

CITY OF CHESTERMERE

PROVINCE OF ALBERTA

BYLAW #004-16

A Bylaw of the City of Chestermere, in the Province of Alberta, to provide for a Subdivision and Development Appeal Board.

WHEREAS Section 627 of the Municipal Government Act, RSA 2000, C. M-26 and amendments thereto requires the establishment of a Subdivision and Development Appeal Board for the City of Chestermere;

AND WHEREAS Section 145 and 628 of the said Act require Council to provide for the procedure and conduct and the functions and duties of a Subdivision and Development Appeal Board established by Council;

NOW THEREFORE The Municipal Council of the City of Chestermere, Alberta duly assembled, hereby enacts as follows:

1. Title

This bylaw may be cited as "Subdivision and Development Appeal Board Bylaw."

2. Definitions

In this bylaw, unless the context otherwise requires:

- (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 served a Notice of Appeal on the Subdivision and Development Appeal Board;*
- (c) *"Board" means the Subdivision and Development Appeal Board established by virtue of this Bylaw;*
- (d) *"Close" used in relation to an Appeal Hearing, means to terminate the Hearing;*
- (e) *"Council" means the municipal council of the City;*
- (f) *"City" means the City of Chestermere;*
- (g) *"Designated Officer" means a designated officer as defined in the Act;*
- (h) *"Development Appeal" means an appeal described in Section 9 of this bylaw.*

- (i) "*Development Application*" means an application made to the Development Authority in accordance with the Land Use bylaw for the purpose of obtaining a development permit;
- (j) "*Development Authority*" means a development authority as defined in the Act;
- (k) "*Development Permit*" means a document authorizing a development issued in accordance with the Land Use bylaw;
- (l) "*Land Use Bylaw*" means the Bylaw adopted as the Land Use Bylaw of the City pursuant to the Act;
- (m) "*Municipal Planning Commission*" means the Chestermere Planning Commission constituted pursuant to Bylaw Number 025-10, as amended, of the City, or any successor or parallel bylaw;
- (n) "*Recess*" used in relation to an Appeal Hearing means to take a break in the Hearing with the intent of returning to the Hearing at a specific time and date to allow for additional information to be brought to the hearing;
- (o) "*Subdivision Appeal*" means an appeal described in section 10 of this bylaw.
- (p) "*Subdivision Authority*" means a subdivision authority as provided for in Part 17 of the Act; and
- (q) "*Working Day*" means the portion of the day between 8:30 a.m. and 4:30 p.m. from Monday to Friday inclusive, except for statutory holidays and holidays approved by Council.

3. Application

- (1) Nothing in this Bylaw relieves a person from complying with any provision of any federal or provincial law or regulation, other bylaw or any requirement of any lawful permit, order or license.
- (2) Any heading, sub-headings, or tables of contents in this Bylaw are included for guidance purposes and convenience only, and shall not form part of this Bylaw.
- (3) Where this Bylaw refers to another Act, bylaw, regulation or agency, it includes reference to any Act, bylaw, regulation or agency that may be substituted therefore.

- (4) This bylaw is gender-neutral and, accordingly, any reference to one gender includes the other.

4. Establishment and Composition

- (1) There is hereby established a Subdivision and Development Appeal Board (*hereinafter called the Board*) for the City.
- (2) No person shall be appointed as a member of the Board;
 - (a) Who is an employee of the City;
 - (b) Who carries out subdivision or development powers, duties and functions on behalf of the City, or
 - (c) Who is a member of the Municipal Planning Commission.
- (3) The Subdivision and Development Appeal Board membership shall not exceed consists of seven (7) members as follows:
 - (a) One Councilor;
 - (b) One alternate Councilor and
 - (c) Six Citizen Representatives

The alternate Councilor will serve in the place of Councilor who is unable to participate in a hearing. The alternate Councilor will be any member of Council who is not part of a Development Authority or a Subdivision Authority. **(016-19)**

- (4) Each member of the Board shall be appointed for a term specified by resolution of Council, but in no case shall the appointment be for more than two (2) years. In some cases, SDAB members may be selected for subsequent two-year term. **(016-19)**
- (5) Each member shall receive Subdivision and Development Appeal Board member training within six (6) months of their appointment or reappointment. If training is not available or a member cannot attend for valid reasons within the six (6) month timeframe, the member shall attend the next available date. The validity of the reason shall be at the discretion of the Chairman and a letter excusing the member from the training within the six (6) month timeframe shall be approved by the Chairman and received by the Secretary.
- (6) Notwithstanding clause (4), a person may be reappointed upon the expiration of his term.

