

# Development Appeal Board Handbook



A Guide to the Duties and Functions  
of a Development Appeal Board



Government of  
Northwest Territories



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## Introduction

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The purpose of an Appeal Board is to hear appeals regarding municipal Development Permits. A Development Appeal Board operates at “arms-length” from municipal staff and council, and serves as an impartial panel to review appeals made against decisions by a municipality’s Development Authority.

Under the NWT’s *Community Planning and Development Act*, municipalities that have a Zoning Bylaw are required to establish a Development Appeal Board<sup>1</sup>. It is, therefore, important that the council and staff of communities with a Zoning Bylaw become familiar with the functions and duties of a Development Appeal Board.

This handbook was developed primarily for the use of municipal staff and councils, with the purpose of providing them with a user-friendly guide to the development appeal process. Other parties involved in or affected by a development appeal, such as developers, builders and members of the public, may also find this handbook to be a useful reference guide.

This Development Appeal Board Handbook was produced by the Community Governance Division of the Department of Municipal and Community Affairs. Should you have any questions regarding the content in this publication, please do not hesitate to contact the Community Planning Section at (867) 767-9165, ext. 21089.



# What is a Development Appeal?

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When a person files an appeal against the decision of a Development Authority, this is known as a development appeal. An appeal is filed if the appellant believes that there are sufficient grounds to reverse or modify the decision of a Development Authority.

Generally speaking, most development appeals fall under one of four categories:

- An applicant appeals the refusal of their Development Permit application<sup>2</sup>.
- An applicant appeals a condition attached to the approval of their Development Permit<sup>3</sup>.
- A person other than the applicant appeals the approval of a Development Permit on the basis that they may be adversely affected<sup>4</sup>.
- A person appeals an order issued by a Development Officer<sup>5</sup>.

Grounds for an appeal must relate to the application and interpretation of a municipality's Zoning Bylaw, Community Plan, Area Development Plan or the *Community Planning and Development Act*. For instance, a Development Permit applicant may be of the opinion that the provisions of the Zoning Bylaw were not applied correctly in the rejection of their application.

In the case of an approved Development Permit, the appellant may believe that a condition attached to the granting of their Development Permit is unreasonable relative to the Zoning Bylaw requirements<sup>6</sup>.

An appeal can only be filed by a person other than an applicant for a Development Permit if the person is both adversely affected by the approval of an application for a Development Permit and meets one or more of the following criteria<sup>7</sup>:

- There was a misapplication of the Zoning Bylaw in the approval of the application.
- The proposed development contravenes the Zoning Bylaw, the Community Plan or Area Development Plan.
- The Development Permit relates to a building or land use that was permitted at the discretion of the Development Authority.
- The application for the Development Permit was approved on the basis that the building or the land use was similar in character and purpose to a land use identified in a Zoning Bylaw for that zone.
- The application for the Development Permit was approved, but the proposed development does not fully conform with a Zoning Bylaw.
- The Development Permit relates to a non-conforming building or use.

If an approved application for a Development Permit is for a use specified in a Zoning Bylaw as a permitted use of land or a building, an appeal may only be made if the allegation is that the Zoning Bylaw was misapplied in the approval process<sup>8</sup>.

## Appeal of a Development Officer's Order

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In addition to reviewing Development Permit appeals, a Development Appeal Board has a secondary function, which is to review appeals of orders made by a Development Officer<sup>9</sup>.

A Development Officer's order is most often associated with a stop work order to cease further development. However, an order can also be issued to require, for example, the alteration of the development, demolition of the development, restoration of the land or building, or stoppage in use of the land or building<sup>10</sup>.

An order is typically issued because the development is deemed to be in contravention of the Development Permit or the relevant legislation (e.g. Zoning Bylaw, *Community Planning and Development Act*).

Similar to an appeal of a Development Permit, an appeal of an order of the Development Officer must be submitted within 14 days after the day the order was served<sup>11</sup>.

The appeal of a Development Officer's order follows the same basic procedure as an appeal of a Development Officer's decision regarding a Development Permit.



## Development Appeal Board

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Once a person has met the requirements and filed a proper appeal<sup>12</sup>, a Development Appeal Board presides over the appellant's hearing. A Development Appeal Board is an independent body established by municipal council under a Zoning Bylaw<sup>13</sup> to hear appeals from people who have been affected by a decision of the Development Authority.

A Development Appeal Board is a quasi-judicial body whose decisions are final and binding and cannot be overturned unless an error in some aspect of law or jurisdiction has been made<sup>14</sup>. The activities of a Development Appeal Board are not bound by the same rules of evidence and procedures as the courts<sup>15</sup>.

