

MGA Review Discussion Paper

Municipal Government Board

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 mqareview.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 related to the *planning and development* theme. It explores the jurisdiction of the Municipal Government Board as described in the *MGA*. The objective of each discussion papers 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 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

Municipal Government Board

The Municipal Government Board (MGB) is a provincially established quasi-judicial appeal body that handles some types of disputes where there is a provincial or regional interest.

MGB Jurisdiction

The jurisdiction of the MGB is to hear appeals or disputes on:

- linear property assessments;
- equalized assessments;
- proposed annexations;
- intermunicipal conflicts related to statutory plans or land-use bylaws;
- certain subdivision proposals where there is a provincial interest;
- conflicts between municipal bylaws and authorizations granted by the Alberta Utilities Commission, the Natural Resources Conservation Board, or the Energy Resources Conservation Board;¹ and
- any issue referred by the Lieutenant Governor in Council or the Minister.

MGB members also preside at hearings of composite assessment review boards (CARBs) that are administered by municipalities. These boards hear property assessment complaints related to multi-dwelling residential properties and non-residential properties.

MGB Organization

Under the *MGA*, the Deputy Minister of Municipal Affairs is the administrator of the MGB, although in practice, the Deputy Minister usually delegates administrative authority to the designated chair of the MGB. MGB members are appointed by Cabinet, on the Minister's recommendation.

- Panels of the Board: At a MGB appeal hearing, MGB panels must consist of three or more members, as chosen by the administrator. Currently the MGB has 49 appeal board members from which to choose panel members from. A majority of a panel constitutes a quorum and the majority decision of a panel is the decision of the board. Sometimes, in assessment procedural matters, MGB members sit as one-member panels.

¹ Starting in June 2013, the new Alberta Energy Regulator (AER) will be responsible for the regulatory functions from the Energy Resources Conservation Board and Alberta Environment and Sustainable Resource Development. The AER is authorized to make decisions on applications for energy development, monitoring for compliance assurance, decommissioning of developments, and all other aspects of energy resource activities. This authority extends to approvals under the public lands and environment statutes that relate to energy resource activities.

MGB Procedures

The MGB has slightly different procedures for each matter within its jurisdiction, as the current *MGA* sets out different procedural requirements for each matter. Generally, there are filing requirements and timing requirements for each matter that comes before the MGB. Under the *MGA*, the MGB has several general powers as set out below:

- Postponement and Adjournment: a party to the appeal who has been notified of the hearing may request a postponement or adjournment, and the MGB may grant or deny the request.
- Appeal Hearing Proceedings: the MGB can review or rehear a matter on a previous decision or before making a decision and may correct any technical irregularities within its decisions.
- Evidence: the MGB may require persons giving evidence to do so under oath and is not bound by the rules of evidence or court proceedings.
- Hearing Procedures: the MGB makes its own procedural rules, and specific sets of procedural rules are applied to: subdivision appeals, linear and equalized assessment complaints, proposed annexations, intermunicipal disputes, and all other matters.
- Other Procedures: the MGB may
 - require a person to attend a hearing or submit a required document; and
 - upon application by one of the parties for costs related to delays or frivolous appeals, have the discretion to determine if costs must be paid and how they are to be registered or split among the parties.²

Decisions of the MGB

Decisions of the MGB are issued in writing generally within 15 days to one month, depending on the type of appeal, from the conclusion of the hearing and are sent to all affected persons and to the municipality in which the property is located.

Land planning decisions must comply with the *Alberta Land Stewardship Act* and the Land Use Policies.

² Special rules for costs in linear and equalized assessment matters are laid out in the Matters Relating to Assessment Complaints Regulation.

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. Jurisdiction of the MGB

Background:

The MGB does not have jurisdiction over a matter unless it is included in the MGB's empowering legislation. In some matters of MGB jurisdiction, such as subdivision appeals or disputes involving regional services commissions, the board's jurisdiction may not be completely clear. For example, the MGB hears appeals of subdivision proposals in which there is a Provincial interest. As noted in another discussion paper³, references to provincial interest may be difficult to apply and interpret. As a result, some appeals that arguably should be directed to the MGB are being heard elsewhere (such as by municipal subdivision and development appeal boards). In regional services commission disputes, the MGB's jurisdiction is residual, meaning that if no other board has jurisdiction in a matter,⁴ then the MGB may hear the dispute.

Cross-jurisdictional Research:

- There are hundreds of administrative tribunals across Canada. Saskatchewan, Manitoba and Ontario each have municipal boards, but the jurisdiction of the boards varies significantly across each province.
 - In Manitoba and Ontario, the provincially established municipal boards may set municipal ward boundaries.
 - Quebec's municipal commission deals with a large spectrum of municipal matters, including municipal inspections, municipal restructuring, and the conformity of municipal planning bylaws with regional plans. The commission also keeps a copy of all municipal planning bylaws for public inspection.
- Other provinces' assessment appeal boards are typically separate from their planning boards.
- Some municipal boards in other provinces have some authority over municipal bylaws.

