
INDUSTRY SUGGESTIONS FOR THE MGA REVIEW PROCESS:

TAXATION & ASSESSMENT

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 defined and adhered to 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** – the assessment process and resulting decisions should be consistent over time, replicable, with certainty of entitlement, and consistent with other sources of valuation.
- h. **Competence** – deciding authorities should be extensively trained in valuation fundamentals and maintain independence and professionalism in adjudicating planning and assessment matters.

RECOMMENDATIONS SPECIFIC TO ASSESSMENT & TAXATION

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

PROPERTY ASSESSMENT PROCESS

The goals of Industry are to:

- 1) Reduce the volume of appeals currently burdening the system;
- 2) Mitigate revenue risk for municipalities created by appeals and provide certainty to Industry stakeholders;
- 3) Reduce the adversarial nature of the appeal process;
- 4) Improve the consistency and predictability of the assessment process; and
- 5) Ensure that assessment measures only market value, irrespective of tax policy.

Transparency of Information and Clarity of Definitions

Industry Position: Industry believes that the assessing municipality should be required to provide greater access to data and processes utilized in the assessment calculations to property owners in order to increase predictability and ensure consistency.

Currently property owners are not given access to the fundamentals of the calculations that determine the assessed value of their properties. This information gap puts the onus on the property owner to identify in what way they believe the assessment is incorrect, without access to the information that was used to create the assessment. Access to the same data and processes as in the possession of the assessors would allow property owners to engage in meaningful discussion with municipalities on the nature of their concerns and allow accurate prediction of assessments year-to-year. Access to this information should be clearly defined, assured, and free from penalties or fees.

Further, the onus of defending the property assessment could be shifted to the municipality. The municipality would then be required to present comparable data to the property owner and explain the reasons for the assessed value. The goal of increased consistency and predictability is satisfied in either case.

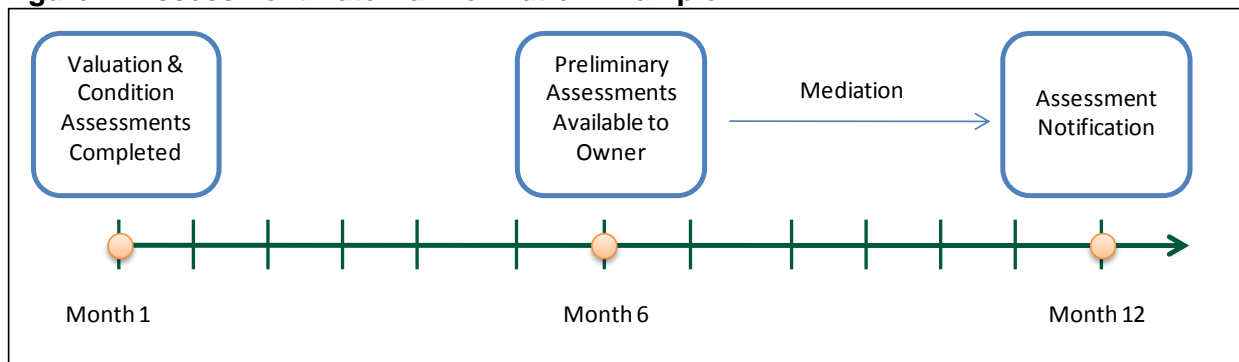
Additionally, Industry believes the MGA should be amended to encourage municipalities to defend appeals based on market valuations rather than mass appraisals. Industry recognizes the practicality in utilizing the mass appraisal system to assess the value of properties across the entire municipality; however, circumstance specific characteristics can dramatically affect the value of a property so market value of the specific property should be the basis of appeal. This should be clearly defined within the act.

Assessment Date Harmonization

Industry Position: Industry believes that the dates for valuation assessments and assessment of conditions should be harmonized in legislation to a single date earlier in the year prior to the tax year.. Preliminary assessments would then be made available to the owner several months later with taxation statements being mailed several months after the preliminary assessments have been mailed (see example in Figure 1), when the tax roll is set and finalized. Careful consideration would have to be paid in establishing the new timelines to create a balanced use of resources and ensure budget certainty.

Harmonizing the dates allows the Alternative Dispute Resolution (ADR) process (described below) and much of the appeal process to be completed prior to the finalization of the municipal tax roll; effectively mitigating the municipal revenue risk associated with tax appeals. Removing revenue risk implications from the process will also reduce the adversarial nature of the appeals process and allow a more productive mediation process. The increased time between notification and appeal deadlines would allow municipalities and property owners greater time to come to an agreement prior to entering the appeals process, reducing any burden on the court system and ultimately saving taxpayer dollars. Date harmonization would also allow property owners to more accurately predict tax implications and plan accordingly.

