

Municipal Powers, Land Use Planning,  
and the Environment:  
Understanding the Public's Role

James S. Mallet

Environmental Law Centre  
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# THE ENVIRONMENTAL LAW CENTRE

The Environmental Law Centre (Alberta) Society is a registered charitable organization that was incorporated in 1982 to provide Albertans with an objective source of information on environmental and natural resources law. The Centre, which is staffed by four full-time lawyers, a librarian and a small support staff, provides services in environmental law education, assistance, research and law reform. The Centre maintains an extensive library of environmental law materials that is accessible by the public free of charge.

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## **Municipal Law and the Environment Series**

This paper is the first module of a four-module project on municipal government and the environment undertaken by the Environmental Law Centre. The second module, which will examine law and policy affecting brownfield redevelopment and opportunities for law reform, will lead to the publication of a report in 2006. Modules three and four will address rural municipal and environmental issues, and provide a public legal education program on municipal government and environmental concerns. For further information on this series, contact the Environmental Law Centre.

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J.S.M.

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## Introduction

Municipalities exercise a broad range of powers that have significant direct and indirect impacts on the environment. Alberta's cities, towns, and rural municipalities are already key players in waste management, water and wastewater treatment, and land use planning and development. They have the authority to assume a greater role in the regulation and management of natural areas including wetlands, air and water quality, toxic substances, redevelopment of contaminated lands, water conservation, wildlife, and other aspects of the environment within the municipality.<sup>1</sup> Although in recent years many municipalities have become more active in these less traditional areas, others have done so minimally or erratically, due to factors such as low public awareness, lack of financial and technical resources, and a general unfamiliarity with local environmental issues.<sup>2</sup> However, municipalities are under increasing public pressure to address these issues, and to incorporate environmental priorities into land use planning and development.<sup>3</sup>

Section 1 of this paper examines the power of Alberta municipalities to regulate aspects of the environment through the general bylaw power. The sources and scope of municipal authority over the environment are explained, as are opportunities for public involvement.

Section 2A examines the significant power of municipalities to affect the environment through the land use planning and development process. After an examination of the major players in the development process, this section describes municipal planning powers, the key planning policies and the land use bylaw, the subdivision and development process, tools and process for regional planning, and the provincial role in municipal land use planning and development.

Section 2B examines formal opportunities for public involvement in the land use planning process. In section 2C, this paper sets out further, informal opportunities to influence municipal planning and development policy. The need for provincial leadership and opportunities for public input into regional planning are reviewed next. This section concludes with guidance on speaking out for or against a particular development.

Traditionally, concerned individuals and groups have taken action to protect a natural area or oppose a local development at the 11<sup>th</sup> hour. This paper proposes a new

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<sup>1</sup> Larry A. Reynolds, "Environmental Regulation and Management by Local Public Authorities in Canada" (1993) 3 J.E.L.P. 41 at 76-77 [Environmental Regulation and Management].

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.* at 42.

direction for citizen involvement in municipal planning and development. There are tremendous gains to be made, in terms of more efficient development, building and site design, natural areas conservation, and agricultural land preservation, from involvement at the earliest stages of planning. Formal and informal opportunities to influence council should be fully exercised to promote conservation priorities. Finally, to be most effective, efforts to protect natural areas in urban municipalities should be refocused on lands near the urban fringe that are not under imminent development pressure.

### **A word of caution about your use of this material**

All information in this paper is current to June 1, 2005. As you use it, it is important to keep in mind that laws and government policies are subject to change. You may wish to consult a lawyer, or the Environmental Law Centre, to determine how the law applies to your circumstances. *You should not rely on the information in this paper as legal advice.*

### **List of acronyms**

The following acronyms are used throughout this paper for ease of reference:

ARP – area redevelopment plan  
ASP – area structure plan  
CFO – confined feeding operation  
DFO – Department of Fisheries and Oceans  
*EPEA – Environmental Protection and Enhancement Act*  
EUB – Alberta Energy and Utilities Board  
IDP – intermunicipal development plan  
IPA – intermunicipal planning authority  
MDP – municipal development plan  
*MGA – Municipal Government Act*  
MGB – Municipal Government Board  
NASP – neighbourhood area structure plan  
NRCB – Natural Resources Conservation Board  
NSP – neighbourhood structure plan  
SCDB – servicing concept design brief  
SDAB – subdivision and development appeal board  
SLAPP – strategic lawsuit against public participation

# 1. Municipal powers and the environment

## A. Sources of municipal power to regulate the environment

### *The Municipal Government Act*

In Alberta, municipalities are created by and derive their powers primarily from the *Municipal Government Act (MGA)*.<sup>4</sup> A “municipality” includes a city, town, village, summer village, municipal district or specialized municipality.<sup>5</sup>

Generally speaking, municipalities are not directly empowered to regulate or protect the environment. However, under the *MGA* and other provincial statutes, they have broad powers to act and pass bylaws in hundreds of ways that directly or indirectly affect the environment. Municipalities can only exercise their powers for municipal purposes, which are broadly stated by the Act: to govern effectively, provide public services and infrastructure, and develop and maintain healthy communities.<sup>6</sup>

The *MGA* provides municipalities with two main sources of power to accomplish these purposes. Firstly, municipalities have “natural person powers”, meaning they have all the rights that the common law attributes to a natural person. This includes the power to borrow and lend money, buy and sell land, make investments, restrict activities on land that they own, etc.<sup>7</sup> These natural person powers are subject to any express restrictions set out in the *MGA* or other legislation.

The second main source of municipal authority is the general power to pass and enforce bylaws. Municipalities may pass bylaws respecting a variety of municipal issues, including:

- (a) the safety, health and welfare of people and the protection of people or property;
- (b) people, activities and things in, on or near a public place or place that is open to the public;
- (c) nuisances, including unsightly property;
- (d) transport and transportation systems;

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<sup>4</sup> R.S.A. 2000, c. M-26 [*MGA*].

<sup>5</sup> *Ibid.*, s. 1(1)(s).

<sup>6</sup> *Ibid.*, s. 3.

<sup>7</sup> *Ibid.*, s. 6.

- (e) businesses, business activities and persons engaged in business;
- (f) services provided by or on behalf of the municipality;
- (g) public utilities; and
- (h) wild and domestic animals and activities in relation to them.<sup>8</sup>

The *MGA* provides that the general bylaw power is stated in general terms to give broad authority to councils to respond flexibly to present and future issues in their municipalities.<sup>9</sup>

In addition to this general power, the *MGA* provides municipalities with specific land use planning powers, control and management of roads and water bodies, authority to expropriate and annex land, and the power to raise revenues through property, business and other taxation.<sup>10</sup> These powers and those listed above are exercised pursuant to the *MGA* and through the passing of bylaws, resolutions, and related municipal policies.

### **Municipal powers under other statutes**

A number of other provincial Acts provide municipalities with additional powers that may affect the environment. Important examples include:

- ***Environmental Protection and Enhancement Act*** - Under this Act, municipalities and other local authorities may accept, hold and enforce conservation easements.<sup>11</sup> This important land use planning tool is discussed in section 2A, under *Conservation easements*.
- ***Historical Resources Act*** - This Act gives municipalities the power to make designations or enter into agreements with landowners to protect historic resources.<sup>12</sup> The Act's definition of "historic resource" is very broad and includes sites and features of historic, cultural, natural, scientific or esthetic interest. Although the Act has primarily been used to protect historic and cultural sites, it could be used to designate or establish agreements to protect important natural sites, such as a significant wetland.<sup>13</sup>

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<sup>8</sup> *Ibid.*, s. 7.

<sup>9</sup> *Ibid.*, s. 9.

<sup>10</sup> *Ibid.*, ss. 14-15, 16-27.6, 60, 112.1-128, 326-452, 616-697.

<sup>11</sup> R.S.A. 2000, c. E-12, ss. 22-24 [*EPEA*].

<sup>12</sup> R.S.A. 2000, c. H-9.

<sup>13</sup> Arlene J. Kwasniak, *Reconciling Ecosystem and Political Borders: A Legal Map* (Edmonton: Environmental Law Centre, 1997) at 159-161 [*Reconciling Ecosystem*].

- **Traffic Safety Act** - This Act gives municipalities broad powers to regulate the use of highways and roads under their jurisdiction and related traffic management issues.<sup>14</sup> Powers most likely to affect the environment include the ability to regulate vehicle noise and the use of road allowances.
- **Dangerous Goods Transportation and Handling Act** - This Act provides municipalities with a limited authority to designate dangerous goods routes.<sup>15</sup>

## B. Key areas of municipal jurisdiction

Municipal bylaws affect the environment in many ways, from regulating and licensing businesses, to controlling nuisances, to a wide variety of measures designed to protect or enhance the general welfare of the community. While a comprehensive review of municipal jurisdiction is beyond the scope of this paper, key areas of jurisdiction are examined briefly below.

In many cases, it is through their jurisdiction over land use planning and development that municipalities have their greatest impact on the environment. This process, the applicable law, and opportunities for public involvement are examined in detail in Part 2, *Municipal land use planning and the environment*.

### **Business licensing and regulation**

Alberta municipalities are authorized to license and regulate businesses within their boundaries.<sup>16</sup> This includes the power to restrict or prohibit businesses that are unsuitable or undesirable due to local health or environmental impacts, provided the regulation does not conflict with federal or provincial law.<sup>17</sup>

However, decisions regarding acceptable locations for different types of businesses and industrial facilities, and site-specific development conditions, are made through the land use planning process.

### **Nuisances**

Municipalities are empowered to pass bylaws respecting nuisances and unsightly property.<sup>18</sup> “Nuisance” is not defined in the legislation, leaving municipalities with the

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<sup>14</sup> R.S.A. 2000, c. T-6, ss. 13-14. The power to manage and control roads within a municipality is provided by the *MGA*, *supra* note 4 at ss. 16-27.6.

<sup>15</sup> R.S.A. 2000, c. D-4, s. 17.

<sup>16</sup> *MGA*, *supra* note 4, ss. 7(e), 8.

<sup>17</sup> Concerning conflicts, see section 1C, *The scope of municipal powers to regulate the environment*.

<sup>18</sup> *MGA*, *supra* note 4, s. 7(c).

flexibility to determine what behaviours will constitute a nuisance.<sup>19</sup> For example, Edmonton's *Nuisance Bylaw* defines nuisance to include "any condition on or around property that is untidy, unsightly, offensive, dangerous to health or which interferes with the use or enjoyment of other property."<sup>20</sup> A nuisance bylaw could be used to restrict the alteration of landscape or wetlands in any way that affects water levels on neighbouring property.<sup>21</sup> Particular conditions (such as noise or odours) and activities that may cause a nuisance may be dealt with under a general nuisance bylaw or under a separate bylaw. However, many public health issues fall within the jurisdiction of the Regional Health Authorities, which are established and operate independently of municipalities. The Regional Health Authorities are responsible for the administration and enforcement of the *Public Health Act* and related regulations.<sup>22</sup> Municipal regulation of nuisances must not conflict with the provisions of the *Public Health Act* or any other statute.<sup>23</sup>

Nuisance bylaws offer some protection for citizens and the environment against dangerous or bothersome conditions. However, municipalities are increasingly relying on their broader general welfare power to address emerging air and water quality concerns, the long-term effects of potentially toxic substances, and other pressing environmental issues.

### **Safety, health and general welfare**

Municipalities are empowered to pass bylaws respecting the safety, health and welfare of people and the protection of people and property.<sup>24</sup> This power, referred to as the general welfare power, has been broadly interpreted by the courts.<sup>25</sup> In addition, the *MGA* specifies that the power to make bylaws is intended to enable councils to respond flexibly to present and future concerns.<sup>26</sup> Taken together, the *MGA* and the recent case law provide Alberta municipalities with a wide latitude to respond to the particular health and environmental concerns of their residents.<sup>27</sup> This is effectively a residual power, subject to the broad parameters of the *MGA*. On the basis of such general welfare provisions, Canadian municipalities have passed bylaws to control smog, greenhouse gas emissions, the cosmetic use of pesticides, smoking, and other health and

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<sup>19</sup> Environmental Regulation and Management, *supra* note 1 at 57.

<sup>20</sup> City of Edmonton, By-law No. 10406, *Nuisance Bylaw*, s. 3.

<sup>21</sup> *Reconciling Ecosystem*, *supra* note 13 at 141.

<sup>22</sup> R.S.A. 2000, c. P-37.

<sup>23</sup> Concerning conflicts, see section 1C, *The scope of municipal powers to regulate the environment*.

<sup>24</sup> *MGA*, *supra* note 4, s. 7(a).

<sup>25</sup> 114957 *Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241 at para. 19 [*Hudson*].

<sup>26</sup> *MGA*, *supra* note 4, s. 9.

<sup>27</sup> Marcia Valiente, "Turf War: Municipal Powers, the Regulation of Pesticides and the *Hudson* Decision" (2002) 11 J.E.L.P. 325 [Turf War].

environmental concerns.<sup>28</sup> As a further example, this power could also arguably be used to protect wetlands for their pollution assimilation properties, as a way to promote the health of municipal residents.<sup>29</sup>

However, the issue addressed by such a bylaw must be closely related to problems that engage the immediate interests of the community on a local level. The issue must also normally be a matter in which the municipality can usefully intervene.<sup>30</sup> The bylaw itself must be directed at a municipal purpose (e.g., maintaining a safe community by promoting the health or well-being of residents of the municipality), must not improperly discriminate, and must not directly conflict with provincial or federal law.<sup>31</sup>

### **Other areas of bylaw jurisdiction**

Municipalities are also empowered to pass bylaws respecting:

- transport and transportation systems;
- services provided by or on behalf of the municipality;
- public utilities;
- people, activities and things in, on or near a public place or place that is open to the public; and
- wild and domestic animals and activities in relation to them.

An examination of these areas is beyond the scope of this paper. However, municipal authority over these areas can be exercised in such a way as to minimize environmental impacts.<sup>32</sup>

### **Municipal jurisdiction over wetlands**

The MGA provides municipalities with “direction, control and management of the rivers, streams, watercourses, lakes and other natural bodies of water within the municipality, including the air space above and the ground below”.<sup>33</sup> This likely

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<sup>28</sup> *Ibid.* at 337.

<sup>29</sup> *Reconciling Ecosystem*, *supra* note 13 at 140.

<sup>30</sup> *Hudson*, *supra* note 25 at para. 53.

<sup>31</sup> *Ibid.* at paras. 38-41. Concerning conflicts, see section 1C, *The scope of municipal powers to regulate the environment*.

<sup>32</sup> *Reconciling Ecosystem*, *supra* note 13 at 140-141.

<sup>33</sup> MGA, *supra* note 4, s. 60(1).

includes intermittent water bodies.<sup>34</sup> Municipal authority is subject to the jurisdiction of Alberta Environment, Environment Canada, the federal Department of Fisheries and Oceans, and other provincial and federal agencies with statutory authority over wetlands.

The Province is the owner of all water in Alberta, and regulates water uses.<sup>35</sup> Subject to exceptions, the Alberta *Water Act* requires an authorization for any activity that can interfere with water or aquatic habitat, such as draining or altering a wetland.<sup>36</sup> The Province also regulates and retains ownership of the beds and shores of permanent, naturally-occurring water bodies, whether on private or public land.<sup>37</sup> The federal government regulates water pollution and other activities that can affect fish habitat and migratory birds.<sup>38</sup> Activities that can affect navigation also normally require authorization from the federal government.<sup>39</sup>

Wetlands are something of a jurisdictional hornet's nest. As a result, many wetlands are drained every year for development without comprehensive regulatory review. Municipalities have traditionally relied on provincial regulators to protect wetlands from unauthorized alteration or drainage. In many cases, the Province has been reluctant to do so unless the municipality is willing to manage the wetland. Management issues include public access, potential effects on nearby property and property owners, general property maintenance, and ongoing viability of the wetland. As with parks management generally, management of wetlands involves significant costs to a municipality.

Concerning steps to protect wetlands, see section 2C, under *Conserving wetlands*.

## **Enforcement**

The *MGA* empowers municipalities to use bylaws to create offences, authorize inspections, and establish penalties.<sup>40</sup> Bylaws are enforced by local bylaw enforcement officers, local police or, where none, the RCMP.

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<sup>34</sup> Arlene J. Kwasniak, *Alberta's Wetlands: A Law and Policy Guide* (Edmonton: Environmental Law Centre, 2001) at 45.

<sup>35</sup> *Water Act*, R.S.A. 2000, c. W-3, s. 3(2).

<sup>36</sup> *Ibid.*, s. 36. Regarding exceptions, see the *Water (Ministerial) Regulation*, Alta. Reg. 205/98, ss. 3-4 and Sch. 1.

<sup>37</sup> *Public Lands Act*, R.S.A. 2000, c. P-40, s. 3.

<sup>38</sup> *Fisheries Act*, R.S.C. 1985, c. F-14, ss. 35(1), 36(3); *Migratory Birds Regulations*, C.R.C., c. 1035, ss. 6, 35.

<sup>39</sup> *Navigable Waters Protection Act*, R.S.C. 1985, c. N-22, s. 5.

<sup>40</sup> *MGA*, *supra* note 4, ss. 7(i), 541-556.



