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By-Law Special Bulletin: The *Municipal Government Act* and Bill 21

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By Sheila McNaughtan

Analysis of Significant Amendments Proposed to the *Municipal Government Act* (*MGA*)

- A preamble is to be added to the *MGA*. Preambles give context to the legislation and are used in interpreting the intent of the legislation. (Bill 21, ss. 2 - 3)

- The purpose of a municipality is amended to include working collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services. This reflects the nature of the other amendments proposed to the *MGA*. (Bill 21, s. 6; *MGA*; s. 3(d))

- The provisions with regard to municipalities controlling corporations, including for-profit corporations, no longer require the Minister's approval. Municipalities may own a controlling position. There are preconditions to municipalities controlling corporations and also reporting requirements. This should provide additional flexibility to municipalities. Regulations will be created to provide further detail. (Bill 21, s. 13; *MGA*, ss. 75.1 - 75.5)

- A duty has been added to those of Councillors set out in s. 153. This is to promote the integrated and strategic approach to intermunicipal land use planning and service delivery with neighbouring municipalities. (Bill 21, s. 15)

- A municipality must offer orientation training to each Councillor within 90 days after the Councillor has been elected. Specific topics must be addressed in that orientation. This may have a cost implication for some municipalities in terms of accessing that training. (Bill 21, s. 16; *MGA*, s. 201.1)

- The Minister may require a matter connected with the management, administration or operation of any municipality or any assessment prepared under Part 9 to be inspected if the Minister receives a sufficient petition. This is in addition to the existing authority to require it on the Minister's initiative or on request by the Council of the municipality. Clarity is provided as to what "administration or operation" of a municipality includes, specifically referring to the conduct of a Councillor or an employee or agent of the municipality or the conduct of a person who has an agreement with the municipality relating to the duties or obligations of the municipality for the person under the agreement. This expands the scope of matters which may be the subject of such an inspection. (Bill 21, s. 83; *MGA*, s. 571)

- The Minister may order an Inquiry on the Minister's initiative. It is no longer possible for a petition to be made or Council to request an Inquiry. The result of this is that when electors or Council wish the Minister to carry out some review, it will be necessary to request an inspection. (Bill 21, s. 84; *MGA*, s. 572)

Part 17: Planning and Development

By Kelsey Becker Brookes & Daina Young

Bill 21 will substantively amend and add to Part 17 (Planning and Development) of the *MGA*. Major amendments will include the requirement for municipalities outside of the Edmonton and Calgary regions to create Intermunicipal Collaboration Frameworks and Intermunicipal Development Plans, the requirement for all municipalities to adopt a Municipal Development Plan, clarification regarding the time to appeal a decision to a Subdivision and Development Appeal Board, expanded off-site levy provisions, the creation of a new category of reserve land, and various amendments regarding inclusionary housing.

Growth Management Boards (Bill 21, s. 219; *MGA*, Part 17.1)

- Growth Management Boards are mandatory for the Edmonton and Calgary regions but remain voluntary in other areas. The purpose of Growth Management Boards is to provide for integrated and strategic planning for further growth in municipalities. The Lieutenant Governor in Council must, by regulation, establish a Growth Management Board for the Edmonton and Calgary region and determine membership.

- The regulation must not only create these two Growth Management Boards, but also must require Growth Management Boards to prepare a growth plan, specify objectives of the growth plan, specify the contents of the growth plan, specify timelines to complete the growth plan, specify the form of the growth plan, specify the desired effect of the growth plan, specify regional services and funding of those services and specify a process for establishing and amending the growth plan.

Intermunicipal Collaboration Frameworks (Bill 21, s. 131; *MGA,* Part 17.2)

- Municipalities not mandated to be a part of a Growth Management Board are to develop an Intermunicipal Framework among two or more municipalities. The purpose of an Intermunicipal Framework is to provide integrated and strategic planning, delivery and funding of intermunicipal services, steward scarce resources efficiently by providing local services and ensure municipalities contribute funding to services that benefit their residents.

- Municipalities with common boundaries must create an Intermunicipal Framework within two years of these sections coming into force. A municipality may be a party to more than one Intermunicipal Framework. The Minister may exempt a municipality by order.

