

**SMOKY LAKE COUNTY  
IN THE PROVINCE OF ALBERTA  
BYLAW NO. 1226-11**

**A BYLAW OF THE MUNICIPALITY OF SMOKY LAKE COUNTY IN THE PROVINCE OF ALBERTA BEING A BYLAW OF SMOKY LAKE COUNTY TO ESTABLISH THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD FOR SMOKY LAKE COUNTY.**

**WHEREAS** Section 627 of the *Municipal Government Act*, as amended, required that a Municipal Council establish a Subdivision and Development Appeal Board by Bylaw.

**NOW THEREFORE** the Council of Smoky Lake County, in the Province of Alberta, hereby enacts as follows:

1. This Bylaw may be cited as the “**Subdivision and Development Appeal Board Bylaw**”.
2. **DEFINITIONS**
  - 2.1. “**Act**” means the *Municipal Government Act*, Revised Statutes of Alberta 2000, Chapter M-26, as amended from time to time.
  - 2.2. “**Adjacent**” means land that is contiguous to a site and includes land that would be contiguous if not for a public roadway, river, stream, pipeline, powerline, utility right of way or railway.
  - 2.3. “**Appellant**” means a person who, pursuant to the Act, has served a Notice of Appeal, with reasons, with the Subdivision and Development Appeal Board.
  - 2.4. “**Board**” means the Smoky Lake County Subdivision and Development Appeal Board.
  - 2.5. “**Council**” means the municipal Council of Smoky Lake County.
  - 2.6. “**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.
  - 2.7. “**Development Authority**” means the authority established by Council, as provided for in Part 17 of the Act, to exercise development powers and duties on behalf of the municipality.
  - 2.8. “**Development Permit**” means a document authorizing a development, issued in accordance with the Land Use Bylaw, the Subdivision and Development Regulations and the Act.
  - 2.9. “**Land Use Bylaw**” means the Land Use Bylaw of Smoky Lake County, pursuant to the Act.
  - 2.10. “**Member at Large**” means a member or members of the public appointed to the Board by Council, pursuant to this Bylaw.
  - 2.11. “**Owner**” means the person shown as the owner of the land on the Municipality’s assessment roll prepared in accordance to the Act.
  - 2.12. “**Subdivision Application**” means an application made to the Subdivision Authority in accordance with the Act, the Subdivision and Development Regulations and the Land Use Bylaw, for the purposes of obtaining a Subdivision Approval.
  - 2.13. “**Subdivision Approval**” means a subdivision document authorizing the subdivision of a parcel of land in accordance with the Act, the Subdivision and Development Regulations and the Land Use Bylaw.
  - 2.14. “**Subdivision Authority**” means the authority established by Council, as provided for in Part 17 of the Act, to exercise subdivision powers and duties on behalf of the municipality.
  - 2.15. “**Subdivision and Development Appeal Board Secretary**” means the person appointed to the position established under Section 5 of this Bylaw.

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2.16. **“Subdivision and Development Regulations”** means the regulations enacted pursuant to Section 694 of the Act, including the Subdivision and Development Regulations and the Subdivision and Development Forms Regulations.

**3. ESTABLISHMENT AND MEMBERSHIP**

- 3.1. The Smoky Lake County Subdivision and Development Appeal Board is hereby established.
- 3.2. The Board shall deal with Subdivision and Development Appeals in accordance with the provisions of the Act and this Bylaw.
- 3.3. The Board shall consist of three (3) Members at Large and two (2) members of Council, appointed by Council resolution.
- 3.4. The Council shall appoint a minimum of four (4) and a maximum of seven (7) Members at Large to serve as alternates for the Board to serve on the Board in the event a Member is unavailable or otherwise cannot hear the Appeal.
- 3.5. Each Member shall be appointed annually at the Organizational Meeting or from time to time should vacancies occur.
- 3.6. The majority of Members of the Board shall not be members of Council.
- 3.7. Where a member of Council is appointed as a Member of the Board, the appointment terminates upon him/her ceasing to be a Member of Council.
- 3.8. No person who is an employee of the County, or who is a member of the Development Authority or Subdivision Authority for Smoky Lake County, shall be appointed as a member of the Board.
- 3.9. Any Member of the Board may be removed by resolution of Council where, in the opinion of Council, that Member has contravened the standards for Member conduct as set out in this Bylaw or as may be established by resolution of Council from time to time. This provision does not negate the sole and unfettered ability of Council to appoint or reappoint members at their discretion according to section 3.5 of this Bylaw.

