



BYLAW NO. 2018-07

BEING A BYLAW OF BIRCH HILLS COUNTY IN THE PROVINCE OF ALBERTA TO PROVIDE FOR THE ESTABLISHMENT OF A SUBDIVISION AND DEVELOPMENT APPEAL BOARD

WHEREAS Section 145(b) of the Municipal Government Act, as amended, allows a Council to pass a bylaw in relation to the procedure and conduct of other bodies established by Council;

AND WHEREAS Section 627(1) of the Municipal Government Act requires Council to establish a Subdivision and Development Appeal Board;

AND WHEREAS Section 628(1) of the Municipal Government Act requires that a Subdivision and Development Appeal Board Bylaw prescribes the functions and duties of the Subdivision and Development Appeal Board;

**NOW THEREFORE
BE IT RESOLVED** that the Council for Birch Hills County, duly assembled enacts as follows:

1. TITLE

- a. This Bylaw will be cited as the "Subdivision and Development Appeal Board Bylaw".

2. DEFINITIONS

- a. "**Act**" means the Municipal Government Act, RSA 2000, c. M- 26 as amended from time to time.
- b. "**Appellant**" means a person who, pursuant to the Act, has filed a notice of appeal with the Subdivision and Development Appeal Board.
- c. "**Board**" means the Subdivision and Development Appeal Board (SDAB) established to hear and make decisions on appeals as established by this bylaw.
- d. "**Chair**" means a member who is appointed to preside over a hearing in accordance with this bylaw.

- e. **"Clerk"** means the person appointed by Council to act as Clerk for the SDAB.
- f. **"Council"** means the Council of Birch Hills County.
- g. **"County"** means Birch Hills County.
- h. **"Hearing"** means a meeting on a contested matter or an opportunity whereby the applicant or agent representing the applicant is provided the opportunity to be heard by the SDAB, in addition to any other person with standing.
- i. **"Land Use Bylaw"** means the County's Land Use Bylaw, as amended or repealed and replaced from time to time.
- j. **"Member"** is a member of the Board duly appointed by Council pursuant to this bylaw.
- k. **"Quorum"** means three (3) members of the SDAB to act at a hearing.

3. **ESTABLISHMENT**

- a. The Subdivision and Development Appeal Board is hereby established to hear and decide subdivision and development appeals in accordance with the provisions of the Act and exercise any other powers, duties and functions given to it by the Land Use Bylaw and any other bylaws of Council.
- b. The SDAB Procedures as set out in Schedule "A" are incorporated into and shall form part of this Bylaw.

4. **FUNCTION AND DUTIES**

- a. The SDAB shall hear all subdivision and development appeals, as set out in Part 17, Division 10 of the Act, in accordance with the requirements of the Act and this Bylaw.

5. **MEMBERSHIP**

- a. The Board shall consist of three (3) Members at large appointed by resolution of Council.
- b. Up to three (3) Members may be appointed by resolution of Council as alternate Members to fill a vacancy on the Board caused by an absence, retirement or resignation of a Member at large, to allow the Board to continue to conduct business to ensure quorum requirements are fulfilled.
- c. Council shall make reasonable efforts to attract candidates and appoint Members who are residents of the County. Notwithstanding the foregoing, Council may appoint a Member who is not a resident of the County if:

- i. The County does not receive a sufficient number of applications from suitable candidates who are residents of the County, or;
 - ii. In the opinion of Council, the Member has particular qualifications, skills or experience which will assist the Board in determining appeals before it.
- d. No person who is a member of the Municipal Planning Commission or an employee of the County or a person who carries out subdivision or development powers or duties for the County shall be appointed to the Board.
- e. Each member of the Board, appointed by Council, shall be for a term specified by a Resolution of Council, but in no case shall the appointment be more than one year.
- f. Notwithstanding Section 5.e a person may be reappointed to the Board upon the expiration of that person's term.
- g. In the event of a vacancy, Council may appoint by resolution a new member to serve for the remainder of the vacating member's term.
- h. The Chairman and Vice-Chairman of the Board shall be appointed annually by resolution of Council.
- i. Council may, by resolution, remove a Member from the SDAB at any time if:
 - i. In the majority opinion of Council or the majority opinion of the Board, a Member is not performing their duties satisfactorily in accordance with this Bylaw and the Act, or;
 - ii. A Member is absent for more than three (3) consecutive meetings of the Board without reasonable excuse.
- j. In the event Council or the Board has determined the removal of a Member is being considered, Council must give the Member or the Member's representative a reasonable opportunity to be heard by Council and thereafter provide the Member with a decision in writing with reasons.
- k. Council may, by resolution, appoint additional Members to the SDAB for a specific short period of time, as the Council sees fit, in order to ensure that the SDAB will have a quorum for a meeting and/or a hearing.
- l. Members shall adhere to the Member Rules of Conduct as set out in Schedule "B" to this Bylaw.
- m. Members are expected to participate in any training offered by the County or

the Province, to assist them in carrying out their duties as Members of the SDAB.

- n. Any Member may resign from their position on the Board by sending written notice to the Chair of the Board and Council.
- o. The Chair and Vice Chair may resign from their positions on the Board by sending written notice to Council.

6. SDAB CLERK

- a. Council shall appoint by resolution a person or persons to serve as Clerk for the SDAB.
- b. The responsibilities of the Clerk for the SDAB are as follows:
 - i. ensure all statutory requirements of the SDAB are met,
 - ii. inform all statutory parties of the appeal hearing in accordance with the Act;
 - iii. inform all affected parties of the appeal hearing in accordance with the Act;
 - iv. compile all necessary documentation for distribution to the Members;
 - v. attend all SDAB appeal hearings;
 - vi. provide services for the recording of the proceedings of the SDAB and for retention of exhibits, including all written submissions to the SDAB;
 - vii. prepare the minutes for the SDAB hearing, including the names and addresses of all parties making representations to the SDAB;
 - viii. communicate decisions of the SDAB to the affected parties in accordance with the Act; and
 - ix. such other matters as the SDAB may direct.

7. MEMBER REMUNERATION

- a. Members shall be entitled to such remuneration, travelling and other expenses, as may be fixed from time to time by Council.

8. ADMINISTRATION

- a. The fee for an appeal will be the fee as set by the Council of the County from time to time. A refund of the appeal fee may be granted by the County if a withdrawal is received in writing and has been delivered to the Clerk prior to notifications of the appeal hearing being sent out.
- b. SDAB Hearings will be held at the County Administration Building or other such location as determined by the County and advertised in accordance with the Act from time to time.
- c. The County will provide the administrative resources for SDAB Hearings.

9. GENERAL

- a. Headings in this Bylaw are for reference purposes only.
- b. Words in the masculine gender will include the feminine gender whenever the context so required and vice versa.
- c. Words in the singular shall include the plural or vice versa whenever the context so requires.

10. ENACTMENT

- a. Bylaw No 09-00 is hereby repealed.
- b. This Bylaw shall come into effect upon third and final reading.

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

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

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

SIGNED this 27th day of August, 2018.



Reeve
Gerald Manzulenko



Chief Administrative Officer
Hermann Minderlein

SCHEDULE "A"

SUBDIVISION AND DEVELOPMENT APPEAL BOARD PROCEDURES

1. DEFINITIONS

Unless otherwise specified herein, all terms shall have the meaning assigned to them in the Bylaw or, where not specified in the Bylaw, in the *Municipal Government Act*, RSA. 2000, Chapter M-26, as amended (the "Act").

- a. **"Appellant"** means a person who, pursuant to the Act, has filed a notice of appeal with the Municipal Subdivision and Development Appeal Board.
- b. **"Board"** means the SDAB.
- c. **"In Camera"** means a meeting of the Board which is closed to the public pursuant to s.197 of the Act.
- d. **"Clerk"** means the person(s) appointed to act as Clerk for the SDAB.
- e. **"Staff"** means an employee of the County.

