

109 Rules of Procedure for Appeals to All Committees

NOTE: Rules peculiar to any committee are set out under that committee's procedure.

RULE 1 CITATION, PRINCIPLE AND DEFINITIONS

Citation

- 1.01 These rules may be cited as the Saskatchewan Municipal Board Rules of Practice and Procedure for Hearings (herein called the "Rules") and shall come into effect on December 15, 1994, superseding all rules made before that date.

Definitions

- 1.02 Refer to Municipal Board Policy & Procedure pages 1-3.

General Principle

- 1.03 These rules shall be liberally construed to secure the most expeditious determination of every matter before the board.

RULE 2 TECHNICAL OBJECTIONS AND NON-COMPLIANCE

- 2.01 No proceeding before the board shall be defeated or affected solely by any technical objection or by any objection based on defects in form.
- 2.02 The board may, in order to secure a just determination of any matter, dispense with compliance with any rule at any time.

RULE 3 COMPUTATION

- 3.01 In the computation of time under these rules:
- (a) where the time limited for the doing of a thing expires or falls upon a holiday, the time so limited extends to and the thing may be done on the day first following that is not a holiday;
 - (b) where a number of days not expressed to be "clear days" is prescribed the number of days shall be reckoned exclusively of the first day and inclusively of the last; where the days are expressed to be "clear days" or where the term "at least" is used both the first day and the last shall be excluded;

- (c) a reference to time shall, with respect to the area in the province to which the Act or regulation applies be deemed to be a reference to the time to be used and observed in that area under or pursuant to *The Time Act*,
 - (d) delivery of a document made after 5:00 p.m. or on a holiday shall be deemed to have been made on the next day that is not a holiday.
- 3.02 The board may extend any time prescribed by these rules on such terms as the board may determine excepting where statutory provisions apply.

RULE 4 PRE FILING OF BRIEFS, DOCUMENTS, ETC.

- 4.01 Copies of any written material other than the record, that will be produced or relied on at a hearing must be delivered to the board and the other party(s) to an appeal prior to the scheduled hearing date for all appeals whether on the record or otherwise as follows:
- The appellant must deliver the materials to the board and the respondent at least 30 days prior to the scheduled hearing date and
 - The respondent must deliver the materials to the board and the appellant at least 15 days prior to the scheduled hearing date.
- 4.02 If the material is not delivered within the specified time frame it shall not be introduced into evidence without the express permission of the board. When permission is granted, the board should consider allowing all parties an appropriate opportunity to respond.
- 4.03 To the extent that a brief relies on case law, copies of same must be provided, along with the relevant legislation (out-of-province only) to the board and to the other party(s) to the appeal when the brief is filed.

RULE 5 BOARD DOCUMENTS

Copies of Board Documents

- 5.01 A person may examine any document filed with the board not to be considered confidential subject to any Act and, upon payment of the board's fee, take copies of such document unless an Act, an order of the court or an order of the board provides otherwise.

- 5.02 Where any part of the materials provided for use in any matter before the board is confidential, the material shall be placed in a secured location. Confidential material shall not be examined by or provided to any person except in accordance with relevant legislation and established procedures.

Panel members will be advised when they are given confidential materials and advised of the penalties for releasing this material. Panel members will be asked to return this material in an appropriate manner when decisions are released.

RULE 6 FILING IRREGULARITY

Where it appears that there is an irregularity in the filing of an appeal (e.g. outside the legislated time frame), the validity of the appeal will not be determined without benefit of a jurisdiction hearing.

RULE 7 FILING FEE

7.01 1. COLLECTION OF FEE:

Collection of appeal fees shall be in accordance with fees established by regulation pursuant to section 75 of *The Municipal Board Act*.

For the purposes of section 4(1) of *The Saskatchewan Municipal Board Fee Regulations*, fees shall be collected:

- (a) where a single property is appealed, (one lot or one quarter section) on the basis of the assessed value of the land, improvements, or the assessment of which is being appealed;
- (b) where more than one property is appealed (multiple legal descriptions); and the property is located in the same municipality; and the parties to the appeal (appellant/respondent) are the same; (and the grounds of the appeals are the same;) on the basis of the total assessed value of the land and improvements, the assessment of which is being appealed;

2. LOCAL IMPROVEMENT ADJUDICATIONS

With respect to requests for adjudication filed pursuant to section 26(2) of *The Local Improvements Act*, no fee shall be charged until such time as the appellant and the respondent have attempted to enter into an agreement and indication is subsequently received from the appellant that no agreement has been reached.