The MGA also specifically provides designated officers with the power to order that a person contravening a bylaw remedy the situation.<sup>41</sup> Landowners can be ordered to remedy unsafe or unsightly conditions on land. In addition, municipalities have a limited authority to remedy contraventions and unsightly property, and have a broad power to respond to emergencies.<sup>42</sup>

### C. The scope of municipal powers to regulate the environment

Municipalities are creatures of provincial statute. This means that, unlike the federal and provincial levels of government, municipalities can only act within the parameters of the powers delegated to them by their enabling legislation. To be valid, an action of a municipality must be pursuant to:

- powers expressly granted by statute;
- powers necessarily or fairly implied by such an express grant of power; or
- powers indispensable, and not merely convenient, to carrying out a municipal purpose.<sup>43</sup>

Whether a bylaw, resolution or other municipal act is within the municipality's authority to pass is normally a question of statutory interpretation.

There is an emerging body of case law that indicates a new willingness of the courts to allow municipalities greater flexibility to respond to local environmental and human health concerns.<sup>44</sup> In these cases, the Supreme Court of Canada has emphasized that councils consist of local, elected representatives, and as such are in the best position to address local problems and concerns. On this basis, the Court has held that municipal powers must be given a benevolent construction:

In approaching a problem of construing a municipal enactment a court should endeavour firstly to interpret it so that the powers sought to be exercised are in consonance with the purposes of the corporation. The provision at hand should be construed with reference to the object of the municipality: to render services to a group of persons in a locality with a view to advancing their health, welfare, safety and good government.<sup>45</sup>

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<sup>41</sup> *Ibid.*, ss. 545-546.

<sup>42</sup> *Ibid.*, ss. 549-551.

<sup>43</sup> *Hudson*, *supra* note 25 at para. 18.

<sup>44</sup> *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342 [*Rascal Trucking*]; *Hudson*, *supra* note 25; *Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710 at paras. 191-205 (per LeBel J.).

<sup>45</sup> Ian M. Rogers, *The Law of Canadian Municipal Corporations*, 2<sup>nd</sup> ed., looseleaf (Toronto: Carswell, 1971) at para. 64.1; as quoted in *Hudson*, *supra* note 25 at para. 26.

This “broad and purposive approach” to interpreting municipal enabling statutes such as the *MGA* incorporates an element of judicial deference.<sup>46</sup> The legality of a bylaw or resolution will normally depend on “a reasonable connection to the municipality’s permissible objectives”.<sup>47</sup> These include the promotion of its residents’ health, the use and protection of the natural environment within the community, the use of land and property within the municipality, and neighbourhood concerns.<sup>48</sup> Provided a bylaw is directed primarily at such an objective and not another, ulterior purpose, it will normally be within municipal jurisdiction.

Many municipalities are reluctant to pass innovative environmental or health bylaws out of concern that they may face protracted and expensive litigation should the bylaw be challenged. Where several municipalities are interested in adopting a bylaw to address an emerging environmental concern, potential liability could be managed through an agreement among the municipalities to share legal costs in the event of a challenge.

Once a bylaw or resolution is found to be within municipal authority to pass, a court considering the legality of a bylaw will examine any conflicts with statutes other than the *MGA*. To the extent a bylaw is inconsistent with federal or provincial law, the bylaw is invalid.<sup>49</sup> The courts have taken a liberal approach and, unless a different test is provided by statute, will only find a conflict where there is an “express contradiction” between the bylaw and the statute in question.<sup>50</sup> Generally speaking, unless both the bylaw and the statute address similar subject matter, and obeying one necessarily means disobeying the other, there will be no conflict. The Supreme Court’s recent articulation of this approach will reduce the range of potential

conflicts and support greater municipal action, even in areas already heavily regulated by the provincial or federal governments.<sup>51</sup>

If a bylaw is found to be within municipal jurisdiction and no conflict is found, the bylaw is entitled to a high level of deference from the courts. Normally, only when an action of council is patently unreasonable, or the procedural requirements imposed by statute and the common law have not been fulfilled, will the courts interfere.

In sum, the scope of municipal authority to address environmental and human health concerns through bylaws and resolutions is expanding. Municipalities are taking on

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<sup>46</sup> *Rascal Trucking*, *supra* note 44 at para. 18; *Turf War*, *supra* note 27 at 335.

<sup>47</sup> *Hudson*, *supra* note 25 at para. 26.

<sup>48</sup> *Ibid.* at paras. 27, 54; *Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, [2004] 3 S.C.R. 304 at para. 38.

<sup>49</sup> *MGA*, *supra* note 4, s. 13.

<sup>50</sup> *Hudson*, *supra* note 25 at paras. 34-36. It appears unlikely that s. 13 of the *MGA*, *supra* note 4, creates a different test: see *Hudson*, *supra* note 25 at para. 40.

<sup>51</sup> *Turf War*, *supra* note 27 at 339, 341.

more responsibility for specific, local social and environmental concerns.<sup>52</sup> However, there are many existing and emerging local environmental and health issues that have not been specifically addressed by municipal councils. To date, only a small number of innovative environmental and health bylaws have been challenged in the courts. In the absence of legislative reform, further direction from the courts is needed to determine how far councils may go to regulate these issues.

#### D. Public involvement (non-planning and development matters)

As public awareness of environmental concerns grows, many municipal councils are under increasing pressure to address issues such as air and water quality, the presence or use of toxic substances, and the redevelopment of remediated property. Recent court cases and federal funding programs have highlighted the importance of municipalities in providing local solutions to social and environmental problems. This spotlight on the key role of municipalities presents an opportunity for residents to organize around issues of concern to influence council priorities.

Most municipal councils respond to signs that public opinion on an issue is changing, or evidence of public demand for change. They are less likely to undertake bold initiatives in the absence of demonstrated public support. Public awareness and education campaigns can be instrumental in raising this kind of support (the recent campaigns by environmental and other groups to inform the public about pesticide-related risks are an excellent example). Through such campaigns, the public can be provided with the information they need to take a position on an issue and express their concerns to their municipal councilors.

The Internet is a useful source of information for individuals and groups seeking municipal action on environmental issues. For example, groups such as the Sierra Club of Canada and the Canadian Environmental Law Association provide web information on pesticide reduction, including sample bylaws.<sup>53</sup> West Coast Environmental Law's Smart Bylaws Guide, a series of publications available online, is another useful tool for those seeking law and policy reform.<sup>54</sup> Information on community energy planning is available through the Pembina Institute.<sup>55</sup>

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<sup>52</sup> *Ibid.* at 327.

<sup>53</sup> See Sierra Club of Canada, online: <<http://www.sierraclub.ca/>>; Canadian Environmental Law Association, online: <<http://www.cela.ca/>>.

<sup>54</sup> West Coast Environmental Law, Smart Bylaws Guide, online: <<http://www.wcel.org/issues/urban/sbg/>>.

<sup>55</sup> See Pembina Institute for Appropriate Development, online: <<http://www.pembina.org/>>.

## Speaking to a proposed bylaw or resolution

Municipal councils can only act by passing resolutions or bylaws.<sup>56</sup> This includes the power to amend or repeal a bylaw. While a resolution is merely an expression of the opinion of council, a bylaw is law and therefore legally enforceable.

Before being passed, proposed bylaws and resolutions must go through three readings.<sup>57</sup> All meetings and hearings before council and council committees must be open to the public unless exceptions apply.<sup>58</sup> Everyone has a right to be present, but council may expel any person for improper conduct. Normally, no more than two readings may be carried out at any one council meeting.<sup>59</sup>

While anyone may attend a meeting, the public only has a right to address council where the *MGA* provides for a formal hearing. Council is only required to notify the public and hold public hearings in connection with specified planning and development matters.<sup>60</sup> However, even when a hearing is not required, council may nevertheless agree to hear from any person wishing to speak to a matter before council.<sup>61</sup> Refer to the local municipal procedure bylaw for guidance.

## Environmental bylaws and public petitions

The *MGA* provides residents with the power to compel municipal councils to enact bylaws addressing a variety of issues, including environmental matters.<sup>62</sup> The following is a summary of the relevant provisions.

Under the *MGA*, a petition may be submitted to the Chief Administrative Officer of the municipality to require council to:

- hold a public meeting to discuss an issue (s. 229);

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<sup>56</sup> *MGA*, *supra* note 4, s. 180.

<sup>57</sup> *Ibid.*, s. 187.

<sup>58</sup> Meetings may be closed to the public to discuss certain matters that are excepted from public disclosure under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25. Municipal planning commissions and subdivision and development authorities and appeal boards may deliberate and make decisions in meetings closed to the public: *MGA*, *supra* note 4, ss. 197(2), (2.1).

<sup>59</sup> *MGA*, *supra* note 4, s. 187(4).

<sup>60</sup> *Ibid.*, ss. 230, 692. Hearings are also required before council concerning specified municipal action in connection with reserve lands (*ibid.*, ss. 674, 676). An opportunity to address council may also be required under the formal petition process (*ibid.*, s. 229).

<sup>61</sup> See *e.g.* City of Edmonton, By-law No. 12300, *Procedures and Committees Bylaw*, ss. 200-214.

<sup>62</sup> *MGA*, *supra* note 4, ss. 217-240.

- hold a vote of electors to determine whether a bylaw or resolution advertised by the municipality should pass (s. 231);
  - this provision does not apply to road closure bylaws or bylaws/resolutions concerning planning and development matters (Part 17 of the *MGA*);

or

- pass or put to a vote of electors a new bylaw, including a bylaw to amend or repeal an existing bylaw or resolution (s. 232);
  - the bylaw must be within the jurisdiction of council to pass; and
  - this provision does not apply to bylaws concerning financial administration (Part 8 of the *MGA*), property assessment (Part 9), taxation (Part 10), or planning and development (Part 17).

Council can only be compelled to act by a petition that meets the requirements set out in the Act. The petition must be signed by at least 10% of the municipal population, and only individuals eligible to vote in a municipal election (electors) may sign.<sup>63</sup> There are specific requirements regarding the content, format, signing, dating, witnessing, etc. of the petition that must be observed to avoid having names struck off the petition.<sup>64</sup> The petition must also be filed as provided by the *MGA* within a specified time after the last signature is collected.<sup>65</sup>

If the matter is put to a vote of the electors and approved by the majority, the council must pass the bylaw or resolution.

The number of signatures required and the formal requirements of the petition process present serious challenges for individuals and groups considering this tool. However, petitions have been used successfully to compel councils to put proposed environmental bylaws to a vote of the electors. In *Smillie v. Saskatoon (City)*, residents used a statutory petition process to compel the city council to submit a proposed bylaw amendment to a vote of electors.<sup>66</sup> The effect of the proposed amendment was to prohibit the city from permitting anyone other than a medical or educational institution from dumping radioactive waste into the city's sewer system.

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<sup>63</sup> *Ibid.*, s. 223. For a summer village, at least 10% of individuals eligible to vote in a municipal election must sign.

<sup>64</sup> *Ibid.*, ss. 224-226.

<sup>65</sup> *Ibid.*, ss. 231, 233.

<sup>66</sup> (1979), 9 C.E.L.R. 131 (Sask. Q.B.).

## Statutory appeal of bylaws and resolutions

The *MGA* provides that a person can apply to the Court of Queen's Bench for an order declaring a bylaw or resolution to be invalid.<sup>67</sup> An order can also be sought requiring council to amend or repeal a bylaw to comply with a previous vote by the electors on the issue. Although the *MGA* is broadly worded, it is likely that only persons who are directly and specifically affected by the bylaw or resolution have standing to bring the application.<sup>68</sup> Public interest standing may be available to applicants where there is a serious or triable issue, the applicant has a genuine interest in the matter, and there are no other persons more directly affected who might reasonably be expected to bring the application.<sup>69</sup> Incorporated bodies may obtain standing where individual members can show they may be affected by the challenged bylaw or resolution.<sup>70</sup>

Statutory appeal is not available where the basis of the challenge is that the bylaw or resolution is unreasonable.<sup>71</sup>

There is a 60-day time limit to apply where the basis of the challenge is that the process or manner in which the decision was made did not comply with the *MGA*.<sup>72</sup> However, this time limit does not apply where:

- a required public hearing was not held;
- a bylaw was required to be advertised but was not;
- a bylaw was not put to a vote of the electors as required;
- a vote of the electors did not approve the bylaw; or
- council refused to pass the bylaw as required after a vote of the electors on the issue.<sup>73</sup>

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<sup>67</sup> *MGA*, *supra* note 4, s. 536.

<sup>68</sup> Frederick A. Laux, *Planning Law and Practice in Alberta*, 3rd ed. (Edmonton: Juriliber, 2002), s. 16.4(2) [*Planning Law*].

<sup>69</sup> *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607; *Reese v. Alberta (Minister of Forestry, Lands & Wildlife)* (1992), 7 C.E.L.R. (N.S.) 89 (Alta. Q.B.).

<sup>70</sup> *Planning Law*, *supra* note 68, s. 16.3(1).

<sup>71</sup> *MGA*, *supra* note 4, s. 539.

<sup>72</sup> *Ibid.*, s. 537. For discussion see *Planning Law*, *supra* note 68, s. 16.4(4).

<sup>73</sup> *MGA*, *supra* note 4, s. 538.

## Judicial review of bylaws and resolutions

The Court of Queen's Bench also retains common law jurisdiction to review any municipal bylaw or resolution for illegality. This includes a bylaw council was not authorized to pass or a failure to fulfill procedural requirements set out in the MGA, its regulations, or the land use bylaw. However, a court will not interfere with an act of council on policy grounds or merely because the court would have come to a different conclusion. In most cases available statutory appeals must be exhausted first, although time limits for bringing an application for judicial review are generally less restrictive. The applicable procedure is set out in the *Alberta Rules of Court*.<sup>74</sup>

Where an act of council is invalidated due to a procedural problem, the matter can often be remedied by council complying with procedural requirements the second time around. However, such delays can provide an important opportunity to raise public support for an issue.

While an examination of the possible grounds for statutory appeal or judicial review is beyond the scope of this paper, some of the more commonly argued grounds are:

- *ultra vires* (where the municipality acted beyond its authority);
- bias on the part of a councilor (where a councilor demonstrates that he or she has formed a final opinion, that cannot be dislodged, on a matter to be decided later by council);
- bad faith (which can include fraud, corruption, personal interest, improper motives or collateral purposes);
- discrimination (where an action that discriminates is carried out with an improper motive of favouring or hurting an individual or group without regard to the public interest);
- improper delegation (where council delegates to municipal officials, staff or committees a function or power that it is required to exercise itself); and
- uncertainty or vagueness (generally, where a reasonably intelligent person would be unable to determine the meaning of the bylaw and govern his actions accordingly).<sup>75</sup>

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<sup>74</sup> *Alberta Rules of Court*, Alta. Reg. 390/68, r. 753.01-753.19.

<sup>75</sup> See generally *The Law of Canadian Municipal Corporations*, *supra* note 45, ss. 190-196.

Judicial review is a complex area of the law. Standing to apply, procedural requirements, grounds, and other potential legal and practical barriers should be discussed with a lawyer before proceeding.

## 2. Municipal land use planning and the environment

### A. Understanding the municipal planning and development process

Municipal land use planning, and the scale and quality of municipal development generally, have a tremendous impact on the local and regional environments. Through a variety of bylaws and policies, municipalities decide where development will occur, whether new buildings and subdivisions will promote compact and efficient growth, whether choice agricultural lands and significant natural features will be conserved, how older neighbourhoods will be maintained, the availability of public transportation, and a host of other factors affecting the environment and quality of life.

The purpose of Part 2 of this paper is to explain the municipal land use planning process, and opportunities for public involvement, from an environmental and community development perspective. Readers concerned about development from a property value point of view are referred to existing resources on this topic.<sup>76</sup>

#### **Note regarding the term “smart growth”**

In discussing options for municipal development, it is useful to refer to “smart growth”, a series of basic principles that minimize environmental impacts, promote quality of life, and save money over time. Although the term has been used in many contexts and many ways, there is general consensus around the following key principles:

- compact, multi-use development;
- natural and open-space conservation (including prime agricultural land);
- expanded mobility (enhanced walkability and transportation options);
- enhanced livability (human-scale design promoting a sense of community);
- a range of housing opportunities and choices;
- efficient management and expansion of infrastructure; and

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<sup>76</sup> *Planning Law*, *supra* note 68.



- strengthening and directing development toward existing communities .<sup>77</sup>

For the purposes of this paper, smart growth refers to planning and development that prioritizes these principles.

### **The players**

The municipality is not the only, or even the primary, force driving land development in Alberta. The development industry, which includes land developers, architects, builders, construction contractors, financial institutions, environmental consultants, and a variety of other professionals, is responsible for the preparation, financing and implementation of most plans to subdivide and develop land. Developers also prepare technical and feasibility studies for new development and, as necessary, submit applications to amend a variety of plans and the land use bylaw.

The role of the municipality is primarily to set policy and administer a process, established by the *MGA*, for the orderly growth of settlement within the municipality. Responsibilities of council include developing and establishing high-level policies indicating general patterns of desired growth, setting zoning restrictions and development standards through the land use bylaw, and addressing rezoning and major development proposals. In some cases, municipalities are also large landowners and developers.

