

## MGA Review Discussion Paper

# Land – Administrative Decision-Making Processes



*This technical document is part of a series of draft discussion papers created by Municipal Affairs staff and stakeholders to prepare for the Municipal Government Act Review. It does not reflect existing or potential Government of Alberta policy directions. This document is the result of a careful review of what is currently included in the Municipal Government Act (MGA) and regulations, definitions of terms and processes, changes requested by stakeholders over the last 18 years, some highlights from other jurisdictions, and identification of potential topics for discussion during the MGA Review. This information will be used to prepare consultation materials as the MGA Review proceeds.*

*These discussion papers have been reviewed and approved by the MGA Stakeholder Advisory Committee, comprised of representatives from major stakeholder organizations: Alberta Association of Municipal and Counties, Alberta Association of Urban Municipalities, Alberta Rural Municipal Administrators Association, Alberta Chambers of Commerce, City of Calgary, City of Edmonton, and Local Government Association of Alberta.*

*The Government of Alberta is asking all Albertans to directly contribute to the MGA Review during online consultation in late 2013 and consultation sessions throughout Alberta in early 2014. This technical document is not intended for gathering stakeholder feedback, but to generate thought and discussion to prepare for the upcoming consultation. Public engagement materials will be available in early 2014. To learn more about how you can join the discussion on how we can build better communities, please visit [mgareview.alberta.ca/get-involved](http://mgareview.alberta.ca/get-involved).*

## Preamble

The *Municipal Government Act (MGA)* provides the legislative framework to guide the operations of municipalities in Alberta. The current *MGA* empowers municipalities with the authority and flexibility to provide services in the best interests of the community. The *MGA* Review will proceed along three major themes: *governance and administration; assessment and taxation; and planning and development.*

This paper is one of 11 discussion papers exploring aspects relating to *planning and development.* It focuses on the municipal planning decision-making processes as described in the *MGA* and the Subdivision and Development Regulation. The objective of each discussion paper is to

- 1) Outline the existing legislation,
- 2) Identify issues with specific aspects based on stakeholder requests,
- 3) Look at how other jurisdictions are approaching these issues; and
- 4) Pose questions to help formulate future analysis of, as well as public and stakeholder engagement on the *MGA.*

Below is a list of the papers that relate to the planning and development theme.

- Managing Growth and Development
- Statutory Plans and Planning Bylaws
- Municipal Planning Authorities
- Land – Administrative Decision-Making Processes
- Land Dedication (Reserves)
- Fees and Levies
- Public Participation
- Planning and Intermunicipal Appeals
- Municipal Government Board
- Municipal Relationships and Dispute Resolution
- Fundamental Changes and Municipal Restructuring

## Land – Administrative Decision-Making Processes

Municipalities establish their own planning policies by adopting statutory plans and land use bylaws. The policies expressed in statutory plans and land use bylaws<sup>1</sup> are put into operation by subdivision and development authorities<sup>2</sup> who are appointed by municipalities and responsible for decisions on subdivision and development permit applications. These types of administrative decisions may be appealed to subdivision and development appeal boards (SDABs) that are administered by the municipality or, in certain instances, to the Municipal Government Board that is administered by the Province.

Subdivision and development decisions generally must be consistent with statutory plans, and comply with land use bylaws, the Subdivision and Development Regulation, and must comply with any regional plans approved under the *Alberta Land Stewardship Act (ALSA)*.

The following decision-making processes are outlined within the *MGA* and the Subdivision and Development Regulation:

- **Subdivision Application Process:** Generally speaking, if a landowner or a developer wishes to subdivide land into more than one lot or adjust boundaries, an application must be submitted to the municipality's subdivision authority to review. Subdivision authorities utilize the applicable statutory plans, land use bylaws, the Subdivision and Development Regulation and the *MGA* when reviewing a subdivision application and making a decision. For example:
  - The *MGA* specifies when a subdivision application is required;
  - The Subdivision and Development Regulation stipulates which referral agencies the subdivision authority needs to refer the application to; and
  - The municipal statutory plans and land use bylaws contain the municipal policy direction on how land can be subdivided in the municipality.