2. APPLICATION

- a. These procedures shall apply to all meetings of the Subdivision and Development Appeal Board.

3. TRAINING

- a. All Members shall receive training as SDAB Members in accordance with the requirements of the Act.
- b. The SDAB may retain legal counsel to provide training or advice before, during or after a hearing as the case may be.

4. PANEL AND CHAIR

- a. When a hearing is required, the panel of Members to hear the appeal will be appointed by the Clerk of the SDAB based on Member availability and experience.
- b. Annually at the Organizational Meeting, Council will appoint one Member to serve as Chair of the SDAB and one Member to serve as Vice Chair of the SDAB.

- c. The Chair shall be responsible for the conduct of the hearing and for ensuring the hearing is conducted in a fair and impartial manner, in accordance with the rules for such hearings as set out in the Act and the rules of natural justice.
- d. In the event of absence or inability of the Chair to preside at a Board meeting, the Vice Chair shall preside, and in the event of the absence or inability of both the Chair and Vice Chair to preside at a meeting of the Board, the Members present in constituting a quorum shall elect one of its Members to act as Chairman for that meeting.

5. QUORUM

- a. Three (3) Members shall constitute a quorum of the Board.

6. DECISIONS

- a. Only Members present for the entire hearing shall participate in the making of a decision on any matter before the Board. The Clerk shall not participate in the making of a decision on any matter before the Board.
- b. The decision of the majority of Members present at the meeting shall be deemed to be the decision of the whole Board. In the event of a tie vote, the appeal shall be denied.
- c. The Board may make its decision with or without conditions in accordance with the Act.
- d. If an appeal is recessed for any reason following the submission of evidence, the appeal hearing may be recessed to the next scheduled meeting or to a scheduled meeting. However, only those Members present at the original hearing shall render a decision of the matter.
- e. An order, decision, approval, notice or other thing made, given or issued by the Board shall be signed by the Chair or Vice Chair or their designate.

7. APPEAL HEARINGS

- a. The Board shall consider and decide all subdivision and development appeals and s. 645 Stop Order appeals which have been properly filed with the County in accordance with the Act.
- b. The Board shall hold a public hearing respecting the appeal within thirty (30) days from the date of receipt of the written notice of appeal.

- c. The Board shall give notice of the hearing in accordance with the Act.
- d. The Board shall make available for public inspection prior to the hearing all relevant documents and materials respecting the appeal.
- e. The Board shall hear from parties in accordance with the Act.
- f. Letters previously submitted to a Municipality's subdivision or development authority will not be considered by the Board unless resubmitted for the appeal hearing. The author of the letter must be identified on the document.
- g. The Board shall hear appeals in public, but it may at any time recess and deliberate *in camera*.
- h. If the Board desires at the hearing of the appeal, to request further technical information, legal opinions, or other assistance, it may recess the hearing pending receipt of such information.
- i. Electronic or similar recording devices shall not be used during the hearing by anyone in attendance except the Clerk. The Board shall make and keep a written record of its proceedings which may be in the form of a summary of the evidence presented at the hearing.
- j. The Board shall give a written decision together with the reasons for the decision in accordance with the Act.

8. HEARING PROCEDURE

- a. The Chair for the meeting will call for a motion to go into public hearing and ask if appellant is present to speak to the appeal.
- b. If the Appellant indicates his/her presence to speak to the appeal, then the Chair will outline the public hearing procedures.
- c. The Clerk will confirm that the notice of appeal has been provided to all parties in accordance with the Act.
- d. The Chair will ask if anyone objects to any Member hearing the appeal.
- e. A member of Staff will introduce the appeal and present the administrative report outlining the background to the appeal.
- f. The Chair shall call upon the Appellant to present his/her appeal submission.

