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INFORMATION BULLETIN #1

BUSINESS IMPROVEMENT DISTRICT COMMISSIONS

Summary: Business Improvement District Commissions are dissolved as of April 1, 1999.

Legislation: Specific - Section 539

Related - Section 56 authorizes a municipality to beautify, improve and maintain property it owns or leases, pay grants to a body corporate for the purpose of promoting or beautifying a business district or for airport, or wharf or waterfront development and to collect an area rate (note this is not money which can be borrowed; it must be budgeted for in the operating budget).

Discussion: Business Improvement District Commissions are dissolved as of April 1, 1999. If the members of the BIDC wish it to continue, they can continue it by incorporating, as a society under the *Societies Act*, for example. The incorporating documents would be filed at the Registry of Joint Stock Companies.

In making the decision to continue to offer its services, the BIDC must take into account that the municipality is not required to support such an activity. If the Municipality does support this activity, it has the following options:

- provide the service itself
- contract for the service
- pay grants to support promotion of the municipality
- collect an area rate on the commercial property and business occupancy assessments in an area specified by council.

Important to note, if a new society will need municipal financial support, these matters should be discussed with the municipality.

Property
Section 539 vests the assets and liabilities of the BIDC in the municipality that established it. Section 539 also permits, but does not require a municipality to transfer the property of a BIDC to a nonprofit organization incorporated for purposes similar to those of the dissolved commission. This may include a former BIDC now incorporated as a society, or any other non profit incorporated organization that has the capacity to own the property. Please note that the *Regional Community Development Act* does not authorize regional development authorities to own real property so transfer of real property to a "RDA" is not an option.

Employees
All contractual obligations of the dissolved BIDC are transferred to the municipality. This includes labour contracts, so any BIDC staff is transferred to the municipality. It may be that arrangements should be made to transfer the staff immediately to any successor organization. Alternatively they could be fitted into the municipal structure. Where there is no continuing provisions of the service, appropriate termination procedures and compensation are required. Legal advice should be obtained.

Resources: Incorporating a Society under the *Societies Act*

Registry of Joint Stocks
P.O. Box 1529
Halifax, N.S. B3J 2Y4
9th floor, Maritime Centre
1505 Barrington Street
Halifax, N.S. B3J 2Y4
Tel: (902) 424-7770
Fax: (902) 424-4633
http://www.gov.ns.ca/bacs/rjsc

Date Produced: February 1999

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.

INFORMATION BULLETIN #2

INDUSTRIAL COMMISSIONS

Summary: Industrial Commissions are dissolved as of April 1, 1999.

Legislation: Specific - Section 540

Related - Section 57 gives municipalities authority to promote the municipality, any part of it or surrounding areas as a location for the institutions, industries and businesses or to pay grants to a body corporate for this purpose. Tax concessions are not permitted.

- Section 60 authorizes intermunicipal services agreements

- Clause 65(ao) and Section 66 authorize municipalities to borrow and expend for industrial parks, incubator malls and land and other facilities for the encouragement of economic development.

Discussion: Section 540 of the Act provides that every industrial commission established by a statute or by a public or local bill (including the *Industrial Commissions Act*) is dissolved as of April 1, 1999. It provides that the assets and liabilities are vested in the municipality or municipalities that established it. If the commission is a joint commission, the assets and liabilities would be shared amongst the municipalities in accordance with the instrument of incorporation.

Distribution of the assets may not be necessary if the municipalities agree to have a society incorporated under the *Societies Act* continue to provide the service and the industrial

commission wishes to incorporate as a society. Subsection 540(2) would allow the municipality (or municipalities) to transfer property of an industrial commission to a non profit organization incorporated for purposes related to the improvement of the economy and commerce of the municipality.

Alternatively, the property of a former regional industrial commission could be transferred to an incorporated body created by an inter-municipal services agreement under Section 60 of the *Municipal Government Act*.

Or the municipalities could retain joint ownership of the property and enter into an inter-municipal services agreement under Section 60 of the *Municipal Government Act* which would delegate the power to provide the service to an (unincorporated) committee representing the participating municipalities. But note, in this case, ownership of the property could not be transferred to the committee.

