

AUMA's Submission on the Subdivision and Development Appeal Board Regulations

Matters for SDAB Clerk

- What topics or matters need to be included in SDAB clerk training?
 - Specific administrative procedures and administrative law elements specific to the SDAB Clerks role.
- What level of flexibility should municipalities have with respect to the development of training content, recognizing the need for consistency across the province?
 - Following a standardized training program developed by the province in conjunction with municipal stakeholders?
 - Minimum requirements for training should be consistent for all municipalities across the province.
 - A standard provincial test will be administered to ensure those minimum requirements are met.
 - Municipalities may build on Minister approved training programs.
 - Allowing the municipality to develop training content, provided it covers the topics approved by the Minister under a provincial training program?
 - Yes, municipalities should be able to augment training programs as long as minimum requirements are met
- What need is there for a transition period after the regulation comes into force for existing SDAB clerks to complete the training?
 - It would be beneficial to have a transition period of 6 months to allow existing SDAB Clerks and Members to receive training and to ensure that any municipalities wishing to build on Minister approved training have the time to do so.
- What level of flexibility should the municipalities have with respect to the delivery of training?
 - Uses of internal or outside training delivery resources?
 - Completion of training prior to a clerk being appointed as a mandatory requirement or identification of a maximum timeframe for a clerk to have completed the training subsequent to appointment?
 - SDAB Clerks and Members must complete training before they can sit on an SDAB appeal.
 - Ability for two or more municipalities to jointly deliver training on a regional basis?
 - Yes, there should be flexibility to deliver training regionally, or in some cases to have the province hold training courses.
- What role should the province play in the delivery of training?
 - In general as a legislator to set out the minimum requirements, but also to assist smaller municipalities who cannot hold the training themselves
- What would constitute completion of mandatory training?
 - Attendance and completion of a provincially approved training program?
 - Completion of an examination after attendance of a provincially approved training program?
 - Training should include an exam based on training materials as a component of completion of SDAB Clerk training.
- Once completed, should clerk training be valid for the clerk for as long as they remain in the role? Or should it be valid for a finite period of time with a requirement for refresher training?

- If yes to mandatory requirement for refresher training, what period would be recommended as practical?
 - Yes, refresher training should be required on a two year cycle.
- What mandatory requirements should be in place to track compliance to completion of training?
 - Tracked by the local municipality(s) for which the person is appointed as a SDAB clerk with yearly reporting to Municipal Affairs through the municipalities' statistical reporting?
 - Municipalities should be responsible for ensuring new SDAB Clerks receive training and report to the province on completion of training.
 - Tracked at the provincial level?
 - Province should maintain a roster of qualified SDAB Clerks available to municipalities.

Matters for SDAB Members

- What would constitute mandatory qualifications for SDAB members?
 - Completion of a mandatory training program?
 - Yes, they must complete training prior to sitting on an SDAB appeal.
 - Additional mandatory qualifications?
 - Requirement for completing a declaration that acknowledges the Member understands their role and responsibilities as part of completion of training.
 - Additional optional qualifications (i.e. at the discretion of the municipality through identification in their SDAB bylaw)?
 - Municipalities should have the option to institute additional training or requirements through their bylaw.
- What topics or matters need to be included in SDAB members training?
 - Does the existing provincial training material (subject to update to reflect changes to the MGA) cover all matters for SDAB board members?
 - Members training should build on existing training and should increase components relating to provisions of MGA.
 - What other matters might stakeholders want the province to consider in updating the existing training material?
- What level of flexibility should municipalities have with respect to the development of training content, recognizing the need for consistency across the province?
 - Continue to following a standardized training program developed by the province in conjunction with municipal stakeholders?
 - Minimum requirements for training should be consistent for all municipalities across the province
 - Municipalities may build on Minister approved training programs
 - Allowing the municipality to develop training content, provided it covers the topics approved by the Minister under a provincial training program?
 - Yes municipalities should be able to augment training programs as long as minimum requirements are met
- What need is there for any transition period after the regulation comes into force for existing SDAB members to complete the training?
 - There should be a six month transition period.
- What level of flexibility should municipalities have with respect to the delivery of training?

