
**INDUSTRY SUGGESTIONS FOR THE
MGA REVIEW PROCESS:
MUNICIPAL & REGIONAL PLANNING**

Revised June 2014

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BACKGROUND

On June 11th & 12th, 2013 BOMA in Alberta, which consists of BOMA Calgary and BOMA Edmonton, hosted a series of workshops with their membership and Industry partners including NAOIP and UDI Alberta regarding the ongoing review of the Municipal Government Act (MGA) being conducted by the Province of Alberta.

These 3 workshops in Taxation, Municipal Planning, and Regional Planning sought to:

- Establish clear direction on some of the priorities and interests of Property Owners, Developers, and Management (Industry) as a whole, not individual stakeholder interests;
- Identify and clarify key issues, directions and recommendations regarding current activities related to policies and practices within municipalities and the Government of Alberta (GoA);
- Develop 'white papers' to provide coherent, consistent and meaningful input to the GoA, particularly as part of the MGA review process; and,
- Establish broad enough principles and feedback so as to attract broad Industry support.

The resulting Whitepapers were circulated to external stakeholders, including local and provincial governments and their elected officials, municipal associations and municipal staff for discussion and comment. Follow up meetings were held between these individuals and groups and BOMA members to solicit feedback. BOMA stakeholders also attended provincially-run MGA consultation review meetings in various locations across the Province. In response to the feedback received, BOMA Calgary and BOMA Edmonton held an additional consultative workshop with their members and industry stakeholders in June 2014. The purpose of this workshop was to review the feedback received through individual meetings and the MGA consultation review meetings, and evaluate existing positions in light of that feedback.

This document consolidates the input and direction received from BOMA members and industry stakeholders as it relates to Assessment & Taxation and forms the basis of BOMA in Alberta's input for the ongoing conversations regarding the MGA review.

ESTABLISHED PRINCIPLES

After detailed conversation and input, Industry members agreed upon the following principles:

- The MGA has had in the past, and will, on a go forward basis, have significant implications for all Industry members, the citizens of Alberta, and the competitiveness of Alberta Municipalities relative to other jurisdictions;
- The Province and Municipalities play a fundamental role in building the platform to accommodate growth by investing in infrastructure, providing services and stewarding communities;
- The Province can help ensure that Alberta is a strong choice for locating businesses by ensuring the competitiveness of municipal jurisdictions in Alberta in terms of taxation policy and regulation; and,
- Rate-paying stakeholders, like electoral stakeholders, have a vested interest in the future of our Province.

KEY CRITERIA

In addition to these principles, stakeholders agreed that as part of assessing the current legislation and processes, the MGA Review should consider the following criteria with the overarching theme of equity:

- a. **Equitable** – rules and procedures should be equitable within and across jurisdictions and applied equally to all market participants.
- b. **Transparent** – processes and evaluation metrics should be clear and defined.
- c. **Efficient** – review processes should be streamlined wherever possible and timelines should be abided with consequences for inaction.
- d. **Appropriate** – guidelines or codes of practice should be established to ensure responsibility and accountability.
- e. **Competitive** – jurisdictions need to remain competitive in attracting new businesses.
- f. **Consistent** – rules and procedures should be consistent within and across jurisdictions.
- g. **Predictable** – assessments and decisions should be consistent over time, replicable, and with certainty of entitlement.
- h. **Competence** – deciding authorities should maintain independence and professionalism in adjudicating planning and assessment matters.

RECOMMENDATIONS SPECIFIC TO MUNICIPAL AND REGIONAL PLANNING

The stakeholder group identified the following key subject areas for consideration:

IMPLEMENT REGIONAL PLANNING FRAMEWORKS

Industry Position: The current system of Municipal Planning should be better integrated with Regional Planning.

Industry believes that the current system of municipal/regional planning in Alberta does not effectively balance the needs of different municipalities and in turn, their relationship with the private sector. Regional Planning frameworks should be established to address these imbalances while recognizing the finite nature of resources, the need for fair costing for use and delivery of services and infrastructure, and the differences between regions.

A strong regional planning structure would be well positioned to manage growth and limit regional disputes. Regional Planning should identify growth corridors and better plan regional infrastructure networks including shared regional roads, public transit, sanitation systems, and potable water distribution across municipalities. Planning in a regional context would also support collaboration among municipalities and a sharing of benefits resulting from joint service structures and regional tax arrangements. Mechanisms should be in place to provide regional solutions, with municipalities sharing infrastructure costs in terms of capital and operating. Protections should be in place to ensure that larger municipalities are properly compensated for reasonable capital and operating costs when providing regional solutions, balanced by the ability of smaller jurisdictions to retain the ability to self-provide if a regional solution is not cost effective from their perspective. Mechanisms should be in place to address cost effective regional solutions.