- (7) Quorum
 - (a) Quorum requires the attendance of the Chairperson or in the absence of the Chairperson, the Vice Chairperson
 - (b) The presence of one Council member is required for quorum (016-19)
- (8) Vacancies shall be filled by resolution of Council at its discretion so long as the requirements of the Municipal Government Act are met. In the event of a vacancy or vacancies, the Board may continue to operate and conduct business until the vacancy or vacancies are filled provided that the quorum requirements are met.
- (9) Council authorizes the Chief Administrative Officer to appoint one or more clerks of the Subdivision and Development Appeal Board in accordance with the Act. (003-18)
- (10) The Board shall be appointed by a resolution of Council and coincide with Council's annual Organization Meeting. (003-18)
- (11) All Board members must successfully complete the mandatory training prior to sitting at and hearing any SDAB sessions.
 - (a) Any members that do not receive the Municipal Government Act mandated municipal training within the first six months of their term may be removed from the Board. (016-19)
- (12) Any Board member that is absent for three or more hearings over their appointed term may be removed from the Board by Council resolution.
 - (a) This provision shall not pertain to Council members as this Bylaw only provides a minimum of one Council member to sit per hearing. (016-19)
- (13) No Council member shall be the Chairperson or Vice-Chairperson. (016-19)

5. Chairman and Vice Chairman

- (1) The members of the Board shall elect from its membership a Chairman and Vice-Chairman.
- (2) Elections of the Chairman and Vice-Chairman shall occur at the first meeting of the Board after the adoption of this Bylaw, and each year thereafter following but not later than the first Subdivision and Development Appeal Board hearing after Council's organizational meeting.

- (3) In the event of absence or inability of the Chairman to preside at a meeting, the Vice-Chairman shall preside.
- (4) In the event of absence or inability of both the Chairman and Vice-Chairman to preside at a meeting, the members present, in constituting a quorum, shall elect one of its members to preside as Chairman for that meeting.

6. Responsibilities

- (1) The Board Secretary shall:
 - (a) Not have a vote;
 - (b) Make and keep a record of the Board's proceedings which may be in the form of a summary of the evidence presented at a Hearing;
 - (c) Notify the Applicant(s) and Appellant(s), members, advisors to the Board, and anyone required under the Act of the arrangements for holding each meeting;
 - (d) Receive all written submissions and provide for recording of those requests;
 - (e) Receive all requests to be heard at the Appeal Hearing and provide for the recording of these requests;
 - (f) Keep and maintain on file, for inspection by the public during regular office hours, the following:
 - i) Written minutes of any and all meetings and business transacted by the Board;
 - ii) All relevant documents and materials respecting the Appeal, including the Application, the decision or Order, and the letter of Appeal. Copies of relevant documents will be made available upon request.
 - (g) Shall make available Subdivision and Development Appeal Board member training.

(2)

- (a) The subdivision clerk appointed must be a Designated Officer and may be a person who holds appointment as a clerk under section 456 of the Act.
- (b) The subdivision clerk as a Designated Officer must have successfully completed a training program in accordance with regulations made under section 627.3(a) of the Act and section ., Training requirements, of SDAB Regulation 195/2017.
- (c) The Designated Officer Shall undertake all actions stated under the requirements for Subdivision and Development Appeal Board Hearing contained in the Act.
- (d) The Designated Officer shall provide a written report to clarify, where necessary, the purpose and effect of the Appeal being considered.
- (e) A member of a Subdivision Authority or a Development Authority may be appointed as a Subdivision and Development Appeal Board Clerk.
- (f) Council authorizes the Chief Administrative Officer to report on the number of members appointed to the Board, the number of clerks appoint to the Board, and the training requirements of both, pursuant to the MGA and SDAB Regulation 195/2017.

(003-18)

7. Submissions & Appeal Hearing Procedures

- (1) The Board shall meet each second and fourth Wednesday of each month or at such intervals as are necessary to consider and decide Appeals filed with it in accordance with the Act.
- (2) The Board may make rules necessary for the conduct of its meetings, its hearings and its business that are consistent with this Bylaw, the City's Land Use Bylaw and the Act.
- (3) In order for the Appeal Hearing to proceed, not less than a Quorum of the Board shall be present. Should a Quorum not be available within fifteen (15) minutes of the schedule time of the Hearing, the members present shall declare the meeting recessed to a future date.
- (4) The Agenda of the Appeal Hearing shall be restricted to the business for which the Hearing was called.
- (5) All submissions for the Agenda of Appeal Hearing shall be received by the Designated Officer no later than 4:30 p.m., seven (7) working days prior to the date of the Appeal Hearing.
- (6) Agendas shall be available to Board members and the public no later than five (5) working days prior to the date of the Appeal Hearing.

