

CITY OF MOOSE JAW



DEVELOPMENT APPEALS BOARD POLICIES AND PROCEDURES

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PURPOSE / PREFACE

The purpose of this document is to summarize information on the role and responsibilities of the Development Appeals Board (the "Board") and the policies and procedures of the Board for conducting hearings and writing decisions.

Under *The Planning and Development Act, 2007* (the "Act"), a municipality with a zoning bylaw is required to have a Development Appeals Board (DAB). The Board must be appointed within 90 days after the zoning bylaw comes into effect. The Board's purpose is to resolve disagreements about the administration of the zoning bylaw under *the Act*.

For further information regarding Development Appeals Board policies and procedures in Saskatchewan, the Provincial Development Appeals Board Guide can be found at www.saskatchewan.ca.

BOARD COMPOSITION AND MEMBERSHIP

The Board is a quasi-judicial board made up of no fewer than three members. Council appoints members, determines the term of office for each member of the Board and the way vacancies can be filled.

Pursuant to Section 215 of *the Act*, the following persons are not eligible to be appointed as members of the Board:

- Council members; and
- Municipal employees.

Currently the Board consists of five members with staggered three-year terms.

At the first meeting of the year, the Board elects a Chairperson, Vice-Chairperson and Secretary. If the Chairperson is absent for a meeting, the Vice-Chairperson acts as Chairperson. If the Chairperson and Vice-Chairperson are both absent for a meeting, but quorum is still present, a member can be appointed as acting Chairperson for that meeting.

BOARD REMUNERATION AND EXPENSES

Council determines the remuneration and expenses (if any) to be paid to each Board member. Currently, each Board member receives \$25.00 per meeting attendance.

BOARD JURISDICTION

After the evaluation of a development permit application, the City's Department of Planning and Development Services must notify the applicant in writing of the decision made on the application, and of the right to appeal the decision.

The Board provides an opportunity for independent review where a decision made by Council, or the Development Officer is questioned. *The Act* sets out the following situations when an appeal may be sought:

1. The zoning bylaw is allegedly misapplied in the issuance of a development permit [clause 219(1)(a)].
2. A refusal to issue a development permit because it would contravene the zoning bylaw [clause 219(1)(b)].
3. The development standards or conditions prescribed in the approval of a development permit are above and beyond those necessary to achieve the objectives of the zoning bylaw [subsections 58(1) and 219(3)].
4. Council has refused to amend a zoning bylaw to remove the holding symbol or has failed to make a decision within the required time [subsection 71(5)].
5. Under an interim development control bylaw, an application has been approved subject to terms or development standards, refused, or not dealt with within the prescribed period, and the applicant is aggrieved by the action or inaction [subsection 86(1)].
6. Council has refused to make a decision within the prescribed period of time or has not entered into a development agreement for development in a direct control district [subsection 67(1)].
7. Council has refused, failed to make a decision within the prescribed period of time or has imposed terms and conditions on a development permit to demolish a residential building in a demolition control district [subsection 72(7)].
8. Council has refused, failed to make a decision within the prescribed period of time or has imposed terms and conditions on a development permit in an Architectural Control District [subsection 73(5)].
9. A minor variance application has been revoked, refused or approved with terms and conditions [subsection 60(10)].
10. An enforcement order has been issued [section 242].
11. An approving authority has prescribed site plan controls in the form of conditions and/or performance standards on a specific commercial, industrial, institutional or mixed-use development [subsection 19(5)].
12. An application for structural repairs, alterations or additions to a non-conforming building is refused [subsection 91(2)].
13. Appeals related to servicing agreements and development levy agreements [section 176].

14. Subdivision appeals [subsection 228(1)].

15. Council has ordered the owner of a building to bring it up to standards specified in a building maintenance bylaw [section 61 of *The Northern Municipalities Act, 2010*].

Not Under the Board's Jurisdiction:

The following decisions may not be appeals to the Board:

- a) A refusal is issued because a proposal contravenes the Zoning Bylaw land use provisions.
- b) A discretionary use application is refused.