Currently, Calgary is the only large jurisdiction in Canada that is not part of a formal regional planning system. The balancing of interests between large and small municipalities has been particularly difficult in Alberta for both the Calgary and Capital regions. The implementation of a Regional Planning framework would work to balance the interests between large and small municipalities, including the equitable and fair division of natural resources (e.g. watersheds).

Empowered Regional Planning frameworks would remove the need for veto powers in settling regional disputes as compliance with the regional plan would be required.

A new Regional Planning framework would also define the clear limitations of municipal powers and recognise that patterns of development do not follow the historical boundaries of municipalities.

Industry recognizes the fundamental differences between areas of the province and the need to address the issues and challenges that are specific to each region in the formation of Regional Planning frameworks.

FOCUS ON ENSURING FAIR & EQUITABLE ACCESS TO RESOURCES

Industry Position: Access to services and resources should be fair, equitable, and transparent.

Access to major infrastructure, such as transportation corridors, water, utilities and sanitary sewer should be equitable, efficient and transparent within and across municipalities. Potable water, as an example, is a resource shared by all Albertans and should not be used as a negotiating tool among municipalities, particularly in the establishment of development and growth patterns.

Potable water should be available to all municipalities on a fair and equitable basis under the management of ESRD (or the appropriate provincially designated and appointed authority), and in keeping with their guidelines.

STRENGTHEN THE EFFECTIVENESS OF APPEAL BOARDS

Industry Position: The effectiveness of the Subdivision and Development Appeal Boards (SDAB) process needs to be strengthened through improved training, changes to membership selection criteria, and establishment of clear definitions of “affected persons” and “materially affected”. The SDAB process should reflect BOMA’s key criteria.

In some, not all, municipalities, appeals are heard by the same persons that made the initial decision that is being appealed, leading to concerns around the impartiality of the appeals process.

SDABs should operate under the principle of independence and should be supported by institutional arrangements that protect the Board and its members from any real or perceived pressure to make adjudicative and regulatory decisions based upon anything other than merit.

The principle of impartiality refers to the selection of members who have sufficient expertise to hear the matter at hand and who view their roles within the context of public service and are capable of deciding matters without prejudice. Consistent with these principles, elected officials and municipal employees should not be allowed membership on the appeal board while in those respective capacities, and afterwards only following a responsible “cooling off” period.

It is important that Appeal Board membership consist of Albertans who are knowledgeable and educated individuals with expertise in the area of real estate fundamentals. Planning and development related decisions can be of a highly technical nature and require relevant experience and an understanding of the industry and other stakeholders that are affected by the decisions of the Appeal process. To ensure competent adjudication, the education process should be further enhanced with education programming ensuring a diversity of perspectives to

ensure that Board members understand the fundamentals of the public and private perspective and experience. To ensure the balance of perspectives, Appeal Board members should be required to receive training from public and private practitioners.

Improved education and adjudication combined with enhanced impartiality should result in decisions of the appeal board that are fair and consistent to allow predictability of decisions for all parties.

The appeals process can be further enhanced by establishing provincial definitions of “affected person” and “materially affected” for the purposes of planning related appeals. Currently these definitions vary between and within municipalities leading to uncertainty of the appeals process, adding time and expense to the appeals process.

BOMA heard from smaller jurisdictions the difficulty in establishing an impartial or learned Board given their smaller pools of qualified applicants. Consideration by the Province should be given to establishing a better framework to facilitate the challenges in the rural jurisdictions.

Finally, written decisions should be supplied with rationale behind the decision.

EMBED ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE MGA

Industry Position: The effectiveness of appeals process can be further enhanced with the addition of an optional Alternative Dispute Resolution (ADR) mechanism.

An Alternative Dispute Resolution (ADR) mechanism and/or quasi-judicial process should be established under the MGA as an optional process to resolve disputes between developers and municipalities. The process could be modelled after that of the Surface Rights Board (SRB) that was established by the Provincial Government to adjudicate land disputes in regards to resource development, as similar to the Ontario Municipal Board structure in use in that province.

The dispute resolution program would be designed to facilitate a shift from adversarial, win-lose thinking, towards cooperative problem solving that favours flexible, personalized and durable outcomes. The SRB incorporates negotiation and mediation processes that parties must follow prior to a formal hearing of the board.

Parties should have the option to use ADR as the primary way to resolve disputes rather than being required to enter into the appeals process as a first step.

Unlike a formal hearing, the parties would have control over the outcome and therefore would likely be more satisfied with mediated results than with decisions imposed by the appeal boards.

