



THE COMMUNICATOR

Alberta Development Officers Association (ADOA)

February 2022

Winter Issue

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Images by Davin Gegolick

NEW IDEA - Bi-Annual Meeting

The ADOA executive members meet 4 times a year for meetings, generally at a location that is central to all members.

This year we have members as south as Brooks and as north as Smoky Lake so it can be interesting.

There was a suggestion at the last meeting that we have an open forum meeting on the Friday afternoon for all members to attend and participate.

If you would like to attend in person, the ADOA will have a venue to fit 20 additional members and will provide lunch to those 20 members. The meeting will also be available to attend online.

We are asking that members let us know if they will be able to attend and if it will be in person or online so we can plan accordingly.

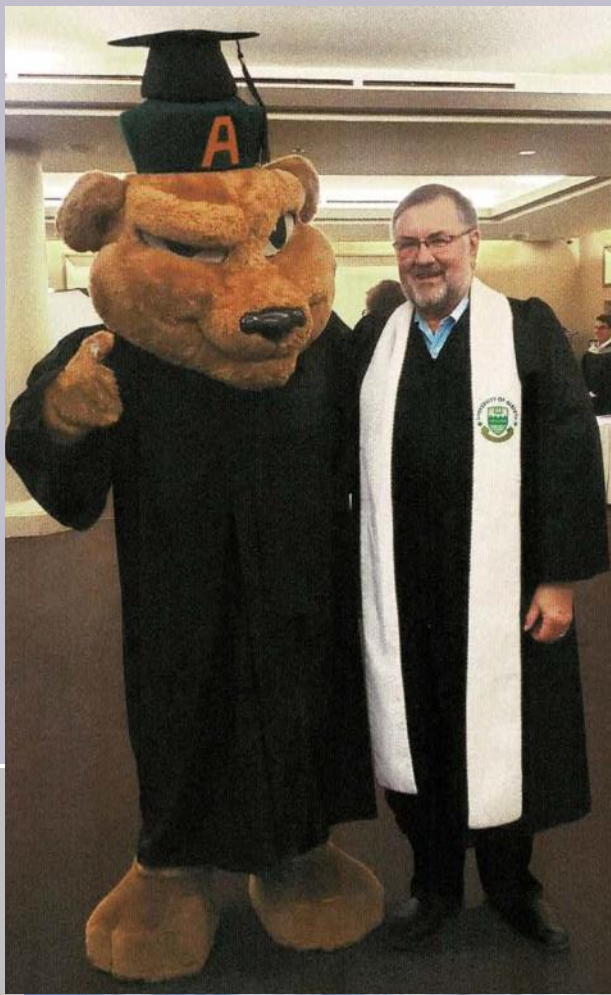
We are reaching out to members to provide a topic that they would like to discuss at the meeting. There will be an agenda to follow and we are hoping to have approximately 3 hours of meeting time to go through the topics and chat with the other Development Officers in the Association.

The meeting will be held on March 4, 2022 in Smoky Lake County, at Metis Crossing.

Please contact Shanna-Lee Simpson at simpsons@newellmail.ca to submit items for the agenda and to respond on your attendance. We will follow up with the online sign in closer to the date of the meeting.

We are very excited to hopefully make this a tradition in the association, once a year doesn't seem near enough to bounce off all the fun things coming into our offices.





It is with heavy hearts that we announce the passing of our dear friend and former President Terry Topolnitsky. Terry passed away after a lengthy struggle on January 7, 2022.

Our deepest condolences to the family.



Why would you go anywhere else when we already live in the most amazing place

ALBERTA!

The Communicator will continue to showcase our lovely province in every issue.

Please send me an email if you live in an area or have visited an area in Alberta that should be showcased.

I just stumbled upon this Gem online, haven't visited but it looks amazing.

The Jurassic Forest, located in Gibbons, Alberta

The forest has a 2 kilometre trail through a forest and inside this forest you will encounter dinosaurs grazing and moving about, they are on motion sensors to be ready for your arrival. There is also events for families, scavenger hunts, mini golf, concession and an active learning park.

The website for more information is <https://www.jurassicforest.com/explore>.