Decisions of the subdivision authority must be made within 60 days (unless an agreement with the applicant has been made to extend the timeline), and the decision may be appealed to the subdivision and development appeal board or, if there is a provincial interest as identified in the Subdivision and Development Regulations, in the matter, to the Municipal Government Board.<sup>3</sup>

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<sup>1</sup> Statutory plans and land use bylaws are described in greater detail in the Statutory Plans and Planning Bylaws discussion paper.

<sup>2</sup> The planning authorities that are responsible for decision-making in a municipality are described in greater detail in the Municipal Planning Authorities discussion paper.

<sup>3</sup> Appeal processes are described in greater detail in the Planning and Intermunicipal Appeals discussion paper and the Municipal Government Board discussion paper.

- Development Permit Application Process: Development authorities must utilize the land use bylaw, and follow provisions in the *MGA* and the Subdivision and Development Regulation, when reviewing applications for development permits. The land use bylaw divides the municipality into districts, prescribes uses and establishes development standards for each district, and provides a process for issuing development permits. The *MGA* also outlines provisions for non-conforming buildings, including the use of land and whether development permits can be issued and when they remain in effect. Decisions of the development authority must be made within 40 days (unless an agreement with the applicant has been made to extend the timeline), and the decision can be appealed to the SDAB.
- Stop Orders: A stop order is issued when the development authority directs that all activity relating to a matter must cease until certain conditions that are stipulated within the stop order are remedied. The *MGA* states that a development authority can issue stop orders when a development, land use or use of a building doesn't comply with a land use bylaw, a development permit, subdivision approval, the *MGA* or the Subdivision and Development Regulation. If the person does not comply with the stop order, the municipality may take whatever action is necessary to carry out the order. Stop orders can be appealed to the SDAB.

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## Discussion Points

Below are some identified discussion topics and questions based on a review of requested amendments, cross-jurisdictional research and issues raised by stakeholders. . The requested amendments discussed below draw upon an inventory of requests received by the Province over the past 18 years. It is important to note these requests:

- i) do not necessarily represent the views of most Albertans;
- ii) do not necessarily apply to all municipalities; and
- iii) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

### 1. Subdivision Applications

#### *Background:*

The *MGA* specifies when subdivision applications are required to be submitted to the municipality and the process for referring the application to other provincial and local authorities, as well as adjacent landowners. The Subdivision and Development Regulation outlines what is required to be submitted as part of a subdivision application. The regulation also identifies the provincial or local authorities to which the municipality is required to circulate the subdivision application (e.g., Alberta Environment and Sustainable Resource Development), the setbacks that are required to be maintained from developments (e.g., abandoned wells, sour gas facilities, landfills, etc.), and the timelines for making decisions.

Some say that the subdivision application review and decision provisions need to be reviewed to ensure that the processes specified in the Subdivision and Development Regulation and the *MGA*, accurately reflect the needs of municipalities and the province (e.g., timelines, referrals, setback distances from wastewater treatment facilities, etc.) and that they are being followed by municipalities.

#### *Cross-Jurisdictional Research:*

- In Ontario, the timeline for decisions on subdivision applications is 180 days.
- In Nova Scotia, the development officer has 14 days from the receipt of the subdivision application to determine if the application is complete and 90 days to issue a decision. Additionally, municipalities can establish a subdivision bylaw which includes procedures for the evaluation of the subdivision application, referral of the application to other agencies, providing notice of subdivision approval and repealing a subdivision.

*Stakeholder and Legislative Amendment Requests:*

- There has been a wide variety of amendment requests specific to the subdivision application review and decision processes within the *MGA* and the Subdivision and Development Regulation. For example:
  - Some stakeholders have asked that the *MGA* be amended to allow for random or periodic audits of the subdivision and development processes and policies of planning authorities to ensure compliance with the *MGA* and Subdivision and Development Regulation.
  - Some stakeholders have requested that the Province shorten the appeal period when all the referral agencies have no objection to a subdivision application.
  - Some stakeholders have expressed concerns about not receiving responses from referral agencies on subdivision applications.
  - Some municipalities have requested that the *MGA* exempt "minor" (e.g. lot line adjustment) subdivision applications from the referral process, subject to the approval of the Minister of Municipal Affairs.
  - Some municipalities have requested that the Province amend the Subdivision and Development Regulation to include setback requirements for wastewater collection systems. Currently, the regulation includes wastewater treatment plant setbacks.
  - Some stakeholders have requested that the Province review the provisions of the *MGA* with respect to non-operating landfill setbacks.
  - Some citizens have requested that the Province review the required minimum setbacks for wastewater management facilities.
  - Some developers have requested that the Province outline conditions a subdivision authority can attach to a subdivision approval decision and how the subdivision approval decision should be circulated (e.g., mail).