BOARD & SECRETARY RESPONSIBILITIES

Chairperson:

- meet with Board members to determine if DAB has jurisdiction to hear the appeal
- provide leadership and attending to all matters necessary for operation of the Board
- ensure legal counsel is provided, if required
- ensure Board members receive training/orientation on holding, preparing for and participating in hearings, decision making, and decision writing
- ensure Board members receive and understand information relevant to the hearing
- ensure Board members follow directives, policies and appropriate rules of conduct
- lead meetings (with attention to the pace and agenda)
- maintain order and ensure a business-like and fair atmosphere
- lead the decision-making process
- prepare or direct another member to prepare the draft decisions
- review and sign the decisions of the Board
- ensure the accuracy of the final written decision typed by the Secretary

Board Members:

- meet with other Board members to determine if the DAB has jurisdiction to hear the appeal
- maintain impartiality by not engaging in any discussion with appellants and/or concerned citizens prior to or following a hearing or decision
- become familiar with hearing procedures
- review the hearing documents prior to the meeting
- attend meetings
- advise the Secretary if they are unable to attend or anticipate arriving late
- declare any conflict of interest on upcoming appeals to the Secretary well in advance of the hearing
- listen carefully to the information presented
- contribute at the hearing, ask questions for clarification
- treat all participants with respect and fairness
- meet with Board members following the hearing to discuss the decision

- render a decision in writing together with reasons and provide to the Secretary
- review the written decision prior to signature by the Chairperson
- support the decision made by the Board after it is made.

Secretary:

- receive and ensure the application for appeal, fees and related materials are properly filed
- inform the appellant, property owner (if different), the Council and each assessed owner within a 75 metre radius of the subject property, no later than 10 days before the hearing, with a notice of hearing notifying them of the date, time and location of the hearing
- ensure all relevant documents are available for public inspection
- attend the meeting: provide Appellant(s) with information sheet (**see Attachment 3**), take attendance, record names of speakers, record the motions, and take detailed minutes
- finalize the minutes
- assist in preparation of the written decisions
- ensure the minutes and decision are reviewed and signed by the Chairperson
- within 10 days of the date on which the decision is made, send out the decisions by registered mail to the appellant, the municipality, the Minister of Government Relations and anyone who made presentations and/or sent in correspondence relating to the appeal

STARTING AN APPEAL

Who Can Appeal

Under *the Act*, the right of appeal is limited to certain circumstances:

- Applicant – The person applying with the intention of subdividing and/or developing land, requesting a minor variance in development, removing holding zone provisions, or requesting a demolition permit.
- Affected persons – Persons who have been impacted by a decision of Council through applying the Zoning Bylaw. This can include a close neighbour or nearby resident of an applicant.
- Building Owner or Occupant – The person who owns or occupies a specific building affected by a decision from Council enforcing the Zoning Bylaw. The owner or occupant may appeal to the Board if an order has been issued.
- Agents – An Appellant, applicant, affected person, building owner or occupant may be represented at an appeal by an agent. An agent requires written authorization from the Appellant to act on their behalf.

Submission of an Appeal

Development Appeal application forms can be found at City Hall, 228 Main Street North, at the City Clerk's Office on the 2nd Floor. They can also be found at: www.moosejaw.ca/boards-committees-commissions/development-appeals-board.

Anyone wishing to start an appeal must send a completed application of appeal to the Secretary of the Development Appeals Board **within 30 days** of:

- The issuance of a Development Officer's decision.
- Failure of Council to make a decision.
- Receipt of a permit with terms and conditions.
- Receipt of an order being served to repair or correct contraventions.

Upon receipt, the Board Secretary reviews the application for compliance with *the Act*. An application for appeal must include all the required information and fee (\$50) to be considered complete. Where the fees have not been included, the Secretary of the Board shall communicate in writing to the Appellant(s) advising that the fees must be received prior to the appeal deadline. If an Appellant does not provide complete information, the Secretary may return the application to the applicant for completion before taking the application forward to the Board.

The Board may also reject an appeal without holding a hearing if the appeal does not fit within the scenarios mentioned above or if the appeal deadline has passed.