- g. After identifying him/herself, the Appellant will be requested to present his/her appeal within a reasonable time period.
- h. The Chair shall then call upon any persons in attendance at the hearing who are entitled to be heard by the Board under the Act and who wish to speak in favour of the appeal.
- i. After identifying themselves, persons or representatives of any group or persons in favour of the appeal may address the Board in turn. The Board reserves the right to abbreviate repetitious oral submissions.
- j. The Chair shall then call upon any persons in attendance at the hearing who are entitled to be heard by the Board under the Act and who wish to speak in opposition to the appeal.
- k. After identifying themselves, persons or representatives of any group or persons, in opposition of the appeal may address the Board in turn. The Board reserves the right to abbreviate repetitious oral submissions.
- l. The Chair shall then call upon the appellant and those persons in attendance at the public hearing who spoke in favor of the appeal for any rebuttal to the points raised by those who spoke in opposition to the appeal. Rebuttal comments are restricted to addressing new points raised by those who spoke in opposition to the appeal.
- m. After a presentation is concluded, any Member may ask the presenter relevant questions.
- n. After all presentations from the public have been completed, any Member may ask Staff relevant questions.
- o. Following the public presentation and Member questions, the Chair shall close the public portion of the hearing.
- p. The Board may, at any time, modify or adjust the foregoing procedure as required to comply with the Act and the rules of natural justice.

9. PRESENTATION MATERIALS

- a. The use of slides maps, videos, and Power Point presentations are permitted and these materials along with any written submissions become the property of the Board as exhibits to the public hearing.
- b. Written submissions shall be received by the Clerk at least three (3) days in advance of the commencement of the hearings. Notwithstanding the foregoing,

the Board retains the discretion to accept late submission where deemed appropriate.

10. INTRODUCTION OF SPEAKERS

- a. Persons addressing the Board shall give their name, location of residence, and indication as to whether they are speaking on their own behalf or for another person or for a group, and address the Chair when responding to questions or providing information.
- b. A person who does not identify him/herself will not be given the opportunity to address the Board.
- c. Following the close of the public portion of the hearing, the Board shall deliberate and make its decision. The Board may deliberate and make its decision in camera.

11. CONDUCT AT HEARINGS

- a. Members of the public in attendance at a hearing:
 - i. shall address the board through the Chair;
 - ii. shall maintain order and quiet; and
 - iii. shall not applaud or otherwise interrupt any speech or action of the Members or any other person addressing the Board.
- b. The Chair may order a member of the public who disturbs or acts improperly at a hearing by words or actions be removed. The Chair may request assistance from a Peace Officer to remove the person.

12. MEMBER CONDUCT

- a. A Member wishing to speak at a hearing shall obtain the approval of the Chair before speaking.
- b. When a Member or member of the public is addressing the Chair, every other Member shall:
 - i. remain quiet and seated;
 - ii. not interrupt the speaker except on a Point of Order;
 - iii. not carry on a private conversation; and
 - iv. not cross between the speaker and the Chair.

SCHEDULE "B"

SDAB MEMBER RULES OF CONDUCT

1. No Member shall participate in the hearing of any matter before the Board in which that Member has a pecuniary interest.
2. For the purposes of determining whether a Member has a pecuniary interest in the matter before the Board, all provisions of s. 170 of the Act shall apply, substituting the term "Member" for the term "Councillor".
3. No Member shall participate in the hearing of any matter before the Board in which that Member has an actual or perceived bias for or against the Appellant or any parties that appear before the Board.
4. Where a Member has a pecuniary interest in the matter before the Board, or an actual or perceived bias for or against the appellant or any parties that appear before the Board, that Member shall disclose that interest or bias to the Board and Clerk as soon as possible and remove him/herself from participating as a Board Member in the hearing of the appeal.
5. Members shall:
 - a. not discuss any matter under appeal with any party to that appeal, outside of the formal hearing process;
 - b. keep *in camera* discussions of Board and legal advice provided to the Board confidential, except where required to disclose that information by law;
 - c. attend all Board hearings to which he or she has been assigned unless prior written consent has been received from the Chair; and
 - d. participate in the deliberation and decision-making process on all matters to which he or she has been assigned and has attended the public hearing for.