Figure 1: Assessment Date Harmonization Example



In an effort to further remove the financial risk of appeals to municipalities and enhance Industry's ability to appropriately budget for property tax levies, a lag of one year could be inserted between the assessment valuation and appeal year, and the year in which that value is taxed. Tax would then be levied on the value of two years prior, rather than the current approach of one year prior. Any changes made during the review and appeal period would have no impact on municipal tax revenue as the mill rate will not be set until the appeal period is complete. This alternation would remove the financial risk to the municipalities if corrections result in material assessment adjustments. The focus would be on getting values right absent the influence of revenue loss. In addition, Industry would know their assessment value well in advance, allowing them to better budget and plan for shifts within assessment classes.

Industry members agree that the current 60 day review period for appeal filing should be maintained. The 60 day period allows Industry members considering an appeal to perform the necessary due diligence to evaluate whether an appeal is warranted. Reducing the time frame for filing an appeal will result in an increase in protective appeals as companies will react to comply with the appeal deadline without taking a considered approach to the merits of the appeal. This is inefficient and costly to both owners and municipalities.

DEVELOP PROVINCIAL APPEAL BOARD & ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISM TO BE IMBEDDED IN MGA

Industry Position: Industry believes that a Provincial Appeal Board and Alternative Dispute Resolution (ADR) mechanism should be established under the MGA to resolve disputes between rate payers and municipalities. The Appeal Board and ADR process could be similar to the Surface Rights Board established by the Provincial Government to adjudicate land disputes in regards to resource development. The British Columbia assessment dispute resolution model also provides guidance.

The goals of Industry are to:

- 1) Reduce the volume of appeals currently burdening the system;
- 2) Improve appeal board independence and objectivity;
- 3) Reduce the adversarial nature of appeal board hearings; and
- 4) Reduce dependency on an already overburdened court system.

Embed Alternative Dispute Resolution (ADR) in MGA

The dispute resolution program would be designed to facilitate a shift from adversarial, win-lose thinking, towards cooperative problem solving that favours flexible, equitable and durable outcomes.

Parties would be encouraged to use mediation as the primary way to resolve disputes rather than being required to enter into the appeals process as a first step. It would also provide full disclosure so parties fully understand the case being made.

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

Pre-hearing dispute mediation conferences should be a required pre-requisite to the appeal process and 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 the costs to taxpayers.

Newly Constituted Provincial Appeal Board

Industry participants believe a new provincial adjudication body should be constituted to replace the current Composite Assessment Review Board (CARB) – a body that would ensure an equitable, consistent, and transparent process for appeals between all municipalities. This provincial appeal board should be competent (i.e. conversant in valuation matters), neutral, and

independent of local influence. Consistent with these principles, membership on the appeal board would only be allowed membership on the appeal board following a reasonable “cooling off” period.

Industry feels that the current process is challenging in that the adjudication of appeals are being heard by the same municipalities that were involved in the assessment process, which leads inherently to a conflict and also to potential and perceived questions of the impartiality of the appeals process. Essential to the fair and consistent rendering of decisions is the notion of independence; a notion that would be supported by institutional arrangements protecting the Board and its members from any real or perceived pressure to make adjudicative decisions that are not based on merit. It is felt that a new body should be competent in taxation matters and constituted by members who view their roles within the context of public service and decide matters without prejudice, and that these principles be codified in the legislative mandate that enables this new appeal body.

Industry members agree that Appeal Board membership should consist of Albertans who are knowledgeable and educated individuals with expertise in the area of real estate fundamentals. Decisions relating to assessments can be highly technical in nature and require relevant experience and an understanding of the industry and other stakeholders that are affected by the decisions of the Appeal process. The education process should be further enhanced to ensure competent adjudication. Education programming should ensure 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.

Industry believes that a newly constituted provincial appeal board, rendering fair, consistent, and predictable decisions, would substantially reduce the number of court proceedings that follow unsuccessful appeals; reducing the burden on the system and ultimately the costs to taxpayers.

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 will be an essential exercise to ensure our province and our municipalities are competitive in the years to come. The frameworks and policies we establish today will set the groundwork for the growth and development of our province. It is essential that the frameworks established work 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.

