

April 20, 2018

Engaging With Your Municipality

For the most up-to-date information about the planning provisions within the *Municipal Government Act (MGA)*, please contact Municipal Services and Legislation toll-free at 310-0000, then 780-427-2225, and ask to speak with a planning advisor or visit the Municipal Affairs website at <http://www.municipalaffairs.alberta.ca>.

Municipal Development Plan (MDP) & Land Use Bylaws (LUB)

In the past, any municipality with a population over 3,500 was required to have a Municipal Development Plan (MDP). An MDP describes the municipality's plans for the future pattern of development. Changes to the *Municipal Government Act (MGA)* in 2017 made it mandatory for all municipalities to have an MDP in place by 2021.

The Land Use Bylaws provide a specific means of implementing the general direction of the MDP. All municipalities are required to have Land Use Bylaws. The *Municipal Government Act* provides guidance on the structure of Land Use Bylaws and municipalities control the content. As a result, you may find that the Land Use Bylaws differ between municipalities. A local council is required to establish a Development Authority to exercise development powers and perform duties on behalf of the municipality.

In the Land Use Bylaws, lands within a municipality will be assigned a zoning. Zoning controls what type of development is permitted in an area, and may create stipulations around the height and/or size of developments. If a person wants to develop land in a manner that is not allowed under the existing zoning, they may apply for rezoning. Decisions on rezoning are made by the municipal council and may require a public hearing. Municipal councils are elected locally every 4 years.

Under the Land Use Bylaws, each zone will have a list of Permitted and Discretionary Uses. If a person applies for a Development Permit for a Permitted Use and the proposal conforms to the standards in the Land Use Bylaw, the Development Authority must issue the Development Permit. In these circumstances, the Development Authority can only impose conditions on the Development Permit as authorized through the MGA and outlined in the municipality's Land Use Bylaws.

When the Development Permit is for a Discretionary Use, the Development Authority may examine the site, the adjacent uses, any additional requirements, and planning considerations related to the proposal in order to determine suitability of the Discretionary Use requested.

The Development Authority has the ability to:

- refuse the application;
- approve the application without conditions; or
- approve the application with conditions.

The Development Authority will have more flexibility negotiating conditions on a Development Permit for a Discretionary Use activity.

The Development Authority does not have the ability to change the Permitted and Discretionary Uses in a Land Use Bylaw. Any changes to the Land Use Bylaw must have a public hearing and be voted on by the municipal council.

Non-Conforming Use

A use may be considered “non-conforming” when there is a Development Permit in place, but the Land Use Bylaws have since changed to prohibit the use in the district. In general, a non-conforming use (where a Development Permit is in place) can be continued, but strict rules put limits on the expansion of that use.

Subdivision Application & Development Permit Appeals

A county council must establish a quasi-judicial Subdivision and Development Appeal Board (SDAB) to deal with subdivision and development appeals. Council determines who is appointed to an SDAB, subject to the limitations outlined in the *Municipal Government Act*.

An SDAB may review three types of decisions:

- subdivision application;
- Development Permit application; or
- Stop Order.

In a minority of cases, subdivision appeals will go through the Municipal Government Board (MGB) instead. The MGB will hear a subdivision appeal if it concerns land within the Green Area (forested portion of Alberta), or within a specific proximity to highways, water bodies, waste treatment plants, hazardous waste management facilities, or operating waste storage sites.

A person desiring to appeal a development decision must submit their appeal within 21 days of receiving notice of the decision, though time extensions may be granted. Note that the time frame for appealing a decision on subdivision is 14 days.

The SDAB will not simply review the decision of the municipality; they will be considering the hearing “de novo,” which means they are looking at the facts and law anew. The SDAB is not bound by precedent, so it does not need to follow previous decisions, but in principle parties in similar situations should be treated similarly.

A person considering an appeal to the SDAB should get an understanding of the SDAB’s powers. When the appeal concerns a Permitted Use, the appeal is limited to situations where the Land Use Bylaw has been relaxed, varied, or misinterpreted. The SDAB has the power to confirm, revoke or vary the decision or any condition attached it. They could also substitute the existing decision for a decision of their own.

Adjacent landowners can appeal a Development Permit on a Permitted Use, but only if the Land Use Bylaw was somehow relaxed, varied, or misinterpreted in the issuance of the Development Permit. This means that unless a variance or relaxation has occurred, or the person appealing is able to point out the Development Authority misinterpreted the Land Use Bylaw, no appeal is possible. Note that adjacent landowners can appeal a Development Permit, but they are not able to appeal a subdivision decision.

The SDAB is not bound by the rules of evidence like a court. The SDAB may accept any oral or written evidence that it considers appropriate. A person who is appealing a decision should support their arguments with evidence such as witnesses, experts, photographs, or other documentary items. The SDAB members may ask questions to clarify and gather information. One thing they will be trying to do is to separate opinions from facts.

The SDAB cannot change Land Use Bylaws. Only council can change the Land Use Bylaws. If no Development Permit is required, no decision of the development authority occurs, so there is no right of appeal to the SDAB. The decision of the SDAB can be appealed to the Court of Appeal within 30 days, but only on a question of law or jurisdiction.

