

MGA Review Discussion Paper

Planning and Intermunicipal Appeals



This technical document is part of a series of draft discussion papers created by Municipal Affairs staff and stakeholders to prepare for the Municipal Government Act Review. It does not reflect existing or potential Government of Alberta policy directions. This document is the result of a careful review of what is currently included in the Municipal Government Act (MGA) and regulations, definitions of terms and processes, changes requested by stakeholders over the last 18 years, some highlights from other jurisdictions, and identification of potential topics for discussion during the MGA Review. This information will be used to prepare consultation materials as the MGA Review proceeds.

These discussion papers have been reviewed and approved by the MGA Stakeholder Advisory Committee, comprised of representatives from major stakeholder organizations: Alberta Association of Municipal and Counties, Alberta Association of Urban Municipalities, Alberta Rural Municipal Administrators Association, Alberta Chambers of Commerce, City of Calgary, City of Edmonton, and Local Government Association of Alberta.

The Government of Alberta is asking all Albertans to directly contribute to the MGA Review during online consultation in late 2013 and consultation sessions throughout Alberta in early 2014. This technical document is not intended for gathering stakeholder feedback, but to generate thought and discussion to prepare for the upcoming consultation. Public engagement materials will be available in early 2014. To learn more about how you can join the discussion on how we can build better communities, please visit mgareview.alberta.ca/get-involved.

Preamble



The *Municipal Government Act (MGA)* provides the legislative framework to guide the operations of municipalities in Alberta. The current *MGA* empowers municipalities with the authority and flexibility to provide services in the best interests of the community. The *MGA* Review will proceed along three major themes: *governance and administration*; *assessment and taxation*; and *planning and development*.

This paper is one of 11 discussion papers exploring aspects related to the *planning and development* theme. It focuses on the process for planning and intermunicipal appeals as described in the *MGA*. The objective of each discussion paper is to

- 1) Outline the existing legislation,
- 2) Identify issues with specific aspects based on stakeholder requests
- 3) Look at how other jurisdictions are approaching these issues; and
- 4) Pose questions to help formulate future analysis of, as well as public and stakeholder engagement on the *MGA*.

Below is a list of the papers that relate to the planning and development theme.

- Managing Growth and Development
- Statutory Plans and Planning Bylaws
- Municipal Planning Authorities
- Land – Administrative Decision-Making Processes
- Land Dedication (Reserves)
- Fees and Levies
- Public Participation
- Planning and Intermunicipal Appeals
- Municipal Government Board
- Municipal Relationships and Dispute Resolution
- Fundamental Changes and Municipal Restructuring

Planning and Intermunicipal Appeals

Within the *MGA*, there are many areas where the public can become involved in the decision-making process of municipalities. One of those avenues is through the various appeal mechanisms for residents and neighbouring municipalities in planning-related matters.

Under the *MGA*, each council is required to establish a Subdivision and Development Appeal Board (SDAB) to hear appeals on subdivision decisions, development permit decisions and stop work orders. Rather than form its own individual board, a municipality may enter into an agreement with other municipalities to establish an intermunicipal SDAB to hear these types of appeals. Currently in Alberta, there are hundreds of subdivision and development appeal boards. Some subdivision appeals and all intermunicipal disputes are heard by the provincially established Municipal Government Board (MGB).¹

Decisions issued by SDABs and the MGB on subdivision and development appeals must comply with regional plans adopted under the *Alberta Land Stewardship Act (ALSA)*, be consistent with provincial land use policies, have regard to municipal statutory plans and the use of land must conform to the Land Use Bylaw. The boards also consider the Subdivision and Development Regulation in making their decision, and they may amend the original subdivision or development authority decision, or substitute a decision of their own. Decisions of the boards may be appealed to the Court of Appeal on a question of law or jurisdiction.

Subdivision Appeals

- **Jurisdiction** – Both the SDAB and the MGB hear subdivision appeals. The MGB handles subdivision appeals where there is a provincial interest, such as proposals involving lands within the Green Area of the Province (as defined by the *Public Lands Act*) or lands within a certain distance of a highway, a water body, or a sewage or waste management facility. All other appeals are handled by the SDAB.
- **Right to Appeal** – The decision of a subdivision authority can be appealed by the applicant, any government department who received a notice of the subdivision application, the council of the municipality, or a school board in some cases. Adjacent landowners do not have the right to appeal subdivision authority decisions.

¹ Jurisdiction of the MGB will be discussed in greater detail in the Municipal Government Board discussion paper.