If an application is rejected, the Board instructs the Secretary to advise the Appellant the appeal cannot be heard. Minutes must be taken at this meeting of the Board.

If the Appellant challenges the ruling to the Saskatchewan Municipal Board (SMB) or to the courts, the Board's decision to reject the application needs to be documented with reasons.

The Board currently holds regularly scheduled meetings; therefore, a hearing may be set for the first or second scheduled meeting after receipt of the appeal application.

MEETING NOTICES

At least ten days before the meeting, the Board Secretary must notify affected parties including the Appellant, the appeal property owner (if the owner and the appellant are not the same person), the City Council and property owners within 75 metres of the property. The notice is to be served by registered mail, personal service or regular mail.

The Appellant and the Respondent (the Department of Planning and Development Services) must provide the Board with all material relating to the appeal at least five days before the meeting. Materials received must be made available to the public for inspection prior to commencement of the meeting. A public agenda package is posted to the City's website before the hearing at:

www.moosejaw.ca/city-council-agendas-current.

Failure to Provide Proper Notice

Failure to provide the mandatory notice may delay the hearing until proper notice can be given. Notice is considered incomplete when not properly provided to all persons entitled to be at a hearing. If it is discovered that proper notice has not been given, the Board must immediately cancel the hearing and provide proper notice for a new hearing. This can be done by either cancelling an upcoming scheduled hearing, or if need be, stopping a hearing already in progress. When the hearing recommences, it must start again from the beginning.

If a hearing was completed and it is discovered a person who should have received notice was excluded, the hearing is deemed null and void, and must be rescheduled and repeated. All parties to the appeal must be served with a notice of the new hearing date. If a new hearing does not occur, the results of the Board's decision may be challenged on appeal to the SMB or Court of Appeal.

Submission of Materials

Pursuant to Section 223 of *the Act*, at least five days prior to the hearing date, the Appellant, Council or anyone acting on behalf of Council must file with the Secretary all supporting documentation in support of or related to the appeal.

The Secretary will also accept written materials from neighbouring property owners any time prior to the hearing. However, any written materials provided by the public will only be considered as evidence if received by 10:00 a.m. on the date of the hearing.

HEARING DOCKET & AGENDA PACKAGE

Hearing dockets will be prepared for each appeal and the maximum number of appeals per hearing docket will be limited to three. In the event it is necessary for an additional appeal or appeals to be heard within a specified period of time, the Secretary, in consultation with the Chairperson, will determine whether a hearing docket will include more than three appeals or whether an additional hearing will be scheduled to accommodate the additional appeal(s).

These hearing dockets will be included within the agenda package which will also include the agenda cover and the public minutes and record(s) of decision(s) from the previous DAB hearing.

Each hearing docket will consist of the following information:

- the appeal application, together with any supporting maps, plans or evidence/submissions received from the Appellant.
- the notice of appeal and list of addresses used to circulate the notice to all neighbouring property owners, together with the accompanying affidavit.
- the report from the Respondent, The City's Planning and Development Services, which provides preliminary information on the appeal, together with any other evidence and/or supporting material.
- any submissions from neighbouring property owners.

Copies of the hearing docket(s) will be delivered to each Board member and the Respondent by the Friday of the week prior to the scheduled hearings. Copies of the report from the Respondent will be provided to the Appellant, and copies of the information within the docket(s) will be made available to all interested parties, upon request.

BOARD MEETINGS

Formal Board meetings can be scheduled by the Secretary on instruction of the Chairperson, or by resolution of the Board.

When a meeting is to be held, the Secretary shall provide, whenever possible, written or e-mail notice of the date, time and place of the meeting to all members at least 24 hours prior to the meeting. The notice shall also include information on the business to be transacted at the meeting. The notices shall be delivered to the usual place where members have requested their appeal dockets and other Board information be delivered.

The Secretary shall attend all formal meetings of the Board to record the decisions of the Board.

Procedures used at formal meetings shall be in accordance with the provisions of City Council's Bylaw No. 5176, Procedure Bylaw. These provisions include decisions being made by motion, which is debated and considered carried by majority vote of those members present. All members, including the Chairperson, must vote on each decision; however, a seconder is not required.