- Intermunicipal Frameworks must include services provided by each municipality, services shared on an intermunicipal basis, services being provided by a third party, the best way to provide services, how intermunicipal services are delivered and funded, and how to implement services on an intermunicipal basis. An Intermunicipal Framework must address services related to transportation, water, wastewater, solid waste, emergency services, and recreation and cannot conflict with a growth plan. In addition, it must address conflicts and be reviewed every five years.

- For an Intermunicipal Framework to be complete, each participants' council must also adopt an Intermunicipal Plan or include an Intermunicipal Plan as an appendix to the framework.

- Where participant municipalities cannot agree on an Intermunicipal Framework or a replacement framework, the matter must be referred to an arbitrator, either chosen by the municipalities or appointed by the Minister.

- The Intermunicipal Framework provisions are aimed at increasing intermunicipal collaboration and cooperation, requiring municipalities to work together regarding service delivery and cost sharing. The goal is to better manage growth, coordinate service delivery and optimize resources for citizens. Regulations will provide additional support to the intermunicipal collaboration framework.

Intermunicipal Development Plans (Bill 21, s. 94; *MGA*, s. 631)

- Two or more municipalities that have common boundaries (but are not part of a Growth Management Board) will be required to adopt an intermunicipal development plan (IDP). The Minister may, by order, exempt one or more municipalities from the requirement to adopt an IDP.

- The scope of mandatory matters to be addressed in an IDP is expanded. An IDP must address the provision of transportation systems for the area, proposals for the financing and programming of intermunicipal infrastructure for the area, the co-ordination of intermunicipal programs relating to the physical, social and economic development of the area, environmental matters within the area, and the provision of intermunicipal services and facilities.

- The requirement to adopt an IDP must be complied with within five years from the date Bill 21 comes into force. In the event that municipalities required to create an IDP are unable to agree on a plan, the arbitration provisions regarding Intermunicipal Collaboration Frameworks apply. It is unclear how the five year time frame will mesh with the two year timeframe for completion of Intermunicipal Collaboration Frameworks, which are not considered complete until the parties to the framework have adopted, or included as an appendix to the framework, an IDP.

Municipal Development Plans (Bill 21, s. 95; *MGA*, s. 632)

- Bill 21 will require all municipalities, not only those with populations of more than 3500, to adopt a municipal development plan (MDP). Municipalities without an MDP are required to adopt a plan within three years of the date Bill 21 comes into force.

- The new requirements regarding Intermunicipal Collaboration Frameworks, IDPs, and MDPs will involve a significant amount of work and require substantial resources.

Planning and Development Policies (Bill 21, s. 96; *MGA*, s. 638.2)

- Municipalities will be required to maintain a list of policies that may be considered in making decisions under Part 17 which have been approved by council or its delegate.

- The policies must be published on the municipality's website with a summary of how they relate to statutory plans and planning and development bylaws. Development authorities and subdivision authorities may only have regard to a policy if it complies with the statutory requirements set out in this section.

Completeness of Applications for Subdivision Approval and Development Permits

- New provisions will require subdivision and development authorities to determine whether an application for subdivision approval or a development permit is complete, within twenty days of receipt of the application. The twenty day time period can be extended by an agreement in writing between the applicant and authority. If the authority does not make a determination within the twenty day time period the application is deemed complete. (Bill 21, ss. 105 and 122; *MGA*, ss. 653.1 and 683.1)

- If the authority determines that the application is incomplete, the authority must provide the applicant with a notice in accordance with the land use bylaw and provide the applicant with the opportunity to provide the outstanding information. If the additional information is not provided, the application is deemed refused and the authority must issue a notice in regarding the refusal and the reasons for it, which is subject to appeal to the SDAB. (Bill 21, ss. 105 and 122; *MGA*, ss. 653.1 and 683.1)

- Cities and specialized municipalities (prescribed by regulation) may, in their land use bylaw, provide alternative periods of time for development and subdivision authorities to review the completeness of, and make decisions on, applications. (Bill 21, s. 98; *MGA*, s. 640.1)

Subdivision and Development Appeal Boards (SDAB)