**4. CHAIRPERSON AND VICE-CHAIRPERSON**

- 4.1. Elections of the Chairperson and Vice-Chairperson shall occur at the first meeting following Council's Organizational Meeting.
- 4.2. At the first meeting held according to section 4.1, the Board shall elect from its membership a Chairperson and a Vice-Chairperson.
- 4.3. A Member may be re-elected to the position of Chairperson or Vice-Chairperson.
- 4.4. The Chairperson:
  - 4.4.1. shall preside at the meetings of the Subdivision and Development Appeal Board.
  - 4.4.2. Shall ensure that all Hearings for the Board are conducted in a fair and impartial manner, in accordance with the rules for such Hearings as set out in the Act or established by Council from time to time;
  - 4.4.3. is authorized to rule that evidence presented at a Hearing is irrelevant to the matter in issue and to direct the Members to disregard the evidence;
  - 4.4.4. may limit a submission if they determine it to be repetitious; and
  - 4.4.5. shall, when a Hearing is recessed and time is not fixed for its continuation, announce that notice of the continuation of the Hearing will be sent to those persons leaving their name and address with the Secretary. Only those persons leaving their name and address shall be entitled to notice of the continuation of the Hearing.

- 4.5. In the event of absence or inability of the Chairperson to preside at a Meeting, the Vice-Chairperson shall preside.
- 4.6. In the event of absence or inability of both the Chairperson and Vice-Chairperson to preside at a Meeting, the members present constituting a quorum shall elect one of its Members to preside as Acting Chairperson for that Meeting.

**5. SECRETARY**

- 5.1. The Subdivision and Development Appeal Board Secretary shall be appointed by resolution of Council and shall not be a Member of the Board.
- 5.2. The Secretary shall have responsibilities and functions including the following:
  - 5.2.1. ensures that all statutory requirements of the Board are met;
  - 5.2.2. receives Notices of Appeals;
  - 5.2.3. schedules Hearings;
  - 5.2.4. sends Notices relating to Hearings;
  - 5.2.5. answers inquiries and provides information to Appellants and the public;
  - 5.2.6. compile all necessary documentation for distribution to Board Members;
  - 5.2.7. attends Hearings and keeps a written record of the proceedings of the Board which shall include:
    - 5.2.7.1. a summary of the evidence presented at the Hearing;
    - 5.2.7.2. the Decision of the Development Authority or Subdivision Authority;
    - 5.2.7.3. the Notice of Appeal and the Notice of Hearing of the Appeal;
    - 5.2.7.4. the Board's Decision on each Appeal;
    - 5.2.7.5. the reasons for the Board's Decision on each Appeal;
    - 5.2.7.6. draft the Decision for signing by the Chairperson and
    - 5.2.7.7. a list of names and addresses of persons who leave their names on the attendance record.

**6. OPERATION OF THE BOARD**

- 6.1. The Board shall hold meetings as necessary to consider and decide Appeals filed with the Board, in accordance with the requirements of the Act.
- 6.2. The Board shall hold public Hearings respecting Appeals in accordance with the Act.
- 6.3. A quorum of the Board shall be three (3) Members; however, Councillors shall not form the majority of the Board hearing an Appeal.
- 6.4. A 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.
- 6.5. If a Member has any interest, whether direct or indirect, in any matter before the Board, the Member shall declare such interest to the Board before discussion of the matter, and shall not participate in the Hearing, or discuss or vote upon the matter, and such abstention shall be recorded in the minutes.
- 6.6. The Board shall sit with a maximum of five (5) members on each Appeal, but may sit with fewer members than the maximum in accordance with the provisions of this Bylaw. Alternate members shall be selected by the CAO in his/her sole

discretion.

