

Village of Hines Creek Council Request for Decision (RFD)

Meeting:	Regular Council Meeting
Meeting Date:	January 22, 2019
Originated By:	Karen Young, Executive Assistant
Title:	Bylaw 581-18 Subdivision and Development Appeal Board Bylaw
File:	0110A

BACKGROUND/PROPOSAL:

The new SDAB Regulations came into force on April 1, 2018. The current Subdivision and Appeal Bylaw No. 459 for the Village of Hines Creek does not clearly describe the duties and powers of the Appeal Board, as required under section 628 of the Municipal Government Act.

This Bylaw will repeal Bylaw No. 459.

DISCUSSION/OPTIONS/BENEFITS/DISADVANTAGES

COSTS/SOURCE OF FUNDING (if applicable)

RECOMMENDED ACTION:

That this Council review Bylaw No. 581-18 Subdivision and Development Appeal Board Bylaw and give three readings as presented.

Initials show support- Reviewed by:	Manager:	C.A.O. <i>SW</i>
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BYLAW NO. 581-18

A BYLAW OF THE VILLAGE OF HINES CREEK IN THE PROVINCE OF ALBERTA, FOR THE PURPOSE OF RESCINDING AND REPLACING BYLAW NO. 459 THE VILLAGE OF HINES CREEK SUBDIVISION AND DEVELOPMENT APPEAL BOARD

WHEREAS, the Council of the Village of Hines Creek wishes to establish a Subdivision and Development Appeal Board as required under Section 627 of the Municipal Government Act, RSA 2000, Chapter M-26 and

WHEREAS, the Council of the Village of Hines Creek, in the Province of Alberta, deems it desirable that Bylaw No. 459 be rescinded and replaced; and

NOW THEREFORE, the Village of Hines Creek Council, duly assembled, hereby enacts as follows:

1. Title

1. This By-Law may be cited as the “Subdivision and Development Appeal Board By-Law”.

2. Definitions

1. “Appellant” means the person who has served written notice of an appeal on the Subdivision and Development Appeal Board from a decision or order of the Development Authority.
2. “Act” means the Municipal Government Act.
3. “ALSA” Regional Plan means a regional plan as defined in the Alberta Land Stewardship Act.
4. “Board” means the Subdivision and Development Appeal Board of the Village of Hines Creek, established pursuant to this Bylaw.
5. “Clerk” means a designated officer appointed by resolution of Council to act as Clerk of the Subdivision and Development Appeal Board, pursuant to Section 627.1 of the Act.
6. “Council” means the Council of the Village of Hines Creek.
7. “Development Authority” means the person appointed pursuant to Development Authority By-Law No. 458 and any amendments thereto.
8. “Land Use By-Law” means the Village of Hines Creek Land Use By-Law No. 546-11 and any amendments thereto.
9. “Members” means a member of the Subdivision and Development Appeal Board of the Village of Hines Creek, as appointed by the Council of the Village of Hines Creek.
10. “Subdivision Authority” means the Subdivision Authority as established pursuant to Subdivision Authority By-Law No. 456 and any amendments thereto.
11. “Village” means the Village of Hines Creek.
12. All other terms used in this By-Law shall have the meaning assigned to them by the Municipal Government Act, to the extent that said meaning differs from the ordinary meaning of such terms.

3. **Establishment**

1. The Subdivision and Development Appeal Board for the Village is hereby established.

4. **Membership and Term**

1. The Subdivision and Development Appeal Board shall consist of a one (1) member of a Municipal Council in the province of Alberta and two (2) members-at large appointed by Council. Members of Council shall not form a majority of members on the Subdivision and Development Appeal Board.
2. Council shall appoint a minimum of one (1) alternate member of a Municipal Council in the province of Alberta Council who shall act in the absence of the member of Council appointed in subsection (1) and one (1) alternate member at large who shall act in the absence of the member at large to the Subdivision and Development Appeal Board.
3. 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.
4. 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.
5. Eligibility
 - a) A member of Council's appointment to the Board terminates upon the person ceasing to be a member of Council.
 - b) The length of a person's appointment to the Board is at the discretion of Council and shall be renewed on an annual basis.
 - c) A member of the Board shall not include:
 - i) a member of the Municipal Planning Commission;
 - ii) a person who carries out development or subdivision authority powers on behalf of the Village; or
 - iii) an employee of the Village
6. Remuneration, Travelling and Accommodations

Members of the Board may be entitled to such remuneration, travelling and accommodation expenses, as may be established by Council from time to time.
7. Chairperson
 - a) The members of the Board shall elect one of themselves as Chairperson.
 - b) The Chairperson shall hold office for a period of one year from the date of appointment and may be reappointed as Chairperson upon the expiration of the term.
8. In the event of a vacancy, Council may appoint by Resolution of Council a new member to the Board to serve for the remainder of the vacating member's term.

