

DEVELOPMENT APPEALS

The following is intended to be a general summary of information regarding the appeal process. Although care has been taken to ensure its accuracy, it should not be considered complete. If you intend to file an appeal, you should familiarize yourself with the applicable legislation.

The Development Appeal Board

The Development Appeal Board (Board) hears appeals regarding the decisions of a Development Officer and renders decisions based on the evidence presented. The Board acts as a quasi-judicial tribunal in accordance with established procedures, and its mandate comes from the *Community Planning and Development Act* of the Northwest Territories and the City of Yellowknife's Zoning By-law.

Yellowknife City Council appoints members of the public to the Development Appeal Board. The Board consists of a Chairperson, a member from City Council and at least two members from the general public. Currently, there are a total of seven members, of which three must be in attendance in order to hold a hearing. The City Clerk acts as the Secretary to the Development Appeal Board.

The Board may confirm, reverse or vary a decision that is appealed, and may impose conditions that it considers appropriate in the circumstances. The Board has 60 days from the date that the appeal hearing concludes in which to render its decision in writing.

A decision of the Development Appeal Board is final and binding on all parties and is not subject to appeal.

WHO CAN APPEAL

If you have applied for a Development Permit

The Community Planning and Development Act states that a person whose application for a development permit is refused, or who is approved for a development permit subject to a condition that he or she considers to be unreasonable, may appeal the refusal or the condition to the Development Appeal Board. A condition that is required by a Zoning By-law to be on a development permit is not subject to appeal.

If you have filed an application for a development permit and have not received a decision within 40 days after the application was submitted in its complete and final form, you may consider the application to be deemed refused and file an appeal.

You must commence your appeal by providing a written notice of appeal to the Development Appeal Board within 14 days after the day the application for a development permit is approved or refused together with payment of the \$25 appeal fee. (The appeal fee will be reimbursed if the decision of the Development Officer is reversed.)

The Board will review your written notice of appeal and determine whether it meets the statutory requirements to grant an appeal hearing.

If you are granted a hearing you will be expected to provide a written submission in support of your appeal and attend the appeal hearing to provide evidence for consideration by the Board.

Where an appeal has been made and a hearing granted, the development permit will not come into effect until a Decision has been rendered by the Development Appeal Board.

If you want to appeal another party's Development Permit

The Community Planning and Development Act states who is permitted to appeal another party's development permit as follows:

A person other than an applicant for a development permit may only appeal to the appeal board in respect of an approval of an application for a development permit on the grounds that the person is adversely affected and

- (a) there was a misapplication of a zoning bylaw in the approval of the application;
- (b) the proposed development contravenes the zoning bylaw, the community plan or an area development plan;
- (c) the development permit relates to a use of land or a building that had been permitted at the discretion of a development authority;
- (d) the application for the development permit had been approved on the basis that the specific use of land or the building was similar in character and purpose to another use that was included in a zoning bylaw for that zone;
- e) the application for the development permit had been approved under circumstances where the proposed development did not fully conform with a zoning bylaw; or
- (f) the development permit relates to a non-conforming building or non-conforming use.

For greater certainty the Act states that you may only appeal an application for a development permit of a permitted use, of land or building, only if you are alleging a misapplication of the by-law in the approval of the application. Please see the Zoning By-law for a list of Zones and Permitted and Conditionally Permitted Uses for each Zone.

You must commence your appeal by providing a written notice of appeal to the Development Appeal Board within 14 days after the day the application for a development permit is approved together with payment of the \$25 appeal fee. (The appeal fee will be reimbursed if the decision of the Development Officer is reversed.)

The Board will review your written notice of appeal and determine whether it meets the statutory requirements to grant an appeal hearing.

If you are granted a hearing you will be expected to provide a written submission in support of your appeal and attend the appeal hearing to provide evidence for consideration by the Board.

Where an appeal has been made and a hearing granted, the development permit will not come into effect until a Decision has been rendered by the Development Appeal Board.

Appeal of Order

A person who is subject to an Order issued by a Development Officer under subsection 57(1) of the *Community Planning and Development Act*, or under the Zoning By-law, may appeal the Order to the Development Appeal Board.

You must commence your appeal by providing a written notice of appeal to the Development Appeal Board within 14 days after the day the Order of the Development Officer is served on you, together with payment of the \$25 appeal fee. (The appeal fee will be reimbursed if the Order is reversed.)

