

VILLAGE OF CARBON

BYLAW 2019-824

Regional Intermunicipal Subdivision and Development Appeal Board Bylaw

Bylaw 2019-824 of the Village of Carbon in the Province of Alberta, being a bylaw to authorize the Village of Carbon to enter into an agreement with one or more other municipalities to establish the Regional Intermunicipal Subdivision and Development Appeal Board and to authorize the Village of Carbon entering into an agreement with Parkland Community Planning Services (PCPS) for the provision of intermunicipal subdivision and development appeal board services.

WHEREAS the *Municipal Government Act*, RSA 2000, Chapter M-26, as amended (the "Act") allows a municipality to enter into an agreement with one or more municipalities to establish an intermunicipal subdivision and development appeal board;

AND WHEREAS the Council of the Village of Carbon considers it beneficial to enter into an agreement with certain other municipalities to establish the Regional Intermunicipal Subdivision and Development Appeal Board and for the provision of subdivision and development appeal board services to be provided by Parkland Community Planning Services;

NOW THEREFORE the Council of the Village of Carbon duly assembled enacts as follows:

Short Title

- 1) The short title of this bylaw shall be the "Regional SDAB Bylaw."

Definitions

- 2) Except as otherwise provided herein, words in this Bylaw shall have the meanings prescribed in the *Municipal Government Act*.
- 3) In this Bylaw, the following terms shall have the meanings shown:

"**Act**" means *the Municipal Government Act*, RSA 2000, Chapter M-26 as amended from time to time, together with all Regulations passed thereunder;

"**Administrative Committee**" means that committee established pursuant to this Bylaw;

"**Administrator**" means the individual appointed as Administrator for the purpose of the Agreement by the Coordinator;

"**Agreement**" means the Agreement to Establish the Regional Intermunicipal Subdivision and Development Appeal Board and to Provide for Regional Intermunicipal Subdivision and Development Board Services to be entered into between the Participating Municipalities and the Coordinator;

"**Board Member**" means a person appointed to the Regional Board;

"Clerk" means the person(s) appointed and qualified to carry out the functions of the clerk of the Regional Board in accordance with this Bylaw and the Act;

"Common Law Bias" means a situation where a Board Member's personal or private interests may or may be perceived as influencing the Board Member on a matter before the Regional Board including but not limited to: direct or indirect Pecuniary Interest, pre-judgment, closed mindedness, undue influence, relationship with any of the parties involved in the matter including family members, close friends and business associates;

"Conflict of Interest" means both Common Law Bias and Pecuniary Interest;

"Coordinator" means the Parkland Community Planning Services;

"Designated Officer" has the same meaning as in the Act;

"Development Authority" has the same meaning as in the Act;

"Municipal Planning Commission" has the same meaning as in the Act;

"Municipality" means the municipal corporation of (insert name of municipality) together with its jurisdictional boundaries, as the context requires;

"Panel" means a panel of the Regional Board consisting of either three (3) or (five) Board Members;

"Participating Municipality(ies)" means the municipalities which are parties to the Agreement;

"Pecuniary Interest" has the same meaning as prescribed in Part 5, Division 9 of the Act;

"Presiding Officer" means that Board Member who is chairing a Regional Board or Panel meeting;

"Regional Board" means the Regional Intermunicipal Subdivision and Development Appeal Board established pursuant to the Agreement and this Bylaw;

"Resident" means an individual who lives in a Participating Municipality on a daily and permanent basis and whose primary residence is located within a Participating Municipality;

"Subdivision Authority" has the same meaning as in the Act; and

"Subdivision and Development Appeal Board" has the same meaning as in the Act.

Establishment of the Regional Board and Composition

- 4) The Municipality is hereby authorized to enter into the Agreement with the Participating Municipalities to establish the Regional Intermunicipal Subdivision and Development Appeal Board for the purpose of exercising the functions of the Subdivision and Development Appeal Board in accordance with the Act and for the provision of Regional Intermunicipal Subdivision and Development Appeal Board services by Parkland Community Planning Services.