- The amendments provide clarification on when the fourteen day appeal period for an appeal to the SDAB commence; seven days from the date the order or decision or development permit was mailed. It is unclear how this provision will interact with land use bylaw provisions which require notice to be given by publication. (Bill 21, s. 125; *MGA*, s. 686(1.1))

- A new provision is added to the *MGA* which provides an express statutory immunity for members of an SDAB while acting in good faith in the exercise of their powers, duties and functions under Part 17 of the *MGA*, and confirms that members are not liable for costs relating to application for permission to appeal or appeals from SDAB decisions. (Bill 21, s. 93; *MGA*, s. 628.1)

Conservation and Environmental Reserve

- The subdivision authority will be authorized to, as a condition of subdivision approval, require the owner of land to provide land to the municipality as conservation reserve if the following requirements are met:

    - the land has environmentally significant features;
    - the land could not be required to be provided as environmental reserve;
    - the purpose of taking the land is to enable the municipality to protect and conserve the land; and
    - the taking is consistent with the municipality's MDP.

    The municipality is required to pay the landowner compensation in an amount equal to the fair market value of the land at the time of the subdivision approval. Disagreements regarding compensation will be determined by the Land Compensation Board. (Bill 21, s. 113; *MGA*, s. 664.1)

- The purposes for which a subdivision authority may be required to provide land as environmental reserve (ER) will be amended the following:

    - to preserve the natural features of specified land;
    - to prevent pollution of the land or of the bed and shore of an adjacent water body or ensure public access to and beside the bed and shore;
    - to prevent development where the natural features of the land would;
    - to ensure public access to and beside the bed and shore; or
    - to prevent development of the land where, in the opinion present a significant risk of personal injury or property damage occurring during development or use of the land. (Bill 21, s. 112; *MGA*, s. 664(1.1))

- Municipalities and landowners will be authorized to enter into written agreements providing that the owner will not be required to provide ER, or specifying the boundaries of the ER to be provided, as a condition of subdivision approval. The subdivision authority cannot then require ER contrary to the agreement unless there is a "material change affecting the parcel of land" which occurred after the agreement was made. (Bill 21, s. 113; *MGA*, s. 664.1)

Off-Site Levies (Bill 21, ss. 101-102; *MGA*, s. 648)

- Currently off-site levies may be used to off-set the capital costs associated with the construction or expansion of water systems, sanitary sewer systems, storm sewers, and roads. Under Bill 21, off-site levies can also be used to pay for all or part of the cost of new or expanded community recreation facilities, fire hall facilities, police station facilities, and libraries. For these expanded purposes, at least 30% of the benefit of the project, as determined under the regulations, must be anticipated to benefit the future occupants of the land on which the off-site levy is being imposed.

- For these expanded purposes, persons on whom an off-site levy is imposed may appeal the levy imposed to the Municipal Government Board.

- While developers will continue to contribute based on their proportional benefit, with the balance funded through general revenue, these changes will allow municipalities to pass on to developers some of the capital costs associated with the increased demand for community facilities.

Inclusionary Housing

- The Lieutenant Governor in Council will be authorized to make regulations regarding the provision of inclusionary housing. (Bill 21, s. 128; *MGA*, s. 694(1)) Municipalities will be able to include standards and regulations for inclusionary housing, in accordance with the regulations, in their land use bylaws. (Bill 21, s. 97; *MGA*, s. 640(4))

- Subdivision and development authorities will be able to require an applicant, as a condition of approval, to provide for inclusionary housing in accordance with the land use bylaw and inclusionary housing regulations. (Bill 21, ss. 103 and 107; *MGA*, ss. 650(1) and 655(1))

- Subdivision and Development Appeal Board (SDAB) decisions will have to comply with the inclusionary housing provision of the land use bylaw and the inclusionary housing regulations. In addition to complying with the land use bylaw (subject to the variance power) and statutory plans when determining an appeal, SDAB must also comply with the inclusionary housing provisions in the land use bylaw and inclusionary housing regulations. Since the SDAB already has to comply with land use bylaw, subject to the variance power, it is not clear if the Board can use its variance power on the inclusionary housing provisions in the land use bylaw and inclusionary housing regulations. (Bill 21, s. 126; *MGA*, s. 687)

Assessment and Taxation Matters

By Carol Zukiwski & Shauna Finlay

Bill 21 includes many changes to assessment and taxation matters. These changes will have a significant impact on how assessments are done and how the revenue required for municipal budgets may be raised through taxation. Therefore, all municipalities should review the proposed changes very carefully to consider how they will affect their own municipalities and financial administration so they can provide feedback to the Province on a timely basis. The principal changes are identified in summary form below.

