATE

Effective Date

1. This Bylaw shall come into full force and effect upon the date of its final passing thereof.

READ a first time this 27th day of March, 2018.

READ a second time this 27th day of March, 2018.

READ a third and final time this 27th day of March, 2018.


Reeve


Chief Administrative Officer