The Board may hold informal meetings at any time for orientation, training or other purposes, when no decisions are required to be made and recorded for the Board. Such meetings will be called by the Secretary, in consultation with the Chairperson.

HEARINGS

DAB meetings must be open to the public with any person notified of the meeting, or who may be affected by the development, allowed to make presentations or submissions to the Board. The Board must give fair consideration to any comments received.

The purpose of a hearing is to consider the evidence and facts of appeals in a forum that allows all parties a fair hearing. The public hearing does not include the decision-making process, which is conducted either during a closed section of the hearing or in a separate private session meeting of the Board.

A written record or minutes of the meeting must be made and filed for public inspection. A Board member with personal or pecuniary interests in the matter must declare the interest and take no further part in the procedures and not vote on the matter.

Location

The Development Appeals Board will hold hearings at City Hall, 228 Main Street North.

Quorum

A majority of the Board members constitutes a quorum for the purpose of a hearing or formal meeting (three out of five members). If a quorum is not present within fifteen minutes of the scheduled time for the hearing, the hearing shall be deemed cancelled, due to lack of quorum.

Conduct

The Board Chairperson controls the procedures and rules to be followed at the hearings. The Chairperson will set the ground rules and maintain order. There should be one speaker at a time and all questions and comments at the hearing must be made with the permission of the Chairperson.

Conflicts of Interest

The onus is on each Board member to make immediate disclosure to the Chairperson upon becoming aware that they are, or may be, in a conflict of interest in connection with an appeal. Section 218 of *the Act* states that where any member of the Board is in any way interested in a matter before the Board, whether directly or indirectly, they shall declare their conflict of interest and take no further part in the proceedings, and they are not entitled to vote on that matter. The member should excuse themselves from the remainder of the hearing and take no part in deliberations of the Board.

If the Chairperson has a conflict of interest with respect to an appeal, the same rules apply and the Vice-Chairperson will assume the duties of the Chairperson, for that portion of the hearing and the signing of the decision for that appeal.

Order of Proceedings

The Chairperson will carry out the following:

- Opening Comments and Introductions (**See Attachment 2**).
- Introduce the first appeal, call the Appellant(s) forward to state their name for the record of the Board.
- Ask the Appellant to proceed with their case by explaining the nature of their appeal and providing any submissions or evidence.
- Allow for questions of the Appellant by the Board and the Respondent.
- Call for any interested parties in attendance to come forward and make presentations.
- Call on the Respondent to provide information regarding the appeal.
- Allow for questions of the Respondent by the Board.
- Allow for questions of the Respondent by the Appellant through the Chairperson where clarification regarding the appeal is required.
- Call on the Appellant to provide a response and closing remarks.
- Reserve decision and move on to the next appeal, repeating the above-mentioned steps.

If the Appellant is not present at the hearing, the appeal will be moved to the end of the agenda and considered at that time. If the Appellant is still not present, the Board may table the hearing of the appeal to an alternate hearing date or hear the appeal in the Appellant's absence.

DECISIONS

The Board must render its decision in writing, together with reasons for the decision, within 30 days of the hearing.

All decisions will be reserved to the closed section of the hearing after all appeals are heard, or to a closed session decision meeting on a day determined by the Board.

An important point to remember is that the Development Appeals Board must decide the appeal based upon the evidence presented to it.

For an appeal to be granted by the Board, the Board considers whether granting the appeal would be a special privilege, be contrary to the purpose and intent of the Zoning Bylaw, and/or would injuriously affect neighbouring property owners.

In accordance with Section 225(3) of *the Act*, "a decision of the majority of members of the Board present and constituting a quorum is a decision of the Board, but in the case of a tie vote, the vote is deemed to be a negative vote".

Members who were not in attendance for the hearing of the appeal, must not take part in the decision-making process for that appeal.

The Secretary will provide administrative/secretarial support to assist the Board with the decision-making process, which includes arranging for the typing of each decision, which shall be signed by the Chairperson or in his/her absence the Vice-Chairperson, or any other member chosen by the Chairperson to act in his or her place.