Maximum 5:1 Ratio for Tax Rates

Bill 21 adds a new section to the *MGA* (s. 358.1) that will impose a maximum 5:1 tax rate ratio of non-residential tax rates to residential tax rates. This means the highest non-residential tax rate in a municipality must not be more than 5 times its lowest residential tax rate. There is however, a grandfathering clause.

Municipalities that, on the date the section comes into force, have ratios that exceed the 5:1 ratio are deemed "non-conforming" and may continue to be non-conforming with the following limitations:

i. a non-conforming municipality cannot increase its ratio in any future years;

ii. if it lowers its ratio in a future year, that becomes its new maximum ratio; and

iii. if it subsequently has a tax rate ratio of 5:1, it loses its "non-conforming" status and must maintain a ratio at or below the 5:1 maximum.

Ability to Split the Non-Residential Tax Rates

Previously, it was not possible for municipalities to have differing tax rates for non-residential property except on the basis of whether it was vacant land or had buildings on it. It is now possible to have different sub-classes for non-residential property. This will increase the flexibility of municipalities to set tax rates that reflect the development objectives of the municipality and require properties that use more municipal services and resources to pay a higher tax rate. It is currently unknown exactly what sub-classes will be authorized by the regulations. Therefore, if municipalities have views on what sub-classes should be included, feedback should be given to Municipal Affairs.

Creation of Designated Industrial Property and a Provincial Assessor

One of the most significant changes in Bill 21 involves the creation of designated industrial property which will be assessed by the provincial assessor. This will mean that property such as oil and gas facilities and forestry plants - which are presently assessed by the municipality - will now be assessed by the Province.

Designated industrial property will include:

i. linear property;

ii. facilities regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the National Energy Board; and

iii. property designated as a major plant by the regulations; and

iv. any other property designated by the regulations.

In this area, the Bill 21 provides that many of the substantive details are to be established in the regulations. The substantive details would include new definitions for linear property, the listing of the major plants, and the valuation standards for designated industrial property. The valuation standard means the way in which this new property is to be valued (market value or something else). The regulation in which many of these substantive details may be included is the *Matters Relating to Assessment and Taxation Regulation* (*MRAT*). Consultation is currently ongoing for *MRAT.* We strongly urge municipalities to discuss the issues to be

determined in *MRAT* with their assessor, and with either The Alberta Urban Municipalities Association (AUMA) or The Alberta Association of Municipal Districts & Counties (AAMD&C).

Complaints for designated industrial property will be heard by the Municipal Government Board, and the municipality is one of the parties who can file a complaint against a designated industrial property that forms part of their tax base. The large plants and some linear property are currently valued based on the cost to construct the property, less certain costs which are excluded under the legislation. Currently the property owner reports that information to the municipal assessor. Under the structure proposed by Bill 21 that information would be provided to the provincial assessor. Bill 21 does not provide a mechanism for the municipality to obtain the cost information or to understand the assessment decisions made by the provincial assessor. Machinery and equipment and linear property (now to be called "designated industrial property") are a significant portion of the tax base for many municipalities. We anticipate the need for municipalities to retain an assessor experienced in industrial assessment to review the assessments prepared by the province on behalf of municipalities.

Creation of a Chair for the Local Assessment Review Boards and the Composite Area Review Boards

Bill 21 introduces a requirement for all municipal councils to:

i. create local assessment and composite assessment review boards (LARBs and CARBs);
ii. designate members of those boards; and
iii. designate a chair of each of those boards.