○ Timelines

- *Application:* A subdivision authority² has 60 days from the date an application is received to issue a decision or to enter into an agreement with the applicant to extend this timeline if necessary. If its decision is not issued within this time period, the application is considered to be refused. A subdivision appeal must be received by the SDAB or MGB within 19 days of the applicant's receipt of the written decision of the subdivision authority (includes five days for mailing).
- *Notification:* Once an appeal has been filed, written notice of the hearing must be given by the appeal board (at least five days prior to the hearing) to the subdivision applicant, the subdivision authority, any affected adjacent municipality, and any school board and government departments that were given a copy of the application. Adjacent landowners must also be notified, regardless of whether they were notified at the application stage.
- *Hearing:* If the appeal lies with the SDAB, the hearing must be held within 30 days of receiving the notice of appeal and a decision must be issued within 15 days of concluding the hearing. If the appeal lies with the MGB, the hearing must be held within 60 days of receiving a notice of appeal and a decision must be issued within 15 days of concluding the hearing. At the hearing, the appeal board must hear from those groups who were notified of the appeal.

Development Appeals

- Jurisdiction – All appeals of decisions of a development authority are heard by the SDAB. Appeals cannot be made on development permits issued for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted. The SDAB may issue development permits that are not consistent with the land use bylaw if the proposed development does not interfere with the amenities of the neighbourhood, affect the use, enjoyment or value of neighbouring parcels of land, and if the proposed development conforms to the use of the land in the land use bylaw.
- Right to Appeal – An appeal can be made by the development permit applicant, a person affected by a stop order issued under the land use bylaw, or by any other person affected by a decision or development permit issued by the development authority (including adjacent landowners).
- Timelines
 - *Application:* A development authority³ has 40 days from the date a development permit application is received to issue a decision or an extended time under agreement with the applicant. If its decision has not been issued within that time, the permit is considered refused. A notice of the appeal, containing reasons, must be filed with the SDAB within 14 days of the decision.

² The chart within appendix 1 depicts the process and timelines for subdivision applications and appeals.

³ The chart within appendix 2 depicts the process and timelines for development permit applications and appeals.

- *Notification:* Once an appeal is filed, a written notice of the hearing must be given by the appeal board (at least five days prior to the hearing) to the appellant; to the development authority whose order, decision or permit is being appealed; to owners required to be notified under the land use bylaw; as well as to any other person the board considers to be affected by the appeal.
- *Hearing:* At the hearing, the SDAB must hear the appellant, the development authority, any person who was given notice of the hearing or who claims to be affected by the decision and who the board agrees to hear, or a person acting on behalf of these people. The board must hear the appeal within 30 days of receiving the notice to appeal and must give its decision in writing, with reasons for the decision, within 15 days after the hearing.

Intermunicipal Appeals

- Right to Appeal – Intermunicipal planning disputes are heard by the MGB. If a municipality is of the opinion that a statutory plan or land use bylaw adopted by an adjacent municipality may have a detrimental effect on it, it may appeal the matter to the MGB.
- Timelines – A municipality initiates an appeal by filing a notice of appeal and statutory declaration with the MGB within 30 days after the adoption, by the adjacent municipality, of the bylaw to adopt or amend a statutory plan or land use bylaw. When the MGB receives the notice, the statutory plan or land use bylaw that is being appealed is suspended until a decision is made. Once the notice is received, the MGB must commence a hearing within 60 days, and give a written decision within 30 days of closing the hearing.
- Decision – During the hearing, the MGB must hear from the municipality making the appeal, the municipality against whom the appeal is launched, and the owner(s) of the land that is the subject of the appeal. The MGB determines whether the disputed matter is detrimental to the municipality that made the appeal and can dismiss the appeal or can order the adjacent municipality to amend or repeal the statutory plan or land use bylaw. If the MGB amends or repeals the statutory plan or LUB, regular notice and public hearing requirements do not apply.

Court of Appeal

Decisions of the MGB and the SDAB may be further appealed to the Court of Appeal on a question of law or jurisdiction. An application for leave to appeal must be filed within 30 days after the board's decision is issued. The notice of the application for leave to appeal must be given to the appeal board and any other persons that the court directs. On hearing the application and those persons who are affected by the application, the court may grant leave to appeal if it determines that the appeal involves a question of law and has a reasonable chance of success.