Please note that the *Regional Community Development Act* does not authorize regional development authorities to own real property so transfer of real property to a “RDA” is not an option.

Employees
All contractual obligations of the dissolved industrial commissions are transferred to the municipalities. This includes labour contracts, so any staff is transferred to the municipalities. It may be that arrangements should be made to transfer them immediately to any successor organization. Alternatively they could be fitted into the municipal structures. Where there is no continuing provisions of the service, appropriate termination procedures and compensation are required. Legal advice should be obtained.

Related: *sale of property*

Where property is conveyed to a non-profit organization, there are no restrictions on how that organization may dispose of the property.

Resources: Incorporating a Society under the *Societies Act*

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P.O. Box 1529
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Date Produced: February 1999

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INFORMATION BULLETIN #3

REGIONAL TRANSIT AUTHORITIES

Summary: Regional Transit Authorities are dissolved as of April 1, 1999 and the municipalities are deemed instead to have an intermunicipal services agreement for transit services.

Legislation: Specific - Section 541

Related - Section 55 authorizes a municipality to provide a public transportation itself or by assisting a person who will provide the service.

- Section 60 authorizes intermunicipal services agreements

Discussion: Section 541 of the Act dissolves every regional transit authority and transfers its assets to the municipality or municipalities that established it. The assets and liabilities would be shared amongst the municipalities in accordance with the instrument of incorporation, subject to the limit on their use explained in the next paragraph.

Section 541 continues the transit authorities however by deeming that the municipalities that are members of the authority to have entered into an intermunicipal services agreement for the provision of public transportation services on the same terms and conditions as are contained in the incorporating documents and to have dedicated the property of the authority for that purpose. *This last part means that the assets cannot be taken and used by the member municipalities for other purposes unless the intermunicipal services agreement is amended to provide for this.*

Section 60 of the *Municipal Government Act* should be reviewed for what can be contained in an intermunicipal services agreement. The instrument of incorporation will provide the basic terms but Section 60 may provide additional ideas of what the municipalities might want to add to their deemed agreement. If the municipalities want the former authority to be a body corporate, this could be done by entering into an agreement (or amending agreement) to this effect (also under Section 60) and filing the information with the Registrar of Joint Stock Companies. Ownership of the property could than be transferred from the municipalities to the body corporate, if the municipalities so choose.

Employees
All contractual obligations of the dissolved transit authority are transferred to the municipalities. This includes labour contracts so any staff of the transit authority is transferred to the municipalities. If the municipalities create a body corporate, arrangements can be made to transfer the staff to this body. Alternatively, they could be fitted into the municipal structures and this could be clarified in the intermunicipal services agreement.

Date Produced: February 1999

Note: The reader is cautioned that preparation of this and subseqent 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.

INFORMATION BULLETIN #4

CORPORATIONS and COMMISSIONS DISSOLVED by the ACT

Summary: In addition to BIDCs, Industrial Commissions and Transit Authorities, a number of other corporations and commissions are dissolved as of April 1, 1999.

Legislation: Specific - Section 542

Related - Section 56 authorizes a municipality to beautify, improve and maintain property it owns or leases, pay grants to a body corporate for the purpose of promoting or beautifying a business district, or for parking facilities or for airport, wharf or waterfront development and to collect area rates for these (note this is not money which can be borrowed; it must be budgeted for in the operating budget).

- Section 60 authorizes intermunicipal services agreements

- Section 63 gives a municipality all the powers formerly given to a tree commission

- Sections 65 and 66 authorize borrowings and expenditures on recreation programs, facilities, parks, parking lots, wharves etc..

- Section 75 authorizes area rates.

Discussion: The following commissions are dissolved as of April 1, 1999 by Section 542 of the Act. The list is specific as to type, so if a type of commission or corporation is not listed, it is not dissolved.