The forest is closed for the season but will open up again in the Spring.

Home of the Rockies



Alberta Prairie Railway, located in Stettler.

The train excursions vary in length and entertainment options. They serve meals, there's entertainment on the train and at the destination and sometimes there is a train robbery!

Most of their excursions are geared towards families, but there is adult excursions as well.

All trains depart and return to Stettler, Alberta.

You can get more information on the several excursions at <https://www.absteamtrain.com/>

ADOA LEGAL CORNER with:



BROWNLEE LLP
Barristers & Solicitors

The Role of Planning Documents in the Development Permit Process

Article 3 of Brownlee LLP's Processing Development Permit Applications Series

The *Municipal Government Act (MGA)* establishes various planning documents, all of which play a different role in the development permit process. Those planning documents are:

✓ Regional Plans

- **Provincial Land Use Policies**

✓ Growth Plans

- **Intermunicipal Development Plans**

✓ Municipal Development Plans

- **Area Structure Plans and Area Redevelopment Plans**

It is crucial that municipalities, particularly Development Authorities, are aware of all planning documents relevant to a development permit application, as there are varying degrees of applicability and binding authority for each. With the intent to provide Development Authorities a general understanding of how planning documents fit into the development permit process, this Article discusses the planning documents listed above and the applicable hierarchy of same, as well as some relevant case law wherein statutory plans were considered.

Provincial Planning Documents: Regional Plans, Land Use Policies, and Growth Plans

✓ Regional Plans

In processing a development permit application, the Development Authority must ensure its decision is *in accordance with* any applicable *Alberta Land Stewardship Act (ALSA)* Regional Plan (*MGA* s. 618.3).

A Regional Plan is an expression of the public policy of the Provincial Government and is a binding document on municipalities, in the context of planning and development (*ALSA* s.13). The Province of Alberta is divided into seven regions each named after the major watersheds in Alberta namely, Lower Athabasca, South Saskatchewan, North Saskatchewan, Lower Peace,

Red Deer, Upper Athabasca, and Upper Peace. The intention is to have a Regional Plan for each of the seven regions.

Currently, there are two regional plans in place: the Lower Athabasca Regional Plan and the South Saskatchewan Regional Plan. If your municipality is within the boundaries of the Lower Athabasca or South Saskatchewan Regional Plan, Development Authorities must ensure they act *in accordance* with the applicable Regional Plan while processing a development permit application.

Unfortunately, the reference in s. 618.3 to “*in accordance with*” has not been considered by the Courts, and therefore there is no judicial guidance respecting the extent of this language. Thus, where an apparent conflict or inconsistency with an *ALSA* Regional Plan exists, the Development Authority may want to consider seeking legal advice prior to moving forward in the development permit process.

Land Use Policies

During the development permit process, the actions of the Development Authority *must be consistent* with the Provincial Land Use Policies (*MGA* s. 618.4).

Land Use Policies supplement the planning provisions of the *MGA*. Land Use Policies provide a framework for statutory plans, land use bylaws, and planning decisions generally. Municipalities are expected to implement the Land Use Policies in carrying out their planning responsibilities.

Notably, following the implementation of *ALSA* and the Regional Plan framework as discussed above, the Land Use Policies are being phased-out. However, the Land Use Policies will not be fully eliminated until *all* Regional Plans are completed. Recall that there are currently only two Regional Plans (Lower Athabasca and South Saskatchewan). In the meantime, until the five remaining Regional Plans are established, the Land Use Policies remain relevant considerations and decisions by Development Authorities must be consistent with same. Indeed, prior to recent legislative amendments, the *MGA* was clear that the Provincial Land Use Policies do not apply where a Regional Plan is established (*MGA*, s. 622(4), repealed). Unfortunately, this provision does not appear to be included in the *MGA* nor in any applicable Acts so the intent of the Legislature in this respect is unclear for the time being.

Growth Plans

Part 17.1 of the *MGA* contemplates Growth Management Boards (GMB). The intention of Part 17.2 of the *MGA* is to provide for integrated and strategic planning for future growth in municipalities through the establishment of a GMB (s. 708.011). There are currently two GMBs in Alberta: the Calgary Metropolitan Regional Board and the Edmonton Metropolitan Regional Board. Various municipalities are members of each GMB.