The court may confirm, vary, reverse or cancel the original decision. If the decision is cancelled, the matter is referred back to the MGB or the SDAB, and the relevant board must rehear the matter in accordance with the direction given by the court. If the court finds the only ground for appeal is a technicality, the court may deny the appeal, or confirm the decision of the appeal board and order the decision to take effect on the terms determined by the court.

Discussion Points

Below are some identified discussion topics and questions based on a review of requested amendments, cross-jurisdictional research and issues raised by stakeholders.

The requested amendments discussed below draw upon an inventory of requests received by the Province over the past 18 years. It is important to note these requests:

- i) do not necessarily represent the views of most Albertans;
- ii) do not necessarily apply to all municipalities; and
- iii) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

1. Jurisdiction for Subdivision Appeals

Background:

The MGA requires the SDAB to hear subdivision appeals, with the exception of those where there is a provincial interest, in which case the appeal is required to go to the MGB. These matters of provincial interest involve proposals for subdivisions on land that is located within the Green Area of the province (as defined by an order under the *Public Lands Act*), or land that is within a specified distance of a highway, water body, sewage or waste treatment facility (as identified within the Subdivision and Development Regulation). In some instances, references to provincial interest are difficult to apply and interpret, and it may be unclear as to which board should hear an appeal.

Cross-jurisdictional Research:

- In Manitoba the appeal body for all subdivision appeals is the Municipal Board. The Municipal Board also hears disputes related to zoning bylaw objections.
- In Ontario, municipalities can establish local appeal bodies. The Ontario Municipal Board remains the appeal body for those municipalities who have not established local appeal bodies. Local appeal bodies have the same powers and duties of the Municipal Board under the *Planning Act*.
- In Nova Scotia, municipalities cannot establish their own appeal body. Instead, appeals are filed with the Nova Scotia Utility and Review Board.

Stakeholder and Legislative Amendment Requests:

- Some municipalities and municipal stakeholder organizations have requested that all subdivision appeals be heard before local SDABs.
- Some members of Alberta's legal community have requested that subdivision appeals be reviewed to determine which subdivision appeals must be heard by subdivision and development appeal boards or by the MGB.
- Some municipalities have suggested MGB appeals should only occur when a Government department raises a concern, rather than when the subdivision "...is within the distance of a highway, a body of water or a sewage treatment or waste management facility set out in the subdivision and development regulations".

2. Detrimental Effect on Planning Bylaws

Background:

The *MGA* specifies that an adjacent municipality can file an appeal to the MGB, if they determine that a statutory plan or land use bylaw adopted by an adjacent municipality may have a “detrimental effect” upon their municipality. However, the term “detrimental effect” is not defined in the *MGA*, which can lead to misinterpretation and confusion on when it is appropriate for a municipality to appeal another municipality’s planning bylaw.

Stakeholder and Legislative Amendment Requests:

- Some stakeholders have requested that the term “detrimental effect” be defined.

3. Timelines for Appeals

Background:

Throughout the *MGA*, timelines have been specified for filing an appeal, for hearing an appeal and for issuing a decision. These timelines vary depending on who has jurisdiction to hear the appeal and on the type of appeal (e.g., development appeal, intermunicipal appeal). In some cases, appeals are complicated and it can be difficult for the appeal authority to meet the legislated timelines.

Cross-jurisdictional Research:

- In Saskatchewan, the appeals must be heard within 30 days of the appeal body’s receipt of an appeal, and a decision must be made within 30 days of the appeal hearing.
- In Ontario, the applicant must file an appeal on a subdivision decision within 20 days of the decision being issued.
- In Manitoba, an appeal must be filed within 30 days of a decision and the Municipal Board must make a decision within 30 days of the appeal hearing.

Stakeholder and Legislative Amendment Requests:

- Some regional planning commissions have requested that the appeal period be shortened when all the referral agencies have no objection to the subdivision application.
- Municipalities and some members of Alberta’s legal community have requested that within the *MGA*, the timeline for a SDAB decision should be extended from 15 days to 30 days.

4. Court of Appeal Filing and Transcripts

Background:

The *MGA* requires SDABs and the MGB to keep a record of proceedings, which may be in summary format. When a leave application to the Court of Appeal is commenced, the *MGA* states that the court may direct that a transcript of the board’s hearing be provided for the court to determine the application. A summary of an SDAB or MGB hearing can be considerably different and less detailed than a transcript of a hearing. Requiring transcripts under the legislation would alleviate issues in the instance that the appeal goes to the courts; however, the cost of developing transcripts can be substantial.

