

**BY-LAW NO. 18-06**  
**TOWN OF FALHER**

A BYLAW OF THE TOWN OF FALHER, IN THE PROVINCE OF ALBERTA, TO ESTABLISH A SUBDIVISION AND DEVELOPMENT APPEAL BOARD FOR THE TOWN OF FALHER AND PROVIDE FOR THE ADMINISTRATION OF SAME

**WHEREAS**, the Council of the Town of Falher wishes to establish a Subdivision and Development Appeal Board, pursuant to the provisions of the *Municipal Government Act*, RSA 2000, Chapter M-26 as amended; and

**WHEREAS**, section 628 of the *Municipal Government Act* requires a Council that establishes a Subdivision and Development Appeal Board to prescribe the functions and duties of the Board.

**NOW THEREFORE**, the Council of the Town of Falher, duly assembled, enacts as follows:

**SECTION I – PURPOSE, TITLE AND DEFINITIONS**

**Purpose**

1. The purpose of this Bylaw is to establish a Subdivision and Development Appeal Board for the Town of Falher.

**Title**

2. This Bylaw may be cited as the “Subdivision and Development Appeal Board Bylaw”.

**Definitions**

3. In this Bylaw,
  - a) “Act” means the *Municipal Government Act*, RSA 2000, as amended.
  - b) “Agency” means Mackenzie Municipal Services Agency.
  - c) “ALSA Regional Plan” means a regional plan as defined in the Alberta Land Stewardship Act.
  - d) “Appellant” means the person who has served written notice of an appeal to the Subdivision and Development Appeal Board from a decision or order of the Development Authority or Subdivision Authority.
  - e) “Board” means the Subdivision and Development Appeal Board of the Town of Falher established by bylaw.
  - f) “Chair” means the person appointed pursuant to section III (13) of this Bylaw.
  - g) “Council” means the duly elected municipal Council of the Town of Falher.
  - h) “Clerk” means a designated officer appointed by Council to act as clerk of the Subdivision and Development Appeal Board under section IV(1) of this Bylaw.
  - i) “Development Authority” means the person(s) appointed pursuant to the *Municipal Government Act*.
  - j) “Land Use Bylaw” means the Town of Falher Land Use Bylaw No. 14-05 and any amendments thereto.
  - k) “Member” means a member of the Subdivision and Development Appeal Board of the Town of Falher, as appointed by the Council of the Town of Falher.
  - l) “Panel” means the members of the Subdivision and Development Appeal Board of the Town of Falher convened to hear and decide upon an appeal.
  - m) “Subdivision Authority” means the Subdivision Authority as established pursuant to the Subdivision Authority Bylaw No. 95-11.
  - n) “Town” means the corporation of the Town of Falher.
  - o) All other terms used in this Bylaw shall have the meaning assigned to them by the *Municipal Government Act*, RSA 2000, Chapter M-26, as amended, or the current Town of Falher Land Use Bylaw, to the extent that said meaning differs from the ordinary meaning of such terms.

**SECTION II – ESTABLISHMENT, DUTIES AND POWERS**

**Establishment**

1. The Subdivision and Development Appeal Board for the Town of Falher is hereby established.

## **Duties and Powers**

2. The Board shall deal with subdivision appeals, development appeals and stop order appeals, in accordance with the provisions of the Act and shall exercise any other powers, duties and functions given to it by any other Bylaws of Council.

## **SECTION III - ADMINISTRATION**

### **Membership, Training, Term and Conditions of Service**

1. The Board shall consist of three (3) members, comprising one (1) member of Council and two (2) members at large.
2. Appointment of the members of the Board shall be made by resolution of Council annually at their organizational meeting, excepting for the first appointment which shall be made at the time of the passage of this Bylaw.
3. A person appointed as a member of the Subdivision and Development Appeal Board shall complete a mandatory training program set or approved by the Minister of Municipal Affairs within one year of their appointment.
4. A member of the Subdivision and Development Appeal Board who serves for a period exceeding three (3) years shall complete a refresher training program set or approved by the Minister of Municipal Affairs every three (3) years, unless appointment is terminated or resignation from the Board is received.
5. The length of a person's appointment to the Board shall be one (1) year, and may be renewed by Council on an annual basis.
6. Vacancies on the Board shall be filled by appointment by Council.
7. The members of the Board shall be entitled to such remuneration, travelling and living expenses, as may be fixed by Council from time to time.