After April 1, 2018, all SDAB members and clerks must undergo mandatory training based on standard training program approved by Minister of Municipal Affairs.

Tips for Preparing for an Appeal

- Stick to the issue. Use your time to speak to the issue at hand, rather than air historical frustrations.
- Avoid referring to what other community members have (or have not) been allowed to do. This is not the basis from which the SDAB will make its decision.
- If you are opposing the Development Authority's decision on a Development Permit, be sure to communicate how you are affected and propose possible solutions. Even if you want the permit to be refused, you should think about "Plan B" (i.e. if the Development Permit is issued, what conditions would mitigate your impacts?)
- If you are presenting opinions, make sure you use evidence to support your argument. Evidence could be eye witnesses, experts, photographs, or other items. Evidence should be relevant to the issue and come from a reliable expert source.
- More information on the subdivision and development appeal process is available online through Municipal Affairs:
http://www.municipalaffairs.alberta.ca/am_planning_and_development

Property Assessment

The assessment process assigns a value to a property for the purpose of taxation. The property assessment will be tied to a tax rate determined by the municipality. Each property will be assigned an assessment class:

- residential,
- non-residential,
- farm land; or
- machinery/equipment.

This process does not follow the whims of the assessor. An assessor must follow strict guidelines. Under legislation, the assessment must reflect the characteristics and physical condition of a property on December 31 the year prior. Farm land is assessed using the *Alberta Farm Land Assessment Minister's Guidelines*. An assessor has the right to enter and inspect

property after giving reasonable notice to the owner of the property. A person must provide any information the assessor needs to prepare the assessment.

A person can appeal their assessment to the Assessment Review Board (ARB) within 60 days of the date on the assessment notice. Remember that this is an appeal process concerning the assessment, not the taxation. The ARB will include members of the community and may contain a maximum of one councillor.

What Do All These Acronyms Mean?

The *Municipal Government Act (MGA)* requires that a municipality have a Development Authority. Some counties may designate a *Municipal Planning Commission (MPC)* as the Development Authority.

A council must establish a *Subdivision and Development Appeal Board (SDAB)* to deal with subdivision and development appeals.

The *Municipal Government Board (MGB)* may hear a subdivision appeal if it concerns land within the Green Area (forested portion of Alberta), or land within certain proximities to highways, water bodies, waste treatment plants, hazardous waste management facilities, or operating storage sites. MGB decisions are subject to judicial review with the Court of Queen's Bench.

The *Assessment Review Board (ARB)* can review appeals about assessment. Note that this only reviews the assessment, not the taxation.

An *Area Structure Plan (ASP)* provides a framework for subdivision and development for a particular area within a community.

Starting a Petition

A petition is a formal request to those in authority to take a particular action. "Starting a petition" can sometimes be an impassioned rally cry when a local community faces an issue, but it is important to understand that a proper petition is more than a bunch of signatures on a sheet of paper.

The *Municipal Government Act* outlines when and how official petitions can be filed with your municipality. A properly filed petition can oblige a municipality to take a certain action. There is no ability to petition on matters related to assessment, proposed planning and development, road closure or bylaws.

The public has the right to petition on:

- a new bylaw (or bylaw to amend or repeal an existing bylaw);
- bylaws relating to borrowing/loans/guarantees of repayment;
- appointment of a financial auditor;
- for a meeting to discuss the matters of the petition;
- against a local improvement; and,
- for an inquiry from the Minister of Municipal Affairs into the affairs of a municipality, the conduct of a councillor, employee or agent of the municipality.

Any person signing the petition must be an elector of the community. This means that the signer must be eligible to vote in the community, above 18 years old, and a Canadian citizen. The person must have been residing in Alberta for 6 consecutive months immediately preceding the date of the petition, and must be a resident in the area on the date they sign the petition.

The basic structural requirements for a petition will be similar for the different types of petitions. To oblige the municipality to take a particular action, the number of names must equal 10% of the county's population (except when it concerns a local improvement).

The petition must include:

- the surname, given name or initials of the petitioner;
- the signature of the petitioner;
- a street address or legal land description (post office boxes or rural route addresses are not sufficient);
- the date; and
- the signature of an adult witness.

The witnesses must also sign an affidavit. All signatures on the petition must be dated no longer than 60 days from when the petition is filed. If you are hoping to use a petition to forward a particular group issue, we recommend calling Municipal Affairs at 1-780-427-2225 to see if the issue can be petitioned under the MGA.

The Ombudsman

Starting April 1, 2018, the Alberta Ombudsman will be able to investigate complaints to determine whether or not a municipality acted fairly and reasonably. If an individual believes that their municipality has not treated them fairly, they may wish to file a complaint, in writing, with the Ombudsman. For more information and to file an online complaint visit <https://www.ombudsman.ab.ca/>

The Ombudsman cannot overturn a municipality's policy decision, but it has the authority to review the process that led to the decision. Using the services of the Ombudsman is a last resort. Before filing a complaint with the Ombudsman, an aggrieved person must go through the relevant municipal review or appeal process. The Ombudsman can be reached at 1-888-455-2756.