Within the municipality, a planning and development department typically administers applications for subdivision, development, and land use changes. The department also coordinates civic action on development-related issues, and recommends policies to council. Department officials review proposals, coordinate referrals and technical reviews, provide information to the other players in the planning process, and speak at meetings and formal public hearings. Approvals for subdivision and development are issued by municipal subdivision and development authorities.

The provincial government also plays an important, if under-exercised, role in municipal planning and development. As owner of the beds and shores of most water bodies in Alberta, the Province can restrict development affecting permanent and

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<sup>77</sup> Douglas R. Porter, *Making Smart Growth Work* (Washington, D.C.: Urban Land Institute, 2002) at 1. See also F. Kaid Benfield, Jutka Terris & Nancy Vorsanger, *Solving Sprawl: Models of Smart Growth in Communities Across America* (New York: Natural Resources Defense Council, 2001); Deborah Curran, *A Case for Smart Growth* (Vancouver: West Coast Environmental Law, 2003); David Gordon, *Green Cities: Ecologically Sound Approaches to Urban Space* (Montreal: Black Rose Books, 1990); Linda Nowlan, Chris Rolfe & Kathy Grant, *The Smart Growth Guide to Local Government Law and Advocacy* (Vancouver: West Coast Environmental Law, 2001); Ray Tomalty *et al.*, "Smart Growth" (2003) 29:3 *Alternatives* 3-30.

naturally occurring wetlands, streams, rivers and lakes.<sup>78</sup> The provincial Department of Environment sets policy for municipal site-condition evaluation in the subdivision process, and regulates industrial facilities and other activities that can affect health and the local environment.

The Province also has a broad jurisdiction to control and manage municipal growth through provincial land use policies, although the current policy offers little direction.<sup>79</sup> In addition, the Province influences municipal development priorities through its funding of municipal service and infrastructure projects. The provincial government also establishes processes and imposes requirements and restrictions on municipal development by regulation. Finally, the provincial legislature has the ultimate authority to extend, restrict or vary powers granted to municipalities under the *MGA*.

The Alberta Energy and Utilities Board (EUB) and the Natural Resources Conservation Board (NRCB) are independent agencies of the provincial government that also have significant powers over municipal land use planning. The EUB grants authorizations for oil, gas, and coal development and related facilities, and for electrical energy facilities.<sup>80</sup> The NRCB issues authorizations for a variety of activities, including confined feeding operations and major tourism, pulp and paper, and mineral development projects.<sup>81</sup>

The federal government plays an expanding but indirect role in municipal development. Ottawa provides financial support and tax rebates for energy efficiency initiatives, brownfield redevelopment, and the development of public transportation and other municipal infrastructure projects. The federal government's regulatory role in municipal development is largely limited to providing advice and issuing authorizations for development projects that may affect fish habitat or navigable waters. The Department of Fisheries and Oceans Canada also develops and implements policy for habitat protection and restoration.<sup>82</sup>

Finally, there is an important role for municipal residents, community leagues, and other affected groups in the land use planning process. Certain persons living near a proposed rezoning, subdivision or development have rights of notice, hearing, and appeal. There are formal opportunities for residents to provide input into municipal planning policies, and opportunities for the public to address council on specific

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<sup>78</sup> *Public Lands Act*, *supra* note 37, s. 3.

<sup>79</sup> Alberta Municipal Affairs, *Land Use Policies* (Edmonton: Alberta Municipal Affairs, 1996) [*Land Use Policies*]; adopted by *Land Use Policies*, O.I.C. 522/96 (Alberta).

<sup>80</sup> EUB jurisdiction is provided by a number of provincial statutes. For information, see Alberta Energy and Utilities Board, online: EUB < <http://www.eub.gov.ab.ca>>.

<sup>81</sup> *Natural Resources Conservation Board Act*, R.S.A. 2000, c. N-3, s. 4; *Agricultural Operation Practices Act*, R.S.A. 2000, c. A-7, s. 13.

<sup>82</sup> *Fisheries Act*, *supra* note 38, s. 35. For information on DFO policy and projects, see Department of Fisheries and Oceans, online: DFO < <http://www.dfo-mpo.gc.ca>>.

planning matters. Community members and groups can also influence the process in less formal ways, through ongoing advocacy for smart growth principles and participation in informal discussions with developers and other stakeholders.

### **Municipal planning and development powers**

The *MGA* provides municipalities with a range of planning powers to regulate private land development and ensure orderly growth. These powers are exercised within the context of a statutory process that imposes requirements upon municipalities and developers and provides opportunities for a variety of parties to comment. The basic framework of requirements and process is mandatory; municipalities have no authority to modify it or to act outside the jurisdiction provided them by the *MGA*. Within this planning and development framework, municipalities are free to guide development according to local priorities through a variety of mandatory and optional planning policies and bylaws.

The purpose of the municipal planning process, statutory plans and the land use bylaw, is:

- (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
- (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.<sup>83</sup>

One noted commentator has identified three stages in the planning process provided by the *MGA*.<sup>84</sup> First, a general, long-range plan for the whole municipality is articulated (municipal development plan). Second, a municipality may adopt a series of more detailed plans for a specific area of the municipality slated for development or redevelopment (area structure and redevelopment plans). These plans may relate to raw land or already developed areas. Other plans (neighbourhood area structure plans and neighbourhood structure plans) supplement these more detailed plans. Third, site-specific planning is carried out through a land use bylaw, which establishes zones, regulates land uses, and imposes development standards to promote compatibility and certainty for residents and businesses.

In addition to these, municipalities rely on a variety of non-statutory plans and policies to elaborate on the statutory planning framework or to help communities articulate a

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<sup>83</sup> *MGA*, *supra* note 4, s. 617.

<sup>84</sup> *Planning Law*, *supra* note 68, s. 5.1.

planning vision. The statutory plans, major non-statutory plans, and land use bylaw are described in this section.<sup>85</sup> This section also describes the subdivision and development processes, available regional planning tools, and provincial control over certain types of development. The process by which plans are adopted or endorsed by council, and opportunities for public involvement, are set out in sections 2B and 2C.

## **Statutory plans**

Statutory plans, which are those provided for by the *MGA*, are the pillars of the municipal planning and development framework. They include municipal development plans, area structure plans and area redevelopment plans. The *MGA* requires most municipalities to adopt a municipal development plan. The other plans provided by the *MGA* may be adopted as needed. Intermunicipal development plans, which are also provided for by the *MGA*, are an optional regional planning tool available to municipalities. All statutory plans must be consistent with each other and with existing provincial land use policies.<sup>86</sup>

### **The municipal development plan**

The municipal development plan (MDP) is a broad policy document that sets out a municipality's general priorities and objectives for growth.<sup>87</sup> The *MGA* requires that every municipality over 3500 residents adopts a municipal development plan. Smaller municipalities may adopt an MDP if they choose. An MDP must encompass the entire municipality and address future land use and development, the provision of transportation systems and municipal services and, in the absence of an intermunicipal development plan, specified intermunicipal planning matters. An MDP is not prescriptive; it does not require that decisions on subdivision and development applications be made one way or another. It normally consists of a series of proposals and long-range planning goals.

Typically, an MDP will identify general land use categories for different areas of the municipality, and set out a broad strategy for the development of existing and planned neighbourhoods, downtown, industrial and commercial areas, natural areas and open spaces, and other priority areas. An MDP normally includes policies for infrastructure development and maintenance, and must set out policies relating to the protection of agricultural lands and development near sour gas facilities.

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<sup>85</sup> For further guidance, see City of Edmonton Planning and Development, *The Planning and Development Handbook for the City of Edmonton* (Edmonton: City of Edmonton, 2001); Edmonton Federation of Community Leagues, *Community Consultation in the Planning and Development Process: A Guide for Edmonton* (Edmonton: EFCL, 2003); *Planning Law*, *supra* note 68.

<sup>86</sup> *MGA*, *supra* note 4, ss. 622(3), 638.

<sup>87</sup> *MGA*, *supra* note 4, s. 632.

The MGA also specifically allows municipalities to address environmental matters in an MDP.<sup>88</sup> For example, a municipality may identify environmentally sensitive areas and natural features and set forth proposals for their development or protection.<sup>89</sup> MDPs may also address any other matters that relate to the physical, social or economic development of the municipality.

### **Area structure plans**

The MGA allows municipalities to adopt area structure plans (ASP) to establish a general land use framework for land slated for development.<sup>90</sup> ASPs are used principally by urban municipalities to plan for land use, transportation and municipal services in undeveloped areas. While ASPs can include an area ranging from only a few acres to several sections of land, they are most commonly used to plan the development of large parcels of raw land. An ASP is more specific than the municipal development plan, and must set out proposed land uses, population densities, and the locations of major transportation routes and public utilities. An ASP normally sets out the location of municipal and environmental reserves, and may address any other matter that council considers necessary.

ASPs are normally prepared at the instigation and expense of the developer or developers involved. The principal objective of the plan is to ensure the compatibility of the proposed uses and infrastructure for the area with those of the surrounding area.<sup>91</sup>

### **Neighbourhood area structure plans**

Neighbourhood area structure plans (NASP) are small area structure plans that apply to one or two neighbourhoods. They meet all requirements for preparation of an ASP, and are approved by bylaw of council.

### **Neighbourhood structure plans**

After developing an area structure plan, a developer will typically prepare a neighbourhood structure plan (NSP) for areas within the ASP that will support 4,000-7,000 people (one neighbourhood). An NSP provides greater detail than either an ASP or a NASP, and will show the size and location of the neighbourhood's land use types and public facilities, transportation network (excluding local roads), and planned development stages. NSPs are approved by bylaw of council, normally as amendments to ASPs, with which they must comply.

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<sup>88</sup> *Ibid.*, s. 632(3)(b)(iii).

<sup>89</sup> *Planning Law*, *supra* note 68, s. 5.2.

<sup>90</sup> MGA, *supra* note 4, s. 693.

<sup>91</sup> *Planning Law*, *supra* note 68, s. 2.2(2)(f).

## **Area redevelopment plans**

Area redevelopment plans (ARP) function like area structure plans, but apply primarily to already developed areas within a municipality.<sup>92</sup> A municipality may adopt an ARP to preserve or improve land or buildings; build, remove or relocate buildings, roads and municipal facilities; and facilitate development in a specified area. An ARP typically describes the characteristics of the area, the objectives of the redevelopment strategy, and proposals for future land uses and development standards.<sup>93</sup> ARPs are commonly used to plan the revitalization of downtowns.

## **Non-statutory plans**

Municipalities may also adopt plans not provided for by the *MGA* (non-statutory plans). These are typically long-range policies that may include transportation plans, recreation plans, community plans, business development plans, and corridor and other land use studies. Although legitimate planning tools, they do not have the legal effect of a statutory plan, and are prepared at the municipality's option.<sup>94</sup> Formal hearings are not normally required to adopt, amend, or repeal them, but non-statutory hearings before council may be held as a matter of policy. The provisions of the *MGA* requiring consideration of or compliance with statutory plans do not apply to non-statutory plans. The following are examples of some commonly used non-statutory plans.

### **Plans for the whole municipality**

Several Alberta municipalities have undertaken high-level planning exercises to obtain broad stakeholder input on ways to grow more sustainably. The non-statutory plans that emerge can articulate a community vision for smarter growth, provide direction for council and planning authorities, and identify steps to be taken to improve quality of life. They may be adopted by resolution of council, but are non-binding.

### **Servicing concept design briefs**

The servicing concept design brief (SCDB) is a key non-statutory planning tool for new neighbourhoods in some urban areas. It is used to establish a general framework for municipal infrastructure, servicing, environmental requirements, and the location and development of major land uses. Like ASPs, an SCDB typically applies to an undeveloped suburban area considered to be an integrated planning unit. Unlike ASPs, SCDBs are adopted by resolution and are therefore more flexible.

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<sup>92</sup> *MGA*, *supra* note 4, s. 634-635.

<sup>93</sup> *Planning Law*, *supra* note 68, s. 5.4.

<sup>94</sup> *Planning Law*, *supra* note 68, s. 5.5.

## Community plans

Community plans, which are non-statutory, address social and land use issues in established neighbourhoods. They are often initiated by a local community league or other group to identify development goals and set out recommended practices designed to promote shared values and desires for the community. Community plans are endorsed by resolution of council. Generally, compliance with the plans is voluntary and not enforced by planning officials.

## The land use bylaw

All Alberta municipalities are required to adopt a land use bylaw to regulate the use and development of land.<sup>95</sup> The land use bylaw is at once a detailed blueprint for future growth and the regulatory tool by which municipalities carry out their statutory plans.<sup>96</sup> The bylaw must divide the municipality into zones, and prescribe permitted and/or discretionary uses for each zone. Zones are indicated on a map of the municipality that is incorporated into the bylaw, and commonly include residential, commercial, industrial and agricultural (conservation zoning options are discussed in section 2B, under *Zoning for environmental protection and open-space conservation*). Most land use bylaws also establish subdivision and development standards, including population densities, minimum lot sizes, building design and location, landscaping, setbacks from water bodies, and a variety of other requirements. The result is a set of criteria that any landowner may refer to in order to determine what uses he or his neighbour may make of their land and what restrictions apply to its development. In addition to the basic rules for each zone, overlays may be adopted by council to impose special regulations for one or more specific areas. Overlays are often used to regulate development in mature neighbourhoods or natural areas.

A second, mandatory component of a land use bylaw is the designation of a development authority and the establishment of administrative procedures for deciding development applications.

While a land use bylaw must be compatible with a municipality's statutory plans,<sup>97</sup> generally speaking the bylaw need not entirely conform to the plans to be legally valid. The plans are policy documents and are given a liberal interpretation to allow municipalities flexibility to respond to changing circumstances.<sup>98</sup> To the extent that a statutory plan goes beyond statements of intent and sets out mandatory prescriptions, a

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<sup>95</sup> *MGA, supra* note 4, s. 639.

<sup>96</sup> *Planning Law, supra* note 68, s. 6.

<sup>97</sup> *Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, *supra* note 48 at para. 37.

<sup>98</sup> *Planning Law, supra* note 68, s. 5.6(4). See also *MGA, supra* note 4, s. 637.

conflicting land use bylaw provision or planning decision may be subject to challenge.<sup>99</sup>

Land use bylaws must, however, conform to existing provincial land use policies.<sup>100</sup>

## **Subdivision**

Subdivision is a process provided by the *MGA* that allows a parcel of land to be divided into two or more parcels with separate titles. Every municipality is required to designate a subdivision authority to decide subdivision applications. The authority reviews applications for technical matters, conformity with statutory and non-statutory plans and bylaws, and matters related to the provision of municipal services. With a few exceptions, no subdivision may be registered against title unless it has been approved by the subdivision authority.<sup>101</sup> A subdivision cannot be approved unless it complies with existing provincial land use policies, the *MGA*, and any applicable plans and regulations under the Act.<sup>102</sup>

The *Subdivision and Development Regulation* under the *MGA* imposes requirements for subdivision and development near sour gas facilities, oil and gas wells, wastewater treatment facilities, solid waste disposal sites, and highways.<sup>103</sup>

## **Reserves and reserve easements**

The *MGA* gives subdivision authorities the power to require a subdivision applicant to dedicate land for specified municipal purposes.<sup>104</sup> Where land is taken as reserve, the municipality takes title to the land. Municipal and environmental reserves can be required to preserve natural features and open spaces. However, the Act restricts the amount and type of land that can be required, limiting the usefulness of reserves for ecosystem protection.

Land may be taken as municipal reserve only for the purposes of a public park, recreation area or school, or to separate areas of land that are used for different purposes.<sup>105</sup> Up to 10% of the parcel may be taken, less any land taken as environmental reserve or environmental reserve easement (see below). A municipal development plan may also specify a lower limit on the amount of land that can be taken as municipal

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<sup>99</sup> *Planning Law*, *supra* note 68, s. 5.6(4).

<sup>100</sup> *MGA*, *supra* note 4, ss. 622(3), 654(1)(c).

<sup>101</sup> *Ibid.*, ss. 618, 652, 652(2).

<sup>102</sup> *Ibid.*, ss. 622(3), 654.

<sup>103</sup> *Ibid.*, ss. 652-660; Alta. Reg. 43/2002.

<sup>104</sup> For a detailed discussion of reserves, reserve easements, and conservation easements within the subdivision process, see *Reconciling Ecosystem*, *supra* note 13 at 146-151.

<sup>105</sup> *MGA*, *supra* note 4, s. 671(2).



reserve. Additional municipal reserve of 3-5% may be taken for certain higher density development projects.<sup>106</sup>

Environmental reserve land may be taken where the reserve consists of:

- a swamp, gully, ravine, coulee or natural drainage course;
- land that is unstable or subject to flooding; or
- a strip of land not less than six metres wide abutting the shore of any water body, for the purpose of preventing pollution or providing public access.<sup>107</sup>

An environmental reserve must be left in its natural state or used as a public park.<sup>108</sup> The *MGA* does not specify a limit on the amount of environmental reserve land that may be taken.

Where the municipality and landowner agree, land that would be taken as environmental reserve may instead be subject to an environmental reserve easement.<sup>109</sup> The easement lands must remain in their natural state. Title to the easement lands remains with the subdivision applicant, but the municipality's easement interest is registered against title and binds present and future owners of the land. Environmental reserve easements that comply with the *MGA* are valid regardless of existing common law requirements for easements.