- Uses of outside training delivery resources?
- Completion of training prior to a SDAB member being appointed as a mandatory requirement or identification of a maximum timeframe for a SDAB member to have completed the training subsequent to their appointment?
 - SDAB Clerks and Members must complete training before they can sit on an SDAB appeal.
- Ability for two or more municipalities to jointly deliver training on a regional basis?
 - Yes, there should be flexibility to deliver training regionally, or in some cases to have the province hold training courses.
- What role should the province play in delivery of training?
 - In general as a legislator to set out the minimum requirements, but also to assist smaller municipalities who cannot hold the training themselves
- What would constitute completion of mandatory training?
 - Attendance and completion of a provincially approved training program?
 - Completion of an examination after attendance of a provincially approved training program?
 - Instead of an exam, which could discourage people agreeing to participate, SDAB members should be required to sign a declaration that includes a checklist acknowledging their understanding of their role, the role of the clerk and the general appeal process.
- Once completed, should SDAB member training be valid for the SDAB member for as long as they remain in the role? Or should it be valid for a finite period of time with requirement for refresher training?
 - If yes to mandatory requirement for refresher training, what period would be recommended as practical?
 - Yes, refresher training should be required on a two year cycle.
- What mandatory requirements should be in place to track compliance to completion of training?
 - Tracked by the local municipality(s) for which the person is appointed as a SDAB member with yearly reporting to Municipal Affairs through the municipalities' statistical reporting?
 - Municipalities should be responsible for ensuring new SDAB Members receive training and report to the province on completion of training.
 - Tracked at the provincial level?
 - Province should maintain a roster of qualified SDAB Members available to municipalities.

Municipal Government Act
Subdivision and Development Appeal Board
Regulation - Training

Discussion Guide

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INTRODUCTION

The *Municipal Government Act* (MGA) provides the legislative framework within which municipalities operate. First introduced in the mid-1990s, the Act has recently been reviewed to ensure it continues to meet the changing needs of communities and their citizens.

Following extensive consultation, the first round of amendments to the MGA was passed in the spring of 2015. The *Municipal Government Amendment Act* (Bill 20) addressed issues that received broad support from the rural and urban municipal associations, the cities of Calgary and Edmonton, and business and industry associations representing key economic sectors. Amendments were made in four broad categories: enhancing municipal accountability; enabling more efficient municipal operations; enhancing municipal viability; and strengthening municipal and intermunicipal planning.

Among the specific amendments enabled via Bill 20 is a requirement for mandatory training of members and clerks of Subdivision and Development Appeal Boards (SDABs) and regulation-making authority regarding the respective qualifications and training program. Subdivision and Development Appeals Boards play a vital role in shaping communities across Alberta and their decisions affect the lives of citizens, developers and businesses. Together, these amendments are intended to help ensure clerks and members of SDABs have the knowledge and capacity they need to make informed decisions in a fair and consistent manner, promoting confidence in both the quality of decisions and the decision-making process.

BACKGROUND CONTEXT

Subdivision and Development Appeal Boards have been a part of Planning and Development within the MGA since 1995. The Boards were created to hear appeals regarding decisions made by a municipality's subdivision and development authorities, promoting local accountability and orderly development. Decisions of the SDAB are based on evidence presented during a public hearing and play a critical role in shaping the community.

Under the MGA, every municipality must have an SDAB or be a part of a joint SDAB. The Boards are created via bylaw and the bylaw may set out such matters as member appointments, terms of office, compensation, chairperson, use of legal counsel, and functions and duties of the SDAB and its related administration.

The SDAB's general duties are to:

- act fairly and reasonably within the limits imposed by administrative law and the principles of natural justice;

- stay within the limits of legislation;
- act in accordance with the SDAB bylaw; and
- apply the applicable planning framework (statutory plans, land use bylaw, local bylaws, etc.) to the appeal in rendering a decision.

Some SDABs consist solely of members of the public, while others draw membership from council and the public. Members are often appointed based on their knowledge and expertise in various planning and development related matters, perceived fairness and impartiality, understanding of the Board's quasi-judicial function, good analytical and reasoning skills, and willingness to devote the time to prepare for and participate in hearings.