A Development Appeal Board does, however, have an obligation to ensure that the appeal process is conducted fairly, and that the appellant and other parties have had an opportunity to be heard at the hearing<sup>16</sup>. Development Appeal Board members have a duty of fairness when considering and making decisions on development appeals. This requires that they consider appeals objectively and consider all of the evidence and relevant information that has been presented. Each appeal has to be considered strictly on its own merits.

A Development Appeal Board (and quorum)<sup>17</sup> must be comprised of a minimum of three members<sup>18</sup>, no more than one of whom may currently sit on council<sup>19</sup> and none of whom may be an employee of the local government<sup>20</sup>. Development Appeal Board members are appointed by council to a three-year term<sup>21</sup> and are generally selected for their experience with local planning and/or land development matters.

Municipalities usually use local advertising or notices to recruit Board members from the community. Participation on a Development Appeal Board may be on a voluntary basis or may be remunerated based on rates set by council<sup>22</sup>. The Development Appeal Board is responsible for internally designating one of their members as the Chairperson<sup>23</sup>.

The role of the Chairperson includes chairing Development Appeal Board hearings and ensuring that the applicant and/or affected parties are provided the opportunity to present their positions. The Chairperson is also responsible for guiding discussions and ensuring that the agenda and proper procedures are being followed.

Individual Development Appeal Board members are responsible for reading the background material provided prior to public hearings and making themselves familiar with the municipality's Community Plan, Area Development Plan and Zoning Bylaw. Development Appeal Board members can only be removed with "cause", meaning that they cannot be replaced simply because council takes issue with their decisions<sup>24</sup>. Development Appeal Board members can also be removed if they become employees of the local government.



## Role of Municipal Staff and Council

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A municipality is required to fund the operations of the Development Appeal Board and provide administrative support<sup>25</sup>. The specific roles and responsibilities for the administration of development appeals are typically identified in a municipality's Zoning Bylaw or rules of procedure.

### Board Secretary

For simplicity purposes, the Board Secretary is identified in this handbook as being the primary administrative coordinator of the development appeal process, but this function may vary from community to community. The Secretary is usually the individual responsible for coordinating appeal hearings and related administrative functions.

These administrative functions typically include receiving development appeal notices, ensuring that the Development Appeal Board hears an appeal within 30 days after notice<sup>26</sup> of appeal has been received and notifying Development Appeal Board members and the public of upcoming public hearings.

The Secretary may also be responsible for preparing an agenda for the proceedings and providing information packages to Board members. This information package would typically include copies of the notice of appeal, the report prepared by the Development Authority (i.e. Development Officer or council), copies of correspondence from the appellant and affected parties, and any other relevant materials.

In most cases, it is the Secretary who ensures that all documentation and papers have been submitted in advance of the hearing and that a quorum of the Board will be present. The Secretary keeps minutes of the hearing and provides notice of the Development Appeal Board's decision to the appellant and affected parties.