In some cases greater flexibility in potential uses of reserve land is required. In others, natural features or sensitive areas may not technically comply with the requirements for an environmental reserve or environmental reserve easement. In such cases a municipality may agree to or negotiate a conservation easement in lieu of reserve or full reserve.<sup>110</sup>

### **Conservation easements**

The *Environmental Protection and Enhancement Act (EPEA)* provides that a local authority, including a city, town, village, summer village, municipal district or specialized municipality, may accept the grant of a conservation easement.<sup>111</sup>

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<sup>106</sup> *Ibid.*, s. 668; *Subdivision and Development Regulation*, *supra* note 103, s. 17.

<sup>107</sup> *MGA*, *supra* note 4, s. 664(1).

<sup>108</sup> *Ibid.*, s. 671(1).

<sup>109</sup> *Ibid.*, s. 664(2).

<sup>110</sup> *Reconciling Ecosystem*, *supra* note 13 at 148-149.

<sup>111</sup> *EPEA*, *supra* note 11, ss. 22-24.

A conservation easement is an interest in land granted by the landowner (grantor) to a local authority or other qualified organization (grantee) as defined by the *EPEA*. The landowner retains title to the land, but grants certain rights over all or part of the land to the organization. The purpose of the conservation easement is to protect the environment or natural scenic or aesthetic values. Such easements can be established to allow for a variety of recreational, open-space, educational or scientific uses, although they are not generally available to preserve agricultural uses.

A conservation easement is formalized by agreement between the grantor and the grantee. Once registered at the Land Titles Office, the agreement will restrict present and future owners from undertaking or allowing certain activities on the easement lands, such as development, disturbance of vegetation, drainage, etc. Conservation easement agreements also authorize the grantee to monitor and enforce compliance and, in some cases, undertake restoration or other work. Before such an agreement can be registered, the requirements of the *EPEA* and the *Conservation Easement Registration Regulation* must be complied with.<sup>112</sup>

For land that they own, local authorities may also grant conservation easements to other qualified organizations.

A few Alberta municipalities have made conservation easements a key element in their efforts to protect natural areas. In Strathcona County, for example, several significant natural areas have been protected through the establishment of conservation easements during the subdivision approval process. However, the negotiation, acquisition, monitoring and enforcement of effective conservation easements require considerable planning, time and financial resources. While this tool remains underutilized by municipalities, the increasing number of successful examples should help convince many municipalities to begin planning for and accepting conservation easements.

### **Land development and development permits**

Day to day implementation of the land use bylaw is carried out by the municipality's development authority, which decides development permit applications. With exceptions, a permit is required for any development in the municipality.<sup>113</sup> Permit applications must comply with the terms of the land use bylaw.

Rezoning, subdivision and development applications are normally required to comply with any other applicable municipal planning policies. These may address a wide variety of issues, including development near natural areas and riverbanks, and identification of natural features on private land.

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<sup>112</sup> Alta. Reg. 215/96. For further discussion of conservation easements, see *Reconciling Ecosystem*, *supra* note 13 at 105.

<sup>113</sup> *MGA*, *supra* note 4, s. 683. Concerning exceptions, see *Planning Law*, *supra* note 68, s. 4.

## Regional planning

Alberta currently has no coordinated regional planning process. Since formal regional planning was abandoned in 1995, there has been increased conflict and competition among individual municipalities and a loss of policy coordination.<sup>1</sup> The Province has provided little leadership in this area. While the provincial *Land Use Policies* encourage municipalities to address common planning issues, particularly shared natural features and development in fringe areas, there is no specific direction provided.<sup>2</sup> Where there is political will and agreement, intermunicipal issues are addressed and resolved among neighbouring municipalities using the limited tools provided by the *MGA*.

These tools include consultation requirements, municipal and intermunicipal development plans, intermunicipal bylaws, and intermunicipal planning authorities. Regional or intermunicipal service commissions and agencies play an important role in providing municipal services, but are not addressed here.

### Regional planning and the municipal development plan

A municipal development plan must address the provision of transportation systems within the municipality and in relation to adjacent municipalities.<sup>3</sup> In addition, in the absence of an intermunicipal development plan, an MDP must address intermunicipal coordination of land use, future growth patterns, and other infrastructure. MDPs typically address these issues in general language, setting out proposed action rather than specific direction.

Furthermore, the *MGA* requires that a municipality preparing an MDP or ASP notify adjacent municipalities, and provide them with an opportunity to comment on the plan.<sup>4</sup>

### Intermunicipal disputes

Where a municipal council is of the view that planning in an adjacent municipality has or may have a detrimental effect on it, the *MGA* provides a right of appeal to the Municipal Government Board (MGB).<sup>5</sup> The appeal may relate to a provision in, or amendment of, a statutory plan or land use bylaw. If the MGB finds that there is a detrimental effect, it can require the adjacent municipality to amend or repeal the

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<sup>1</sup> Karen Wilkie and Robert Roach, *Breaking New Ground: Urban Residential Development and the Environment* (Calgary: Canada West Foundation, 2004) at 4 [*Breaking New Ground*].

<sup>2</sup> *Land Use Policies*, *supra* note 79, s. 3.

<sup>3</sup> *MGA*, *supra* note 4, s. 632(3).

<sup>4</sup> *Ibid.*, ss. 636(d), (e).

<sup>5</sup> *Ibid.*, s. 690.

provision. Otherwise, the Board may dismiss the appeal. No public hearing is required, either before the MGB or where a plan or bylaw is subsequently amended or repealed according to the Board's decision.

### **The intermunicipal development plan**

The intermunicipal development plan (IDP) is a non-mandatory regional planning tool. The *MGA* allows two or more municipal councils to adopt such a plan by bylaw where there is consensus on use and development in specified areas.<sup>119</sup> The plan may address future land uses, make proposals for future development, and address any other matter relating to the physical, social or economic development of the subject areas.

The ability to coordinate planning for selected areas makes multi-jurisdiction ecosystem-based planning possible.<sup>120</sup> However, such planning remains voluntary and subject to available municipal resources and political will.

IDPs typically relate to fringe areas between urban and rural municipalities or shared natural features such as lakes.<sup>121</sup> They could also be used to address land use and development in environmentally sensitive areas and important wildlife habitat.<sup>122</sup>

### **Intermunicipal bylaws**

As a rule, a municipal bylaw applies only within the boundaries of the municipality. However, two municipalities may enter into an agreement providing that a bylaw of one municipality has effect within the other.<sup>123</sup> Although the *MGA* only contemplates an agreement between two municipalities, separate, similar agreements could be negotiated to include additional municipalities within the intermunicipal bylaw scheme.

Intermunicipal bylaws can be effectively used to carry out the policy direction provided in an intermunicipal development plan. They are particularly well-suited to ecosystem-based planning, for example to address the environmental management and protection of shared natural areas.<sup>124</sup>

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<sup>119</sup> *Ibid.*, s. 631.

<sup>120</sup> *Reconciling Ecosystem*, *supra* note 13 at 157.

<sup>121</sup> Alberta Municipal Affairs, *The Legislative Framework for Municipal Planning, Subdivision, and Development Control* (Edmonton: Alberta Municipal Affairs, 1997, rev'd 2002) [*Legislative Framework*].

<sup>122</sup> *Reconciling Ecosystem*, *supra* note 13 at 157.

<sup>123</sup> *MGA*, *supra* note 4, s. 12.

<sup>124</sup> *Reconciling Ecosystem*, *supra* note 13 at 158.

## **Intermunicipal planning authorities**

The *MGA* provides municipalities with important opportunities to cooperate in carrying out planning responsibilities. An intermunicipal planning commission may be formed by agreement between two or more municipalities. The participating municipalities may designate the commission as an intermunicipal subdivision and development authority and provide the commission with a wide variety of other planning powers. Subdivision and development authority may also be delegated by agreement to a regional services commission, or to an existing or newly established intermunicipal service agency. A municipality may also enter into an agreement with one or more municipalities to establish an intermunicipal subdivision and development appeal board.

Responsibilities of joint planning authorities may include preparation of intermunicipal plans and bylaws, providing advice and assistance to participating councils, and undertaking joint inventories of natural and geological features and conditions.<sup>125</sup>

## **Provincial land use policies**

The *MGA* gives provincial Cabinet the authority to establish land use policies for the Province.<sup>126</sup> Alberta's current land use policies were established in 1996.<sup>127</sup> Every statutory plan, land use bylaw, and municipal action taken under the planning provisions of the Act must comply with the land use policies. Under the policies, municipalities are encouraged to create inventories of environmentally sensitive areas, water resources and watersheds, and significant fish, wildlife and plant habitat. Plans to mitigate impacts on such areas resulting from subdivision and development are also encouraged. Concerning agricultural areas, municipalities are encouraged to identify prime agricultural land. They are also urged to limit fragmentation of such lands, direct development to other areas, and minimize potential conflicts between intensive agricultural operations and other land uses. Other sections of the policies address intermunicipal cooperation, land use patterns, transportation and residential development.

The language of the policies is uniformly permissive, imposing no firm rules and giving little real direction to municipalities. Although the *MGA* requires that municipal planning instruments and actions comply with the policies, the latter are so generally worded that there is no apparent basis on which lack of conformity could be successfully challenged.

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<sup>125</sup> *Ibid.*

<sup>126</sup> *MGA*, *supra* note 4, s. 622.

<sup>127</sup> *Land Use Policies*, *supra* note 79.

## **Use of land use planning powers to control provincially regulated activities and areas**

Many activities that can harm the environment or human health are regulated by provincial departments and agencies. While most provincially-regulated projects also require municipal planning approval, some are exempt from the planning requirements of the *MGA*. For certain other projects, planning requirements apply, but will be overridden by the terms of a provincial approval.

The remainder of this section examines the relationship of municipal planning to provincial authority. The rights of municipalities to participate in provincial approval and appeal processes are not addressed here.

### **Planning requirements not applicable to certain developments and areas**

The planning provisions of the *MGA*, its regulations, and municipal land use bylaws do not apply to subdivision or development for highways or roads, oil and gas wells or batteries, or pipelines and related facilities.<sup>128</sup> Neither do they apply on Métis settlements or designated Crown lands, or to any action, person, or thing that the provincial Cabinet has exempted by regulation.<sup>129</sup>

### **Development restrictions under other statutes**

Cabinet also has the power to create restricted development areas and water conservation areas by regulation.<sup>130</sup> This power applies to public and private lands. The purpose of such regulations is to protect natural resources and the environment, including watersheds, from development and land uses that may adversely affect them. In these areas, development is prohibited without permission of the Department of Environment.

The provincial and federal governments also control development in designated areas of Crown land under the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, the *Provincial Parks Act*, the *Canada National Parks Act*, and a number of other statutes.<sup>131</sup>

Where development restrictions are imposed under statutes other than the *MGA*, these restrictions prevail over plans, bylaws and decisions made under Part 17 of the *MGA*.

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<sup>128</sup> *MGA*, *supra* note 4, s. 618.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Government Organization Act*, R.S.A. 2000, c. G-10, Sch. 5, s. 4.

<sup>131</sup> *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, R.S.A. 2000, c. W-9; *Provincial Parks Act*, R.S.A. 2000, c. P-35; *Canada National Parks Act*, S.C. 2000, c. 32. For discussion see *Planning Law*, *supra* note 68, s. 3.8.

### **Planning requirements not applicable to other levels of government**

Where the provincial or federal government is undertaking development, the requirements for subdivision approvals and development permits do not apply.<sup>132</sup> However, provincial and federal departments and agencies often apply to obtain approvals and permits nonetheless.

### **Confined feeding operations (intensive livestock)**

Approved confined feeding operations (CFOs) and manure storage facilities are also exempt from the planning provisions of the *MGA*, its regulations, and land use bylaws.<sup>133</sup> Developers of these facilities are not required to obtain subdivision approvals or development permits. The Natural Resources Conservation Board regulates these facilities and administers an authorization process pursuant to the *Agricultural Operation Practices Act*.<sup>134</sup> The Act provides municipalities with very limited influence over the siting of CFOs and manure storage facilities. An NRCB approvals officer must refuse an approval for a CFO if the facility is inconsistent with the land use provisions of the municipal development plan. In making this determination, approvals officers are required to disregard any provisions of the plan that deal with tests or conditions for the site or the construction of the facility, or with the application of manure, composting materials, or compost.<sup>135</sup> On appeal to the NRCB, the Board is required to give consideration to, but is not bound by, the municipal development plan.<sup>136</sup>

### **Authorization requirements under other provincial statutes**

As a general rule, a facility or activity that requires planning approval under the *MGA* must also obtain any authorization required by other provincial laws. For example, a coal-burning manufacturing plant will require both a development permit and an approval under the Alberta *Environmental Protection and Enhancement Act*.

Environmental impacts on property and persons within the municipality, including water quality and quantity impacts, are valid planning considerations.<sup>137</sup> Even where specialized environmental or public health legislation provides a department or agency with the power to regulate a facility or activity, a municipality is not generally prevented from considering the issues addressed, or yet to be addressed, by the

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<sup>132</sup> The *MGA*, *supra* note 4, is not binding on either the provincial or federal governments: *Interpretation Act*, R.S.A. 2000, c. I-8, s. 14; *Interpretation Act*, R.S.C. 1985, c. I-21, s. 17.

<sup>133</sup> *MGA*, *supra* note 4, s. 618.1.

<sup>134</sup> *Agricultural Operation Practices Act*, *supra* note 81.

<sup>135</sup> *Ibid.*, ss. 20(1.1), 22(2.1).

<sup>136</sup> *Ibid.*, s. 25(4)(g).

<sup>137</sup> *Planning Law*, *supra* note 68, s. 3.9.

regulator.<sup>138</sup> A planning authority could validly reject a development application on legitimate planning grounds that were not considered by the provincial regulator.<sup>139</sup>

In some cases, a bylaw or planning decision that addresses the same subject matter and seeks to achieve the same objectives as provincial or federal laws may raise a conflict. However, provided a land use bylaw or other planning instrument or decision is directed at regulating the use, enjoyment or value of land, a conflict with environmental or public health legislation is unlikely.<sup>140</sup> Unless there is evidence that the statute in question was intended to exclude municipal action in the area, or dual compliance is impossible, the bylaw or decision will normally stand.<sup>141</sup>

Where there is no conflict, both the planning instrument or decision and the provincial regulatory requirement are operative. The proponent or developer must obtain the necessary authorizations from both sources, and comply with both. Where conditions are attached to one or both authorizations, unless they are in conflict the proponent will be required to fulfill them all. This is the case where, for example, setbacks imposed by the municipality on a project to preserve land values or community character are greater than setbacks imposed by a provincial regulator to protect the health of neighbours.<sup>142</sup>

Where there is a conflict among conditions, provincial and federal conditions will normally prevail.<sup>143</sup> For example, this would apply where a planning bylaw or decision is directed not primarily at land use concerns, but at an environmental or health issue that could affect property values. However, this restriction does not narrow the power of municipalities, provided bylaws and planning decisions are consistent with provincial and federal law.<sup>144</sup>

Special considerations apply to facilities regulated by the Energy and Utilities Board and the Natural Resources Conservation Board.

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<sup>138</sup> *Robertson v. Edmonton (City)* (1990), 4 W.W.R. 232, 104 A.R. 374 (Q.B.); *Hutterian Brethren Church of Starland v. Starland No. 47 (Municipal District)* (1991), 6 M.P.L.R. (2d) 67, A.J. No. 495 (QL) (C.A.) [*Hutterian Brethren*].

<sup>139</sup> *Planning Law*, *supra* note 68, s. 3.9(3)(a).

<sup>140</sup> *Hutterian Brethren*, *supra* note 138; *Propane Gas Association of Canada Inc. v. North Vancouver (City)* (1989), 42 M.P.L.R. 29 (B.C.S.C.).

<sup>141</sup> *Hudson*, *supra* note 25 at paras. 34-39.

<sup>142</sup> *Planning Law*, *supra* note 68, s. 3.9(3)(a).

<sup>143</sup> *MGA*, *supra* note 4, s. 620; *Planning Law*, *supra* note 68, s. 3.9(3).

<sup>144</sup> *Hudson*, *supra* note 25 at para. 40.



## EUB and NRCB authorizations

The *MGA* makes special provision for potential planning conflicts with authorizations issued by the Energy and Utilities Board or the Natural Resources Conservation Board.<sup>145</sup>

Where either of these boards has approved a facility, the authorization prevails over any municipal land use policy, land use bylaw or decision.<sup>146</sup> The *MGA* requires the local municipal council to approve an application to amend a plan or land use bylaw if the application is consistent with an authorization of either Board. Subdivision approvals, development permits, and other municipal approvals must also be granted where consistent.

For plan and land use bylaw amendments, a public hearing need not be held unless the amendment relates to matters not included in the Board's authorization. Where a hearing is held, the hearing cannot address matters already decided by the Board. If a municipality fails to approve an application for an amendment as required, the applicant may appeal to the Municipal Government Board. Only the applicant and the municipality have a right to be heard on appeal.