If you file an appeal you will be expected to provide a written submission in support of your appeal and attend the appeal hearing to provide evidence for consideration by the Board.

Before you file an Appeal

Before filing an appeal you may wish to speak with the Development Officer or the developer about the development permit application and proposed development. They will be able to answer questions you may have and an appeal hearing may be unnecessary.

How do I file an Appeal

Your appeal must:

- a. Be in writing;
- b. State your eligibility to appeal;
- c. State your reasons for appeal;
- d. Summarize the supporting facts for each reason;
- e. Indicate the relief sought;
- f. Be accompanied by the \$25 appeal fee;
- g. Be received by the Secretary to the Development Appeal Board within 14 days from the decision to approve or refuse the development permit, or within 14 days from the issuance of an Order.

Development Appeal Board
c/o City Clerk's Office
City of Yellowknife
4807 – 52 Street, (City Hall)
P.O. Box 580,
Yellowknife, NT X1A 2N4

When will the Hearing take place?

The Appeal Hearing must commence within 30 days after the notice of appeal is received and shall be completed as soon as is reasonably practicable.

Written Submissions

Written submissions, including all maps, plans, drawings, photographs and written material you wish to rely upon must be filed with the Development Appeal Board not later than 10 days before the day fixed for the hearing. Your submission will be included in the hearing package that will be provided to the Board, yourself, the Development Officer and other parties involved in the appeal such as the developer or the appellant. The appeal hearing will provide all parties with an opportunity to respond to the written submissions and arguments/evidence therein.

The submission of further evidence past this deadline is at the discretion of the Board.

The hearing package is a public document and is made available for viewing upon request.

What happens after an appeal is filed?

The Board will review the notice of appeal to ensure compliance with statutory requirements. If a hearing is granted, the Secretary to the Development Appeal Board will contact you to discuss your availability and potential hearing dates as well as the availability of the Development Officer and

developer if applicable. Once a date has been set for the Hearing the Secretary to the Board will confirm the date with you and advise you of the deadline to file your written submission.

Who Can Participate in the Hearing?

The Development Officer, the Developer, the Appellant or representatives thereof and any other persons the Boards consider necessary, may participate in the hearing process.

Withdrawing an Appeal

If you elect to withdraw your appeal after it has been filed, you must do so in writing to the Secretary of the Development Appeal Board. It is best to do so as soon as possible so that resources of the parties are not expended unnecessarily.

The Hearing Process

The hearing will follow the following format:

1. Introduction of the Board.
2. Presentation from the City Development Officer regarding the issuance/refusal of the Development Permit or Order.
3. Questions of the Development Officer from the Board / Appellant / Developer.
4. Presentation from the Appellant.
5. Questions of the Appellant from the Board / Development Officer / Developer.
6. Presentation from the Developer.
7. Questions of the Developer from the Board / Development Officer / Appellant.
8. Final summation by the Appellant.
9. Final summation by the Developer.
10. Final summation by the Development Officer.
11. The hearing is then closed and the Board then goes into a meeting closed to the public to deliberate its Decision.

Should the Board decide that a site visit is necessary it will do so with all parties to the appeal in attendance.

It should be noted that the Board is not bound by the rules of evidence that apply to court proceedings.

Decision of the Development Appeal Board

The Board may confirm, reverse or vary a decision appealed, and may impose conditions that it considers appropriate in the circumstances.

The Board will render its Decision in writing with reasons within 60 days after the day on which the hearing is concluded. The written Decision will be provided to the Appellant and other parties to the appeal.

The Decision is final and binding on all parties and is not subject to appeal.

The Decision is a public record.

Deadlines

- Appeal: An appeal must be filed with the Secretary to the Board within 14 days of from the decision to approve or refuse the development permit, or within 14 days from the issuance of an Order.
- Hearing: The Hearing must be scheduled within 30 days from the date of filing the Appeal.
- Written Submissions: Must be received not later than 10 days prior to the Hearing.
- Written Decision: The Board has 60 days after the day on which a hearing concludes, to issue a written decision with reasons.

For Further Information

If you have questions regarding a development permit or Order, please contact the Development Officer at 867-920-5600.

If you have questions regarding the appeal process, please contact the Secretary to the Development Appeal Board at:

Phone: 867-920-5646
Email: cityclerk@yellowknife.ca

DM#467546