### Development Authority

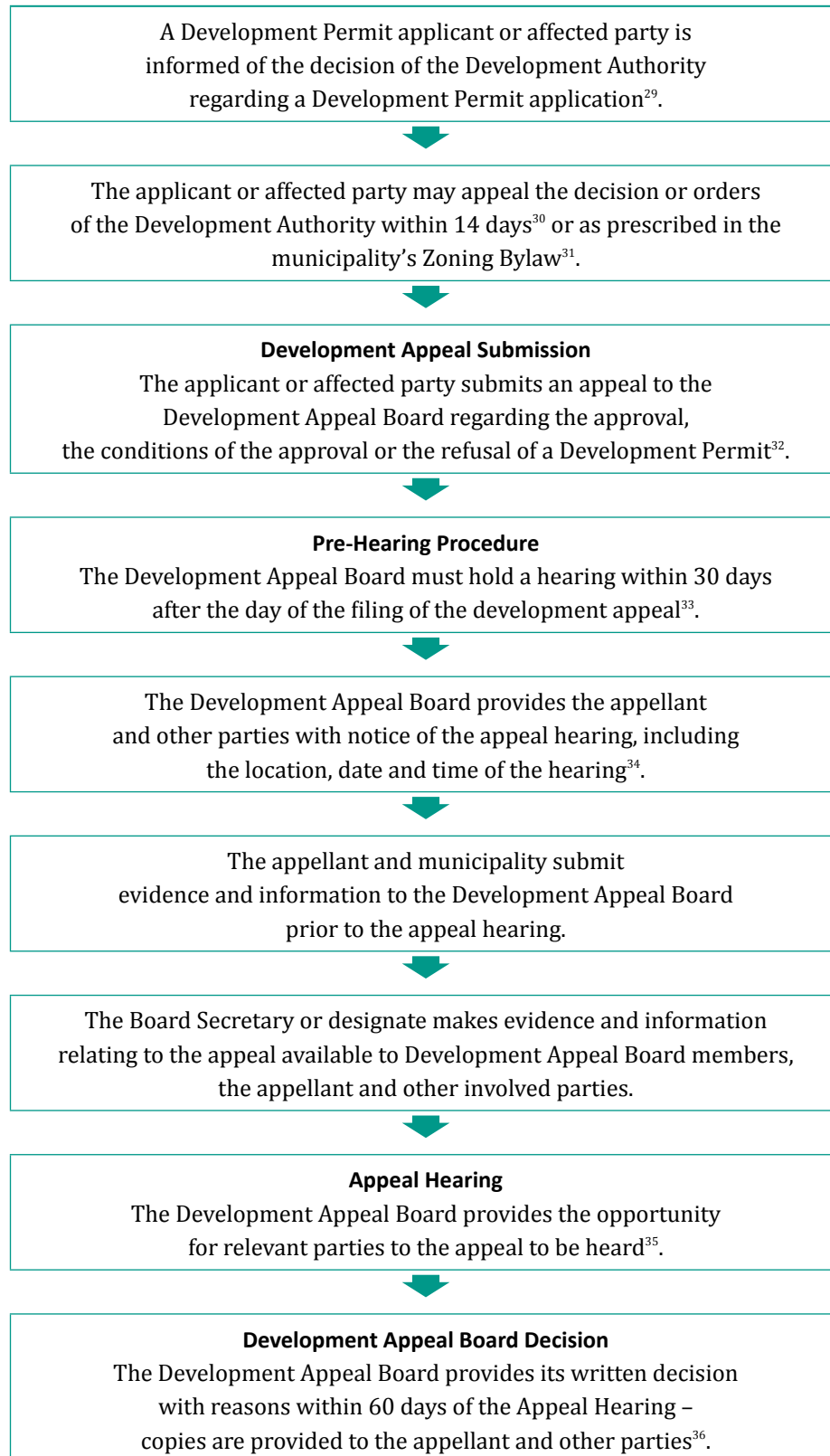
The role of the Development Authority is to provide information at the appeal hearing regarding the purpose of the Development Permit application. A municipality's Zoning Bylaw must identify either council or the Development Officer, or both, as the community's Development Authority<sup>27</sup>.

If the municipality's Zoning Bylaw designates the Development Officer as the Development Authority, it is the Development Officer who makes the presentation before the Development Appeal Board. If the Development Authority is the council, then a representative of council or the Senior Administrative Officer may make the presentation before the Development Appeal Board.

The Development Authority typically provides information at the appeal hearing regarding the specifics of the Development Permit application and provides reasons as to why the Development Permit was approved, refused or approved with conditions<sup>28</sup>. The Development Authority also advises the Development Appeal Board as to whether any relaxations of the Zoning Bylaw were granted and, if so, the nature of those variances.

## Development Appeal Process

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## Development Appeal Submission

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The development appeal process is triggered when a Development Permit applicant or adversely affected person submits a development appeal to a municipality. An appeal submitted by a Development Permit applicant may be because their application was refused or because they do not agree with the conditions attached to the approval of the Development Permit<sup>37</sup>.

A person who is claiming to be adversely affected by a Development Permit may be appealing the Permit's approval because, for example, they believe that the development impinges on the enjoyment of their property or that the Zoning Bylaw has been misapplied<sup>38</sup>.

In addition to providing reasons as to why they are being adversely affected, the appellant must also meet certain criteria set out in the legislation before their appeal will be accepted<sup>39</sup> (see page 4).

Unless otherwise set out in a municipality's Zoning Bylaw, a development appeal must be commenced by submitting a written notice of appeal<sup>40</sup> to the Development Appeal Board within 14 days after the development permit application has been either approved or refused<sup>41</sup>.

Some municipalities may have a form available, which appellants can use to provide this information (see sample Development Appeal application form in Appendix A).

The 14-day timeframe for submitting a written notice of appeal may be extended if a community's Zoning Bylaw specifies a longer appeal period<sup>42</sup>. Persons considering submitting an appeal would be advised to confirm the appeal deadline with municipal staff.