### **Eligibility**

8. A member of the Board shall not include:
  - a) a person who carries out subdivision or development powers, duties and functions on behalf of the Town of Falher; or
  - b) an employee of the Town of Falher.
9. A member of Council's appointment to the Board terminates upon the person ceasing to be a member of Council.
10. Members of the Board may include non-residents of the Town of Falher,

### **Quorum**

11. Three (3) members of the Board shall constitute a quorum for the purpose of a meeting or public hearing.
12. A panel of the Board hearing an appeal cannot have more than one (1) councillor.

### **Chair**

13. The members of the Board shall elect one of themselves as Chair.

### **Absent Members**

14. A member of the Board who for any reason is unable to attend the whole or a part of any hearing of an appeal, shall not participate in the deliberations or decision made by the Board upon that appeal.
15. In the event of the absence of, or the inability to act as, the Chair at a hearing or meeting of the Board, the members of the Board present at the hearing or meeting shall elect a member to act as Chair at that hearing or meeting.

## **Signing Authority**

16. An order, decision, approval, notice or other things, made, given or issued by the Board shall be signed on its behalf by its Chair or another member of the Board authorized to sign on its behalf.

## **Meetings and Public Hearings**

17. The hearing of an appeal shall be held in accordance with the provisions of the *Municipal Government Act*.
18. Within thirty (30) days of receiving written notice of an appeal that is in accordance with the provisions of the *Municipal Government Act*, the Board shall hold a public hearing to hear an appeal of:
  - a) a decision of the Subdivision Authority or Development Authority; or
  - b) the Subdivision Authority or Development Authority's refusal or failure to make a decision within the time period allowed for a decision, as established by the *Municipal Government Act*; or
  - c) a stop order issued by the Development Authority.
19. Upon receipt of a notice of appeal duly filed pursuant to the provisions of the *Municipal Government Act* and of this Bylaw, the Clerk may convene a special meeting of the Board to consider what persons are affected by the appeal and should be notified thereof.
20. The Chair or Acting Chair shall be responsible for the conduct of a public hearing.
21. The hearing of an appeal by the Board shall be held in public, but the Board may deliberate and make its decision in a meeting closed to the public, in accordance with Section 197 of the *Municipal Government Act*.
22. In accordance with section 629 of the *Municipal Government Act*, the Board may accept any oral or written evidence that it considers, whether admissible in a court of law or not, and is not bound by the laws of evidence applicable to judicial proceedings.
23. The Board must make and keep record of its proceedings, which may be in the form of a summary of the evidence presented at a hearing, in accordance with the section 629 of the *Municipal Government Act*.
24. The Board may adjourn to a specific time and date upon its own volition to request technical information, legal opinions or other information desired by the Board.
25. A request for adjournment of a public hearing may be granted at the discretion of the Board, but any adjournment must be to a specific time and date.
26. The Board may refer to the Town of Falher Procedural Bylaw or the *Municipal Government Act* for matters not covered in this Bylaw.

## **Decisions**

27. Upon conclusion of a public hearing, the Board may deliberate and make its decision in a meeting closed to the public in accordance with Section 197 of the *Municipal Government Act*.
28. All members present shall vote on every matter placed before the Board unless the member declares a pecuniary interest in the same manner as required of an elected representative pursuant to Sections 169, 170, and 172 of the *Municipal Government Act*. Any member who declares a pecuniary interest shall not participate in any debate or decision concerning the matter. Such pecuniary interest shall be recorded in the minutes.
29. The decision of the majority of the members of the Board present at a public hearing, duly convened, is deemed to be the decision of the whole Board.
30. The Chair or Clerk of the Board may make a verbal announcement of the decision on an appeal at the conclusion of the public hearing, but in that event, shall notify the parties that the verbal decision is not final or binding, and that parties should not act upon it until it has been reduced to writing and signed.