- (7) At the commencement of an Appeal Hearing, the Chairman shall:
 - (a) Call the meeting to order;
 - (b) State the matter to be considered at the Hearing;
 - (c) Ask the Designated Officer if the Appeal Hearing has been advertised in accordance with the Municipal Government Act;
 - (d) Request that the Designated Officer present a report on the issue at hand.
- (8) Any person who claims to be affected by the subject matter of the Appeal Hearing shall be afforded an opportunity to be heard by the Board in person or through an agent, in the following order:
 - (a) The chairman will call on the Secretary to read into the record the written submissions to the Appeal Hearing;
 - (b) The Chairman will call those who have indicated either verbally or in writing that they wish to speak on the issue at hand;
- (9) Each person giving a verbal presentation shall give the following information:
 - (a) Their name and address; and
 - (b) An indication as to whether they are speaking on their own behalf or on behalf of another person or group of citizens or an organization.
- (10) Should any person refuse to provide the information requested in Section (9) above the Chairman shall not allow them to speak.
- (11) Each person addressing the Appeal Hearing shall complete their verbal presentation within five (5) minutes which does not include questions from the Chairman or any member of the Board through the Chairman. Answers shall be brief and factual. **(016-19)**
- (12) The Chairman may ask, with the consent of the majority of the Board members present, if there is anyone present who has not already made a verbal presentation or written submission who wishes to make any general comments regarding the Appeal matters. All comments will be in accordance with Sections 9, 10 and 11 of this Bylaw.
- (13) Any member of the Board, through the Chairman, may direct questions to any person present who has provided a written or verbal submission.

Persons answering questions shall limit themselves to a brief and factual response to the questions, and shall direct all comments to the Chairman.

- (14) The Chairman shall allow the Designated Officer to make closing comments.
- (15) The Board shall hear appeals in public, but may at any time recess and deliberate and make decisions in meetings closed to the public.
- (16) If there is more than one Appeal Hearing on the Agenda, the Chairman shall recess or close one Appeal Hearing before opening another Appeal Hearing.
- (17) If an Appeal Hearing is recessed, the Board shall not receive any additional submission in relation to the subject matter until it re-opens the Hearing.
- (18) The Board may recess at any time, to a specific date and time, in order for additional information to be brought to a Hearing.
- (19) If an Appeal Hearing is closed, the Board shall not receive any additional submissions from the public in relation to the subject matter, until after it has voted on the subject matter of the Appeal Hearing.
- (20) The decision of the majority of the members of the Board present at a duly convened meeting at which a quorum is present is deemed to be the decision of the Board.
- (21) In the event of a tie vote, an Appeal shall be deemed to be denied.
- (22) A Board member, who for any reason is unable to attend the whole of the hearing of an Appeal, shall not participate in the Board's deliberations or the decision made by the Board on that Appeal.
- (23) The Board shall not permit electronic or similar recording devices to be used during a Hearing by anyone in attendance except that of the Secretary of the Board.

8. Fees

- (1) An Appellant shall pay to the City a fee as prescribed in Fee Policy 643 of the City per Appeal, at the same time a Notice of Appeal is served on the Secretary of the Board.
- (2) No Appeal shall be scheduled until such time as all fees and relevant documents are submitted by the Applicant.

9. Development Appeals

- (1) Subject to Section 641(4) and 685(3) of the Act, the Board shall hold an Appeal Hearing on an Appeal where a Development Authority for the City:
 - (a) Fails or refuses to issue a development permit to a person;
 - (b) Issues a development permit subject to conditions; or
 - (c) Issues an order under Section 645 of the Act,
 - (d) and the Appellant appeals within the time limitations and in the manner indicated in the Act.
- (2) Subject to Sections 641(4) and 685(3) of the Act the Board shall hear Appeals from any person affected by an order, decision or development permit issued by the Development Authority, who Appeals within the time limitation and in the manner indicated in the Act.
- (3) The Board shall hold an Appeal Hearing respecting any Development Appeal within thirty (30) days of receipt of the complete Notice of Appeal as per Section 8 of this bylaw.
- (4) The Board shall give at least five (5) days' notice in writing of the Hearing to:
 - (a) The Appellant;
 - (b) The Development Authority;
 - (c) The owners required to be notified under the Land Use bylaw; and
 - (d) Any other person that the Board considers to be affected by the appeal and should be notified.
- (5) In determining a Development Appeal, the Board:
 - (a) Must hear the persons referred to in Section 687(1) of the Act if those persons appear at the Hearing;
 - (b) Must act in accordance with any applicable ALSA (Alberta Land Stewardship Act) regional plan; **(016-19)**
 - (c) Shall comply with the Land Use Policies established pursuant to Section 622 of the Act;

- (d) Shall comply with any statutory plan and the Land use Bylaw of the City;
- (e) Shall have regard to but not be bound to 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, except in the case of a Development Permit issued by Council with respect to land in a Direct Control District;
- (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,
 - a. The proposed development 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 development conforms to the use prescribed for that land or building in the Land Use Bylaw.
- (h) The Board shall give its decision in writing together with reason for the decision within fifteen (15) days of the conclusion of the Hearing.