Written submissions should, at a minimum, provide the following<sup>43</sup>:

- a) Name of the appellant and full contact information.
- b) Address and legal description of the subject property.
- c) A description of the development.
- d) Reasons for the appeal.
- e) A summary of supporting facts for each reason.
- f) The relief sought.
- g) The appeal fee (if required by the Zoning Bylaw).
- h) If the appeal is being filed by an affected party, a statement explaining how the appellant is adversely affected.

## Pre-Hearing Procedure

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Upon receipt of the appeal, the Development Appeal Board has 30 days in which to commence the hearing for the appeal<sup>44</sup>. Similar to the appeal submission time requirement, this 30-day timeframe may be extended if it is specified in a Zoning Bylaw<sup>45</sup>.

Once the appeal has been received, the Development Appeal Board is required to send notice of the public hearing to the appellant, the Development Authority and owners and leaseholders of land within 30 metres of the subject property, depending on whether the appeal relates to a decision or order<sup>46</sup>.

The *Community Planning and Development Act* does not prescribe time limits for when the notices are required to be sent out, except that the timing should be “reasonable”. A minimum of 10 working days is a commonly applied standard for public notices of this type.

The Board Secretary is typically responsible for circulating the notice for the appeal hearing, which must be delivered either in person, by registered mail or by another method authorized by the regulations<sup>47</sup>. The Secretary is also responsible for establishing the availability of all of the parties and setting a date for the appeal hearing.

The Board Secretary draws up the agenda for the public hearing and puts together a background information package for the hearing participants. This information package is provided to Board members and other parties in advance of the public hearing.





## Appeal Hearing

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A Development Appeal Board is considered a quasi-judicial panel, so it is not bound by the same types of rules or procedures that a court may be obliged to adhere to. However, there are certain conventions that are often followed in the course of a hearing.

The Chairperson typically opens a hearing by introducing himself and the fellow members of the Development Appeal Board. Some Chairpersons may offer a brief explanation of the purpose of the Development Appeal Board and an overview of the development appeal process.

The Chairperson then reviews the agenda and confirms that proper notification of the hearing was provided. The Chairperson would also briefly summarize the subject of the hearing and the relief that is being sought by the appellant.

The municipality's Development Officer or council representative, depending on which party has been designated as the Development Authority, is then requested to provide background information on the proposed development, including the reasons for their decision on the Development Permit. This would include information regarding the development's conformity with the municipality's Community Plan, Area Development Plan and Zoning Bylaw.

Development Appeal Board members are then permitted to ask the Development Authority questions or request clarification on the information presented. Following this, the appellant or their representative is requested by the Chairperson to make a presentation to the Development Appeal Board explaining the reasons for their appeal.

In some cases, an appellant may be unable or unwilling to attend the hearing and may request permission from the Development Appeal Board to not attend<sup>48</sup>. Although it is generally advantageous for an appellant to appear in person, there is some flexibility in this regard.

Legislation provides a Development Appeal Board with the discretion to proceed with an appeal hearing without the appellant present or to consider alternate ways for the appellant to participate in the hearing process, including by telephone or by an audio-visual method<sup>49</sup>.

After the appellant has presented their evidence, persons in support of the appeal are allowed to explain the reasons for their support. Alternately, persons opposed to the appeal are then invited to explain their reasons for opposition to the development.

## Appeal Hearing continued

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Following closing questions or remarks from Development Appeal Board members, the Chairperson may permit the appellant a final opportunity to respond to any new information raised during the hearing. Once the public hearing has concluded, the Development Appeal Board then proceeds to meet privately (in-camera) to discuss the appeal and deliberate on a decision.

Although this overview describes the typical process for a development appeal hearing, it should be noted that the Development Appeal Board has the latitude to develop their own procedures, provided that they comply with the *Community Planning and Development Act* and the municipal Zoning Bylaw<sup>50</sup>.



## Development Appeal Board Decision

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In rendering its decision, the Development Appeal Board needs to consider whether or not the proposed development conforms to the general intent and purpose of the Community Plan, Area Development Plan and Zoning Bylaw. The Development Appeal Board then has the authority to either, confirm, reverse or vary the decision of the Development Authority and impose conditions that it considers appropriate in the circumstances<sup>51</sup>.

They also need to consider the impact that the proposed development would potentially have on the use, enjoyment and value of neighbouring properties. It is also important to consider whether the development is in keeping with the general character of the neighbourhood and surrounding area.

For discussion purposes, it may be useful for Development Appeal Board members to consider the following questions:

- What are the alternatives to the development?
- What are the advantages and disadvantages of each alternative?
- What are the risks?
- What is the most appropriate option for the community and the individual, and how can the two interests be best balanced?