The effect of these requirements is to prevent a municipality from interfering with a decision of the EUB or NRCB in respect of issues that have been addressed by either Board. In deciding on a development permit for an EUB or NRCB authorized facility, the municipality retains the jurisdiction to address planning considerations that the Board did not address.<sup>147</sup> Neighbours and the concerned public should be prepared to make their concerns known to the EUB or NRCB during the Board's approval process. If either Board addresses issues of concern to the public and approves the facility, the door will be closed to citizens wishing to raise those same issues at the municipal planning stage.

However, the EUB has held that, while the *MGA* gives precedence to EUB approvals, it does not transfer land use planning responsibilities from municipalities to the EUB. Municipal land use bylaws, plans and policies are relevant to the EUB's determination as to whether the impacts of a facility on neighbouring lands are acceptable.<sup>148</sup>

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<sup>145</sup> This discussion does not apply to NRCB-regulated confined feeding operations and manure storage facilities. Regarding these operations and facilities, see discussion on page 31.

<sup>146</sup> *MGA*, *supra* note 4, s. 619.

<sup>147</sup> *Planning Law*, *supra* note 68, s. 3.9(3)(b); *Re AES Calgary ULC* (2 July 2002), MGB 091/02 at 36-39, online: Alberta Municipal Affairs <<http://www.municipalaffairs.gov.ab.ca/mahome/cfml/boardorders/pdf/M091-02.pdf>>.

<sup>148</sup> *Re AES Calgary ULC* (25 June 2001), EUB 2001-101 at 4, online: EUB <<http://www.eub.gov.ab.ca/BBS/documents/decisions/2001/2001-101.pdf>>.

## B. Formal opportunities to influence municipal planning and development

### Introduction

Given Alberta's strong economy and expanding population, increased development is inevitable. However, growth can be guided to create strong communities, provide a wide range of housing and transportation options, and protect significant natural areas and prime agricultural land. It can also be allowed to create inefficient, sprawling development, consume important agricultural and natural areas, and promote car-dependency and long commutes.

Land use planning is a political process. Without strong policy direction from council, experience shows that most planning departments are unlikely to require developers to move beyond the status quo of low-density sprawl in large-scale raw land development.

#### **Red Deer County: Moving toward more efficient growth**

Red Deer County has taken bold steps to address problems associated with rapid growth. Over the past four years, council has earmarked \$600,000 to undertake studies and realign policies to conserve prime agricultural land and promote more efficient development. At the preliminary stage, the County commissioned studies profiling its agricultural lands and the industry and communities that depend on them. Studies have also profiled the county, towns and individual neighbourhoods (including historical and biophysical characteristics). The County is now undertaking a series of planning projects, including comprehensive revisions of all its planning policies and the land use bylaw. Through consultations, a vision for the County 25 to 50 years from now will be articulated, followed by 5 to 10 year policy plans. The policies and bylaws that emerge will be integrated and consistent to ensure that growth management objectives are reached.

This comprehensive approach is facilitated by the use of a single consultant for the public consultations and planning projects. Now that the studies are complete, the projects, including plan revisions, are to be completed within nine months. Also planned is an ongoing program to educate municipal councilors, staff, landowners and the development industry about the need for more efficient growth, and the tools available to achieve it.

There are, however, many options for smart growth planning, including compact, mixed-use development; pedestrian-focused street and landscape design; and the incorporation of trail systems and working agricultural lands into new residential areas. These and other options have been shown to be consistent with highly marketable

development.<sup>149</sup> There are also a variety of tools and incentives municipalities can use to encourage planning along these lines.<sup>150</sup> Municipal planners are generally familiar with these alternatives, but often lack the necessary political direction from council, who may not be. The limited resources of planning departments, and the inclination of the development industry to maintain the status quo, creates a kind of institutional resistance to smarter planning.

Experience in Red Deer, Strathcona and Lakeland Counties indicates that lack of leadership from municipal council, not lack of tools or information, is the primary hurdle to planning that incorporates smart growth priorities. Taking advantage of opportunities to influence council to commit to such planning is a key role for citizens, community groups and environmental groups.

The following section explains the formal opportunities for citizens to influence the planning and development process, from municipal development plans to decisions on specific development projects. Further, informal opportunities are described in section 2C, below. For a graphic overview of the process, including useful flowcharts, readers are referred to *The Planning and Development Handbook for the City of Edmonton*.<sup>151</sup> While some information in the *Handbook* may not be applicable outside Edmonton, it gives a good overview of the key steps in the planning process.

### **Citizen involvement in statutory planning and the land use bylaw**

The MGA provides for citizen involvement in the development of the following statutory plans and bylaws: intermunicipal development plans, municipal development plans, area structure plans, area redevelopment plans, and land use bylaws.

A municipality that is preparing a statutory plan must provide persons who may be affected by it with the opportunity to comment.<sup>152</sup> Typically, terms of reference for the proposed plan will be available for review and comment at this stage. The public must also be notified of the plan preparation process and of the means to provide input. These requirements at the plan preparation stage do not apply to amendments.

A municipality that is preparing to adopt a statutory plan or a land use bylaw must also hold a public hearing before second reading.<sup>153</sup> This applies to amendments as well. Notice of the hearing, which is generally a newspaper notice, must set out the purpose

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<sup>149</sup> Randall Arendt, *Growing Greener: Putting Conservation into Local Plans and Ordinances* (Washington, D.C.: Island Press, 1999) [*Growing Greener*]; F. Kaid Benfield, Jutka Terris & Nancy Vorsanger, *Solving Sprawl: Models of Smart Growth in Communities Across America*, *supra* note 76.

<sup>150</sup> *Breaking New Ground*, *supra* note 114 at 22.

<sup>151</sup> *Supra* note 85.

<sup>152</sup> MGA, *supra* note 4, s. 636.

<sup>153</sup> *Ibid.*, s. 692(1).

of the hearing, provide an address where the plan or bylaw may be inspected, and set out the date, time and place of the hearing.<sup>154</sup> At the hearing, council must hear from any person, group, or representative of a person or group who claims to be affected by the proposed plan or bylaw, provided the person or group has complied with council's procedures.<sup>155</sup> Council also has the discretion to hear from other persons and groups.

There are additional notice requirements where the purpose of the hearing is to consider a zoning change to the land use bylaw for a parcel of land.<sup>156</sup> Notice and additional matters relating to this process are addressed in most land use bylaws.

Individuals and groups who claim to be affected by a bylaw adopting or amending a statutory plan or land use bylaw are entitled to speak either for or against it. Required procedures for addressing council at hearings are set out in municipal procedure bylaws. Parties generally have a very limited time to address council.<sup>157</sup> However, individuals and groups are also free to write, call, or meet with councilors to discuss growth management priorities.

It appears that the adoption, repeal, or amendment of a statutory plan can only be formally initiated by council.<sup>158</sup> Standing to apply for a land use bylaw amendment is broader (see below, *Influencing a land use bylaw*). The petition process does not apply to statutory plans or a land use bylaw, except where the purpose of the petition is to require council to hold a public meeting (see section 1D, under *Environmental bylaws and public petitions*).

### **Note regarding validity of council action**

There are a wide variety of requirements that must be met for an act of council to be valid. These include requirements for quorum at meetings, concerning conflicts of interest, eligibility to vote, giving readings to bylaws, and amending and repealing a bylaw.<sup>159</sup>

In addition to these statutory requirements, in some cases the common law imposes a further duty of fairness on council considering adopting or amending a plan or land use

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<sup>154</sup> *Ibid.*, s. 606.

<sup>155</sup> *Ibid.*, s. 230.

<sup>156</sup> *Ibid.*, s. 692(4).

<sup>157</sup> In Edmonton, presentations are limited to five minutes: *Procedures and Committees Bylaw*, *supra* note 61, ss. 204, 208.

<sup>158</sup> *Planning Law*, *supra* note 68, s. at 7.1(1); *MGA*, *supra* note 4, s. 191. Holders of EUB or NRCB approvals may apply to amend a statutory plan or land use bylaw: see section 1A, under *EUB and NRCB authorizations*.

<sup>159</sup> *MGA*, *supra* note 4, ss. 167, 172, 182-191; *Planning Law*, *supra* note 68, s. 7.2(1).

bylaw.<sup>160</sup> The scope of this duty will depend on the nature of the decision at hand, but may include further requirements for notice and opportunities to make submissions. Non-disclosure by council of material that is relevant to a plan or bylaw change can constitute a denial of procedural fairness.<sup>161</sup> In such a case a court may set aside the amending or adopting bylaw.

### **Influencing a municipal development plan**

An MDP is a statement of general principles, priorities and proposals. Because it does not regulate land use decisions, and does not generally bind council or planning authorities, it is often viewed as a sort of wish-list, and its importance is sometimes overlooked by the public. The primary significance of an MDP is as an expression of the public's vision for future development. It provides a useful opportunity for concerned citizens to influence municipal growth, and to demonstrate to council that there is broad public support for conservation-oriented, smart growth planning.

The development of an MDP normally begins with a municipality undertaking detailed studies of land and other natural resources; current land use conditions; trends for population growth; and agricultural, commercial and industrial activity.<sup>162</sup> Based on this information, projections are made regarding future needs for housing, transportation, infrastructure and commercial space and industrial sites. The MDP is designed to reflect these projections and the priorities of council and municipal residents.

Municipalities periodically review their MDPs, although the MGA does not require such reviews. A review is initiated by council, typically on the advice of the planning department.

In the course of MDP development or review, municipalities generally seek public input through a series of open houses and public meetings. These events are good opportunities to meet city planners and councilors, ask questions, and relay your priorities and concerns. Written materials will normally be available for further study and comment.

For rural municipalities, it is at the MDP stage that priorities are set regarding the location, type and intensity of preferred industrial and tourism development. Policy regarding the protection of agricultural areas must also be included.<sup>163</sup> The MDP offers an important opportunity for residents of rural municipalities to influence these priorities.

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<sup>160</sup> *Planning Law*, *supra* note 68, s. 7.2(2).

<sup>161</sup> *Hoyda v. Edmonton (City)* (1979), 18 A.R. 215 (Dist. Ct.); *Norman v. Port Moody (City)* (1995), 17 B.C.L.R. (3d) 208 (B.C.S.C.), *aff'd* (1996), 84 B.C.A.C. 146 (C.A.).

<sup>162</sup> *Planning Law*, *supra* note 68, s. 5.2.

<sup>163</sup> *MGA*, *supra* note 4, s. 632(3)(f).

## **MDP: Issues to consider**

Typically, an MDP will propose general conservation measures for significant natural areas owned or acquired by the municipality. These may include the development and implementation of plans to protect, integrate, and manage the areas. An MDP may also provide that environmental impacts should be considered in the decision-making process for land, transportation, and infrastructure development.

An MDP should identify the conservation of natural features and sites in developed areas as a priority. Infill development should be specifically promoted as a way to relieve development pressure at the urban fringe. Council should also be encouraged to incorporate specific references to conservation in land development at the urban fringe, and in rural municipalities adjacent to urban areas. For example, an MDP could provide that:

New suburban development will be managed carefully to:

- conserve significant natural areas and promote the interconnection of these areas;
- conserve prime agricultural lands;
- promote mixed-use, compact development and provide a wide variety of housing options, including low-income housing;
- prioritize the use of existing municipal infrastructure and facilities, including public transportation; and
- promote walkability and provide a variety of transportation options.

Urban growth boundaries have been used effectively in many American cities to legally limit development at the urban fringe and discourage land speculation. An MDP that included such a legal boundary would effectively promote infill development in existing neighbourhoods and efficient, compact design in developing areas. The municipality's other plans and land use bylaw would need to be amended to be consistent with and support the urban growth boundary. Regional planning with adjacent municipalities is critical to the success of such a boundary.

An MDP can also set priorities for policy to address the development of land with a history of contamination (brownfields), downtown redevelopment, improved building design standards, incentive programs for smart growth design and development, and a wide variety of other issues. Determining which options will best promote sustainable

development in a given municipality will depend on the resources, needs and values of the community.

Although MDPs are typically drafted in broad language, there is no reason specific policy approaches to development issues cannot be included. In many cases, more specific language can strengthen the MDP and increase accountability without preventing flexible responses to emerging issues.

### **Influencing an area structure plan**

Area structure plans are, typically, heavily engineered, detailed, and expensive plans for the development of large tracts of raw land. They reflect council priorities as set out in the MDP, zoning patterns set out in the land use bylaw, and the expectations of the planning and development department. In most municipalities, preparation of an ASP is left primarily to the developer, with municipal planners provided input as needed. The final draft of the plan is reviewed and approved by council.

This approach to ASP development makes it difficult for council to require significant changes to the plan. For the same reasons, citizens and groups seeking to influence an ASP at the formal hearing council must hold before voting on the plan face an uphill battle. Expensive studies and expert help may be required to convince council that changes are needed and feasible alternatives available. Nonetheless, the formal hearing is a useful opportunity to address council directly and voice concerns in an open forum.

Concerned citizens should also take advantage of an earlier opportunity provided by the MGA. Where an ASP is in preparation, council is required to notify and provide potentially affected persons with the opportunity to comment. It is during this preparatory phase that concerned citizens and groups can most effectively influence the development of a particular ASP. Many municipalities have produced inventories of significant natural and prime agricultural areas, and should be able to provide information on such areas within the lands to be covered by an ASP. Nearby residents may also be familiar with these areas.

In addition to the above, citizens and groups should consider lobbying council to provide strong and specific policy direction to the planning department concerning ASP development. The need for such leadership is addressed in section 2C, under *Better statutory planning*.

### **Influencing an area redevelopment plan**

Public involvement in an ARP typically centres on concerns over the incursion of high-density residential and commercial development into mature residential neighbourhoods. However, this type of plan also has significant potential as a tool in

smart growth planning. ARPs can promote intensification and diversity of uses and function as a key element in a broader plan to revitalize under-used areas of a municipality. This in turn relieves development pressure on lands at the urban fringe. Many concerns regarding higher density development can be resolved through effective consultation and excellent design.

Because they concern already-developed areas, ARPs are not as amenable to broad policy direction as ASPs. Solutions for revitalization and maintaining or enhancing community character, natural areas and property values will require a case-specific balancing of interests and concerns.

Unlike ASPs, ARPs are often initiated by neighbourhood groups. It is open to a community group interested in sustainable neighbourhood revitalization to gather support for area redevelopment and contact council or the planning department about the need for an ARP. As with the ASP, council is required to notify potentially affected persons during the development of an ARP, and provide an opportunity to comment. A formal hearing must also be held before council can approve the plan.

### **Influencing non-statutory plans**

Formal requirements for public input into statutory plans do not apply to non-statutory plans. Community plans are normally initiated and developed by the community with input from the planning department. Other plans, particularly concerning servicing and infrastructure, are developed by industry and planning officials. Although concerned individuals have no right to address council at a hearing, comments can be directed to individual councilors. Council may also decide to hold a formal public hearing for an issue of public concern, or carry out a more general consultation.

Several Alberta municipalities, particularly larger urban ones, have carried out policy development exercises related to sustainable growth outside of the statutory planning process.<sup>164</sup> These exercises present important opportunities for residents and groups to influence the debate on municipal development priorities. Where no such review is underway, it is open to residents to encourage council to initiate one.

### **Influencing a land use bylaw**

The land use bylaw is the regulatory tool used by council to implement its statutory plans. It is a lengthy, detailed and highly specific document. Zoning and overlays are applied to different areas of a municipality to restrict certain forms of development and encourage others. They are also used to conserve large natural and open-space areas.<sup>165</sup>

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<sup>164</sup> See e.g. City of Edmonton, *Smart Choices for Developing Our Community: A Catalogue of Ideas* (Edmonton: City of Edmonton, 2003).

<sup>165</sup> *Reconciling Ecosystem*, *supra* note 13 at 144-145.



Development standards set out in land use bylaws have a predominant impact on livability, walkability, community character, residential density, and compactness of design.

Council has authority to amend the land use bylaw. Applications to amend the bylaw are typically brought by developers. Before council can vote on an amendment, the municipality must meet notification requirements and hold a public hearing. Although the hearing is a good opportunity for individuals to express their concerns to council, it is important to realize that this is a late stage in the development planning process. The developer has in most cases already completed his studies, plans and consultations. Where possible, concerned citizens and groups should work with their councilors, municipal planners, and the developers to get their concerns addressed at an earlier stage.

### **Land use bylaw amendments initiated by citizens and groups**

Citizens and groups with some specific interest in the land at issue may also have the right to apply to amend the land use bylaw. Rights to apply for an amendment are set out in most land use bylaws. Furthermore, there is no reason in principle why even a person with no legal or equitable interest in the land in question could not apply for rezoning or other amendment, provided he can show some legitimate interest.<sup>166</sup> A concerned area resident or community group should be entitled to apply to amend a land use bylaw to downzone a local piece of property, for example to a holding, open-space, or conservation category (where available), provided they can show some material impact on their own properties.<sup>167</sup> An application could also be brought to create a new zoning category, such as a zone designed for the permanent conservation of significant natural sites. However, standing to bring such an application may be restricted by the provisions of the local land use bylaw.

Citizens and groups should be aware that, depending on the nature and extent of the change, applying to amend a bylaw can be an expensive, time-consuming process.

Applications could also be made to amend development standards and any of a variety of other development matters addressed in the bylaw. However, amendments that do not relate to a local zoning matter are best considered systematically as part of a general review by council. Ideally, this review would be part of a council re-evaluation of all statutory and non-statutory development plans to determine how they could be most effectively amended to reflect conservation and other smart growth priorities.