31. The Board shall give its decision on an appeal in writing together with reasons for the decision within fifteen (15) days of the conclusion of the public hearing.
32. In determining an appeal, the Board:
- a) must act in accordance with any applicable ALSA regional plan;
  - b) must comply with any applicable land use policies;
  - c) must comply with any applicable statutory plans, subject to section 638 of the MGA;
  - d) subject to clause (g), must comply with the Land Use Bylaw;
  - e) must have regard to but is not bound by the Subdivision and Development Regulations;
  - f) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
  - g) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the Land Use Bylaw if, in its opinion,
    - (i) the proposed development would not,
      - (A) unduly interfere with the amenities of the neighbourhood, or
      - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
    - (ii) the proposed development conforms with the use prescribed for that land or building in the Land Use Bylaw.
33. Where the Board allows an appeal against the refusal of a development permit by the Development Authority, the Development Authority shall issue a development permit in conformity with the Board's decision, upon receiving notice of the Board's decision.

#### **Referral Authorization**

34. Where it is deemed necessary, the Board is authorized to refer subdivision appeals to the Mackenzie Inter-Municipal Subdivision Appeal Board.

#### **Advisors**

35. The Executive Director of the Agency, or a representative of the Executive Director, shall be an advisor to the Board.
36. The Board may request a person or persons to attend a meeting or hearing in an advisory capacity, such as a representative of a provincial government department.

#### **Immunity**

37. Members of the Subdivision and Development Appeal Board are not personally liable for anything done or omitted to be done in good faith in the exercise or purported exercise of a power, duty or function under Part 17 of the *Municipal Government Act*.
38. No member of the Subdivision and Development Appeal Board is liable for costs by reason of or in respect of an application for permission to appeal or an appeal under Part 17 of the *Municipal Government Act*.

### **SECTION IV - CLERK**

#### **Appointment**

1. Council hereby appoints the Administrative Assistant as a Designated Officer in the position of Clerk of the Subdivision and Development Appeal Board.

#### **Training**

2. The Clerk shall:
- a) complete a mandatory training program set or approved by the Minister of Municipal Affairs within one (1) year of taking office.
  - b) complete a refresher training program set or approved by the Minister of Municipal Affairs every three (3) years, unless appointment is terminated or resignation is received.

## **Duties and Responsibilities**

3. The Clerk shall:
  - (a) perform such functions as may be necessary to ensure that the Board is in full compliance with its duties under the *Municipal Government Act* and this Bylaw.
  - (b) attend all meetings and hearings of the Board;
  - (c) not vote on any matters before the Board;
  - (d) notify all members of the Board of the arrangements for the holding of each hearing and other meetings of the Board;
  - (e) make available for public inspection before the commencement of a public hearing all relevant documents and materials respecting the appeal including the application, its refusal and the appeal therefrom, or a stop order of the Development Authority, as the case may be.
  - (f) keep the following records:
    - i. the minutes of all meetings and hearings, which may include a written summary of all evidence presented at a hearing in accordance with Section III (23);
    - ii. all applications;
    - iii. records of all notices of hearings and of persons to whom they were sent;
    - iv. copies of all written representations to the Board;
    - v. notes as to each representation;
    - vi. the names and addresses of those making representations at a hearing;
    - vii. the decisions of the Board;
    - viii. the reasons for the decision of the Board;
    - ix. the vote of the members of the Board on the decision;
    - x. records of all notices of decision and of persons to whom they were sent;
    - xi. all notices, decisions and orders made on appeal from the decisions of the Board; and
    - xii. such other matters as the Board may direct or the Secretary may determine.
  - (g) perform any other duties and functions as the Board may specify.

## **SECTION V – NOTIFICATION**

### **Notice of Appeal**

1. The written notice of appeal shall be made on the Town's official Appeal Form, and signed by the appellant.
2. The appellant may serve the appeal form to the Board by EITHER:
  - a) mailing it to:

The Clerk  
Subdivision and Development Appeal Board  
011 Central Avenue SW  
Town of Falher  
P.O. Box 155  
Falher, Alberta  
T0H 1M0
  - i. with respect to a subdivision appeal, by registered mail within fourteen (14) days after the deemed refusal of the Subdivision Authority or receipt of the written decision of the Subdivision Authority, as:
    - A. first published in a newspaper circulating in the area; or
    - B. posted on the site of the property, the subject of the application; or
    - C. received by the appellant,whichever of these shall occur first.