A GMB develops a Growth Plan to, among other things, ensure efficient land use, including environmentally responsible land use planning, and, naturally growth management.

In the event of a conflict or inconsistency between a Growth Plan and a statutory plan or a land use bylaw, the Growth Plan will prevail (*MGA* s. 708.061(1)). However, a Regional Plan will prevail over a Growth Plan in the event of a conflict or inconsistency between the two documents (s. 708.06(1)). If a municipality is subject to a Growth Plan, every statutory plan and bylaw must be amended, to the extent necessary, to conform with the Growth Plan (*MGA*, s. 708.061(2)).

Municipal Planning Documents: Statutory Plans

In addition to the Provincial planning documents, Development Authorities must also consider all applicable statutory plans.

The *MGA* establishes an interrelated system of four statutory plans:

- Intermunicipal Development Plans (IDP);
- Municipal Development Plans (MDP);
- Area Structure Plans (ASP); and
- Area Redevelopment Plans (ARP).

Every municipality *must* adopt an MDP and *may* adopt ASPs or ARPs, or both (*MGA*, ss. 632(1) and 633(1), respectively). With respect to IDPs specifically, municipalities with common boundaries are *required* to adopt an IDP however, there are exceptions to that rule (*MGA*, s. 631). For the purposes of this Article, Development Authorities must determine whether an applicable IDP exists at the outset of the development permit process.

- *Intermunicipal Development Plans*

IDPs are long-range development plans established by two or more municipalities to act as a tool in facilitating intermunicipal planning initiatives (see *MGA* ss. 631-631.1). Generally, IDPs address planning guidelines and land use control on specified fringe land on either side of a common boundary between two or more municipalities. IDPs are required to, among other things, establish a process for determining how development applications will be processed. For example, an IDP will clarify whether a development application within a municipality that is party to an IDP must be circulated to the other municipalities that are party to the IDP.

Knowing the contents of an applicable IDP will ensure Development Authorities act in compliance with the terms and conditions of the plan thereby reducing challenges to a decision.

- *Municipal Development Plans*

MDPs are long-range development plans passed by a municipality to deal with planning policies and decisions for the entire municipality (see *MGA* s. 632). The intent of an MDP is to provide an interpretive guideline for future development within the municipality. MDPs provide for future land use plans, location for municipal services, among other things. Upon receipt of a development application, Development Authorities must determine whether a particular development permit application is for a use that is consistent with the land use planning

established by the MDP so that the decision on the application can demonstrate how the development application ... had regard for the MDP.

- *Area Structure Plans and Area Redevelopment Plans*

Zooming in from the overarching plan established by an MDP, ASPs and ARPs provide a more detailed framework for future development within a specifically defined area in a municipality (see *MGA* ss. 633-635).

For instance, ASPs must describe the sequence of development for the relevant plan area, the proposed land uses and density for the area, as well as the general location of major transportation routes and public utilities. ASPs may also contain any other matters considered necessary by the municipal council. It is important for Development Authorities to determine whether a particular development application is within an ASP plan area to ensure consistency and compliance with municipal policy.

Unlike ASPs, ARPs identify an *already* developed area as a redevelopment area for the purposes of, among other things, imposing and collecting a redevelopment levy. In keeping with the general theme of this Article, it is critical that a Development Authority makes itself aware of an applicable ARP. Consider a redevelopment levy, for example – it is critical a development approval for land within an ARP area that establishes a redevelopment levy is conditioned to ensure collection of the levy because a development approval that is not conditioned to this effect may render the municipality unable to collect the redevelopment levy.

If a municipality wishes to impose an area redevelopment levy (for land for a park/school buildings, or new or expanded recreation facilities, or both) it must do so pursuant to an ARP (see *MGA* s. 647). However, practically speaking an ASP may be used for either greenfield development, or redevelopment for an area already developed for other purposes; however, a redevelopment levy cannot be imposed through a ASP.

- ***But...what if there is a conflict or inconsistency between statutory plans?***

Where there is a conflict or inconsistency between an IDP and an MDP, an ASP, or an ARP, the IDP prevails (*MGA* s. 638(1)).