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<sup>166</sup> *Planning Law*, *supra* note 68, s. 7.1(1).

<sup>167</sup> *Ibid.*; *Tollefson v. Gloucester (Township)* (1976), 1 M.P.L.R. 11 (Ont. Mun. Bd).

## **Zoning for environmental protection and open-space conservation**

Privately and municipally owned land can be zoned to conserve natural areas or protect environmentally sensitive features such as wetlands. Conservation, environmental protection, or open-space zoning categories restrict development to those uses that are unlikely to adversely affect natural values. Most municipalities have provided for open-space zoning in their land use bylaws. Examples of express purposes for such zoning categories include:

- conserving natural resources and areas for recreational and educational uses and/or environmental protection; and
- protecting land from development that would disrupt normal hydrological action or increase the risk of flooding.

Park and recreation zones are also used by many municipalities to conserve open space for low-impact recreational uses. Agricultural zoning prioritizes agricultural uses and, indirectly, conserves open space in rural areas. Such zones typically prevent country residential development or, in some cases, provide that such development is a discretionary use.

Also relevant to land conservation are holding districts, or zones, which are usually applied to recently annexed lands on the urban fringe. However, the purpose of holding districts is typically to prevent premature, disorderly development, and not to conserve open spaces over the long-term.

### **Direct control districts**

Councils in municipalities that have adopted municipal development plans can also create direct control districts through their land use bylaws.<sup>168</sup> This type of district, or zone, allows council to directly control development of land and buildings by resolution, as it sees fit. Direct control districts can be applied to environmentally sensitive lands, transitional areas in or near an urban centre, and lands at the urban fringe, among other areas.<sup>169</sup> They can likely be used to control development on a single, small parcel in addition to larger areas of land.<sup>170</sup> In these districts, council can either decide on development permit applications itself or delegate this authority to a development authority with directions. There is no appeal from council's decision on a development permit. Where the decision is made by a development authority, the appeal to the subdivision and development appeal board is limited to whether the authority followed the directions of council.

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<sup>168</sup> *MGA*, *supra* note 4, s. 641. See also *Planning Law*, *supra* note 68, s. 6.2(2)(c).

<sup>169</sup> *Planning Law*, *supra* note 68, ss. 6.2(2)(c)(i), (ii).

<sup>170</sup> *Ibid.*, ss. 6.2(2)(c)(iv), (v).

Most land use bylaws that provide for direct control districts prescribe uses and development standards for the district, or specifically refer to uses and standards prescribed by an applicable ASP or ARP. In other cases, the bylaw will not give such direction, leaving council with maximum flexibility to decide applications or direct the development authority. Notice requirements for development permit applications in direct control districts may also be set out in the land use bylaw. Even where they are not provided, council is likely required to hear from affected persons before deciding on such a permit application.<sup>171</sup>

Flexibility, which is the great advantage of direct control districts, also makes this zoning somewhat unreliable for conservation purposes. Ideally, where conservation is the purpose of such a district, this should be expressly and clearly provided. Discretionary uses and development standards should consistently reflect and reinforce this purpose.

### **Downzoning and right of compensation**

Downzoning occurs when a land use bylaw is amended to further restrict development on a parcel or area of land. Such amendments are nearly always highly contentious, since they normally result in lower property values for the parcel or area. However, downzoning is a key tool for municipalities seeking to conserve significant natural sites, prime agricultural lands, and other areas of public interest.

In some cases, a municipality is required to compensate landowners for loss of property value resulting from a rezoning. For example, where a municipality downzones to derail a specific development that might otherwise have been successful or with the express purpose of limiting property values, compensation may be required. Compensation is also payable when a municipality expropriates land, or rezones land for certain municipal purposes.<sup>172</sup>

However, municipalities have considerable latitude to downzone without paying compensation, provided they act in good faith and pursuant to comprehensive, legitimate, long-range planning objectives.<sup>173</sup> This includes downzoning to existing zoning categories, or to specially-designed conservation categories, for the purpose of conserving the natural environment.<sup>174</sup>

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<sup>171</sup> *Ibid.*, s. 6.2(2)(c)(i), n. 121.

<sup>172</sup> *MGA*, *supra* note 4, s. 644.

<sup>173</sup> *Ibid.*, s. 621; *Planning Law*, *supra* note 68, s. 8.3(3).

<sup>174</sup> *Planning Law*, *supra* note 68, s. 8.3(3); *Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, *supra* note 48 at para. 38.

## Influencing the subdivision process

Subdivision of land is a major concern in rural municipalities in particular. The high value of acreage lots in many such municipalities has put pressure on owners of working farms and ranches to subdivide and sell for country residential development. The result is a loss of productive farm and rangeland, conflicts with new neighbours unhappy with noise, dust and odours, and an erosion of farm communities. Subdivision of smaller parcels in cities, towns and villages can also change the character of a community and stress water and other natural and municipal resources.

The *MGA* requires each municipality to establish a subdivision authority to decide subdivision applications.<sup>175</sup> The authority may include or consist of councilors, municipal officials, a municipal planning commission, an intermunicipal planning commission or service agency, or any other person or organization.<sup>176</sup> Subdivision authorities are established to determine whether an application meets existing legal and policy requirements, and may approve or refuse the application, or approve it with conditions.<sup>177</sup> An application to subdivide must comply with Part 17 of the *MGA*, the *Subdivision and Development Regulation* (the Regulation), any applicable statutory plans and, subject to exceptions, the local land use bylaw.<sup>178</sup>

The subdivision authority must also be convinced that the land to be subdivided is suitable for the purpose intended. The authority retains a limited discretion to refuse applications on this basis even if the application fully conforms to the local land use bylaw and is physically suitable for the intended use.<sup>179</sup> In exercising this discretion, a subdivision authority may refuse an application for, or impose conditions to achieve, legitimate planning considerations.<sup>180</sup> Such considerations may include potential negative impacts on neighbouring properties.

Adjacent landowners are entitled to notice of a subdivision application, unless the land to be subdivided is within an ASP or conceptual scheme for which a public hearing has been held.<sup>181</sup> Notice can be provided by mail, by posting on the land proposed for subdivision, or by publishing a notice in a newspaper with general circulation in the area. The notice must set out information about the application and explain how written

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<sup>175</sup> *MGA*, *supra* note 4, s. 623.

<sup>176</sup> *Ibid.*, ss. 623, 625, 626.

<sup>177</sup> *Ibid.*, s. 655, *Planning Law*, *supra* note 68, s. 12.5(5)(b).

<sup>178</sup> *MGA*, *supra* note 4, s. 654; *Subdivision and Development Regulation*, *supra* note 104.

<sup>179</sup> *Subdivision and Development Regulation*, *ibid.*, s. 7; *Planning Law*, *supra* note 68, s. 12.5(4).

<sup>180</sup> Generally speaking, a subdivision authority has the right to impose a condition on an approval where it has a valid, legal right to refuse the approval and the condition would alleviate the concerns on which the approval would otherwise be refused: *Reconciling Ecosystem*, *supra* note 13 at 149.

<sup>181</sup> *MGA*, *supra* note 4, s. 653. "Adjacent land" is defined in s. 653(4.4).

submissions may be made to the subdivision authority. The authority must consider, but is not bound by, submissions made by adjacent landowners who were entitled to notice. The authority is not required to hold a hearing, or to provide adjacent landowners with notice of the decision or reasons.<sup>182</sup>

Adjacent landowners and concerned neighbours have no right to appeal a subdivision approval.<sup>183</sup> However, where the subdivision authority has exceeded its jurisdiction, the decision may be judicially reviewable (see below, *Judicial review of planning and development matters*).

Subdivision can promote more intensive and productive uses of land, and is necessary to accommodate urban growth. Subdivision for country residential development in marginal agricultural areas can also assist in relieving development pressure from prime agricultural lands. The success of planned rural communities in the United States has demonstrated that agricultural uses and residential development can be combined in innovative ways.<sup>184</sup> Well-planned urban subdivision and development can also reduce the overall demand for raw land. However, before smart growth principles can be successfully incorporated into subdivision and development standards and decisions, municipal statutory plans and land use bylaws must first be amended to specifically address these concerns. In light of the limited opportunities for public involvement in subdivision decisions, and the requirement that subdivision decisions comply with statutory plans and the land use bylaw, citizen efforts are most productively directed to plan and bylaw reform.

### **Influencing the development permit process**

The *MGA* requires that each municipality establish a development authority to decide development permit applications.<sup>185</sup> The authority may consist of municipal officials, a municipal planning commission, an intermunicipal planning commission or service agency, or any other person or organization.<sup>186</sup>

With exceptions, the *MGA* prohibits development without a development permit.<sup>187</sup> “Development” is very broadly defined by the Act, and includes an excavation, a building, or a change of use or intensity of use of land or a building.<sup>188</sup> Where an application is for a use permitted by the land use bylaw and fully conforms to the bylaw,

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<sup>182</sup> *Ibid.*, s. 656.

<sup>183</sup> *Ibid.*, s. 678.

<sup>184</sup> *Growing Greener*, *supra* note 149.

<sup>185</sup> *MGA*, *supra* note 4, s. 624.

<sup>186</sup> *Ibid.*, ss. 624-626.

<sup>187</sup> *Ibid.*, s. 683.

<sup>188</sup> *Ibid.*, s. 616(b).

the authority must issue the permit, with or without conditions.<sup>189</sup> Where the use is a discretionary use under the bylaw, the authority has the discretion to issue the permit, with or without conditions. A land use bylaw may also provide the authority with the power to issue a development permit even where it does not comply with the land use bylaw, where certain criteria are met.<sup>190</sup> Regulations regarding application procedures, exemptions from the permit requirement, conditions, notice, and the scope of the authority's discretion are provided by most land use bylaws.

The *MGA* does not require a development authority to hold a hearing before deciding on a development application, and there is likely no common law requirement to do so.<sup>191</sup> However, some land use bylaws may provide for a hearing for specified discretionary uses. Alternatively, a land use bylaw may require that notice of the application be posted on the site and that objectors be given the opportunity to file written comments before a decision is made.<sup>192</sup>

A land use bylaw must specify how and to whom notice of the issuance of a development permit must be given.<sup>193</sup> Affected persons can then exercise their right to appeal the decision to the subdivision and development appeal board. However, many land use bylaws only impose notification requirements for discretionary use permits.<sup>194</sup>

## **Subdivision and development appeals**

### **Subdivision appeals**

A decision of a subdivision authority may only be appealed by the applicant or, in certain cases, by a provincial government department, municipal council, or school authority.<sup>195</sup> In most cases the appeal is brought before a subdivision and development appeal board (SDAB), which each municipality is required to establish.<sup>196</sup> Adjacent landowners are entitled to five days' notice of an appeal hearing before the SDAB, and have a right to make submissions, either in person or by agent.<sup>197</sup> Other concerned citizens are not entitled to notice, and the board is not required to hear from them.

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<sup>189</sup> *Ibid.*, s. 640.

<sup>190</sup> *Ibid.*, s. 640(6).

<sup>191</sup> *Planning Law*, *supra* note 68, s. 9.3(2).

<sup>192</sup> *Ibid.*, s. 9.4.

<sup>193</sup> *MGA*, *supra* note 4, s. 640(2)(d).

<sup>194</sup> Laux argues that because there are limited grounds for appeal of a permitted-use permit by affected persons, there is a common law right to notice for such permits (*Planning Law*, *supra* note 68, s. 9.4(2)).

<sup>195</sup> *MGA*, *supra* note 4, s. 678.

<sup>196</sup> *Ibid.*, ss. 627-628, 678(2). For land in the Green Area of the Province and certain other lands, the appeal is made to the Municipal Government Board.

<sup>197</sup> *Ibid.*, ss. 679-680.

## Development appeals

A decision of a development authority may be appealed by the applicant or by any affected person.<sup>198</sup> However, where a permit was issued for a permitted use, no appeal is available unless the development authority relaxed, varied, or misinterpreted the provisions of the land use bylaw.

Development permit appeals are made to the subdivision and development appeal board.<sup>199</sup> After notice of issuance of a development permit is given according to the land use bylaw, affected persons have 14 days in which to file a notice of appeal with the board.<sup>200</sup> If the notice of issuance is mailed, it may be deemed to have been delivered after seven days have lapsed, extending the appeal period to 21 days.<sup>201</sup> However, it is open to the appellant to prove that the notice of issuance was not in fact received. If the notice requirement is not properly carried out, or the land use bylaw does not provide a reasonable notice period, it is open to an appellant to argue that the 14-day appeal period does not begin to run until receipt of notice of issuance.<sup>202</sup>

On receiving a notice of appeal from an appellant, the subdivision and development appeal board must proceed to hold a hearing within 30 days.<sup>203</sup> The appellant, the development authority, and anyone required by the land use bylaw to be notified of the issuance of the development permit must be given five days' written notice of the hearing. Before the hearing, the board must make available to the public all relevant documents, including the application, the decision of the development authority, and the notice of appeal.

A person who was given notice of the hearing is entitled to make representations at the hearing, as is any other person who claims to be affected and that the board agrees to hear.<sup>204</sup> Such individuals may also be represented by another person at the hearing.

In its decision, the appeal board must comply with provincial land use policies, municipal statutory plans and, subject to specified exceptions, the land use bylaw.<sup>205</sup> The board must consider, but is not bound by, the *Subdivision and Development Regulation*. The board may ultimately confirm, revoke or vary the order, decision or development permit, or any condition attached. The board may also substitute an order, decision or permit of its own.

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<sup>198</sup> *Ibid.*, s. 685.

<sup>199</sup> *Ibid.*, ss. 627-628.

<sup>200</sup> *Ibid.*, s. 686.

<sup>201</sup> *Interpretation Act*, R.S.A., *supra* note 132, s. 23; *Legislative Framework*, *supra* note 121 at 5.

<sup>202</sup> *Planning Law*, *supra* note 68, s. 9.4(4).

<sup>203</sup> *MGA*, *supra* note 4, s. 686.

<sup>204</sup> *Ibid.*, s. 687.

<sup>205</sup> *Ibid.*

There is a further statutory appeal to the Court of Appeal from any decision of a subdivision and development appeal board.<sup>206</sup> The appeal lies on a question of law or jurisdiction only. Questions or findings of fact cannot be appealed. Leave of the Court is required, and must be sought within 30 days of the board's decision.

### **Development permit suspended while under appeal**

Under most land use bylaws, a development permit will be suspended while an appeal is underway at a subdivision and development appeal board or the Court of Appeal.<sup>207</sup> The requirement of a separate leave application at the Court of Appeal can create significant delays that can affect the viability of a development project.

### **Annexation**

Where necessary to accommodate urban growth or a specific planning priority, a municipality may enter into formal negotiations with one or more adjacent municipalities to annex land.<sup>208</sup> The public must be consulted as part of the negotiations, although face-to-face meetings are only required for owners of the lands to be annexed. Once the negotiations and consultations are complete, the initiating municipality submits a formal report to the Municipal Government Board. If the Board finds that the affected municipalities and the public are generally in agreement with the annexation, it must notify all parties that are, in its view, affected by the proposal. Unless objections are filed with the Board by the date specified, the Board will make a recommendation to the Minister of Municipal Affairs. In its recommendation, the Board must consider criteria established by the Minister (none have yet been established). The Minister will then bring the recommendation to Cabinet, who may issue an order for the annexation.

If objections to the annexation are filed, or the Board finds that there is no agreement among the affected parties and the general public, a hearing must be held and all affected persons allowed to address the Board.<sup>209</sup> Notice of the hearing must be provided in a local newspaper. Once it has held the hearing and considered the representations and other relevant materials, the Board is required to make a recommendation to the Minister. The Board may award costs as it sees fit. The final decision on annexation is made by order of Cabinet.

The *MGA* therefore provides three potential opportunities for influencing annexation decisions: participating in consultations carried out by the initiating municipality; filing

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<sup>206</sup> *Ibid.*, s. 688.

<sup>207</sup> Dennis R. Thomas, "Statutory Appeals – The Poor Man's Injunction" (2000) 15:4 *Environmental Law Centre News Brief* 11.

<sup>208</sup> *MGA*, *supra* note 4, ss. 116-120.

<sup>209</sup> *Ibid.*, ss. 120-128.



objections with the Municipal Government Board; and submitting comments to members of Cabinet.

Land is most often annexed to growing urban municipalities from adjacent rural ones. The pace, location and nature of urban expansion reflects the planning priorities of council as set out in the municipal development plan and any regional plans or agreements. While concerned citizens should take advantage of the opportunities set out above, efforts to control urban expansion are most productively directed to plan and bylaw reform.

### **Petition for a public meeting on a planning and development issue**

The *MGA* provides that, where a petition is filed that meets the requirements of the Act, council may be required to hold a public meeting to discuss any issue.<sup>210</sup> This may be an appropriate route where the Act does not otherwise require a formal public hearing on an issue, and council has opted not to call a public meeting. Concerning petitions, see section 1D, under *Environmental bylaws and public petitions*.