Cross-jurisdictional Research:

- In Ontario, municipalities establish a local appeal body by bylaw under the direction of a regulation entitled Local Appeal Bodies. This regulation requires that the bylaw prepared by municipalities contain information regarding the practice and procedures of hearings, including decisions. Therefore, it is up to the municipalities to determine, through their bylaw, how best to issue decisions on appeals.

Stakeholder and Legislative Amendment Requests:

- Some members of Alberta's legal community have requested the MGA clarify that appeal boards do not need to provide a transcript to the Court of Appeal if the appeal board has not previously developed one.

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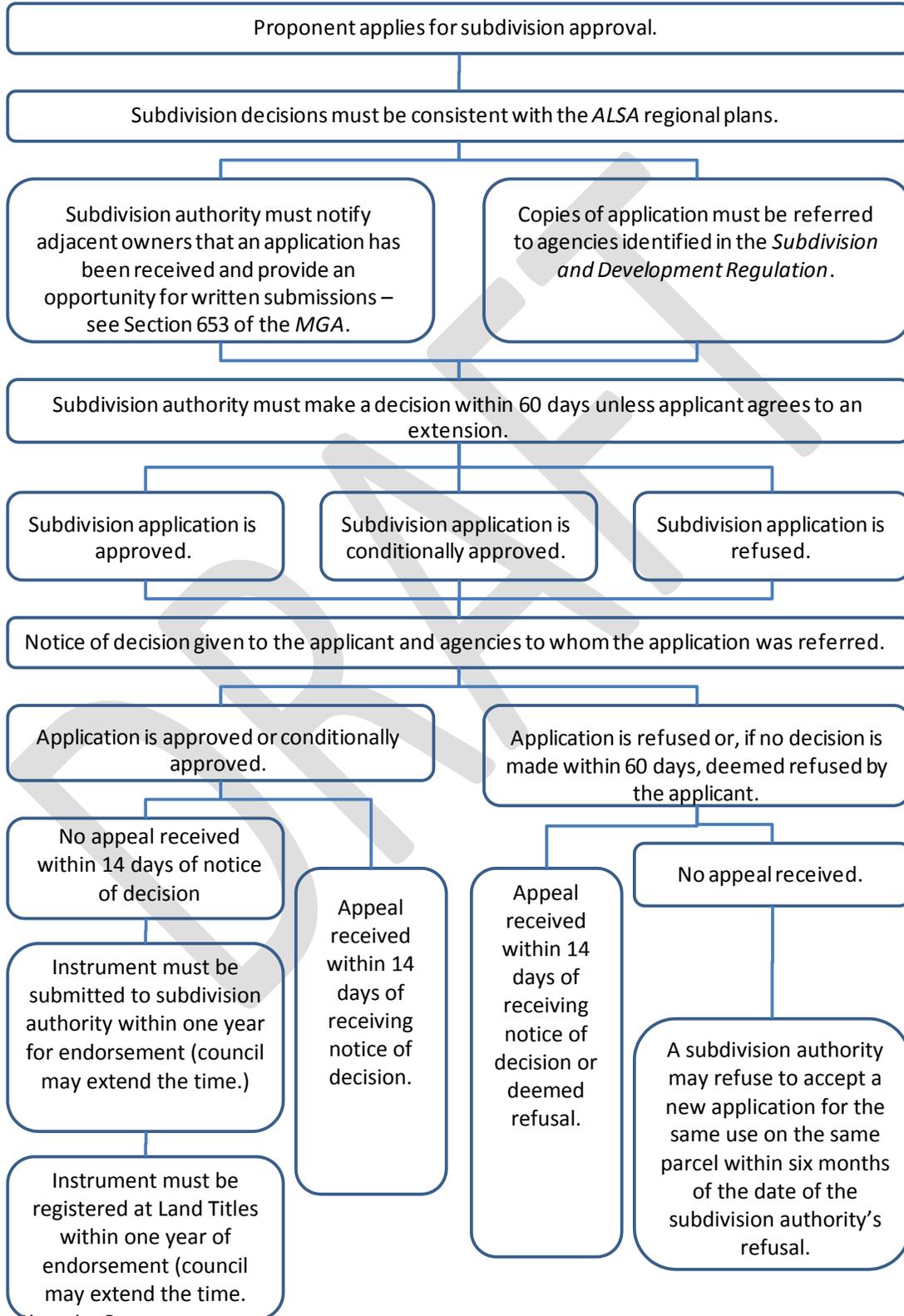
Discussion Questions