After deliberating on an appeal, the decision must be made by the majority of the Development Appeal Board members<sup>52</sup>. The Development Appeal Board must issue a written decision to the appellant and other parties to the appeal within 60 days of the Public Hearing, providing reasons for the decision<sup>53</sup>.

The written decision would typically include the following information:

- Date of the decision.
- Names of the Development Appeal Board members who heard the appeal.
- Description and location of the Development Permit being appealed.
- The name of the appellant.
- Location and date of the hearing.
- Names of parties at the hearing and witnesses that gave evidence.
- The decision of the Development Appeal Board and any conditions attached to their decision.
- The reasons for the decision.
- The signature of the Development Appeal Board Chairperson and Secretary.

The written decision should demonstrate that sound reasoning and fairness were applied in the decision-making process. Once it has been recorded, the Chairperson or acting Chairperson may sign off on the decision on behalf of the Board<sup>54</sup>. Decisions of the Development Appeal Board are on the public record<sup>55</sup>, are final and binding on all parties, and not subject to appeal<sup>56</sup>.





## Appendix A

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### Development Appeal Application

Name:			
Address:			
Legal Description:			
Phone Numbers:	Home:	Work:	Cell:
Email:			
Description of the Development:			
<p>I wish to appeal Development Permit Number _____ to the _____ Development Appeal Board and request that a Public Hearing be held to hear my appeal.</p> <p>Please provide the following required information regarding your appeal (add additional pages if required):</p> <ul style="list-style-type: none"><li>a) The reasons for the appeal.</li><li>b) The supporting facts for the given reasons.</li><li>c) The relief sought.</li><li>d) If the appeal is being filed by an affected party, state how the appellant is adversely affected.</li></ul>			
Appellant's Signature:		Date:	

## Endnotes

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- 1 *Community Planning and Development Act (CPDA)*, s. 30(1)
- 2 *CPDA*, s. 61(1)
- 3 *CPDA*, s. 61(1)
- 4 *CPDA*, s. 62(1)
- 5 *CPDA*, s. 63(1)
- 6 *CPDA*, s. 61(1)
- 7 *CPDA*, s. 62(1)
- 8 *CPDA*, s. 62(2)
- 9 *CPDA*, s. 63(1)
- 10 *CPDA*, s. 57(2)
- 11 *CPDA*, s. 63(2)
- 12 *CPDA*, s. 65
- 13 *CPDA*, s. 30(1)
- 14 *CPDA*, s. 70
- 15 *CPDA*, s. 67(1) and 67(2)
- 16 *CPDA*, s. 68(1)
- 17 *CPDA*, s. 67(4)
- 18 *CPDA*, s. 30(1)
- 19 *CPDA*, s. 30(3)
- 20 *CPDA*, s. 30(5)
- 21 *CPDA*, s. 30(1)(a)
- 22 *CPDA*, s. *Hamlets Act 62(2)(e), Cities, Towns, Villages Act 60(2)(e), Charter Communities Act 64 (2)(e)*
- 23 *CPDA*, s. 30(1)(b)
- 24 *CPDA*, s. 30(6)
- 25 *CPDA*, s. 31
- 26 *CPDA*, s. 66
- 27 *CPDA*, s. 1 and 16(1)
- 28 *CPDA*, s. 25(5)
- 29 *CPDA*, s. 25(4)
- 30 *CPDA*, s. 61(4) and 62(3)
- 31 *CPDA*, s. 32(3)
- 32 *CPDA*, s. 65
- 33 *CPDA*, s. 66(1)
- 34 *CPDA*, s. 66(2)
- 35 *CPDA*, s. 68(1)
- 36 *CPDA*, s. 69(3)
- 37 *CPDA*, s. 61(1)
- 38 *CPDA*, s. 62(1) and 62(2)
- 39 *CPDA*, s. 62(1) and 65(2)
- 40 *CPDA*, s. 62 (3)
- 41 *CPDA*, s. 61(4) and 62(3)
- 42 *CPDA*, s. 32(3)
- 43 *CPDA*, s. 65
- 44 *CPDA*, s. 66(1)
- 45 *CPDA*, s. 32(3)
- 46 *CPDA*, s. 66(2)
- 47 *CPDA*, s. 66(3)
- 48 *CPDA*, s. 68(2)
- 49 *CPDA*, s. 67(2)
- 50 *CPDA*, s. 67(1)
- 51 *CPDA*, s. 69(1)
- 52 *CPDA*, s. 67(4)
- 53 *CPDA*, s. 69(3)
- 54 *CPDA*, s. 69(4)
- 55 *CPDA*, s. 69(5)
- 56 *CPDA*, s. 70