Where there is a conflict with a MDP and an ASP or an ARP, the MDP prevails (*MGA*, s. 638(2)).

If a Development Authority becomes aware of an inconsistency between statutory plans, it would be prudent to consider whether an inconsistency should be resolved through an amendment to one or both of the statutory plans.

- ***And...how do the Provincial planning documents and the municipal statutory plans work together?***

Recall that Development Authorities are required to act in accordance with any applicable ALSA Regional Plan. Importantly, this requirement is *not* limited to Development Authorities. Indeed, the *MGA* requires municipalities to ensure that *anything done under Part 17 of the MGA* is in accordance with any applicable *ALSA* Regional Plan.

Municipal statutory plans are established pursuant to Part 17 of the *MGA*. Thus, IDPs, MDPs, ASPs, and ARPs *all must be in accordance* any applicable *ALSA* Regional Plan and where a conflict or inconsistency exists with a municipal statutory plan, the *ALSA* Regional Plan prevails, to the extent necessary to resolve the conflict or inconsistency (*MGA*, s. 618.3(2)).

Similarly, municipal statutory plans are required to be consistent with Provincial Land Use Policies. Again, if there is an inconsistency between provincial planning documents on the one hand and municipal statutory plans on the other, it would be prudent to consider whether the inconsistency should be resolved through an amendment to the relevant statutory plan(s).

- ***WAIT...what about the Land Use Bylaw? How does the Land Use Bylaw, as a planning document, fit into the development permit process? What have the Courts said?***

Notwithstanding that the planning documents established by the *Municipal Government Act* are expected to work in harmony, conflicts and inconsistencies nevertheless arise. This is particularly so in the application of the land use bylaw during the development permit process. We provide the following comments on some relevant case law whereby the Court has grappled with the hierarchy of statutory documents versus land use bylaws. Note that the *MGA* does not address the issue of inconsistency between a land use bylaw on the one hand, and either provincial planning documents or municipal statutory plans on the other hand.

In *Hartel Holdings Co. Ltd. v. City of Calgary*, [1984] 1 SCR 337, the Supreme Court of Canada confirmed that municipalities are *not required* to undertake anything contained in a Municipal Development Plan. This is codified in the *Municipal Government Act* at section 637:

Effect of Plans

637 The adoption by a council of a statutory plan does not require the municipality to undertake any of the projects referred to in it.

Also, the Alberta Court of Queen's Bench has stated that statutory plans provide broad direction but do not designate land use in the manner that a land use bylaw does; statutory plans are implemented through a land use bylaw, and to the extent that there is an inconsistency, the land use bylaw prevails: *Hosford v Strathcona County*, 2019 ABQB 871. Similarly, in *McCauley Community League v Edmonton (City)* 2012 ABCA 224, the Alberta Court of Appeal held that as a regulatory document, a land use bylaw takes precedence if there is a conflict between an area redevelopment plan and a land use bylaw.

In the recent Alberta Court of Appeal decision in *Koebisch v Rocky View (County)* 2021 ABCA 265, the Court said statutory plans are policy documents which state goals; statutory plans cannot regulate in a prescriptive manner. The Court said that it is open to a reviewing Court to conclude

that a certain development project is illegal merely because it is at variance with a municipal development plan. Notably though, the Court cautions that this approach “must not be taken too far lest statutory plans be ineffectualized”. Indeed, in *Koebisch*, the Court also said that the mandatory language included in the contentious municipal development plan in that instance was in fact binding on the municipality because applying an “unduly flexible approach to interpreting it [the MDP] would make it ineffectual”.

From the perspective of the Development Authority, the above referenced case law confirms that the Land Use Bylaw regulates development, not statutory plans. In the event of a conflict between a land use bylaw and a statutory plan, the Land Use Bylaw prevails. Notably though, this rule is not without exception: strict mandatory language within an applicable statutory plan may be enough to displace the notion that the Land Use Bylaw always prevails *if* disregarding the language in the applicable statutory plan would render the plan ineffective.