Pre-hearing dispute mediation conferences would be offered as an optional mechanism for certain types of appeals to the Subdivision and Development Appeal Boards (SDAB) and Municipal Government Board (MGB). This would help ensure that the parties have the assistance of highly qualified representatives when discussing their dispute and exploring how best it may be resolved. Industry believes that an ADR process would substantially reduce the number of appeals and reduce the number of court proceedings that follow unsuccessful appeals; reducing the burden on the system and ultimately costs to taxpayers.

INCREASE PREDICTABILITY & PROVIDE OPTIONS FOR ALTERNATIVE DELIVERY

Levy Allocation for Improvements:

Industry Position: Greater clarity is required on where and how levy funding is allocated. Industry generally believes that levies collected in respect of a development should directly benefit that development and reflect BOMA's key criteria.

Currently no assurance is given that the money sourced from developers and earmarked for particular improvements (e.g. streetlights, recreation centres, parks etc) is actually spent on the earmarked improvement within the timelines agreed. Funds for improvements are often placed in general reserves to be allocated at the municipality's discretion with minimal consideration of the original intent of the funds.

In the interest of efficiency, municipalities could grant developers the ability to implement the improvements independent of the municipality based on a prescribed funding arrangement, ensuring the improvements are developed on pace with the rest of the development. Developers could also have the option of obtaining their funds back from the municipality should the improvements not have been completed within agreed-upon time constraints.

It is important to emphasize that leading and lagging infrastructure are different, and that some improvements require greater predictability (e.g. sewers) while others do not require the same level of predictability (e.g. schools). However, a process should be in place to ensure both predictability and accountability of all parties.

Consistent with this principle, the MGA should include robust frameworks for "endeavours to assist" to recognise costs borne by developers in front-ending infrastructure. In many cases, developers are required by a municipality to install infrastructure to a level that is beyond the current needs of their development or the municipality. "Oversizing" of infrastructure is typically required in anticipation of future demand and requires the developer to front-end the cost of development that will be utilised by developers in the future. The Industry believes that a more robust framework is required to ensure that the municipality is recovering the cost of oversizing that infrastructure for the initial developer in a timely manner.

Levy Predictability:

Industry Position: Municipalities should be required to implement multi-year levy and acreage assessment rate structures to give greater predictability to the Industry for investment decisions.

Industry currently operates on multi-year and long-term planning horizons but is subject to uncertainty in terms of shorter term assessments and levies. Greater predictability would encourage greater competitiveness.

Sustainability & Environmental Stewardship

Industry Position: The MGA should incorporate a section on Sustainability & Environmental Stewardship that encourages innovative solutions to address existing land use issues.

Environmental stewardship has become an increasingly important part of the public conversation and the MGA should be updated to accommodate innovative solutions to environmental problems. For example, Industry currently faces challenges in adapting older non-conforming buildings for reuse as the existing land use regulations make no provision for

Adaptive Reuse. Industry believes an opportunity exists to provide for legal non-conforming properties to be adapted for reuse without applying modern land use bylaw restrictions that would force the closure of, or prevent the upgrading of, the property. The reuse of the properties would have environmental benefits in the avoidance of demolition and reconstruction.

Unnecessary additional water transportation infrastructure is required due to the inequitable distribution of water among municipalities and the fact that water is allocated at a municipal level without consideration of the regional planning context. The additional infrastructure and energy costs cause unnecessary harm to the environment that could be avoided with regional water planning and allocations.

Industry believes that sustainability can be encouraged through incentives to include sustainability improvements and not through a mandated certification process, which may become outdated or obsolete.

CHARTER CITIES

Industry Position: Industry believes that the granting of charters to select municipalities should be done in a manner that does not result in increased regional inequity or new levies or powers of taxation. The charter cities discussions should also be contained within the MGA review process as the creation of “charter cities” could nullify the effect of suggested changes to the MGA for chosen municipalities.

The current MGA grants significant authority to municipalities to levy developers. If changes are required to address a municipality’s ability to fund infrastructure, then adjustments should be made within the existing framework. Industry also believes that the existing planning process be maintained to promote consistency across Alberta.

Charter city frameworks should be developed in a manner that leads to greater equity between the major population centres and the municipalities that surround them.

CONCLUSION

These White Papers are meant to encourage discussion and demonstrate the industry’s commitment to working with the Province to develop solutions, practices and approaches that are able to acknowledge and address the different priorities and objectives of different parties and regions yet remain consistent with the key criteria.

The MGA Review process is welcomed by Industry to ensure our province and our municipalities are competitive in the years to come. The legislation we establish today will set the groundwork for the growth and development of our province. It is essential that the MGA works in the best interests of all stakeholders and that the principles of fairness, transparency, efficiency, appropriateness, competitiveness, consistency, and predictability are reinforced and enshrined in the legislation and subsequent regulations.