7.02 Circumstances of Refund:

(a) WITHDRAWAL OF APPEAL

Reimbursement of fee for all appeals will occur when notification of appeal being withdrawn is delivered in writing at least 30 days prior to the hearing date.

(b) OTHER

Where only a portion of the appeal is being withdrawn (e.g. one issue of two or one property of three), that portion of the fee which exceeds the portion of the fee applicable to the remaining issue or property shall be refunded;

Where the agenda indicates hearings scheduled for a range of dates, where the request for withdrawal is received 30 days prior to the first date shown in the range, the fee shall be refunded;

Where the request for withdrawal is physically received in the office by 5:00 p.m. on the 30th day prior to the hearing date (postmarks and the date appearing on the letter are not sufficient), the fee shall be refunded;

Where there are protective appeals as envisioned in Section (4)(2.1) of *The Saskatchewan Municipal Board Fee Regulations*, and a portion(s) of appeals are withdrawn for years other than the initial year of appeal, then those subsequent year's appeals are to remain as protective, however, no fees are refundable where all portions of the appeals remain, albeit for various years;

Where there are protective appeals as envisioned in Section (4)(2.1) of *The Saskatchewan Municipal Board Fee Regulations*, and a portion(s) of appeals are withdrawn for the initial year but remain appealed for subsequent years, then that portion of the fee which exceeds the portion of the fee applicable to the remaining issue shall not be refunded for that year, but rather transferred to the remaining year(s);

Upon a legislative dismissal.

(c) REFUND WHERE APPEAL IS SUCCESSFUL

On an assessment appeal, an appeal is successful where the assessment is reduced upon appeal (where the basis of the appeal was that the assessment was too high). The impetus for the reduction is irrelevant (a finding of the committee; a recommendation of the assessor);

On an assessment appeal, an appeal is successful where the assessment is increased upon appeal (where the basis of the appeal was that the assessment was too low);

On an assessment appeal, an appeal is successful where the matter is remitted to the assessor for recalculation or to the Board of Revision for redetermination.

On an adjudication request pursuant to *The Local Improvements Act*, an application is successful where the committee directs that the assessment be less than that upon which the request for adjudication is based;

On appeal pursuant to *The Conservation and Development Act*, where a change is ordered pertaining to: number of benefited acres; number of acres shown on the assessment roll; ownership other than that contained in the assessment roll; or an omission from the assessment roll;

On a request for exemption from taxation, where the committee directs that the municipality exempt the property in an amount greater than that originally exempted upon appeal to the committee;

On a successful appeal before the Court of Appeal, resulting in a reduction in the assessment or where the matter is remitted to the assessor for recalculation, where the successful party is the same party that appealed to the committee initially;

In any other matter, where a change is ordered.

(d) SPECIAL CIRCUMSTANCE REFUNDS

Where the Assessment Appeals Committee identifies a special circumstance, which may warrant an appeal fee refund, the committee shall refer the matter to the board for a decision.

RULE 8 POSTPONEMENTS AND ADJOURNMENTS

- 8.01 Postponements and adjournments are not a matter of right and accordingly will not be automatically granted.
- 8.02 Adjournments will not be granted on the basis of non-preparedness when a minimum of 60 days notice has been given prior to hearing.

RULE 9 PRE HEARING CONFERENCE

- 9.01 At the request of a party to the appeal or on the initiative of the panel members, the committee chair may call a pre hearing conference. The circumstances that will be considered in the chair's decision are the complexity of the appeal and the estimated length of the hearing. The purpose of the conference may be to achieve any or all of the following:
- (a) identify and clarify the basis for the appeal;
 - (b) possibly settle any or all of the matters under appeal;
 - (c) establish procedures that will be fair to both parties while at the same time expediting the hearing;
 - (d) impose terms and conditions with respect to the exchange of documents or briefs that either party will rely on at the hearing;
 - (e) discuss and thence decide on a request for a summons;
 - (f) determine the validity of a summons that has been issued with respect to the subject appeal;
 - (g) any other matter that may assist in the just and expeditious disposition of the proceedings.
- 9.02 A record will be made of any facts or issues agreed to at this conference with copies of same made available to the parties.