If a Development Authority is dealing with a conflict between a land use bylaw and a statutory plan, the Development Authority may want to seek legal advice in order to reduce the risk that the decision is appealed to the Subdivision and Development Appeal Board or the Land and Property Rights Tribunal, as the case may be.

Conclusion

There are various planning documents established by the *MGA* all of which serve different purposes in respect of the development permit process. Ultimately, Development Authorities must be aware of the applicable planning documents and the impact of each document from development application to development application. It is unlikely all planning documents will equally apply to all development permit applications so review and consideration of each plan at the time of each development application is in Development Authority’s best interest.

BUT REMEMBER...

If a development application is for a permitted use that complies with the development standards in the land use bylaw, the applicant is entitled to the development permit as of right, regardless of what an applicable statutory plan may say. For further discussion respecting permitted uses, please refer to Article 2 of this Series: **An Important Use Distinction: Permitted and Discretionary Uses**.

The Brownlee Municipal Law Team is pleased to offer our services in a number of planning and development areas, including processing development permit applications, subdivision applications, all related appeals, and adoption of planning bylaws. For more information, please contact a member of the Brownlee LLP Municipal Team on our Municipal Helpline at 1-800-661-9069 (Edmonton) or 1-877-232-8303 (Calgary).

Alberta Safety Codes



Hello, my name is Laural Sheeler, I have been part of the safety codes industry since March 1996. My safety codes career started in permit issuance and has evolved to Contract Manager with Superior Safety Codes. With a team of 53 administrators and Safety Codes Officers, we have offices in Calgary, Edmonton, Lethbridge, Lloydminster, and Red Deer.

Superior Safety Codes has been protecting the safety of Albertans, throughout the province, since 2004. We are accredited in the building, electrical, gas, plumbing and private sewage disciplines. Our objective is to assist our clients in ensuring they meet their obligations when it comes to public safety. We are partners with our customers, listening to their unique needs and delivering the services and information they need to stay in compliance with the Safety Codes Act and provincial regulations. We are responsive, flexible, adaptive, and prepared to develop and/or enhance a service program that aligns with the Municipality's needs.

Thank you to the ADOA for giving us the opportunity to provide a quick overview of our company.

'Superior Safety Codes Inc.'s mission is to provide all individuals ethical and timely service through an absolute commitment to integrity.'

ADOA Conference 2022

Spoiler Alert!

Camrose has offered to host the 2022 ADOA conference!

The following message is from Sandy Domes, Development Officer with the City of Camrose

The City of Camrose is excited to welcome you to the ADOA Conference of September 21-23, 2022.

Camrose is a vibrant regional hub of 20,000 people along Hwy. 13, nestled amongst agriculture lands.

The growing municipality is an established leading regional shopping center.

In addition to the healthy business and manufacturing climate there exists a quality of life second to none.

The conference theme for 2022 is The Stage is Set and we can't wait to greet you to our city.



* Reminders *

If you are leaving your job or Alberta, please let us know...

This way we can keep our membership current.

Thank you for your cooperation!

- *Remember your membership is to you the Individual if you leave your job for whatever reason your membership stays with you for the rest of the year.*

ADOA Fees & Education Subsidy

Membership fees include a subsidy program for education to advance your knowledge. If you have any educational needs related to being a Development Officer please contact admin@adoa.net to apply.

Contributions Wanted

- Perfect snapshot?
- Topics of concern?
- Spotlight a Interesting or unique development?
- Have an original article you'd like to have published?
- Nominate a Development Officer for the spotlight?

Please make a submission at
admin@adoa.net

2021-2022 Board of Directors

Board Member	Role	Municipality	Contact
Jordan Ruegg	President	Smoky Lake County	jruegg@smokylakecounty.ab.ca (780) 656-3730
Cheryl Callihoo	Past President Bylaw and Policy Chair	Town of Barrhead	ccallihoo@barrhead.ca (780) 674-3301
Natacha Entz	Secretary	City of Brooks	nentz@brooks.ca (403) 794-2251
Diane Cloutier	Treasurer Chair Conference Committee Liaison	Lac La Biche County	diane.cloutier@laclabichecounty.com (780) 623-6732
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Contact Us

Send us an e-mail or give us a call for more information about our membership and our non-profit group.

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