

# Municipal Government Act

## progressive powers for municipalities

### INFORMATION BULLETIN #38

#### SITE-PLANS

- Summary:** Site-planning is a new development control tool in the *Municipal Government Act*. It enables a municipality, through its planning process, to negotiate certain site specific items with a developer as a condition of receiving a development permit.
- Legislation:** Specific - Part VIII, Sections 231 to 234, Section 265  
Related - Part VIII, Section 236
- Discussion:** In the past, municipalities have used the development agreement process to gain control over items other than the use of land itself (i.e., items related to the site such as landscaping, the location of parking lots or storage areas, number of parking spaces, signage, hours of operation, building design, etc.). The development agreement process can be a lengthy and expensive process which results in a legal contract between the developer and the municipality. The site-plan approval process is a way of dealing with some of these site related issues in a less formal way. The site-plan approval is also limited to dealing with only one lot at a time, whereas a development agreement can involve a subdivision or multiple lots.
- To use this tool, a municipality must have policy support in its municipal planning strategy identifying the use(s) and/or zone or area where the municipality wants to have greater control over site specific items: s.231. Items that can be dealt with in a site-plan are set out in Section 231(4) of the MGA. The policy provisions must explain why the municipality requires this extra control. The land-use by-law provisions in particular should also provide guidelines for the development officer in evaluating site-plans.
- The MGA specifically states that one and two unit residential dwellings cannot be subject to the site-plan approval process: s.231(2).

A development subject to the site-plan approval process must be a permitted use in the zone in which the proposed development is to be located. The negotiations for the site-plan take place between the developer and the development officer: s.232(1).

A site-plan will not be a written contract. Rather, it is a drawing or plan and may include some written notations. It deals with the site items set out in the municipal planning strategy and land use by-law. The site-plan cannot regulate land-use, the height of a building, the hours of operation or the number of required parking spaces. It can, however, regulate such items as buffering, retention of existing vegetation or management of storm or surface water, if provided for in the municipal planning strategy and the land-use by-law.

Prior to the approval of the site-plan the applicant must agree in writing to carry out the terms of the site-plan. This can be a simple process, for example, it can be a notation on the site-plan itself or an attachment to the plan.

When a development officer approves or refuses a site-plan, the process and rights of appeal are the same as those for a variance: s.232(2). This requires notice to neighbours and gives them fourteen days to appeal the decision to Council.

If the owner is in breach of the site-plan, the municipality may enter the land and perform any of the terms contained in the site-plan, which would become a first lien on the land: s.265.

These site-plans are specific to the property and continue to apply in the event the property is sold unless discharged by Council: s.234. An owner of the land may at a later date, wish to change the use of the property to another permitted as of right use in the zone. If the new use is subject to site approval, the original negotiated site-plan would be revisited.

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**Note:** The reader is cautioned that preparation of this and subsequent Information Bulletins containing practical suggestions must necessarily involve interpretation of legislation as it applies in general situations. Specific situations may require careful legal analysis and therefore reference should be made to the *Municipal Government Act*, other relevant legislation and to legal advisors.