### **Judicial review of planning and development matters**

Any person who is directly and specifically affected by a decision of council, a development authority, a subdivision authority, a subdivision and development appeal board, or the Municipal Government Board may bring an application for judicial review.<sup>211</sup> Broader, public interest standing may also be available. The application is brought before the Court of Queen's Bench. Where the authority or board exceeded its jurisdiction by interpreting the applicable law incorrectly or in another manner, the Court may quash the decision or provide one of a number of other remedies.

Normally, judicial review will not be available where alternative remedies, such as a statutory appeal, are or were available. This and other restrictions may make judicial review an inappropriate route.<sup>212</sup> It is advisable to seek legal advice concerning judicial review.

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<sup>210</sup> *Ibid.*, s. 229.

<sup>211</sup> Judicial review is discussed in greater detail at section 1D, under *Judicial review of bylaws and resolutions*.

<sup>212</sup> *Planning Law*, *supra* note 68, s. 16.5(4)(a).

## C. Informal opportunities to influence municipal planning and development

### **Pushing for better policy**

In addition to the statutory plans, non-statutory plans and land use bylaw, a wide range of policies direct the decisions of planning officials. Policy will determine when an application for subdivision or development is substantially complete and ready to be forwarded on by the planning department to the body that decides such applications. These policies may require that applications include environmental information, set out mitigation strategies, and describe environmental impacts of a proposed development. Planning policies may also address such issues as agricultural land conservation, development in environmentally sensitive areas, and the protection of significant natural areas. Policies may require or provide incentives for more compact design to encourage livability, walkability and access to transit options. It is open to concerned individuals and groups to influence council to adopt or strengthen such policies.

Policies are especially needed to identify significant natural sites in newly developing areas, and to provide for their acquisition (by the municipality or a land trust). Because limited resources often mean that acquisition can only conserve a small amount of highly sensitive land, policies are also needed to provide for the rezoning of lands to open-space or conservation zoning categories long before development pressures make such action unfeasible. The great majority of these lands are located at the urban fringe or in rural municipalities. Such policies not only meet conservation objectives, they provide developers with certainty and help minimize the time and resources they currently spend overcoming public opposition to contentious projects. A regional approach will be required where two or more municipalities share an interest in conserving the land or land uses in question.

### **Better statutory planning**

In order for the public to be meaningfully involved in the development of statutory plans, municipalities need comprehensive policies setting out an inclusive consultation process. In reviewing a municipal development plan, in particular, stakeholders should be encouraged to examine what the municipality will look like in 20, 30, and 40 years under a business-as-usual growth scenario. Studies written in plain language, including graphics and identifying natural areas, features and prime agricultural land, should be commissioned by the municipality to assist in this visioning process. Stakeholders should be encouraged to challenge existing assumptions about what areas need to be developed and in what manner. Where policies concerning plan development are not in place, concerned citizens should encourage their adoption by council.

The policy area in greatest need of reform from the urban perspective is in the preparation of area structure plans. The current approach, common to most cities and towns, is to allow developers an extremely wide latitude in the development of these plans. A small number of urban municipalities have themselves become major landowners and developers, giving them greater influence over plan development. However, many municipalities lack the capacity to undertake acquisition and development on this scale. Policy is therefore needed at the municipal level to involve council and planning officials from the earliest stages of plan development. In addition, it is vital that council show leadership in suburban planning by adopting or revising mandatory ASP guidelines to ensure that growth is efficient and sustainable.

Such guidelines should be designed to minimize both costs to the municipality over the long term and environmental impacts. They should require the most efficient use of existing infrastructure (including public transit), better integration with neighbouring areas, identification and conservation of key natural areas and prime agricultural land, and design that promotes walkability and a sense of community. Guidelines should also promote the development of pedestrian friendly, mixed-use commercial and service centres. Planning guidelines incorporating such basic smart growth principles would ultimately make it more feasible for residents to work, play, and meet their daily needs within the local community, improve quality of life, save municipal dollars, and reduce environmental impacts.

In addition to such planning guidelines, municipalities should be encouraged to move toward community-based planning for area and neighbourhood structure plans. Currently, the process favours private property development interests over broader conservation and quality-of-life interests. Community-based planning requires broad stakeholder input on a vision for growth at the earliest stages of planning, and long-term commitment to carrying out the community's vision. Such policies are needed to ensure that council and planning staff are attuned to the views and priorities of the local community.

### **Conserving wetlands**

Wetland conservation is a key concern for environmental and community groups and many municipal residents. While most municipalities continue to rely on provincial regulators to protect significant wetlands, some have taken bold steps to realign planning priorities to reflect the ecological and social value of these areas.

Calgary has established a comprehensive policy to conserve wetlands on both private and public land within the municipality.<sup>213</sup> A wetland policy is also under development

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<sup>213</sup> City of Calgary, *Wetland Conservation Plan Final Draft* (18 May 2004), online: City of Calgary <[http://www.calgary.ca/docgallery/bu/parks\\_operations/wetland\\_conservation\\_plan.pdf](http://www.calgary.ca/docgallery/bu/parks_operations/wetland_conservation_plan.pdf)>.

by the City of Edmonton, and under consideration by a number of other municipalities. Such policies are critical to conserving an essential public and ecological resource. However, municipal jurisdiction to implement them, beyond the powers set out in Part 17 (planning and development) of the *MGA*, remains unclear. Although the Act provides municipalities with a limited authority to manage wetlands, they need clear policy or regulatory direction from the Province in order to confidently exercise this power.<sup>214</sup>

Where a permanent and naturally-occurring wetland is under threat, the provincial department responsible for public land management should be alerted and asked to participate in discussions with the municipality, the developer, and concerned area residents.<sup>215</sup> Regarding both permanent and intermittent wetlands, the provincial department responsible for the environment should also be involved.<sup>216</sup> Practically speaking, the active involvement of these departments is more likely where a councilor or senior municipal planner has requested it.

Where fish habitat is involved, concerned parties can also direct their comments to the regional office of the federal Department of Fisheries and Oceans. Concerns about migratory bird nesting can be directed to the Canadian Wildlife Service of Environment Canada.

### **Establishing a land trust**

A land trust is a non-governmental organization that acquires legal interests in land for conservation purposes. The Nature Conservancy of Canada, Ducks Unlimited Canada, the Southern Alberta Land Trust Society, and a variety of other organizations active in Alberta have established successful land trusts. Although municipalities can also acquire land and accept conservation easements, independent land trusts have significant advantages. First, land trusts are established for conservation purposes only, while municipalities must manage conflicting interests and priorities. Secondly, municipal jurisdiction normally prevents a municipality from owning land outside its boundaries, making a regional approach difficult. Third, unlike conservation organizations, municipalities are subject to political shifts and new priorities with each election.

Most lands held or managed by land trusts are located in rural municipalities. Land values in urban areas are often too high to make acquisition feasible. However,

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<sup>214</sup> *MGA*, *supra* note 4, s. 60; *Alberta's Wetlands: A Law and Policy Guide*, *supra* note 34 at 45.

<sup>215</sup> Currently, Alberta Sustainable Resource Development has primary responsibility for public land management.

<sup>216</sup> Currently Alberta Environment.

successful urban land trusts are emerging with the support of local municipalities.<sup>217</sup> In Calgary, a regional land trust has been established to conserve significant natural areas within the city and the adjacent municipal districts of Rocky View and Foothills. In Okotoks, a land trust was formed to purchase land under development pressure along a riverine escarpment. Once the land was purchased, it was protected by conservation easement and transferred to the town for operations and maintenance. Both land trusts function at arm's length from the municipalities in which they operate. However, the active involvement of the municipalities, and their ongoing collaboration and support, has been essential to the success of the land trusts.

A land trust provides a highly visible and credible vehicle for strengthening both community and municipal involvement in conservation efforts. Regional land trusts reflect local conservation priorities, are managed locally, and can serve as a focus of civic pride. Citizens and groups wishing to promote the establishment or strengthening of a regional land trust should express their support to council.

### **Other necessary changes**

A public education campaign concerning the existence and value of important natural sites, particularly those on the urban fringe, is needed to generate public support for their protection. Municipalities should be encouraged to lead such education efforts, and to work with groups already active in the area.

Statutory reform is also needed to increase the amount of land municipalities can take as reserve land, along with provincial policy directing how these lands should be managed. In the absence of such reform and provincial leadership, municipal policy is needed to ensure that reserve lands are taken and managed to achieve conservation and open-space objectives. Councils should be encouraged to dedicate more of their municipal reserve lands to natural or agricultural sites instead of traditional parks, especially where park space is not needed by schools. They should also re-examine the practice of taking money in lieu of reserve land, particularly in commercial and industrial areas.

Even the most well-intentioned policy will fail without adequate financial support. It is therefore critical for municipalities to commit sufficient funds to natural areas acquisition and management programs, and any other conservation initiatives they undertake.

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<sup>217</sup> See M.J. Salomons, *Discussion Paper: Establishing an Edmonton Regional Land Trust* (August 2004), online: The Land Stewardship Centre of Canada <[http://www.landstewardship.org/EdmontonLandTrustReport\\_000.pdf.pdf](http://www.landstewardship.org/EdmontonLandTrustReport_000.pdf.pdf)>.

## **Pushing for regional planning**

Land development, industrial activity and natural resource management in a growing municipality inevitably impact neighbouring municipalities. Regional, or intermunicipal, planning is essential to preserving shared natural areas and features. It is also key to controlling new development, promoting better use of existing urbanized areas, transportation planning, and creating more connected and livable communities.

### **The need for provincial leadership**

Since formal regional planning was abandoned by the Province in 1995, these intermunicipal issues have been addressed primarily on an ad hoc basis. Many municipal governments are competitive, wary of collaboration, and heavily influenced by local interests that have most to gain from unimpeded local development. There is often considerable institutional and political resistance to developing and implementing regional strategies for smart growth. However, without such a regional blueprint, local solutions to growth issues will be piecemeal and will fail to achieve significant, lasting change. Better, more sustainable planning depends on a regional approach.<sup>218</sup>

The *MGA* provides for intermunicipal development plans and intermunicipal bylaws. Although these are potentially effective tools, to date they have been used primarily to address site-specific intermunicipal concerns rather than broader regional planning issues.

Regional forums are therefore needed to set development strategies and standards for smart, sustainable growth. Existing voluntary organizations such as the Alberta Capital Region Alliance have taken some steps to address regional growth management issues. However, to be effective, such organizations must go beyond information exchange and ad hoc cooperation to provide a comprehensive vision and implementation strategy. This type of cooperative planning requires provincial leadership that goes beyond simply making statutory tools available.

In order to meet this need and address increasing land use conflicts, concerns about water source protection, sprawl, and the loss of agricultural land, the Province should develop and implement a comprehensive land use policy. Such a policy, which would be binding, would create a level playing field among municipalities and promote more efficient and sustainable development.

The Province should also begin working with municipalities to establish regional planning bodies. These organizations could be provided with the statutory authority to develop and adopt growth management strategies, and given the regulatory powers to

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<sup>218</sup> *Making Smart Growth Work*, *supra* note 76 at 158.

implement them. Alternatively, they could derive their authority by agreement among the municipalities in the region. Either way, it is essential that the Province provide a comprehensive policy framework for regional planning.

Citizen and group concerns regarding the provincial role in regional planning should be directed to the local MLA, the Premier, and the Minister of Municipal Affairs. Copies of correspondence can also be sent to the leaders of the opposition parties.

### **Encouraging regional planning using existing tools**

In the meantime, municipalities are authorized by the *MGA* to establish intermunicipal planning authorities (IPA) to address regional concerns. An IPA is given its mandate, duties and powers by agreement of the participating municipalities. This may include the development of intermunicipal development plans and non-statutory growth management plans, and the power to decide subdivision and development applications.

Many municipalities currently cooperate on a wide range of planning issues. However, before they will consider formalizing these arrangements under an IPA, the councils will normally need to be convinced that there is sufficient political support for the idea. They must also be sure that a permanent joint planning authority is in the best interest of the municipality, and that the arrangement will not unduly interfere in local planning matters. Convincing two councils of the merits of formal intermunicipal planning can be a daunting challenge in the current climate of competition. The initiative will benefit enormously from the commitment of one or more champions on each council, who share a regional planning vision. Perhaps the most effective role for citizens and local groups is to identify these councilors, keep them informed, and demonstrate that there is public support for smarter growth through formalized regional planning.

Where a formal IPA is not feasible, councilors may be more amenable to establishing an intermunicipal councilors' forum. The forum can be used to discuss and resolve regional issues and find answers to common infrastructure needs. However, as an informal mechanism, such a forum depends on the ongoing commitment of the councils involved.

Whether regional planning proceeds formally or informally, there are a variety of ways that a planning authority, councilors' forum, or other regional organization can promote smart growth.<sup>219</sup> They can:

- provide and disseminate credible information, and advise member councils, on regional growth issues;

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<sup>219</sup> *Ibid.* at 160.

- work with member municipalities to define regional needs;
- assess the regional compatibility of statutory plans, land use bylaws, and subdivision and development decisions;
- develop and implement a public education campaign on the need for sustainable regional growth and cooperation; and
- develop and (where authorized) implement regional growth management and impact mitigation strategies.

There are other ways to generate interest in regional planning that do not depend so heavily, at least initially, on buy-in from council. Business associations such as local Chambers of Commerce meet regularly to discuss ways to promote local economic development. Although it may take persistence, alliances are possible among such associations, conservation and smart growth advocacy groups, and local planning organizations. Real estate associations may be more resistant to such initiatives, but with broad support and good organization they may be convinced that it is better to be included. Possible collaborations could include a regional growth conference, having speakers from one organization attend and address a meeting of one of the other groups, and joint visioning exercises. The ultimate aim of such efforts is to build bridges, find common ground, and demonstrate a broad base of support for smarter regional growth.

### **Speaking out against a proposed development**

Public participation in land use planning decisions can be critical to ensuring development proceeds in a sustainable manner and in the interests of the local community. Beyond the formal opportunities provided by the *MGA*, citizens can lobby councilors, collect signatures for an informal petition, launch media campaigns, and take other steps to raise awareness of issues relating to a proposed development.

Because individual residents typically lack the resources available to developers and municipalities, groups may be especially important for pooling resources for effective action. Individuals within the group can divide responsibilities, which may include investigating neighbourhood planning issues and concerns; gathering information; monitoring development initiatives; setting up meetings, public forums and consultations; surveying the membership to develop a group position on a development proposal; and representing the group in discussions with developers and the municipality.

Where possible, individuals and community groups should be prepared to discuss development proposals with developers, city planners, and councilors in good faith. This means beginning discussions from the assumption that a mutually agreeable



solution may be possible. In many cases an aggressive media or lobbying campaign opposing a development will make discussions more contentious and progress on potential common ground more difficult. Unless there is no possibility of a mutually agreeable solution, or development is imminent, it may in some cases be advisable to delay campaign activities.

As a rule, discussions and consultations with the municipality and developer should be undertaken as early in the planning process as possible. In some cases, a developer will hold a pre-hearing consultation with the affected community. This may be in response to a municipal policy requirement or on the developer's own initiative. Planning officials may also be present. While some information will be provided at the meeting, community members may also contact the planning department to review available information beforehand.

Before entering into discussions with the municipality or the developer, a community group should be clear on what its priority concerns are and what issues need to be addressed. A survey of members is a good way to gather this information. If the group agrees to be represented in discussions or consultations, the mandate of the group's representatives should also be clear.

A group that has reviewed all the available information regarding the project, identified problem areas, and examined ways the project could be modified to resolve concerns, is more likely to get a positive reception from the other stakeholders. A useful guide to the consultation process and community involvement is *Community Consultation in the Planning and Development Process: A Guide for Edmonton*.<sup>220</sup> While the Guide is written for an urban context, much of the material will apply to development in rural municipalities as well.

### **Speaking out in favour of a proposed development**

Many community and environmental advocates are very effective in opposing development, but fail to express support for well-planned, smart growth development proposals. Speaking out in favour of such proposals is essential to demonstrating public support for sustainable municipal growth. It can also add to the credibility of your group by showing that you can be constructive and are not opposed to any and all development. Council, in particular, needs to be aware of community support for well-designed and planned developments.

Support can be expressed by letter, e-mail, petition, phone call, or by speaking up at a meeting or public hearing. Group representatives should also be ready to explain to the media why they support a particular development.

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<sup>220</sup> *Supra* note 85.

## Civil liability for speaking out

Municipal residents who speak out regarding a proposed development have faced lawsuits for defamation and a variety of other alleged wrongs. Untruthful, misleading or malicious statements can lead to litigation and, ultimately, an award of damages against the individuals who made or publicized the statement. However, provided such statements are avoided, there is little risk of liability for speaking out.

Community advocates have in recent years been subject to “strategic lawsuits against public participation”, or SLAPP suits. In a SLAPP suit, the plaintiff, often a developer, typically alleges that the defendant individual or group has damaged a specific economic interest through its campaign against a particular development. The effect of a SLAPP suit is to intimidate the defendant and other individuals or groups who might consider similar action in the future. Defending such a suit can also be very expensive, pressuring the defendant to end the campaign.

In *Fraser v. Saanich (District)*, a BC landowner who was proposing a redevelopment brought a SLAPP suit against a local community group.<sup>221</sup> The group had signed a petition against the proposed development. The court found that there was no merit to the developer’s claim that the group colluded, conspired, breached a fiduciary duty, acted in bad faith, or interfered with contractual relations. The court went on to censure the developer for using the lawsuit to attempt to stifle the group’s democratic right to speak out against the development. The judge dismissed the developer’s claim and made a special award of costs against him.