10. Subdivision Appeals

- (1) Subject to Section 678 of the Act, the Board shall hear appeals of decisions of the Subdivision Authority provided an appeal is received within the time limitations and in the manner indicated in the Act.
- (2) The Board shall hold an Appeal Hearing respecting any Subdivision Appeal within thirty (30) days of receipt of the Notice of Appeal.
- (3) The Board shall give at least five (5) days' notice in writing of a Hearing to:
 - (a) The Appellant;
 - (b) The applicant for subdivision approval;

- (c) The Subdivision Authority;
 - (d) Any school board to whom the application for subdivision approval was referred;
 - (e) All adjacent land owners who were given notice under Section 653(4) of the Act;
 - (f) Every Government department that was given a copy of the application for subdivision approval pursuant to the Subdivision and Development Regulations; and
 - (g) If the land that is the subject of the application for subdivision approval is adjacent to the boundaries of another municipality, that municipality.
- (4) In determining a Subdivision Appeal, the Board hearing the appeal;
- (a) Shall hear the person referred to in Section 680(1) of the Act if that person appears at the Hearing;
 - (b) Shall be consistent with the Land Use Policies established pursuant to section 622 of the Act;
 - (c) Shall have regard to any statutory plan which is in effect;
 - (d) Shall conform with the uses of land referred to in the Land Use Bylaw;
 - (e) Shall have regard to, but is not bound by, the Subdivision and Development Regulations;
 - (f) May confirm, revoke or vary the approval or decision or any condition imposed by the Subdivision Authority or make or substitute an approval, decision or condition of its own;
 - (g) May exercise the same power as the Subdivision Authority is permitted to exercise pursuant to the Act or any Regulations or Bylaws under the Act;
 - (h) Shall give its decision in writing together with reasons for the decision within fifteen (15) days of the conclusion of the Hearing.
- (5) Any member of the Board who voted on the decision which is the subject of a Subdivision Appeal shall not participate in the Hearing of the Appeal.

- (6) Pursuant to Section 682(2) of the Act, if a Subdivision Authority fails or refuses to endorse a plan of subdivision or other instrument submitted to it under Section 682(1) the Chairman of the meeting of the Board which heard a Subdivision Appeal is authorized to endorse the Plan of Subdivision or other instrument.

11. Conflict of Interest

- (1) A member of the Board shall not participate in discussion on, nor vote on, any matter before the Board on any question:
 - (i) Affecting a private company of which is or she is a controlling shareholder or the beneficial holder of a majority of its issued shares;
 - (j) Affecting a public company in which he or she holds more than ten (10%) percent of the number of shares issued;
 - (k) Affecting a partnership, proprietorship or firm of which he is she is a member;
 - (l) Affecting a company of which he or she is a director; or
 - (m) On any question in which he or she has a direct or indirect pecuniary interest.
- (2) When a member of the Board is not entitled to vote by virtue of Section 11 (1) of this bylaw, he or she shall so declare before discussion of the question and shall not participate in the debate and the abstention and the reasons therefore shall be recorded in the minutes.
- (3) According to sections 170 to 173 of the MGA, if Council hears an appeal where a Councilor or their family has an economic interest in the outcome of the decision, the Councilor must declare the interest and must abstain from discussion or voting on the appeal. Typically, the Councilor will leave the room after declaring a conflict. Any declaration or action must be noted in the minutes.

The pecuniary interest rules under section 172 of the MGA may be used as a guideline for a SDAB Member. (016-19)

12. Repeal

- (1) That bylaw 95-609, the Subdivision Approving Authority bylaw, is repealed
- (2) That bylaw 95-610/1, the Subdivision and Development Appeal Board bylaw, referenced in bylaw 99-609/1 will be repealed upon the adoption of this bylaw.

13. Severability

- (1) If any Section or part of this Bylaw is found in any court of law to be illegal or beyond the power of Council to pass, such Section or parts shall be deemed to be severable and all other Sections or parts of this Bylaw shall be deemed to be separate and independent there from and to be passed as such.

14. General

- (1) This bylaw shall come into full force and effect upon third and final reading.

READ A FIRST TIME this 18 day of July 2016

READ A SECOND TIME this 18 day of July 2016

READ A THIRD TIME this 18 day of July 2016

Resolution Numbers – 297-16
298-16
300-16

Douglas B. Ryan
MAYOR

Quint

CAO