2. Development Permits

*Background:*

The *MGA* provides a 40-day timeline for municipalities to issue development permits to applicants. If a permit is not issued within this period of time, the application is considered to have been refused. Sometimes applicants submit permit applications without all the necessary accompanying information (e.g., a site plan). As such, it can at times be difficult for municipalities to determine when the application is complete, and when the 40-day time period begins. For example, do the 40 days begin when the permit is paid for and submitted to the development authority, or when all the required information for a permit is submitted?

*Stakeholder and Legislative Amendment Requests:*

- Some citizens have asked the Province to outline minimum requirements for development permit applications.

### 3. Site Suitability

#### *Background:*

The MGA requires that, when making a decision on a subdivision application, the subdivision authority consider the suitability of the site. The Subdivision and Development Regulation identifies site suitability factors such as topography, soil characteristics, storm water collection and disposal, potential for flooding, subsidence or erosion, accessibility to a road, availability of water supply, sewage disposal and solid waste disposal, lot sizes in relation to private sewage disposal systems, adjacent land uses, and other considerations. Some of these provisions may need updating to reflect current planning practices for determining site suitability.

#### *Cross-Jurisdictional Research:*

- In Ontario, a couple of site suitability factors that differ from Alberta are:
  - *the suitability of the land for the proposed purpose, including the size and shape of the lot(s) being created; and,*
  - *the community is protected from developments which are inappropriate or may put an undue strain on community facilities, services or finances.*
- In B.C., the subdivision application process differs from Alberta in that the application must be refused if:
  - *after due consideration of all available environmental impact and planning studies, the anticipated development of the subdivision would adversely affect the natural environment or the conservation of heritage property to an unacceptable level;*
  - *the subdivision is unsuited to the configuration of the land being subdivided or to the use intended, or make impracticable future subdivision of the land within the proposed subdivision or of land adjacent to it;*
  - *the anticipated development of the subdivision would unreasonably interfere with farming operations on adjoining or reasonably adjacent properties, due to inadequate buffering or separation of the development from the farm.*

#### *Stakeholder and Legislative Amendment Requests:*

- Some safety codes officers have expressed concern that in some areas subdivisions are not being designed to allow for firefighting equipment (e.g., fire trucks), and that some lot sizes may not meet the minimum safety codes standards (e.g. private sewage, building).
- Some municipalities have requested that subdivision decisions should consider the preservation of farm land and agriculture.

### 4. Reconsidering Decisions

#### *Background:*

The MGA lays out the timelines for decisions to be made by a subdivision or development authority, and the subsequent timelines for filing an appeal of a decision. Under the MGA, there is no power for a subdivision or development authority to vary its decision. Additionally, the timeline for filing an appeal is not flexible to allow for a variance in a decision. Occasionally, after a decision is issued by a subdivision or development authority, it may be necessary for an amendment to be made to the decision, either because the decision did not capture all matters or the parties (applicant and authority) agree to changes.

*Stakeholder and Legislative Amendment Requests:*

- Some municipalities have requested that a subdivision authority be allowed to make minor adjustments to an approved subdivision plan and/or conditions of approval.

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## Discussion Questions

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1. Do the current subdivision application requirements and processes meet the needs of proper land use planning and management (e.g., referral process, timelines, etc.)? Why or why not?
  2. Does the current 40-day timeline for decisions on development applications adequately reflect the time that may be necessary to review the various components of a development application? Why or why not?
  3. Is there a need to identify what the minimum requirements should be for a complete development permit application? Why or why not?
  4. Should conditions attached to a development permit contain rationale? Why or why not?
  5. What, if any, site suitability factors should a subdivision authority be required to consider in its review of a subdivision application? Why?
  6. Should the *MGA* be more specific on the conditions attached to a subdivision approval decision? Why or why not?
  7. Is there a need to allow subdivision authorities or development authorities to amend their decisions? Why or why not?