

MGA Review Discussion Paper

Municipal Planning Authorities

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.

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 process for establishing municipal planning authorities as described in the *MGA*. 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

Municipal Planning Authorities



In general, municipal planning authorities are responsible for reviewing subdivision and development applications and issuing decisions that are reflective of the planning policies that have been established by the municipality, through their statutory plans and land use bylaws. Within the *MGA* there are several types of planning authorities that can be established by municipal council. These include subdivision and development authorities, intermunicipal service agencies, municipal and intermunicipal planning commissions, subdivision and development appeal boards and intermunicipal subdivision and development appeal boards.

- Subdivision and Development Authorities

All municipalities must establish a subdivision authority and a development authority by bylaw. These roles may be filled by council members (subdivision authority only), a designated officer, a municipal planning commission, or any other person or organization. The subdivision authority exercises the subdivision powers and duties for the municipality, which includes reviewing and issuing decisions on subdivision applications and ensuring that any application approval conditions have been carried out by the applicant. The development authority exercises the development powers and duties for the municipality, which includes enforcing the regulations within a municipality's land use bylaws by reviewing and issuing development permits and by issuing stop orders when developments are in contravention of the land use bylaw.

- Intermunicipal Service Agency

A municipality may delegate the powers, duties or functions of a subdivision or development authority to an intermunicipal service agency. This is an agency that is established by municipalities to provide services across a region, and the agency may be either a regional services commission or operated by another municipality.

- Municipal Planning Commission (MPC) and Intermunicipal Planning Commission

A municipality may establish an MPC or an intermunicipal planning commission to exercise subdivision and development powers. The bylaw that establishes an MPC or an intermunicipal planning commission lays out the function and duties of the committee. An intermunicipal planning commission bylaw authorizes municipalities to enter into an agreement with each other and includes procedures for the commission's dissolution.

○ Subdivision and Development Appeal Board (SDAB) and Intermunicipal Subdivision and Development Appeal Board

A municipality must establish either an SDAB or an intermunicipal SDAB, or establish both boards. The bylaw that establishes the appeal board(s) must describe the procedures and functions of the board(s) and any committees (if established). Decisions made by the committees are considered decisions of the board. These boards hear appeals of development permit decisions, subdivision application decisions that are outside the jurisdiction of the Municipal Government Board, and stop orders.

An appeal board may not include a municipal employee, a person involved in subdivision or development application or decisions, or a member of a municipal planning commission. Councillors of a municipality may not form the majority of the SDAB members hearing an appeal, and councillors from one municipality may not form the majority of the intermunicipal SDAB members hearing an appeal. The appeal boards are not bound by the court's laws of evidence, which means they can accept any oral or written evidence whether it is admissible in court or not; however, the boards must keep records of their proceedings, and are subject to the rules of procedural fairness and natural justice.

All decisions issued by planning authorities must comply with any applicable *Alberta Land Stewardship Act (ALSA)* regional plan.

DRAFT

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. Potential for Perceived Bias in Planning Decisions

Background:

Within the *MGA*, some or all councillors may comprise part or all of the membership of the subdivision authority, comprise the MPC, and sit as members on the SDAB. Councillors may be the development authority in municipalities in which an MPC has been established as the development authority and it is made up of council members. Councillors can also make decisions as the development authority for lands that are identified as direct control districts within a municipality's land use bylaw.

The ability to have councillors serve as planning authorities in a variety of situations helps to ensure quorums are met in instances where the municipality may be struggling to find citizens willing to serve on the SDAB or other planning bodies. However, there is the potential that a councillor may be accused of issuing a decision based upon reasons other than the policies that have been established through the municipality's planning documents.

In some instances, municipalities have created planning review committees that are not "official" planning authorities established under the *MGA*. The role of these review committees can vary depending on the municipality. There have been instances where the members of these committees have also served as members of the subdivision and development appeal board. The *MGA* states that the appeal boards may not include members of MPCs and persons who carry out subdivision and development functions, but does not mention other committees. Therefore, if members of these other committees have had previous knowledge or involvement in the application review process prior to the appeal, there may be a public perception of bias.

Cross-Jurisdictional Research:

- In some jurisdictions conflict of interest by councillors is applied broadly to councillors throughout their roles. This includes:
 - In Ontario, council members must disclose their conflicts of interest whether or not they attend meetings where that conflict of interest would occur.
 - In Australia, the legislation requires that councillors disclose conflicts of interest and not participate in decisions related to those matters. This includes council committees.

- In Saskatchewan, the legislation is more specific to councillor roles in planning and states that councillors cannot be members of the development appeal board.
- The courts recently found a councillor's comments on an SDAB matter introduced an element of bias (*Beaverford v Thorhild (County No. 7)*, 2013 ABCA 6). In this case a municipal councillor who had previously voiced opinions and objections about gravel pits and gravel extraction within the municipality, participated as a SDAB member at an appeal hearing that heard an appeal on an application for gravel extraction.

Stakeholder and Legislative Amendment Requests:

- Municipal Affairs has received calls from some municipalities questioning the potential for a perceived conflict of interest if a councillor is a member of a planning committee and is also a member of the SDAB.
- Municipal Affairs has received requests from the public to establish a subdivision and development appeal process that is separate from the administration and political oversight of the municipality.

2. Subdivision and Development Appeal Board Training

Background

The *MGA* does not require SDAB members to receive mandatory training, although a municipality may request training from Municipal Affairs. In some instances, a subdivision or development appeal may be challenging and complex, depending on the nature of the appeal. Recent amendments to the *MGA* require members of assessment review boards to pass provincially prescribed training and qualifications courses every three years.

Cross-Jurisdictional Research:

- Cross-jurisdictional research on other municipal acts did not result in any information specific to this issue.

Stakeholder and Legislative Amendment Requests:

- Some municipalities have suggested that training and qualifications should be prescribed in the legislation for local appeal boards such as the subdivision and development appeal board.

3. Bylaws establishing Planning Authorities

Background

Planning authorities that are established by municipalities are done so through bylaw. For example, to establish a subdivision and development appeal board, the *MGA* requires that the bylaw must also specify the functions and duties of the board (e.g., roles, responsibilities, powers, procedures), but does not provide further detail on bylaw contents. As a result, variations in SDAB bylaws may lead to different interpretations and inconsistency in their application province-wide.

Cross-Jurisdictional Research:

- In Ontario, a regulation entitled Local Appeal Bodies contains provisions on what must be included in the bylaw that establishes the local appeal body (e.g., specifying the roles, powers and duties of the members, chair, and secretary).

Stakeholder and Legislative Amendment Requests:

- Some municipalities have requested that the *MGA* further outline the additional information that can be contained in a bylaw that establishes a subdivision and development appeal board.

DRAFT

Discussion Questions

- 
1. Should the subdivision and development appeal process be separate from administrative or political oversight? Why or why not?
 2. Who should be able to be appointed as a planning authority? Why?
 3. Is there a need for the *MGA* to address potential conflict of interest in regard to the membership and decisions of subdivision and development appeal boards? Why or why not?
 4. Should the *MGA* have minimum standards (e.g., training, credentials) in place for subdivision and development appeal boards? Why or why not?
 - a) If so, what should be the minimum standards and how should the standards be monitored or enforced?
 5. Should the *MGA* set out specific requirements for the content of bylaws that establish planning authorities? If so, what should they be?