RULE 10 SUMMONS/SUBPOENA

- 10.01 Where a party to the appeal requires the attendance of an individual to give evidence or produce documents, a request may be made to the board for issuance of a summons.

Responsibility for drawing and serving a summons rests with the party requesting same as does responsibility for providing the person named therein with conduct money (attendance and travel expenses).

10.02 The time frame that must be considered by the person requesting the summons should reflect:

- (a) the amount of information being requested;
- (b) the amount of time required to produce/retrieve the information; and
- (c) the distance to be travelled to attend the hearing.

10.03 The board will, on behalf of a party to an appeal, issue a summons providing the board is satisfied the evidence and/or documents will assist the board in making a determination of the matter under appeal. To assist the board in determining relevancy, the following information/documentation must accompany the request:

- (a) a copy of the summons/subpoena;
- (b) a statement to the effect the witness possesses evidence and will not appear voluntarily or will not voluntarily produce the documentation;
- (c) a statement the information/documentation is not available from other sources;
- (d) an explanation of why the evidence sought is relevant and necessary.

10.04 The board reserves the right to amend or quash a summons it has issued where subsequent to such issuance, information is received that warrants such action.

RULE 11 NON-ATTENDANCE AT HEARING

If a party does not appear at the hearing in person or by agent, the board or committee members present may, after consulting with the party in attendance: adjourn the hearing to another date, dismiss the appeal outright, or proceed with the hearing in the party's absence.

RULE 12 CONDUCT OF HEARING

12.01 Hearings before the board shall be held at any times and places as the board deems to be most convenient for its affairs.

12.02 All board hearings shall be open to the public except where the board determines that a matter should be heard in the absence of the public.

Procedure at a Hearing

12.03 In each and every case before it, it is incumbent upon the panel to raise the issue of jurisdiction where:

- (a) the matter has been brought to the parties' attention through a letter previously advising of the perceived irregularity.
- (b) a prior review of the record by the panel reveals a jurisdictional issue; or
- (c) it becomes apparent, during the hearing, that the Board/Committee's jurisdiction to entertain all, or a portion of the appeal, may be in question.

12.04 With the exception of appeals launched pursuant to section 16 of *The Municipal Board Act*, the presiding member will, at the beginning of the hearing, indicate the procedure that will be used. Unless varied by the presiding member of the committee, the hearing shall be conducted in the following manner:

- (a) the hearing of an appeal is open to the public;
- (b) everyone who gives evidence before the committee is required to take an oath or affirm that the evidence they give will be the truth;
- (c) the hearing will be conducted in an orderly manner with only one person speaking at a time;
- (d) the appellant always proceeds with his/her case first. It may be desirable at the outset if the appellant makes a brief opening statement outlining the main issues. Following the opening statement the appellant may then proceed to introduce evidence. Subsequent to this the witness may be questioned (cross-examined) by the other party to the appeal or by committee members;
- (e) the respondent may then proceed in the same manner with the appellant being given the opportunity to cross-examine;
- (f) the appellant will have an opportunity to respond to any new matters raised in the respondent's case;
- (g) summation of evidence and argument of appellant;
- (h) summation of evidence and argument of respondent;
- (i) final rebuttal by appellant.

- 12.05 The committee may, at any time during the presentation of the case by any party, ask questions to clarify issues or facts, or ask questions in the nature of direct examination or cross-examination.
- 12.06 The committee may require any party to submit written arguments within a specified time period. This material must be exchanged with the other party to the appeal.