The types of commissions that are dissolved are:

- incorporated waterfront development corporations
- incorporated parking commissions
- incorporated tree commissions

- incorporated parks commissions
- incorporated recreation commissions

that are either established by a municipality (by registering it as an incorporated body itself) or by a statute (either a public or local bill). *Note that this section does not apply to unincorporated bodies such as committees that go by the name "commission".*

Section 542 provides that the corporation's or commission's assets and liabilities are vested in the municipality that established it or where it operates. If the members of the commission or corporation wish it to continue, they can continue it by incorporating, as a society under the *Societies Act*, for example. The incorporating documents would be filed at the Registry of Joint Stock Companies.

In making the decision to continue to offer its services, the commission or corporation must take into account that the municipality has the option to:

- provide the service itself
- contract for the service
- pay grants to support promotion of the municipality
- collect an area rate on the area specified by council.

Important to note, if a new society will need municipal financial support, these matters should be discussed with the municipality.

Property

Section 542 permits a municipality to transfer the property of a commission or corporation to a nonprofit organization incorporated for purposes similar to those of the dissolved commission. This may include a society described above or a pre-existing nonprofit incorporated organization that has the capacity to own the property. Note that while the *Societies Act* contains authority for societies to own real property, and an intermunicipal services agreement creating a body corporate could authorize it to own real property, the *Regional Community Development Act* does not authorize regional development authorities to own real property. The municipality may choose not to transfer the property, as well.

Employees
All contractual obligations of the dissolved body are transferred to the municipality. This includes labour contracts, so any staff is transferred to the municipality. It may be that arrangements should be made to transfer them immediately to any successor organization.

Alternatively they could be fitted into the municipal structure. Where there is no continuing provisions of the service, appropriate termination procedures and compensation are required. Legal advice should be obtained.

Resources: Incorporating a Society under the *Societies Act*

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INFORMATION BULLETIN #5

MAYORS and WARDENS

Summary: Mayors in towns and regional municipalities are elected at large; in county or district municipalities, the choice of electing the chair of the council at large or from among the council is made by the council.

Legislation: Specific - Section 12

Related - Section 16

Discussion:

Towns and Regional Municipalities

In towns and regional municipalities, the mayor continues to be elected at large.

County or District Municipalities

In rural municipalities (referred to in the *Municipal Government Act* as county or district municipalities) the head of council continues to be elected by the council members from among themselves unless altered by the council. Council may choose to have the head of the council elected at large. A head of council elected at large is known as a mayor. A head of council elected from the council members continues to be known as a warden.

The term of office of the warden is usually the term of office of the council. However, councils are now able to set a shorter term if they choose, by policy. The decision to elect a warden from the council for less than the full term of the council (four years starting in 2000) must be made before the warden is elected, that is, at or before the first meeting of the council after the year 2000 municipal elections. See s.12 (2). Otherwise the warden holds office for the full term of the council.

The term of office of a mayor elected at large is always the term of office of the council.

A warden may be removed from office by a vote of two thirds of the council: s.12(7). This provision does not apply to mayors elected at large.

Changing from Warden to Mayor

If a county or district municipality wishes to change to having the head of the council elected at large, it must make a determination at least nine months before the next regular municipal election: s.12(8). For the year 2000 elections the decision would have to be made by mid-January, 2000.

If there is concern about keeping the council the same size, the decision to have a mayor elected at large should be made early enough to allow time to apply for a reduced number of polling districts. In clause 12(8) © the MGA provides that the membership of the council will automatically be increased by one, to preserve the existing polling districts, if a mayor is to be elected at large. The council may apply to the Nova Scotia Utility and Review Board to reduce the number.

Changing from a warden elected by council to a mayor elected at large might be considered during the polling district reviews required in 1999.

A decision to have the head of council elected at large may not be reversed after February 15 in the year in which the mayor is first to be elected at large; it is a one-way choice: s.12(9). Once a mayor has been elected at large in a county or district municipality all future mayors will be elected at large.

Councils that wish to consider the election of a mayor at large will be balancing concerns of direct democracy and a direct mandate for the mayor against the expense and difficulty of elections across the whole municipality and the benefit of having, at least initially, the confidence of a majority of the council. These factors will undoubtedly weigh differently with different councils. The attached issue paper sets out most of the relevant considerations.