While mandatory training of SDAB members and clerks has not previously been required under the MGA, Municipal Affairs has developed SDAB member training material in recent years to support SDABs in conducting effective hearings, making and writing legally binding decisions, and acting within the scope of its authority. This material was updated in 2015 and is available on Municipal Affairs' website at:

http://www.municipalaffairs.alberta.ca/am_subdivison_appeals_board_manual

In addition, where time and resources have permitted, Municipal Affairs has offered training workshops to SDAB members on a voluntary basis. In other instances municipalities have contracted outside resources to offer training to their SDAB members.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD LEGISLATION

Bill 20 provides the Minister with the authority to make regulations respecting the training program for the SDAB clerk and respecting the qualifications for the SDAB members.

Section 627 of the MGA provides guidance on establishing an SDAB. Section 627.3, included via Bill 20, provides new regulation making authority.

MGA, section 627

Appeal board established

627(1) A council must by bylaw

(a) establish a subdivision and development appeal board, or
 (b) authorize the municipality to enter into an agreement with one or more municipalities to establish an intermunicipal subdivision and development appeal board, or both.

(2) An intermunicipal subdivision and development appeal board is a subdivision and development appeal board for the purposes of this Part.

(3) Despite section 146,

(a) in the case of a subdivision and development appeal board formed under subsection (1)(a), councillors may not form the majority of the board or the majority of the board or a committee hearing an appeal, and

(b) in the case of a subdivision and development appeal board formed under subsection (1)(b), the councillors from a single municipality may not form the majority of the board or of a committee hearing an appeal.

- (4) The following persons may not be appointed as members of a subdivision and development appeal board:
- (a) an employee of the municipality;
 - (b) a person who carries out subdivision or development powers, duties and functions on behalf of the municipality;
 - (c) a member of a municipal planning commission.

Bill 20/2015 section 61

Clerks

627.1(1) A council that establishes a subdivision and development appeal board must appoint, and a council that authorizes the establishment of a subdivision and development appeal board must authorize the appointment of, one or more clerks of the subdivision and development appeal board.

(2) If the subdivision and development appeal board is an intermunicipal subdivision and development appeal board, the councils that authorize its establishment must appoint one or more clerks.

(3) A clerk appointed under this section must be a designated officer and may be a person who holds an appointment as a designated officer under section 455.

(4) No designated officer is eligible for appointment under this section unless that designated officer has successfully completed a training program in accordance with the regulations made under section 627.3(a).

(5) No subdivision authority or development authority is eligible for appointment under this section.

Qualifications

627.2 A member of a subdivision and development appeal board may not participate in a hearing of the subdivision and development appeal board unless the member is qualified to do so in accordance with the regulations made under section 627.3(b).

Regulations

627.3 The Minister may make regulations

- (a) respecting training programs for the purposes of section 627.1(4);
- (b) respecting qualifications for the purposes of section 627.2.

These amendments will come into effect when proclaimed in 2017 as part of the *Modernized Municipal Government Act*.

PURPOSE OF THIS DISCUSSION PAPER

This discussion guide – namely the matters identified below - has been prepared to seek input into the development of the regulation related to the training program for the SDAB clerks and qualifications for SDAB board members. Stakeholder feedback is critical in ensuring that the new regulation results in a standardized, province-wide approach that supports the effective functioning of SDABs across Alberta.

MATTERS TO CONSIDER IN THE DEVELOPMENT OF AN SDAB REGULATION

Basic Assumptions for Discussion

- A consistent training program for both clerks and SDAB members will be applied across the province.
- There needs to be flexibility in the mechanisms for training delivery such that it can be delivered in a cost efficient, timely manner either locally, regionally or provincially.
- The province will partner with municipal stakeholders in the development of training programs and in the exploration of delivery models.
- Training for SDAB members will be founded upon the training materials already completed by the province and updated as necessary to reflect relevant amendments to the MGA and its regulations.
- Training materials for SDAB clerks will need to be developed to address their administrative role in support of the SDAB members and the appeal process.