In making a decision, the Board:

- a) Is bound by the policies of the Official Community Plan.
- b) Must ensure its decisions conform to the uses of land, intensity of land and density of development in the Zoning Bylaw.
- c) Must ensure its decisions are consistent with provincial land use policies and statements of provincial interest.
- d) May confirm, revoke, or vary the decision of the Department of Planning and Development Services, the Council or an approving authority, including any conditions attached to the decision, if in its opinion that action would not:
 - Grant the applicant a special privilege inconsistent with restrictions on neighbouring properties in the same zoning district;
 - Amount to a relaxation so as to defeat the purpose and intent of the Zoning Bylaw; or
 - Injurious affect the neighbouring properties.

The Board's decision must be in writing and signed by the Board Chairperson. Within ten days of its decision, the Board Secretary shall send a copy by registered mail (and by e-mail to Appellant if provided/requested) to all affected parties, including anyone who made representations at the public meeting, the Appellant, the Municipality, and the Minister of the Ministry of Government Relations.

A decision may be voided unless it:

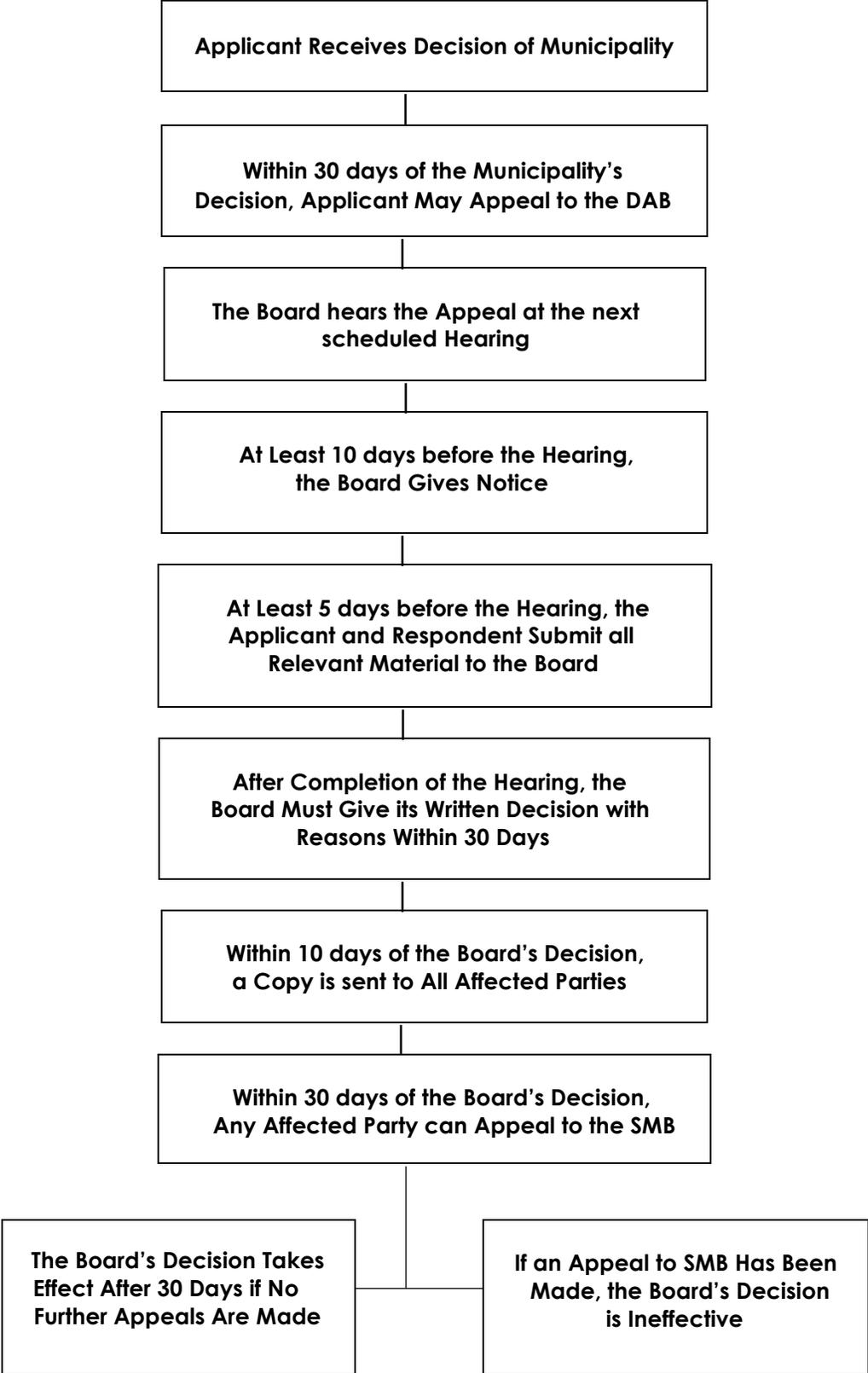
- Outlines the facts of the case.
- States the decision.
- Gives clear, specific reasons for the decision.