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1. Does the SDAB have sufficient scope of authority to adequately adjudicate and administer (e.g. penalties, written submissions) the broad range of appeals that are presented to them?
 2. What types of planning appeals should go to a municipal or provincial appeal body?
 - a) What types of mechanisms should be in place to ensure that planning appeals are being heard by the appropriate appeal body?
 3. Should the term “detrimental effect” be clarified in the MGA? Why or why not?
 4. What should constitute an “affected party” under the MGA?
 - a) Who has the right to be notified on appeals?
 5. What are appropriate timelines for the appeals (e.g., for filing the appeal, notifying affected parties, hearing the appeal, and issuing the decision)?
 6. What format would be appropriate to record appeal hearings? How can this be balanced with what is required by the courts for hearing appeals?

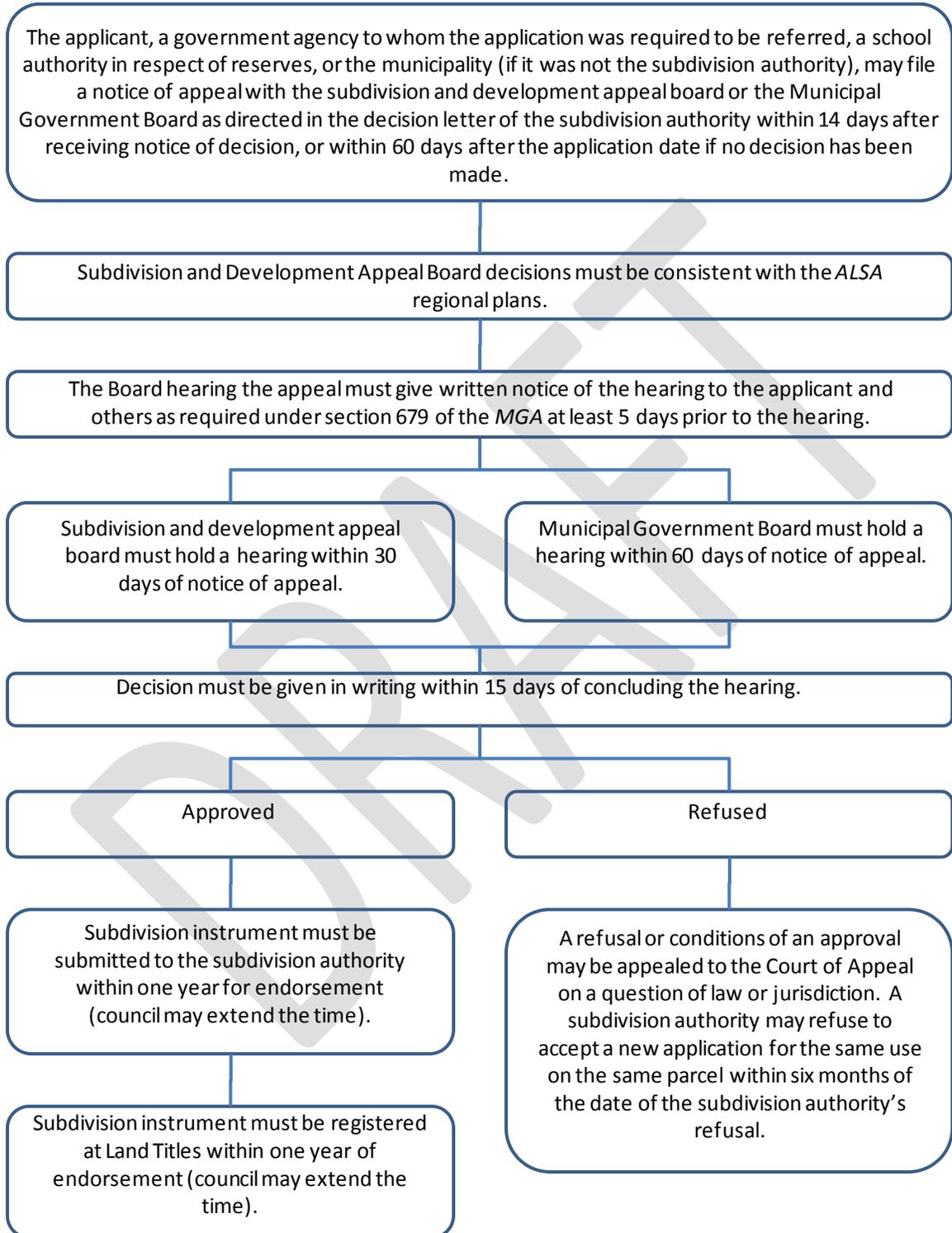
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Appendix 1