- 5) The Regional Intermunicipal Subdivision and Development Appeal Board is hereby established and authorized to exercise the functions of the Subdivision and Development Appeal Board for the Municipality in accordance with the Act.
- 6) The Regional Board shall be composed of a minimum of five (5) Board Members and a maximum of twelve (12) Board Members.
- 7) It is preferred, but not required, that one Member who is a resident of the Participating Municipality be appointed from each Participating Municipality.

Powers and Duties of Board

- 8) The Regional Board shall hear and decide upon appeals made with respect to a decision made by the Subdivision Authority and the failure or refusal to make a decision by the Subdivision Authority in accordance with the Act.
- 9) The Regional Board shall hear and decide upon appeals made against a decision or order made by the Development Authority and the failure or refusal to make a decision by the Development Authority in accordance with the Act.

Administrative Committee

- 10) The Administrative Committee is hereby established.
- 11) The Administrative Committee shall consist of all the Participating Municipalities' Chief Administrative Officers or their respective designates.
- 12) The Administrator or his/her designate shall be a non-voting member of the Administrative Committee.
- 13) The Administrative Committee is hereby delegated the authorization and power to appoint Board Members in accordance with this Bylaw.
- 14) The Administrative Committee's functions, powers and duties are as follows:
 - a) subject to this Bylaw, establish qualifications and expectations for Board Members;
 - b) appoint Members to the Regional Board who meet the qualifications of a Board Member as specified in this Bylaw and as may be established by the Administrative Committee from time to time;
 - c) develop policies and procedures governing hearings, conduct of Board Members and other Regional Board matters;
 - d) evaluate Board Member performance to identify areas where additional training may be required and prepare reports regarding performance and re-appointment of Board Members, as may be required;
 - e) ensure Board Members are provided with adequate mentoring and training to effectively fulfil their role;
 - f) establish rates of remuneration and expenses for Board Members;



- g) remove and replace Board Members as deemed necessary by the Administrative Committee in accordance with this Bylaw; and
 - h) act as a liaison between Participating Municipalities and the Coordinator.
- 15) The Administrative Committee shall meet on at least an annual basis and as often as deemed necessary by the Administrative Committee or as may be reasonably requested by the Coordinator.
- 16) The Administrative Committee shall conduct its meetings in accordance with the Act and may develop its own meeting procedure rules as it deems appropriate from time to time.
- 17) Quorum for a meeting of the Administrative Committee shall be five (5) Chief Administrative Officers or their respective designates together with the Administrator or his/her designate.
- 18) Decisions of the Administrative Committee shall be determined by a simple majority vote of those Chief Administrative Officers or their designate present at the meeting.

Board Members

- 19) A Board Member shall not include:
- a) an employee of any Participating Municipality,
 - b) a member of any Municipal Planning Commission, or
 - c) any person who carries out Subdivision or Development Authority powers, duties or functions on behalf of any Participating Municipality.
- 20) Board Members shall be not less than 18 years of age and it is preferred, but not required, that Board Members be a Resident of a Participating Municipality.
- 21) At least 50% of the Board Members shall be Residents of a Participating Municipality

Terms of Board Member Appointment

- 22) All Board Members shall be appointed for a two (2) or three (3) year term, at the discretion of the Administrative Committee, for the purpose of establishing a staggered expiration of terms amongst the Board Members.
- 23) The Administrative Committee may re-appoint a Board Member at the expiration of his/her term.
- 24) A Board Member may resign from the Regional Board at any time by providing written notice to the Administrator to that effect.
- 25) The Administrative Committee may remove a Board Member at any time if:
- a) in the opinion of the Administrative Committee, a Board Member is not performing his/her duties in accordance with the Act, this Bylaw or the rules of natural justice,