5. **Procedural Matters**

1. Three members of the Board constitute a quorum.

2. The Chairperson or Acting Chairperson shall be responsible for the conduct of a hearing.
3. Absent Board Members:
 - a) Where a hearing is held by the Board and a member of the Board is unable to attend, the alternate member shall sit as a member of the Board.
 - b) A member of the Board who 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.
 - c) If the Chairperson of the Board is unable to attend a hearing, the other members of the Board shall select a Chairperson for the hearing from amongst themselves.

4. Referral Authorization:

Where it is deemed necessary, the Village of Hines Creek Subdivision and Development Appeal Board is authorized to refer subdivision appeals to the Mackenzie Inter-Municipal Subdivision Appeal Board.

6. **Clerk**

1. Council shall appoint by Resolution of Council, a Clerk to the Board who shall be an employee of the Village.
- 2.. The Clerk shall:
 - b) Complete a mandatory training program set or approved by the Minister of Municipal Affairs within one (1) year of taking office.
 - c) 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.

7. **Functions and Duties**

1. 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 Subdivision Authority or Development Authority;
 - b) the Subdivision Authority or Development Authority's refusal or failure to make a decision within the time allowed for a decision established by the Municipal Government Act; or
 - c) a stop order issued by Development Authority.
2. Upon receipt of a notice of appeal duly filed pursuant to the provisions of the Municipal Government Act, and of this Bylaw, the Clerk shall convene a special meeting of the Board to consider the agenda for a hearing; the procedures to be used at a hearing; and what persons are affected by the appeal and should be notified thereof.
3. The hearing of an appeal pursuant to the Municipal Government Act and the provisions of this Bylaw 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.

4. 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.
5. The board shall make and keep records of office proceedings which may be in the form of a summary of the evidence presented at a hearing in accordance with Section 629 of the Municipal Government Act.
6. A request for adjournment of a hearing may be granted at the discretion of the Board, but any adjournment must be to a specific time and date.
7. 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.
8. 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:
 - i) the minutes of all meetings and hearings, including 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;
 - ix) **the outcome** of a 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.

9. Signing Authority

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

8. Notification to the Board

1. The written notice of appeal shall be made on the official Appeal Form and shall be signed by the appellant.

- a) Mailing the appeal to:

The Clerk
Subdivision and Development Appeal Board
Village of Hines Creek
Box 421
Hines Creek AB, T0H 2A0

within 14 calendar days of receipt of the written decision of the subdivision authority or deemed refusal by the subdivision 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 the appeal in person to the Village of Hines Creek Municipal Office at 212-10th Street, Hines Creek within 14 calendar days of receipt of the decision or order of the subdivision authority and was either:

- 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.

Proof of the said delivering shall be the official receipt of the Village.

2. The appeal shall be accompanied by an application fee in the amount established by Council from time to time.
3. 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.
4. Notice of Hearing
 - a) The Clerk, in the name of the Board, shall send written notice of the time and place of the hearing of an appeal, together with a summary of the application, not less than five (5) days (including Saturdays, Sundays and holidays) prior to the hearing to:
 - i) the appellant; and
 - ii) the Development Authority or the Subdivision Authority; and
 - iii) those persons required to be notified under the Land Use By-Law and any other person that the Board considers to be affected by the appeal should be notified.
 - b) In the case of the appellant, notice of the appeal hearing shall be sent by registered mail to the address given on the appellants appeal.
 - c) In the case of those persons referred to in subsection 8(4)(a)(iii) above, notice of the appeal hearing shall be sent by registered mail to the address shown on the last revised assessment roll.

- d) In addition to the notice required by section 8 (4)(a), the Board may direct the Clerk publish notice of the hearing in such manner as the Board may determine.
- e) 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 appeal and announce it to those in attendance, it shall be the duty of the Chairperson 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.

9. **Decisions**

1. 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.
2. 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.
2. The Board shall give its decision upon an appeal in writing together with reasons for the decision within fifteen (15) days of the conclusion of the hearing.
3. The decision of the majority of the members of the Board present at a hearing duly convened, is deemed to be the decision of the whole Board.
4. Where there is a tie vote on an appeal motion, that motion is deemed defeated.
5. The Clerk of the Board or the Chairperson, may make a verbal announcement of the decision upon an appeal at the conclusion of the public hearing, 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 it has been reduced to writing and signed.
6. 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 Municipal Government Act;
 - 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 substitute and order, decisions 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 neighborhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighboring parcels of land,

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

7. 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 Boards decision, upon receiving notice of the Board's decision.