- 6.7. Any order, decision, approval, notice or other things, made, given or issued by the Board may be signed on its behalf by the Chairperson

## **7. FEES AND EXPENSES**

- 7.1. The remuneration, travelling, living and other expenses of the Members of the Board and the Secretary, shall be established by Council resolution from time to time.
- 7.2. The fees associated with the launching of Appeals, holding of Hearings, and meetings of the Board may be set by the Council.

## **8. DEVELOPMENT APPEALS**

- 8.1. Subject to Sections 641(4) and 685(3) of the Act, the Board shall hear appeals where the Development Authority for Smoky Lake County:

- 8.1.1. refuses or fails to issue a Development Permit to a person;
- 8.1.2. issues a Development Permit subject to conditions; or
- 8.1.3. issues an Order under Section 645 of the Act;

provided appeals from the Applicant are received within the required time and in the manner indicated in the Act.

- 8.2. Subject to Section 685(2) of the Act, any person affected by an Order, Decision or Development Permit made or issued by the Development Authority may appeal to the Board, provided appeals are received within the required time and in the manner indicated in the Act.

- 8.3. Despite 8.1 and 8.2, no appeal lies in respect of the issuance of a Development Permit for a permitted use unless the provisions of the Land Use Bylaw were relaxed, varied or misinterpreted.

- 8.4. The Board shall hold an Appeal Hearing respecting any Development Appeal within 30 days of receipt of the Notice of Appeal.

- 8.5. The Board shall give at least 5 days notice in writing of the Appeal Hearing to:

- 8.5.1. the Appellant;
- 8.5.2. the Development Authority whose order, decision or development permits is the subject of the appeal;
- 8.5.3. the owners required to be notified under the Land Use Bylaw; and
- 8.5.4. any other person or persons that the Board considers to be affected by the appeal.

- 8.6. The Board shall make available for public inspection, prior to the Hearing, all relevant documents and materials respecting the Appeal, including:

- 8.6.1. The Application for the Development Permit, the Decision and the Notice of Appeal; or
- 8.6.2. The Order under Section 645 of the Act.

- 8.7. In accordance to the Act, the Board shall hear:

- 8.7.1. The Appellant or any person action on his/her behalf;
- 8.7.2. The Development Authority from whose Order, Decision or Development Permit the appeal is made or a person acting on behalf of the Development Authority;
- 8.7.3. Any other person who was served notice of the Hearing and who wishes



to be heard or a person acting on his/her behalf; and

8.7.4. Any other person who claims to be affected by the Order, Decision or Permit and that the Board agrees to hear or person acting on behalf of that person.

8.8. The Board shall hold all Appeal Hearings in public, but the Board may recess the Hearing at any time and deliberate in private.

8.9. At the Hearing of the Appeal, should the Board request further technical information, a legal opinion or other assistance, it may recess the Hearing pending receipt of such information.

8.10. Electronic or similar record devices shall not be used during the Hearings by anyone in attendance, except the Recording Secretary.

**9. DEVELOPMENT APPEALS DECISIONS**

9.1. In determining an Appeal, the Board:

9.1.1. shall comply with the Land Use Policies established pursuant to Section 622 of the Act;

9.1.2. shall comply with any and statutory plans and, subject to 9.1.5 of this Bylaw, the Land Use Bylaw of Smoky Lake County;

9.1.3. shall have regard to but not be bound by the Subdivision and Development Regulations established pursuant to Section 694 of the Act;

9.1.4. 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;

9.1.5. may make an Order, Decision or issue or confirm the issue of the Development Permit even through the proposed development does not comply with the Land Use Bylaw if, in its opinion:

9.1.5.1. the proposed development would not:

9.1.5.1.1. unduly interfere with the amenities of the neighbourhood; or

9.1.5.1.2. materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land; and

9.1.5.2. the proposed development conforms with the use prescribed for that land or building in the Land Use Bylaw.