- b) a Board Member is absent for more than three (3) consecutive meetings of a Panel to which he/she has been assigned without reasonable cause, or
 - c) a Board Member has participated in a matter in which that Board Member has a Conflict of Interest, contrary to the provisions of this Bylaw.
- 26) Notwithstanding any vacancy in the membership of the Regional Board, the remaining Board Members may exercise and perform the powers and duties of the Regional Board.
- 27) In the event that a vacancy occurs on the Regional Board with more than one (1) year left in the that Board Member's term, the Administrative Committee shall appoint a replacement Board Member within six (6) months of the notice of the vacancy and the person so appointed to fill such vacancy shall hold office for the balance of the period that his/her predecessor would have held the position of Board Member.
- 28) Upon being appointed as a Board Member, an individual must successfully complete the training as prescribed by the Act prior to participating in a Regional Board appeal hearing.

Appointment and Duties of Chair and Vice-Chair of the Regional Board

- 29) At its organizational meeting held in any calendar year, the Regional Board shall appoint a Chair and Vice-Chair from amongst the Board Members.
- 30) The Chair and Vice-Chair shall hold office for a period of two (2) years from the date of appointment.
- 31) The Chair, and in his/her absence, the Vice-Chair, shall:
- a) preside at meetings of the Regional Board; and
 - b) serve as the Presiding Officer for a Panel hearing an appeal if the Chair or Vice-Chair is assigned to hear the appeal.
- 32) In the absence of the Chair or Vice-Chair, the Board Members of every Panel hearing an appeal shall select a Presiding Officer from among themselves who shall:
- a) preside over and be responsible for the conduct of the hearing;
 - b) vote on matters submitted to the Panel unless disqualified to do so; and
 - c) sign orders, decisions and documents issued by the Regional Board.

Authorization of Appointment of the Clerk to the Regional Board

- 33) The position of Clerk of the Regional Board is hereby established to carry out the powers, duties and functions of a Designated Officer of the Municipality which shall be the powers, duties and functions of a Clerk prescribed by the Act.

34) The Administrator is hereby appointed into the position of Clerk to the Regional Board.

35) The Administrator is hereby authorized to appoint one or more Clerks of the Regional Board.

Clerk of the Regional Board

36) The Clerk of the Regional Board shall provide administrative and logistical support to the Regional Board in accordance with the Act and shall:

- a) not have a vote in any proceedings of the Regional Board;
- b) give at least five (5) days written notice of a hearing of an appeal to:
 - i) in the case of an appeal against an order, decision or a failure to make a decision by a development authority, the parties indicated in the Act; and
 - ii) in the case of an appeal against a decision or a failure to make a decision by the subdivision authority, the parties indicated in the Act;
- c) notify Board Members of the meetings of the Regional Board, including hearings;
- d) prepare and maintain a file of written minutes of the business transacted at all meetings, including hearings, of the Regional Board;
- e) for each Regional Board appeal hearing, record and issue a decision of the Regional Board and its findings, with reasons, to all affected parties in accordance with the Act;
- f) obtain legal counsel to advise the Regional Board when required;
- g) be authorized to sign on behalf of the Regional Board any order, decision, approval, notice, or any other thing made, given or issued by the Regional Board; and
- h) undertake such other duties as the Regional Board may require.

Filing an Appeal

37) A party may appeal to the Regional Board in accordance with the Act.

38) A notice of appeal is deemed to be filed with the Regional Board on the date that all information requirements related to a notice of appeal prescribed in the Act and the applicable appeal fee are received by the Clerk within the time period for filing a notice of appeal prescribed in the Act.