RULE 13 COST IN PROCEEDINGS BEFORE THE BOARD

13.01 The costs of and incidental to any proceeding before the board, except as otherwise provided in this or any other Act, Regulation or Rule, shall be at the discretion of the board:

- (a) Costs will be awarded by the board whenever the sitting panel members by majority agree that:
- 1) The person by whom any costs are payable has significantly and deliberately acted in a manner which caused unnecessary costs to a party to the hearing.
 - 2) The person against whom the costs are ordered has been unsuccessful.

Examples of cause for awarding costs are; a) repetitious hearings wherein no new evidence or argument has been introduced in the latest hearing, b) failure to allow the expeditious proceeding of a hearing without cause, c) failure to appear without notice and without acceptable reason (generally as a repeat offence).

- (b) Costs may be ordered in respect to any hearing regardless of whether or not a party has requested costs. Decisions will always include a decision as to costs whenever costs have been requested by a party to the proceedings.
- (c) Under no circumstances will requests for costs be considered after the conclusion of the hearing.
- (d) If costs are requested and detailed the board may award any or all of the items in the request. If there is no request for costs or the request for cost does not specify rates or charges, any or all of the following costs may be awarded by the board:
- 1) Meals - at the current provincial government rate;
 - 2) Transportation - at the current provincial government rate per kilometre or travel costs supported by receipt;

- 3) Accommodation - at the current provincial government rate or as supported by receipt;
 - 4) Remuneration - based on the current part time board member per diem rate;
 - 5) Reproduction of documents - as contained in Section 8 (official documents) of *The Saskatchewan Municipal Board Fee Regulations*;
 - 6) Incidental costs - as determined by the board;
- (e) Costs may be awarded to any person who is a party to the hearing of the Saskatchewan Municipal Board.

RULE 14 RECORDINGS AND TRANSCRIPTS

- 14.01 No person, other than the board, shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing an oral or visual reproduction by electronic or other means at a hearing.
- 14.02 Upon application, the secretary shall release its recording of the hearing to a transcriber, approved by the Saskatchewan Municipal Board, to prepare a transcript at the applicant's expense of all or any part of the testimony recorded at the hearing. The original of any transcript along with the recording shall be sent to the Saskatchewan Municipal Board office.

RULE 15 DECISION/ORDER/APPROVAL REVIEW

- 15.01 Where a party requests a review of the board decision, order, or approval pursuant to Section 40(5)(b) of *The Municipal Board Act*, it must do so by way of application, such application to include, in detail:
- (a) the information alleged to be incorrect; and
 - (b) the reason why the alleged incorrect information was not successfully challenged at any initial hearing/review.
- 15.02 Where a clerical error or mistake in calculation is revealed pursuant to section 40(5)(a) of *The Municipal Board Act*, which affects the decision, and is confirmed incorrect, the board shall issue a revised decision reflecting the necessary correction.

110 Decisions

1. General

Section 71 of *The Municipal Board Act* states:

"71 In the case of appeals on any matter, the board shall:

- (a) render its decision in writing, signed by the chair, or in his absence the vice or acting chair and the secretary, or by the chair of a committee of the board and the secretary;***
- (b) set out the finding of fact on which the decision was made;***
- (c) state the reasons for the decision; and***
- (d) send a copy of the decision to each party to the appeal and other interested parties as may be determined by the board or to parties to whom notice of the appeal to the board is required to be served pursuant to any Act or any regulations."***

In addition, a decision of the board or committee shall be rendered as soon as possible after the date on which the decision was made;

A decision of the committee members present at the hearing is the decision and in the case of a tie vote, the vote is deemed to be negative pursuant to Section 14(1) of *The Municipal Board Act*;

2. Decision Writing

- (a) Any member of the board or committee present during a hearing and deliberations may prepare a decision.
- (b) A copy of a draft decision of the board or committee shall be circulated to those members who took part in the proceedings for comments respecting errors in facts or reasons, prior to executing the decision. If members concur with the draft decision, they may sign it at this time.
- (c) Comments under clause (b) should be made to the secretary and participating members within 14 days and shall, at the request of the members, become part of the permanent file.
- (d) Decisions in their final form shall be circulated to sitting members for concurrence prior to their release.
- (e) Decisions forwarded to all parties to the appeal must contain signatures of concurring and, if applicable,