9.2. The Board must give its Decision in writing, together with reasons for the Decision, within fifteen (15) days after concluding the Hearing.

**10. SUBDIVISION APPEALS**

10.1. Subject to Sections 678 of the Act, the Board shall hear appeals of decisions of the Subdivision Authority for Smoky Lake County provided an appeal is received within the time limitations and in the manner indicated in the Act.

10.2. The Board shall hold an Appeal Hearing respecting any Development Appeal within 30 days of receipt of the Notice of Appeal.

10.3. The Board shall give at least 5 days notice in writing of the Appeal Hearing to:

10.3.1. the Applicant for subdivision approval;

10.3.2. the Subdivision Authority that made the decision;

10.3.3. any school authority to whom the application for subdivision was referred;

- 10.3.4. all adjacent land owners who were given notice of the Application for subdivision approval pursuant to Section 653(4) of the Act;
- 10.3.5. every Government department that was given a copy of the Application for subdivision approval pursuant to the Act and Subdivision and Development Regulations; and
- 10.3.6. if the land that is the subject of the Application for subdivision approval is adjacent to the boundaries of another municipality, that municipality.
- 10.4. The Board shall make available for public inspection, prior to the Hearing, all relevant documents and materials respecting the Appeal.
- 10.5. In accordance to the Act, the Board hearing the appeal is not required to hear from any other person or entity other than:
  - 10.5.1. a person or entity that was notified under Section 10.3 of this Bylaw, and
  - 10.5.2. each owner of adjacent land to the land that is the subject of the Appeal;
  - 10.5.3. or a person acting on any of those persons` behalf.
- 10.6. Letters previously submitted to the Subdivision Authority will not become part of the Appeal, unless resubmitted for the Appeal Hearing. The writer of the letter must be identified by name on the document.
- 10.7. The Board shall hold all Appeal Hearings in public, but the Board may recess the Hearing at any time and deliberate in private.
- 10.8. At the Hearing of the Appeal, should the Board request further technical information, a legal opinion or other assistance, it may recess the Hearing pending receipt of such information.
- 10.9. Electronic or similar record devices shall not be used during the Hearings by anyone in attendance, except the Recording Secretary.

**11. SUBDIVISION APPEALS DECISIONS**

- 11.1. In determining an Appeal, the Board:
  - 11.1.1. must be consistent with the Land Use Policies established pursuant to Section 622 of the Act;
  - 11.1.2. must conform with the uses of land referred to in the Land Use Bylaw of Smoky Lake County;
  - 11.1.3. must have regard to any statutory plan;
  - 11.1.4. shall have regard to but not be bound by the Subdivision and Development Regulations established pursuant to Section 694 of the Act;
  - 11.1.5. 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;
  - 11.1.6. may, in addition to the other power it has, exercise the same power as a Subdivision Authority is permitted to exercise pursuant to the Act or Subdivision and Development Regulations or Bylaws passed under Part 17 of the Act.
- 11.2. After hearing all submission and rebuttals, the Board shall deliberate and reach its Decision in private.
- 11.3. The Board must give its Decision in writing, together with reasons for the Decision, within fifteen (15) days after concluding the Hearing.

**12. GENERAL**

- 12.1. The Decision of the majority of the Members of the Board present at a meeting

shall be deemed to be the Decision of the whole Board. In the event of a tie vote, any motion before the Board shall be deemed to be defeated.

12.2. A Board Member, who for any reason is unable to attend the entire hearing of an Appeal, shall not participate in the Board's deliberations for the Decision made by the Board on that Appeal.

12.3. The Chairperson of the Board, may make a verbal announcement of the Decision on an Appeal at the conclusion of the Board's deliberations, but in that event shall notify the parties that the verbal decision is not final and binding, and that the parties should not act upon it until the Decision has been written and signed.

12.4. The Decision of the Board shall be signed by the Chairperson who presided at the Hearing at which the Decision was made.