- ii. with respect to a development appeal, by registered mail within twenty-one (21) days after the date the decision, the order, or no decision within the required period, is made by the Development Authority, as:
  - A. first published in a newspaper circulating in the area; or
  - B. posted on the site of the property, the subject of the application; or
  - C. received by the appellant,

whichever of these shall occur first.

OR

- b) delivering it in person to the Town Office:
  - i. with respect to a subdivision appeal, within fourteen (14) days after the deemed refusal of the Subdivision Authority or receipt of the written decision of the Subdivision Authority, as
    - A. first published in a newspaper circulating in the area; or
    - B. posted on the site of the property, the subject of the application; or
    - C. received by the appellant,

whichever of these shall occur first.

- ii. with respect to a development appeal, within twenty-one (21) days after the date the decision, the order, or no decision within the required period, is made by the Development Authority, as:
  - A. first published in a newspaper circulating in the area; or
  - B. posted on the site of the property, the subject of the application; or
  - C. received by the appellant,

whichever of these shall occur first.

- 3. Proof of the said delivery under subsection 2(b)(i) or (ii) shall be the official receipt of the Town of Falher Office.
- 4. For the purposes of subsections 2(a) and 2(b), the date of receipt of the decision is deemed to be seven (7) days from the date the decision is mailed, unless otherwise legislated.

#### **Appeal Fee**

- 5. The Appeal Form shall be accompanied by a fee of an amount established by Council from time to time.
- 6. Notwithstanding subsection 5, where the Board is of the opinion that an appeal is applicable to and for the benefit of the municipality at-large, the Board may direct that the application fee be returned to the appellant.

#### **Notice of Public Hearing**

- 7. The Clerk, in the name of the Board, shall give at least five (5) days' written notice of the time and place of the hearing of an appeal, together with a summary of the application, to:
  - a) the appellant;
  - b) the Subdivision Authority or Development Authority or;
  - c) those persons required to be notified under the Land Use Bylaw and any other person that the Board considers to be affected by the appeal that should be notified; and
  - d) any other persons required to be notified in accordance with the *Municipal Government Act*.
- 8. In the case of the appellant, notice of the appeal hearing shall be sent by mail to the address given on the appellant's appeal form.
- 9. In the case of those persons referred to in 7(c) above, notice of the appeal hearing shall be sent by mail to the address shown on the last revised assessment roll.
- 10. In addition to the notice required by 7, the Board may direct that the Clerk publish notice of the hearing in such manner as the Board may determine.
- 11. Where a hearing is adjourned or the decision is reserved, and the Board does not at the time of adjournment fix a time and place for the further hearing of the application and announce it to those in attendance, it shall be the duty of the Chair to announce to those in attendance that the notice of the time and place

for further hearing will be sent to only those persons who leave their name and address with the Clerk; and thereafter, only such persons as do leave their name and address shall be entitled to the notice of the further hearing.

#### **SECTION VI – COURT OF APPEAL**

##### **Record of Appeal**

1. The Clerk shall keep on file all notices of application made for leave to appeal to the Court of Appeal from decisions of the Board pursuant to the *Municipal Government Act*.

#### **SECTION VII – SEVERABILITY**

##### **Severability**

1. If any portion of this Bylaw is declared invalid by a court of competent jurisdiction, then the invalid portion shall be severed.

#### **SECTION VIII – REPEAL OF BYLAW**

##### **Repeal of Bylaw**

1. The Subdivision and Development Appeal Board Bylaw No. 12-03 is hereby repealed.

#### **SECTION IX – EFFECTIVE DATE**

##### **Effective Date**

1. This Bylaw shall come into full force and effect upon the date of its final passing thereof.

READ a first time this \_\_\_\_ day of \_\_\_\_\_, 2018.

READ a second time this \_\_\_\_ day of \_\_\_\_\_, 2018.

READ a third and final time this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
MUNICIPAL