SUBDIVISION APPROVAL PROCESS

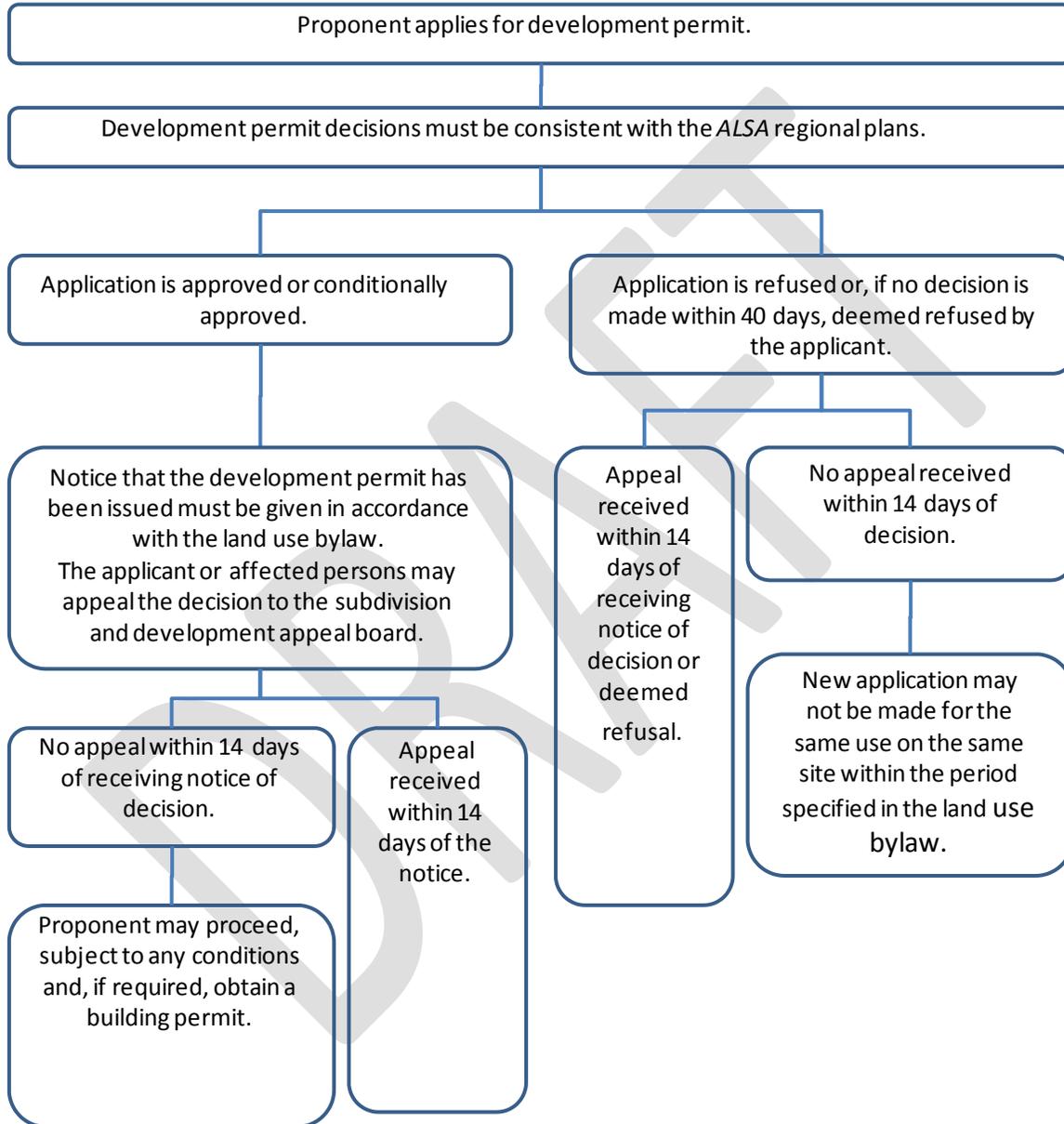


SUBDIVISION APPEALS



Appendix 2

DEVELOPMENT PERMIT APPROVAL PROCESS



DEVELOPMENT PERMIT APPEALS