Deputy Mayor and Deputy Warden

The term of office of the deputy mayor or deputy warden must be set by council by policy: s.16(2). As the Act does not provide for a term of office for these positions, the term must be set before a deputy warden or deputy mayor are elected. Otherwise the deputy mayor or deputy warden has no term of office, and the election will have to be repeated after the term has been prescribed.

Resources: Attached Issue Paper, Method of Choosing Chief of Magistrate, DHMA, 1993.

Date Produced: February 1999

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.

ISSUE PAPER

Appendix to Information Bulletin #5 - Mayors and Wardens

METHOD OF CHOOSING THE CHIEF MAGISTRATE

Like other provinces, Nova Scotia has adopted two principal methods of choosing the chief magistrate as head of a municipal council. In the Province's rural municipalities, the chief magistrate (or warden[1]) is selected by and from among council members at the first council meeting following a general election. In the towns and cities, the chief magistrate (or mayor) is elected at large.

Each model has its strong and weak points. The procedure followed in rural municipalities avoids the problem of candidates campaigning in large geographic areas. Many local campaigns are run from "the kitchen table". If wardens were elected at large, candidates could be hard-pressed to campaign effectively throughout the municipality.

Selection of the warden from among councillors can help to establish good working relationships on council. The procedure demonstrates council's confidence in their chief magistrate. It enhances consensus-building and reduces the likelihood of friction around the warden.

However, the procedure also means that the warden is only first among equals and his or her primary accountability is to council itself. This can be a problem if the views of the warden are at variance with the majority of council. Also, in some cases, the selection process and the competition among councillors for the warden's office can create permanent rifts and power cliques on council. There have been a few attempts in the past to dismiss wardens, but they were unsuccessful primarily because there is no provision for council to do this.

Another difficulty is that, apart from being the head of council, the warden is also regarded as the political leader of the municipality. Yet, except for electors in the warden's district, there is no direct electoral means by which all voters in the municipality can express approval or otherwise of their chief magistrate. At the same time, the warden's responsibility to represent his or her electoral district may lead to parochialism or the appearance of it. All this may undermine the warden's legitimacy to represent and speak for the municipality as a whole.

The alternative approach involving election of the chief magistrate by the general vote is

[1]Except in the Municipality of the County of Halifax where the term Mayor is now used.

the ultimate in the democratic process. It achieves the “one person one vote” principle of direct democracy. In theory, it also means that any qualified elector has a chance to seek mayoralty office. However, in practice, it would be difficult for most electors to run as serious candidates. It is usually ex-councillors who offer as mayoralty candidates.

Under this model, the candidate elected as mayor is directly accountable to the municipal electorate and not to council. As a consequence, the model may build into the system conflict between the mayor and council. For instance, the mayor could be elected on a platform or have a position on a range of policy issues opposed by the majority of councillors. This could be a recipe for acrimony on council. The mayor could be rendered ineffective by a council that may have different priorities. However, in practice, it is not that bleak because the mayor usually votes only in a tie and generally acts impartially as chair in council proceedings. Council may still function effectively, depending on the goodwill of all members and the skills of the mayor in developing a team spirit. At the same time, the public may become increasingly aware of the importance of leadership skills when reviewing election platforms of mayoralty candidates.

On the positive side, the mayor’s office is a high profile one. The general vote gives the mayor the legitimacy to be the ambassador, spokesperson and political leader of the entire municipality. A mandate from the general public probably strengthens the mayor’s leadership role and this may encourage council to follow the mayor’s lead and direction in developing and carrying through council plans and Policies.

If a municipal unit is very large and lacking in essential infrastructure (communications network, media), campaigning by candidates throughout the unit may be less effective. Some of the areas to be amalgamated into unitary municipalities will be large rural areas. Name recognition of candidates could be a problem. Some of them would have little chance of becoming known outside their own neighbourhoods. Choice of the chief magistrate by the council could be appropriate in such units. However, generally speaking communications in Nova Scotia municipalities are quite good, and very much improved over the days when their boundaries were first established.