Establishment of Board Panels for Individual Hearings

- 39) Where a matter has been appealed to the Regional Board, the following Panels may be established at the discretion of the Administrator in consultation with the Chief Administrative Officer of the Participating Municipality in which the appeal was filed:
- a) a Panel consisting of three (3) Board Members; or
 - b) a Panel consisting of five (5) Board Members.
- 40) Board Members from one (1) municipality may not form the majority of any Panel hearing an appeal.
- 41) It is preferred, but not required, that a Board Member appointed from a Participating Municipality sit on the Panel hearing an appeal involving that Participating Municipality.
- 42) A Panel shall not have more than one Board Member who is a councillor.
- 43) A decision of a Panel is the decision of the entire Regional Board.

Appeal Hearings

- 44) Within thirty (30) days of receiving written notice of an appeal that is filed in accordance with the provisions of the Act, the Regional Board shall hold a public hearing to hear an appeal from:
- a) a decision of a Subdivision Authority or Development Authority;
 - b) a Subdivision Authority or Development Authority's refusal or failure to make a decision within the time allowed for a decision established in the Act; or
 - c) an order issued by a Development Authority.
- 45) The hearings of the Regional Board shall be in public, but the Regional Board may at any time recess and deliberate and make its decisions in private.
- 46) The Regional Board shall hear all those persons from whom it is required to hear by the applicable provisions of the Act.
- 47) A request for adjournment of a hearing may be granted at the discretion of the Regional Board, but any adjournment must be to a specific time and date.
- 48) The Regional Board may adjourn an appeal hearing to a specific time and date upon its own volition to request technical information, legal opinions, or other information desired by the Regional Board.
- 49) Upon conclusion of a hearing, the Regional Board shall deliberate and reach its decision in private and in doing so shall determine an appeal in accordance with the provisions of the Act.
- 50) Audio and/or video recordings of hearings may be made by the Clerk. No other recordings of appeal hearings shall be permitted. Recordings of appeal hearings, if made, shall be retained for at least six (6) months following the adjournment of the

hearing and after that time may be destroyed subject to legal and/or legislative requirements.

Quorum and Voting at Hearings

- 51) A quorum of the Regional Board shall be as follows:
- a. two (2) Board Members for a panel of the Regional Board consisting of three (3) Board Members; and
 - b. three (3) Board Members for a panel of the Regional Board consisting of five (5) Board Members.
- 52) All Board Members must vote on all matters before the Regional Board unless a Board Member declares a Conflict of Interest.
- 53) Where a Board Member of a Panel hearing an appeal absents declares a Conflict of Interest, the Clerk may appoint a replacement Board Member to the Panel.
- 54) Only those Board Members present at the entire hearing of an appeal shall be able to vote on the appeal, provided those Board Members voting form a quorum.
- 55) The majority vote of those Board Members present and voting constitutes the decision of the Panel and Regional Board.
- 56) In the event of a tie vote, the appeal shall be deemed to be denied.

Rules of Order

- 57) The Regional Board shall conduct appeal hearings in accordance with:
- a) the provisions of the Act and related Regulations;
 - b) the principles of natural justice and procedural fairness; and
 - c) the policies and procedures established by the Administrative Committee.

Conflict of Interest

- 58) Where a Board Member is of the opinion that he/she may have a Conflict of Interest in respect of a matter before the Board, the Board Member shall absent him/herself from the Regional Board proceedings while that matter is being discussed. Prior to leaving the meeting, the Board Member shall:
- a) declare that he/she has a Conflict of Interest; and
 - b) describe in general terms the nature of the Conflict of Interest.
- 59) All Board Members are bound to adhere to and comply with the Pecuniary Interest provisions of the Act.

60) The Clerk shall cause a record to be made in the hearing minutes of the Board Member's absence and reasons for it.

Notice of Decisions and Record of Hearing

61) After the conclusion of an appeal hearing, the Clerk shall:

- a) under the direction of the Presiding Officer, prepare the decision or order of the Regional Board and the reasons for the decision in compliance with the Act; and
- b) arrange for the order or decision of the Regional Board to be signed and distributed in accordance with the requirements of the Act.