12.5. The Decision shall send its written Decision and reasons in accordance to the Act to the Applicant, the Appellant and those affected persons who gave their name and address to the Secretary during the public Hearing.

12.6. 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.

12.7. In the event that an Appellant withdraws their appeal, the Board will not proceed with the Hearing.

**13. SEVERABILITY**

Should any provision of this Bylaw be invalidated by any means, then the invalid provision shall be severed and the remaining provisions of this Bylaw shall be maintained and in full effect.

**14. REPEAL AND EFFECTIVE DATE**

13.1. Bylaw 995-95 shall be repealed upon the passing of this Bylaw.

13.2. This Bylaw comes into effect on the date of final passing.

READ A **FIRST TIME** IN COUNCIL THIS 23<sup>rd</sup> day of June, AD 2011.

READ A **SECOND TIME** IN COUNCIL THIS 23<sup>rd</sup> day of June, AD 2011.

READ A **THIRD AND FINAL TIME** IN COUNCIL THIS 23<sup>rd</sup> day of June, AD 2011.

  
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Dareld Cholak  
Reeve

**SEAL**

  
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Cory Ollikka  
Chief Administrative Officer

## SCHEDULE A

### SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEMBERS RULES FOR CONDUCT

1. For the purpose of this Schedule, the following terms shall have the same meaning as in Section 169 of the Act:
  - 1.1. "Corporation", "Director", "Distributing Corporation", "Officer", "Stakeholder", "Voting Rights" and "Spouse"
2. For the purpose of this Schedule, the term "Member's Family" shall have the same meaning as the term "Councillor's Family" under Section 169 of the Act.
3. No Member shall participate in the Hearing of any matter before the Board in which the Member has a pecuniary interest.
4. A Member has a pecuniary interest in a matter if:
  - 4.1. The matter could monetarily affect the Member or an employer of the Member; or
  - 4.2. The Member knows or ought to know the matter could monetarily affect the Member's family.
5. For the purposes of Section 3, a Member is monetarily affected by a matter if the matter monetarily affects:
  - 5.1. The Member directly;
  - 5.2. A corporation, other than distributing corporation, in which the person is a shareholder, director or officer;
  - 5.3. A distributing corporation in which the Member beneficially owns voting shares carrying at least 10% of the voting rights attached to the voting shares of the corporation or of which the Member is a director or officer; or
  - 5.4. A partnership or firm of which the Member is a member.
6. For the purposes of determining whether a Member has a pecuniary interest in the matter before the Board, the provision of Section 170(3) of the Act shall apply, substituting the term "Member" for the term "Councillor".
7. Where a Member has a pecuniary interest of the matter before the Board, that Member shall:
  - 7.1. Disclose the nature of the pecuniary interest to the Chair and Secretary of the Board;
  - 7.2. Abstain from participating in the Hearing of the matter;
  - 7.3. Abstain from any discussion of voting on the matter; and
  - 7.4. Be absent from the room in which the appeal is heard, except to the extent that the Member is entitled to be heard before the Board as a appellant or a person affected by the matter before the Board.
8. Where Council becomes aware of a breach of these provisions by a Member of the Board, Council shall review the facts of the case and make a determination as to whether the Member, in the opinion of Council, has breached pecuniary interest provisions of this Schedule.
9. Where, after its review pursuant to Section 8, Council determines that a breach of pecuniary interest provisions has occurred; Council may remove the Member from the Board, in accordance with the provisions for appointment and removal of a Member in the Subdivision and Development Appeal Board Bylaw.



10. A Member of the Board shall:

10.1. Not discuss any matter under appeal with any party to that appeal, outside of the formal hearing process.

10.2. Keep in camera discussions of Board and the Committees, and any legal advice provided to the Board or Committees confidential, except where required to disclose that information by law; and

10.3. Attend all Board Hearings to which he or she has been assigned.

11. Where Council has reasonable grounds to believe that a Member has breached any of the provisions in Section 10, Council may remove that Member from the Board in accordance with the provisions for appointment and removal of a Member in the Subdivision and Development Appeal Board Bylaw.