In Cape Breton and Halifax counties, the availability of media, communications and transportation network is probably sufficient to overcome this problem. Election campaigning could be more costly than at present. But candidates would have a much larger base for donations[2], volunteers, and other resources.

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[2]The Department conducted a study on election contributions and spending limits following elections in 1988. The issue arose from metro area. Most units are not in favour of introducing regulations, and see controls as completely unnecessary.

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INFORMATION BULLETIN #6

COUNCIL REMUNERATION and EXPENSES

- Revised -

Summary: The mayor or warden, deputy mayor or deputy warden and councillors are to be paid annual stipends with no meeting pay.

Legislation: Specific - Part I, Section 23

Related - Section 24(5), Section 24(6) and Section 538

Discussion: Remuneration is to be dealt with by the council by policy, similar to the old recorded resolution. There must be seven days notice to council before a policy is passed or amended, but there are no publication requirements. Once passed, the policy is kept in the by-law book.

Council may determine:

1) the annual remuneration for the mayor or warden;

2) the annual remuneration for the deputy mayor or deputy warden;

3) the annual remuneration for councillors;

4) that part of the remuneration that is an allowance for expenses incidental to the discharge of their duties (the tax free portion, maximum one-third);

5) any deduction to be made for missing more than three council or committee meetings in a year (optional);

6) the rate per kilometre for travel expenses to council or committee meetings (generally used only in regional,

county and district municipalities where travel distances can be significant); [The current rate per kilometre travelled for provincial employees is $0.315 per kilometre].

7) whether council requires that remuneration from appointments to outside boards or commissions be paid to the municipality rather than to the member (among salaried councillors, the only exceptions typically allowed were for members that had an excessive committee load);

8) an expense policy for reimbursement of expenses incurred by council members.

Accordingly, councils should adopt policies governing council remuneration on an annual basis (meeting pay is not permitted) and reimbursement of expenses. In order to maintain a level playing field for council members, council could consider including in the reimbursement policy a provision requiring compensation paid for boards, commissions or other appointments as a representative of the municipality to be paid to the municipality.

If a council member is appointed by council to a board, commission or other position or is otherwise appointed as representative of the council, the remuneration that that body is authorized to pay, in whatever form it is paid, may be paid by that body to the council member *unless* the municipality has a policy under the *Municipal Government Act* that this type of remuneration must be paid to the municipality: (s.23(2)). An example might be if a council appoints a council member to be a member of a municipal housing corporation under the *Municipal Housing Corporations Act*; that Act permits the corporation to fix remuneration for members by by-law and does not restrict it to annual remuneration. (Note: the *Police Act, Libraries Act* and *Regional Community Development Act*, do not provide the authority for remuneration.)

Also if a council member is a member of a board, commission or other similar position as a member of the public and not as a council appointment or representative, the remuneration, in whatever form it is paid, may be paid to the member. Neither the *Municipal Government Act* nor council have authority over this.

Other than these examples, council may not receive meeting fees by attending committee meetings. This prohibition applies to committees established under intermunicipal agreements whether incorporated or not, (i.e., solid waste, district planning commissions, etc.)

It is important to be clear whether the remuneration for the warden is additional to the stipend for a councillor (since the warden is also a councillor) or includes it. Similarly, it is important to be clear whether the remuneration for the deputy mayor or deputy warden is additional to the stipend for acting as councillor, or includes it. It is common to pay the deputy mayor or deputy warden an additional allowance so he or she receives a total stipend somewhere between the stipend for councillor and that for the mayor or warden in recognition of the additional duties of the position.

Members of the council are not entitled to additional pay for serving on council committees, s.24(5), although they may be paid expenses. Committee members who are not councillors may be paid an annual honorarium for serving on the committee, including special allowances for the chair, and may be reimbursed their expenses: s.24(6). Councils should consider whether to provide reimbursement for non-council committee members when setting their own reimbursement policies.