62) The Regional Board shall issue its decision in writing, together with reasons for the decision, within fifteen (15) days of the conclusion of a hearing.

63) A decision of the Regional Board is not final until notification of the decision is issued in writing.

64) The Clerk shall maintain a record of the appeal hearing in accordance with the Act.

Subdivision Endorsement

65) If a Subdivision Authority fails or refuses to endorse a plan of subdivision or other instrument as approved by the Regional Board on appeal, the Presiding Officer of the Panel that heard the appeal, or in his/her absence any other Board Member of the Panel that heard the appeal is authorized to endorse the subdivision instrument.

Number and Gender References

66) All references in this Bylaw shall be read with such changes in number and gender as may be appropriate according to whether the reference is to a male or a female person, or a corporation or a partnership.

Severability

67) Every provision of this Bylaw is independent of all other provisions and if any provision of this Bylaw is declared invalid for any reason by a court of competent jurisdiction, all other provisions of this Bylaw shall remain valid and enforceable.

Transition and Effective Date

68) Bylaws 2008-761, 2012-777 and 2017-799 are hereby repealed.

69) This Bylaw shall come into force and effect when it has received third reading and has been duly signed.

Read a first time this 18th day of April, 2019.

Read a second time this 18th day of April, 2019.

Motion to proceed to third and final time this 18th day of April, 2019.

Read a third and final time this 18th day of April, 2019.


MAYOR


CHIEF ADMINISTRATIVE OFFICER

SCHEDULE B – SERVICE OPTIONS

In response to the varying needs and capabilities of Participating Municipalities, two different service packages/levels are available:

- **Service Package A** focuses on the organization and training of a qualified pool of Board Members that is shared by Participating Municipalities.
- **Service Package B** focuses on sharing the administrative arrangements for receiving notices of appeal, coordinating and holding appeals and issuing decisions through a qualified pool of Clerks that provide support to the Regional Board.

A. Service Package A – Shared Pool of Board Members

- The Participating Municipalities share in the recruiting and organizing of a pool of twelve (12) Board Members available to sit on Panels to hear appeals
- The Participating Municipalities share in the cost of training and certification of twelve (12) Board Members

Services include:

- Assistance with recruiting and selection of Board Members in accordance with the Agreement and the Bylaw
- Arranging for and providing training of Board Members in accordance with the Act
- Reporting Board Member training to Alberta Municipal Affairs in accordance with the Act
- Organizing the general orientation and organizational meetings of the Regional Board

Exclusions to Services:

- Municipalities participating in only **Service Package A** are required to provide and train their own Clerks and provide all administrative support required for the Regional Board hearing an appeal, in accordance with the Act, at the municipality's sole cost and expense.
- Municipalities participating in only **Service Package A** are required to pay Board Member per diems and expenses directly to the Board Members assigned to an appeal in accordance with the rates outlined in **Schedule C**.
- The provision of services directly related to holding an appeal on a particular matter is not included in **Service Package A** or **Service Package B**. These services are subject to additional fees in accordance with **Schedule C**.

B. Service Package B – Shared Administration and Clerks (Only as “Add- On” to Service Package A)

- **Service Package B** is only available as an “add-on” to **Service Package A**.
- All services included in **Service Package A**
- The Participating Municipalities share in the administrative costs to have a system in place to process all appeal hearings and making arrangements for hearing appeals in accordance with the Act.
- The Participating Municipalities share in the cost of training and certification of four (4) Clerks (2 planners and 2 non-planner) in accordance with the Act.

Services included:

- Arranging for and providing for training of Clerks in accordance with the Act
- Reporting Clerk training to Alberta Municipal Affairs in accordance with the Act
- General administration of policies, procedures and information brochures

Exclusions to Services:

- The provision of services directly related to holding an appeal on a particular matter is not included in **Service Package A** or **Service Package B**. These services are subject to additional fees in accordance with **Schedule C**.