8. Where the Board allows an appeal against the refusal of an application for subdivision, the Subdivision Authority shall issue an approval in conformity with the Board's decision, upon receiving notice of the Board's decision.

10. Immunity

1. The 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.

2. 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 this Part 17 of the Municipal Government Act.

11. Court of Appeal

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

12. Severability

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

13. Repeal of By-Law

1. The Subdivision and Development Appeal Board By-Law No. 459 is hereby rescinded and repealed.

14. Effective Date

This By-Law shall come into full force and effect upon the date of its final passing thereof.

READ a first time this ____ day of _____, 20 ____.

READ a second time this ____ day of _____, 20 ____.

GIVEN UNANIMOUS consent to go to third reading on this ____ day of 20 ____.

READ a third time this ____ day of _____, 20 ____.

Hazel Reintjes
Mayor

Leanne Walmsley
Acting Chief Administrative Officer
"Schedule A"
By-Law no. 581-18

SUBDIVISION AND DEVELOPMENT APPEAL FORM

Office Use Only:

Date Received _____
Receipt No. _____
Dev. Permit No. _____
Date of Hearing _____

NOTICE OF APPEAL
TO THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

1. I/We _____ of _____
Address Telephone No.

Hereby give notice to the Subdivision and Development Appeal Board that I/We wish to appeal against the decision of the Subdivision/Development Authority, dated _____, Numbered _____, in which It REFUSED, APPROVED, APPROVED WITH CONDITIONS

(briefly describe the proposed subdivision or development)

Located on Lot _____, Block _____, Plan _____ Civic Address _____

2. My reasons or grounds for appealing are as follows: (please attach additional sheets if necessary) _____

3. I enclose a _____ cheque, _____ money order for \$25.00 payable to the Village of Hines Creek, as an Appeal Fee.

4. Please send notification of the time and place of the appeal hearing to me/us at the following address: _____

5. I hereby declare that all information provided by me is to the best of my knowledge, true and correct in all respects.

Date

Appellant

EITHER mail to:

or DELIVER to:

The Clerk
Subdivision & Development Appeal Board
Village of Hines Creek
Box 421
Hines Creek, Alberta T0H 2A0

Village of Hines Creek Office
208-10 Street
Hines Creek, Alberta T0H 2A0

SO, IN EITHER EVENT, AS TO REACH THE SECRETARY NO LATER THAN 30 DAYS (COUNTING SATURDAYS, SUNDAYS AND HOLIDAYS) AFTER THE DATE OF RECEIPT OF THE DECISION OF THE SUBDIVISION AND DEVELOPMENT AUTHORITY, AS OUTLINED IN BY-LAW NO. 581-18 OF THE VILLAGE OF HINES CREEK.

“Schedule A”

FORM B

NOTICE OF APPEAL HEARING

This is to notify you that an appeal has been made to the Subdivision and Development Appeal Board against a decision in respect of Application No. _____, which involves subdivision/development described as follows:

The decision: _____ APPROVED
_____ APPROVED WITH CONDITIONS
_____ REFUSED,

a subdivision/development permit for the following reasons:

Place of Hearing: _____

Time of Hearing: _____

Date of Hearing: _____

Any person affected by the proposed subdivision/development has the right to present a written brief prior to the hearing and/or to be present and be heard at the hearing.

Date

Clerk
Subdivision & Development Appeal Board
Village of Hines Creek

FORM C

NOTICE OF APPEAL DECISION

Application No. _____

This is to notify you than an appeal against the:

- _____ APPROVAL
- _____ APPROVAL WITH CONDITIONS
- _____ REFUSAL,

of a subdivision or development permit with regard to the following:

was considered by the SUBDIVISION & DEVELOPMENT APPEAL BOARD on _____
20____, and the decision of the SUBDIVISION & DEVELOPMENT APPEAL BOARD
with regard to the appeal is as follows and for the following reasons:

Date

Clerk
Subdivision & Development Appeal Board

Note:

A decision of the Subdivision and Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon a question of jurisdiction or law. An application for leave to appeal to the Appellate Division of the Supreme Court of Alberta shall be made:

- a. to a judge of the Appellate Division, and
- b. within 30 days after the issue of the order, decision, permit or approval sought to be appealed.