By contrast, in *Home Equity Development Inc. et al. v. Crow et al.*, a number of residents of East Sooke, BC were found to have defamed the developer.<sup>222</sup> The court found that the residents had published material stating or implying that the developer was dishonest, deceitful, and corrupt, and alleging that the developer had a callous disregard for the environmental condition of the land in question. The residents were ordered to pay significant damages to the developer.

Untrue statements that are presented as fact and false allegations that paint a person in a negative light are likely defamatory and should be avoided. The advice of a lawyer should be sought before releasing any statement that could be defamatory.

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<sup>221</sup> (1999), 32 C.E.L.R. (N.S.) 143 (B.C.S.C.).

<sup>222</sup> 2004 BCSC 124 (B.C.S.C.).

## **Getting the jump on development in natural areas**

There are many natural areas already slated for development. Many of these will be destroyed or irreparably altered before development plans can be updated, strong policy for natural areas protection created, or a land trust established. Individuals and groups need to be aware that efforts to conserve individual natural areas are much more likely to succeed where the land is not yet under imminent development pressure. In the urban context, most of this land is at the urban fringe, where it is less likely to attract significant attention from conservationists. However, these areas are precisely where concerned individuals and groups should be focusing their efforts.

The need to build positive relationships with developers is especially great where a woodlot is slated for development. Unfortunately, it is not uncommon for a developer to raze a stand of trees in order to avoid an emerging confrontation with the community over its protection. Subject to the land use bylaw and any provincial or federal regulation or permit requirements, a private landowner is generally entitled to use his land as he sees fit. In the absence of effective conservation policies, the good will of the developer may therefore be especially important to preserving a wooded area.

## **A new approach to community involvement in land use planning**

Citizens typically take action to protect natural areas from development at the 11<sup>th</sup> hour. They respond reactively to notice of a planned development provided by the developer or through their community league. By this time, the developer has already invested considerable time and resources in carrying out studies, developing plans, and arranging financing for the development. This investment is made on the basis of expectations for growth, required infrastructure, natural areas protection, etc. set out in existing development plans and communicated to developers by municipal council and the planning and development department. While effective community input at this late stage can result in important changes to development design, it is rare that such intervention will stop a project. It is also unlikely to alter the growth priorities of a municipal council or planning department.

A new approach to citizen involvement in planning decisions is needed. This approach would require a broader vision for sustainable municipal growth. Residents and groups need to get involved at the earliest stages of the planning process to promote the conservation of natural areas and prime agricultural lands; mixed-use, compact urban development; effective public transportation systems in urban areas; and community-oriented, walkable neighbourhoods. In other words, to protect more natural areas, residents need to work more consistently for sustainable planning. These goals are best achieved by convincing municipal councils to realign development priorities.

### **Poplar Lake: A conservation success story**

Poplar Lake in north Edmonton is a good example of how early, well-organized involvement can save a significant natural area from development. In the early 1990's, a conservation-oriented councilor from the local municipality identified Poplar Lake as a natural area that should be protected from development. The lake was on the urban fringe, and although an area structure plan was in place, the area was not under immediate development pressure. The councilor was able to organize meetings with municipal planning, drainage, parks and transportation staff. The six developers with interests in the area were involved, as well as staff from Alberta Environment. The early timing was key to the willingness of the developers to consider alternatives plans for the lake.

After a series of meetings, the bed and shore was identified as Crown land, and further shore and some upland areas were taken by the municipality as reserve land. One of the developers agreed to undertake additional hydrological studies. Development plans were then modified to integrate and conserve the lake for natural and storm water management purposes. Most of the lake area was fenced off to protect riparian areas, and a management plan was worked out with the municipal community services department (parks). A local natural history club offered to design and mount interpretive signs at its own expense.

Early timing, the involvement of a committed councilor and senior municipal staff, and the cooperation of the developers were all instrumental in saving Poplar Lake. In the absence of such collaboration, natural areas slated for eventual development will be more difficult to save.

The Poplar Lake story is especially notable in that there was no direct community involvement, as the lake was more than a kilometre from the nearest subdivision. Where community opposition has often failed, early timing, strong leadership, and collaboration prevailed. The story also demonstrates the importance of electing councilors who are committed to protecting significant natural areas from development and promoting smart growth principles. Ongoing support of such councilors and cooperative advocacy efforts are both essential to conserving natural areas, particularly on the urban fringe.

Education programs are also needed to raise the awareness of municipal residents concerning growth management issues. Getting urban residents to imagine the impacts of growth at the regional level, or on agriculture or the watershed, will require considerable effort. In the absence of provincial leadership, it is an effort that is best pursued through the cooperation of municipalities, local community groups, and, where possible, the development industry.

Several Alberta municipalities have undertaken exercises to articulate a vision for future growth outside the statutory planning process. Others have earmarked significant dollars to carry out consultations with stakeholders and revise key statutory plans to incorporate smart growth principles. Such initiatives provide a rallying point for volunteers, donors and concerned citizens, and an opportunity to form alliances, pool resources, and seek common ground. They are an important invitation to influence both public opinion and council's planning priorities.

## Conclusion

This paper has reviewed the powers of municipalities to regulate the environment through the general bylaw power and the land use planning process. Legal and policy tools for reducing the environmental impacts of municipalities have been examined and recommended. However, the concerns of rural municipalities are typically very different from those of urban centres. Even among municipalities that would appear to have much in common, differences in local economic, social and environmental conditions mean that approaches or tools that are appropriate for one municipality may not work for another.

In spite of their differences, there is a great deal that municipalities can learn from each other. Existing associations provide opportunities for municipalities to exchange information and take advantage of lessons learned by other cities, towns, villages and rural municipalities. Given the complexity of the issues, the need for regional solutions, the current lack of provincial leadership, and the administrative and financial limits of smaller municipalities in particular, there is a real need for increased cooperation through these and other forums. Comprehensive intermunicipal and regional planning presents significant challenges, and will require vision and commitment from municipal councils, staff and stakeholders. However, to be economically and environmentally viable, municipal growth depends on it.

Public participation in municipal regulation and the land use planning process is equally important to ensuring that environmental, health and conservation objectives are identified and achieved. Civic engagement, from exercising rights of participation to lobbying councilors for policy reform and raising public awareness, is vital to ensuring our municipalities remain livable and sustainable.

## Bibliography

### Monographs

Arendt, Randall. *Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks* (Washington, D.C.: Island Press, 1996).

\_\_\_\_\_. *Growing Greener: Putting Conservation into Local Plans and Ordinances* (Washington, D.C.: Island Press, 1999).

Benfield, F. Kaid, Jutka Terris & Nancy Vorsanger, *Solving Sprawl: Models of Smart Growth in Communities Across America* (New York: Natural Resources Defense Council, 2001).

Benfield, F. Kaid, Matthew D. Raimi & Donald D.T. Chen. *Once There Were Greenfields* (New York: Natural Resources Defense Council, 1999).

Boyd, David R. *Sustainability Within a Generation* (Vancouver: David Suzuki Foundation, 2004), online: David Suzuki Foundation  
<<http://www.davidsuzuki.org/WOL/Sustainability/>>.

Brugmann, Jeb. *Managing Human Ecosystems: Principles for Ecological Municipal Management* (Toronto: Local Environmental Initiatives, 1992).

Curran, Deborah. *A Case for Smart Growth* (Vancouver: West Coast Environmental Law, 2003), online: WCEL <<http://www.wcel.org/issues/urban/sbg>>.

\_\_\_\_\_. *Smart Bylaws – Summary* (Vancouver: West Coast Environmental Law, 2003), online: WCEL <<http://www.wcel.org/issues/urban/sbg>>.

Edmonton Federation of Community Leagues. *Community Consultation in the Planning and Development Process: A Guide for Edmonton* (Edmonton: EFCL, 2003).

Gordon, David. *Green Cities: Ecologically Sound Approaches to Urban Space* (Montreal: Black Rose Books, 1990).

Gurran, David, *et al.* *Understanding Sprawl* (Vancouver: David Suzuki Foundation, 2003), online: David Suzuki Foundation  
<[http://www.davidsuzuki.org/files/Climate/Ontario/Understanding\\_Sprawl.pdf](http://www.davidsuzuki.org/files/Climate/Ontario/Understanding_Sprawl.pdf)>

Hoehn, Felix. *Municipalities and Canadian Law: Defining the Authority of Local Governments* (Saskatoon: Purich Publishing, 1996).

- Kwasniak, Arlene J. *Alberta's Wetlands: A Law and Policy Guide* (Edmonton: Environmental Law Centre, 2001).
- \_\_\_\_\_. *Reconciling Ecosystem and Political Borders: A Legal Map* (Edmonton: Environmental Law Centre, 1997).
- Laux, Frederick A. *Planning Law and Practice in Alberta*, 3<sup>rd</sup> ed. (Edmonton: Juriliber, 2002).
- Makuch, Stanley M., Neil Craik & Signe B. Leisk, *Canadian Municipal and Planning Law*, 2<sup>nd</sup> ed. (Toronto: Carswell, 2004).
- Nowlan, Linda, Chris Rolfe & Kathy Grant, *The Smart Growth Guide to Local Government Law and Advocacy* (Vancouver: West Coast Environmental Law, 2001), online: West Coast Environmental Law <<http://www.wcel.org/wcelpub/2001/13300.pdf>>.
- Pim, Linda & Joel Ornoy. *A Smart Future for Ontario: How to Protect Nature and Curb Urban Sprawl in Your Community* (Don Mills, Ont.: Federation of Ontario Naturalists, 2002), online: <<http://www.ontarionature.org/enviroandcons/issues/sprawl.html>>.
- Porter, Douglas R. *Making Smart Growth Work* (Washington, D.C.: Urban Land Institute, 2002).
- Rogers, Ian M. *The Law of Canadian Municipal Corporations*, 2<sup>nd</sup> ed., looseleaf (Toronto: Carswell, 1971).
- Salomons, M.J. *Discussion Paper: Establishing an Edmonton Regional Land Trust* (August 2004), online: The Land Stewardship Centre of Canada <[http://www.landstewardship.org/EdmontonLandTrustReport\\_000.pdf.pdf](http://www.landstewardship.org/EdmontonLandTrustReport_000.pdf.pdf)>.
- Smart Growth BC. *The Smart Growth Toolkit: Helping to Create More Livable Communities in British Columbia* (Vancouver: Smart Growth BC, 2001), online: Smart Growth BC <[http://www.smartgrowth.bc.ca/index.cfm?Group\\_ID=3383](http://www.smartgrowth.bc.ca/index.cfm?Group_ID=3383)>.
- Urban Land Institute. *Environment and Development: Myth and Fact* (Washington, D.C.: ULI, 2002).
- Wilkie, Karen and Robert Roach. *Breaking New Ground: Urban Residential Development and the Environment* (Calgary: Canada West Foundation, 2004).

## Articles

Chandler, Margaret. "Sprawl Pox" (July/August 2004) 7:4 *Alberta Views* 36.

Mullan, David. "Revisiting the Standard of Review for Municipal Decisions - When is a Pile of Soil an 'Erection'?" (2000-2001) 13 C.J.A.L.P. 319.

Reynolds, Larry A. "Environmental Regulation and Management by Local Public Authorities in Canada" (1993) 3 J.E.L.P. 41.

Tomalty, Ray *et al.* "Smart Growth" (2003) 29:3 *Alternatives* 3-30.

Thomas, Dennis R. "Statutory Appeals – The Poor Man's Injunction" (2000) 15:4 *Environmental Law Centre News Brief* 11.

Valiente, Marcia. "Turf War: Municipal Powers, the Regulation of Pesticides and the Hudson Decision" (2002) 11 J.E.L.P. 325.

## Government Documents

Alberta Municipal Affairs. *Land Use Policies* (Edmonton: Alberta Municipal Affairs, 1996).

\_\_\_\_\_. *The Legislative Framework for Municipal Planning, Subdivision, and Development Control* (Edmonton: Alberta Municipal Affairs, 1997, rev'd 2002).

City of Calgary. *Wetland Conservation Plan Final Draft* (18 May 2004), online: City of Calgary  
<[http://www.calgary.ca/docgallery/bu/parks\\_operations/wetland\\_conservation\\_plan.pdf](http://www.calgary.ca/docgallery/bu/parks_operations/wetland_conservation_plan.pdf)>.

City of Edmonton, *Smart Choices for Developing Our Community: A Catalogue of Ideas* (Edmonton: City of Edmonton, 2003).

City of Edmonton Planning and Development. *The Planning and Development Handbook for the City of Edmonton* (Edmonton: City of Edmonton, 2001).

## Jurisprudence

114957 *Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241.

*Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710.



*Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, [2004] 3 S.C.R. 304.

*Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607.

*Fraser v. Saanich (District)* (1999), 32 C.E.L.R. (N.S.) 143 (B.C.S.C.).

*Home Equity Development Inc. et al. v. Crow et al.*, 2004 BCSC 124 (B.C.S.C.).

*Hoyda v. Edmonton (City)* (1979), 18 A.R. 215 (Dist. Ct.).

*Hutterian Brethren Church of Starland v. Starland No. 47 (Municipal District)* (1991), 6 M.P.L.R. (2d) 67, A.J. No. 495 (QL) (C.A.).

*Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342.

*Norman v. Port Moody (City)* (1995), 17 B.C.L.R. (3d) 208 (B.C.S.C.), aff'd (1996), 84 B.C.A.C. 146 (C.A.).

*Propane Gas Association of Canada Inc. v. North Vancouver (City)* (1989), 42 M.P.L.R. 29 (B.C.S.C.).

*Re AES Calgary ULC* (2 July 2002), MGB 091/02, online: Alberta Municipal Affairs <<http://www.municipalaffairs.gov.ab.ca/mahome/cfml/boardorders/pdf/M091-02.pdf>>.

*Re AES Calgary ULC* (25 June 2001), EUB 2001-101, online: EUB <<http://www.eub.gov.ab.ca/BBS/documents/decisions/2001/2001-101.pdf>>.

*Reese v. Alberta (Minister of Forestry, Lands & Wildlife)* (1992), 7 C.E.L.R. (N.S.) 89 (Alta. Q.B.).

*Robertson v. Edmonton (City)* (1990), 4 W.W.R. 232, 104 A.R. 374 (Q.B.).

*Smillie v. Saskatoon (City)* (1979), 9 C.E.L.R. 131 (Sask. Q.B.).

*Tollefson v. Gloucester (Township)* (1976), 1 M.P.L.R. 11 (Ont. Mun. Bd).

## **Legislation**

*Alberta Rules of Court*, Alta. Reg. 390/68.

*Agricultural Operation Practices Act*, R.S.A. 2000, c. A-7.

*Canada National Parks Act*, S.C. 2000, c. 32.

City of Edmonton, By-law No. 10406, *Nuisance Bylaw*.

City of Edmonton, By-law No. 12300, *Procedures and Committees Bylaw*.

*Conservation Easement Registration Regulation*, Alta. Reg. 215/96.

*Dangerous Goods Transportation and Handling Act*, R.S.A. 2000, c. D-4.

*Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12.

*Fisheries Act*, R.S.C. 1985, c. F-14.

*Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25.

*Government Organization Act*, R.S.A. 2000, c. G-10.

*Historical Resources Act*, R.S.A. 2000, c. H-9.

*Interpretation Act*, R.S.A. 2000, c. I-8.

*Interpretation Act*, R.S.C. 1985, c. I-21.

*Land Use Policies*, O.I.C. 522/96 (Alberta).

*Migratory Birds Regulations*, C.R.C., c. 1035.

*Municipal Government Act*, R.S.A. 2000, c. M-26.

*Natural Resources Conservation Board Act*, R.S.A. 2000, c. N-3.

*Navigable Waters Protection Act*, R.S.C. 1985, c. N-22.

*Provincial Parks Act*, R.S.A. 2000, c. P-35.

*Public Health Act*, R.S.A. 2000, c. P-37.

*Public Lands Act*, R.S.A. 2000, c. P-40.

*Subdivision and Development Regulation*, Alta. Reg. 43/2002.

*Traffic Safety Act*, R.S.A. 2000, c. T-6.

*Water Act*, R.S.A. 2000, c. W-3.

*Water (Ministerial) Regulation*, Alta. Reg. 205/98.

*Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, R.S.A. 2000, c. W-9.

### **Online Resources**

Alberta Energy and Utilities Board, online: <<http://www.eub.gov.ab.ca>>.

Canadian Environmental Law Association, online: <<http://www.cela.ca/>>.

Department of Fisheries and Oceans, online: <<http://www.dfo-mpo.gc.ca>>.

Pembina Institute for Appropriate Development, online: <<http://www.pembina.org/>>.

Sierra Club of Canada, online: <<http://www.sierraclub.ca/>>.

Smart Growth Canada, online: <<http://www.smartgrowthcanada.com>>.

Smart Growth Online, online: <<http://www.smartgrowth.org/>>.

Sprawl Busters, online: <<http://www.sprawl-busters.com/index2.html>>.

West Coast Environmental Law, Smart Bylaws Guide, online:  
<<http://www.wcel.org/issues/urban/sbg/>>.