C. Services Related to Holding an Appeal for Additional Fees (Rates set out in Schedule C)

The following will be offered by the Coordinator where the Coordinator provides the Clerk and administrative support for a specific hearing:

- Receive notice of appeal, collect and remit fee to the Participating Municipality and determine whether filing timelines have been met
- Notify Participating Municipality of appeal
- Coordinate a Panel of not less than three (3) Board members and, at the option of the Participating Municipality, five (5) Board Members
- Schedule hearing date with appellant(s), respondent(s), Participating Municipality and Board Members forming the Panel within 30 days from the date of receipt of the notice of appeal
- Coordinate the hearing venue with the Participating Municipality
- Prepare appeal agenda package and arrange for distribution
- Prepare and send out notice of appeal in accordance with the Act and arrange for posting with Participating Municipality
- Make all relevant documents and materials respecting the appeal available for public inspection electronically on the Coordinator's website and at the Coordinator's office
- Attend hearing and assist Presiding Officer with conduct of hearing
- Prepare record of proceedings
- Attend and assist Panel with deliberations and preparation of decision
- Distribution of decision to affected parties

D. Services Related to a Leave to Appeal Application to the Court of Appeal or a Court of Appeal Merit Hearing for Additional Fees (Rates set out in Schedule C)

The following services will be provided by the Coordinator where the Coordinator provided the Clerk and administrative support for a specific Regional Board appeal hearing and the Regional Board's decision on that appeal is the subject of a leave to appeal application to or merit hearing at the Court of Appeal:

- a) coordinate legal counsel to represent the Regional Board in consultation with the Chief Administrative Officer of the Subject Participating Municipality, and
- b) coordinate the preparation and filing of the Regional Board hearing Record with the Court of Appeal as well as any other matters that may be requested or required to support the Regional Board's response to the leave to appeal application or merit hearing.

E. Other Service Offerings

The Coordinator may provide other services at such rates as the Parties may mutually agree to from time to time.

SCHEDULE C – SERVICE FEES AND OTHER FEES

1. **ANNUAL SERVICE FEE:** (Participating Municipality must confirm in writing which Service Package is being chosen at time of Annual Service Fee payment)

SERVICE PACKAGE A: \$300.00

SERVICE PACKAGE B: \$180.00

2. **ADDITIONAL FEES:**

- a. Clerk services provided by a planner will be charged at a rate of \$150/hour and Clerk services provided by a non-planner will be charged at a rate of \$70/hour.
- b. Administrative support services to the Regional Board and Clerk will be charged at a rate of \$70/hour.
- c. Court of Appeal fees: where the Coordinator is providing services relating to a leave to appeal application to or merit hearing at the Court of Appeal, these services will be charged at the rate of \$150/hr where the service is performed by a planner and at a rate of \$70/hr where the service is performed by a non-planner.
- d. Withdrawn Appeals: in instances where an appeal is filed and then withdrawn; the Participating Municipality will be obligated to pay the hourly rates for the effort put into the file.
- e. Board Member Per Diems: in instances where an appeal proceeds to a hearing; the Participating Municipality will be obligated to pay Board Member Per Diems in accordance with the following:

Up to 4 hours	Over 4 Hours
\$150	\$300

- f. Meals and Expenses: will be charged to the Participating Municipality in accordance with policies and procedures prescribed by the Coordinator.
- g. Office/Print Supplies: will be charged to the Participating Municipality on a cost recovery basis.
- h. Legal Services: will be charged to the Participating Municipality on a cost recovery basis.
- i. Audio, Digital Recording and Transcript Services: will be charged to the Participating Municipality on a cost recovery basis.
- j. Venue booking fees, rates and charges will be charged to the Participating Municipality on a cost recovery basis.

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SCHEDULE "D"

PARTICIPATING MUNICIPALITIES CONTACT INFORMATION

VILLAGE OF CARBON

PO BOX 249

CARBON, ALBERTA

TOM OLO

C1