The role of the chair of these boards will be to put together panels of each of those boards where there are complaints relating to assessments, tax or assessment exemptions, or business or improvement taxes. The chair will be responsible for ensuring that the panels convened meet the new requirements contained in Bill 21 that only one municipal councillor from the local municipality may be appointed to a three person panel (i.e. so they cannot form a majority) or two municipal councillors may be appointed if they are from municipalities other than the municipality in which the property in issue is located.

Councillors cannot be the Majority on a LARB / CARB / SDAB

As discussed above, Bill 21 prohibits local councillors from forming the majority of panels for SDAB, LARB or CARB hearings by limiting the number of local councillors that can sit on panels (only one). Councillors from other municipalities are permitted to make up the majority of such panels. Municipalities that have difficulties finding enough qualified members to appoint to these boards may find this change increases those difficulties.

Linear Taxes Not Shared – But May be Discussed Where Creation of Intermunicipal Collaborative Frameworks

Linear taxes will continue to be allocated to the municipality in which the linear property is located. While it has been suggested that in the intermunicipal collaboration framework that is proposed, funding for shared initiatives may include a discussion regarding the sharing of linear taxes, there is no legislated change that would require this in Bill 21.

Assessor's Ability to Request Information

Bill 21 makes a change to s. 295(1) and expands the type of information that an assessor can request from a property owner. However, the type of information is not specified and Bill 21 indicates that the information will be set out in the regulations. This is another reason why we encourage municipalities to become involved in the regulation review.

The proposed s. 295(1) has the word 'and' between the subsections, and it appears that a property owner would have to fail to supply the information in both subsections before their complaint could be dismissed by the board. A positive addition in Bill 21 is the addition of a reference to s. 295 under s. 296 which would allow the municipality to make a court application to obtain documents requested under s. 295.

Property Owner's Right to Request Information about How the Assessment is Prepared

Bill 21 makes a good amendment to s. 299 by stating that the information to be provided is limited to information in the assessor's possession at the time the information is prepared. The detail of the type of information to be provided is also to be set out in the regulations (likely *MRAT*).

Municipalities may wish to consider whether s. 299.1 (access to provincial assessment record) should be amended further to allow a municipality to make a request under this section.

Municipality Can Amend the Assessment Even if a Complaint Filed

Bill 21 would amend s. 305 of the *MGA* to allow municipalities to correct and amend an assessment and issue a reassessment even if the property assessment is under complaint. This allows municipalities more autonomy to correct and revise assessments without having to go before the applicable assessment review board to make the change. However, the proposed amendment does not address the finding of the Court of Appeal in the *Capilano Mall v. City of Edmonton* decision that s. 305 can only be used by the assessor to correct a technical error or a typo. If the intent of the proposed amendment was to allow the assessor to exercise professional judgement and determine that an assessment should be amended beyond correcting a typo, the proposed amendment does not achieve that objective.

Court Review of Assesment Review Board Decisions: File for Judicial Review within Sixty Days

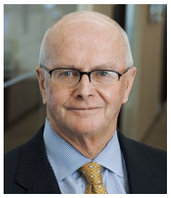
Bill 21 repeals the statutory appeal framework for decisions of (ARB) and, instead, simply sets out a sixty day time limit for judicial review applications. It also sets out record preparation requirements in the event of a judicial review. Interestingly, along with this change, no privative clause (statement that ARB decisions are final) was added.

This change also removes the requirement to seek leave to appeal. Very few municipalities have ever obtained leave to appeal an ARB decision so the removal of this requirement should mean that municipalities have a clearer path to a review of board decision than previously existed. Conversely, it will also mean that property owners also have a clearer and easier path to bring a board decision before the Court.

One question is whether this change may also broaden the issues that may be appealed, from only law or jurisdiction, to questions of fact or questions of mixed fact and law. Given that there is no privative clause introduced, it is suggested one could appeal on a broader list of issues.

Consultation with regard to regulations concerning the preparation of assessments is currently ongoing and we recommend municipalities contact either AUMA or AAMD&C to provide their input.

OUR MUNICIPAL TEAM



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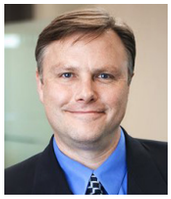

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