³ Jurisdiction for subdivision appeals is further discussed within the Planning and Intermunicipal Appeals Discussion Paper.

⁴ Some matters of dispute for regional services commissions may fall under the jurisdiction of the Alberta Transportation Safety Board, the Alberta Utilities Commission, or other boards or tribunals.

- In Manitoba, bylaws that would have been declared invalid due to a technical irregularity (e.g. clerical error, omission), may be validated by the municipal board.
- In Ontario, the municipal board can have a role in reviewing planning bylaws to ensure they are consistent with the planning legislation.

Stakeholder and Legislative Amendment Requests:

- Some municipalities and industry stakeholders have requested that the MGB have the jurisdiction to hear property assessment appeals of complex industrial properties.
- Some municipalities have suggested that all subdivision appeals be heard by municipal subdivision and development appeal boards.
- Some municipalities have requested a review of which subdivision appeals must be heard by subdivision and development appeal boards, and which must be heard by the MGB.
- One municipality has requested the ability to complain on matters related to the formula used in and the policy intent of equalized assessments, not just the amount of an equalized assessment.
- Some industry stakeholders have requested that the MGB hear all appeals related to off-site levies.
- At least one municipality has indicated the MGB should be able to determine the validity of a bylaw in the context of an intermunicipal dispute.

2. MGB Procedures

Background:

The MGB must follow the procedures set out in the *MGA* and its regulations. However, some of these provisions have at times led to administrative or process-related difficulties. For example:

- Except for a few circumstances that are outlined in the Matters Relating to Assessment Complaints Regulation, the MGB must use panels composed of at least three members of the board. In some instances related to preliminary or procedural matters, or the postponing or delaying of a hearing, organizing a panel of three members can be costly.

Cross-jurisdictional Research:

- Given that there are hundreds of tribunals across Canada, there is considerable variety in legislative practice. Most tribunals, such as Ontario's Municipal Board, have their fundamental procedures set out in legislation and their administrative procedures are not prescribed.

Stakeholder and Legislative Amendment Requests:

- The MGB has asked for more flexibility in respect of certain procedures which are currently required by legislation, to allow for a more efficient use of its resources (e.g., procedures for postponement of hearings).
- Some stakeholders in Alberta's legal community have suggested that MGB decisions be issued within a particular number of days following an oral hearing, and not the date on which the MGB determines a hearing is closed.
- Some citizens have requested that the *MGA* be amended to allow for greater involvement by area landowners at subdivision appeals heard by the MGB.

3. Protecting Private Information at Hearings

Background:

Sometimes, during an MGB hearing, a person may wish to bring confidential documents (e.g., income or business-related documents) as evidence for the MGB to consider in making a decision. However, parties often produce these documents only if the MGB is willing to seal the documents and keep them confidential. If the MGB is unable to give assurance to those parties that the documents can be kept from the public record, those documents are not typically produced by the parties.

The MGB will seal documents if requested and if it is appropriate to do so; however, all MGB records are subject to *Freedom of Information and Protection of Privacy Act (FOIP)* requests. Under *FOIP*, if an application is made for information to be disclosed on a matter, an analysis is required to determine whether any documents filed with the MGB should be produced, whether or not they are sealed. By contrast, if a court determines that information should be kept confidential, it may seal documents and bar public access, in which case the documents are not subject to a further review under *FOIP*.


Cross-jurisdictional Research:

- The law generally favours open hearings; however, Ontario's Municipal Board may order hearings to be closed to the public in certain cases, including when intimate financial or personal matters that may be disclosed at the hearing are such that avoiding their disclosure outweighs the desirability of a public hearing.

Stakeholder and Legislative Amendment Requests:

- Some citizens have expressed concerns that evidence used at MGB hearing, such as confidential business information, could be released as a result of documents being subject to *FOIP*.

Discussion Questions

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1. Should any adjustments be made in the *MGA* in regard to those matters falling within the jurisdiction of the MGB? Why or why not?
 - a) What types of mechanisms should be in place to ensure that subdivision appeals are being heard by the appropriate appeal authority?
 2. What are appropriate qualifications for MGB members?
 3. What, if any, adjustments should be made in the *MGA* in regard to the details, or level of detail, set out for MGB procedures related to:
 - a) postponement of a hearing;
 - b) the size of the panels that hear appeals;
 - c) the handling of confidential information;
 - d) swearing in the proceedings; or
 - e) other board processes?