FURTHER APPEAL

In accordance with Section 226 of *the Act*, the Minister, the City Council, the Appellant or any other person may, within 30 days after receipt of a copy of the Notice of Decision, appeal a decision of the Board to the Saskatchewan Municipal Board, by written notice to:

Planning Appeals Committee
Saskatchewan Municipal Board
480 – 2151 Scarth Street
Regina, SK S4P

DAB APPEAL PROCESS CHART



OPENING COMMENTS OF CHAIRPERSON

Good afternoon. Welcome to the Development Appeals Board hearing.

My name is _____ and I will be chairing your appeal hearing today.

The members of the Board in attendance today are: _____.

The Board Secretary is _____; and the representative(s) of the City Administration from Planning and Development Services is _____.

You should have all received an information sheet which:

- Outlines the hearing process which will be followed today, and
- Quotes the legislation that guides the decision-making process

The final decision on these appeals will be made within 30 days from today and decisions will be sent by REGISTERED MAIL within 10 days from the Decision date.

Please remember that the Board's priority is to ensure that all parties receive fair hearings, and our decision will be based upon the evidence presented.

Board members may have viewed your property to note its physical and geographic conditions.

Today, we will be hearing _____ appeal(s).

DEVELOPMENT APPEALS BOARD HEARING INFORMATION SHEET

ORDER OF PROCEEDINGS

The Chairperson will carry out the following:

- Opening Comments and Introductions.
- Introduce the first appeal, call the Appellant forward to state their name for the record.
- Ask the Appellant to proceed with their case by explaining the nature of their appeal and providing any submissions or evidence.
- Allow for questions of the Appellant by the Board and Respondent.
- Call for any interested parties in attendance to come forward and provide presentation(s).
- Call on the Respondent to provide information regarding the appeal.
- Allow for questions of the Respondent by the Board.
- Allow for questions of the Respondent by the Appellant through the Chairperson where clarification regarding the appeal is required.
- Call on the Appellant to provide a response and closing remarks.
- Reserve decision and move on to the next appeal (if any).

LEGISLATION

Section 225 of *The Planning and Development Act, 2007* outlines the decision-making process involved for Development Appeals:

- 225(1)** The board shall render its decision in writing, together with reasons for the decision, within 30 days after the conclusion of the hearing.
- (2) Every decision of the board approving a proposed development is subject to the following terms and conditions:
- (a) the board's approval lapses on the expiration of the period for which the development permit is valid unless the municipality issues a new development permit in accordance with the board's decision;
 - (b) the board's decision is specific to the proposed development as outlined in the material and plans submitted to the board.
- (3) A decision of the majority of the members of the board present and constituting a quorum is a decision of the board, but in the case of a tie vote, the vote is deemed to be a negative vote.
- (4) A decision of the board must be signed by:
- (a) the chairperson; or
 - (b) in the chairperson's absence, any other board member and the secretary.
- (5) Within 10 days after the date on which the decision is made, the board shall forward a copy of its decision by personal service or registered mail to the appellant, the municipality, the director and all persons who made representations at the public hearing.
- (6) Subject to section 226, a decision of the board does not take effect until the expiration of 30 days from the date on which the decision is made.