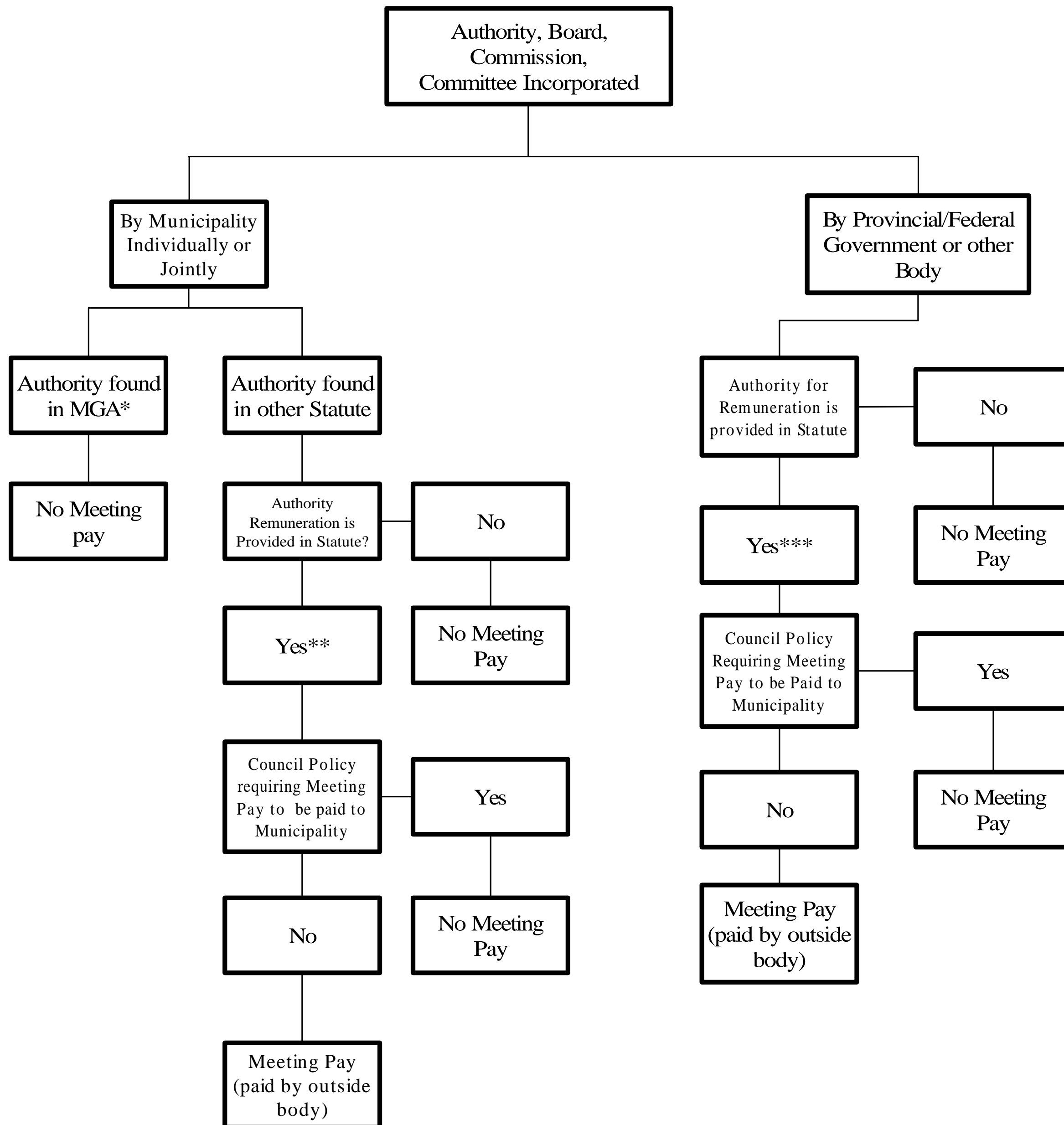
Section 538 of the Act provides that by-laws, orders, policies and resolutions in force in a municipality on March 31, 1999 continue **to the extent that they are authorized by this or another Act**, so existing by-laws or recorded resolutions that authorize remuneration not authorized by the MGA do not continue in force after March 31, 1999. Existing by-laws and resolutions should be reviewed so that they can be replaced for April 1, 1999, if necessary.

Resource: See attached Decision Chart.

Date Produced: February 1999

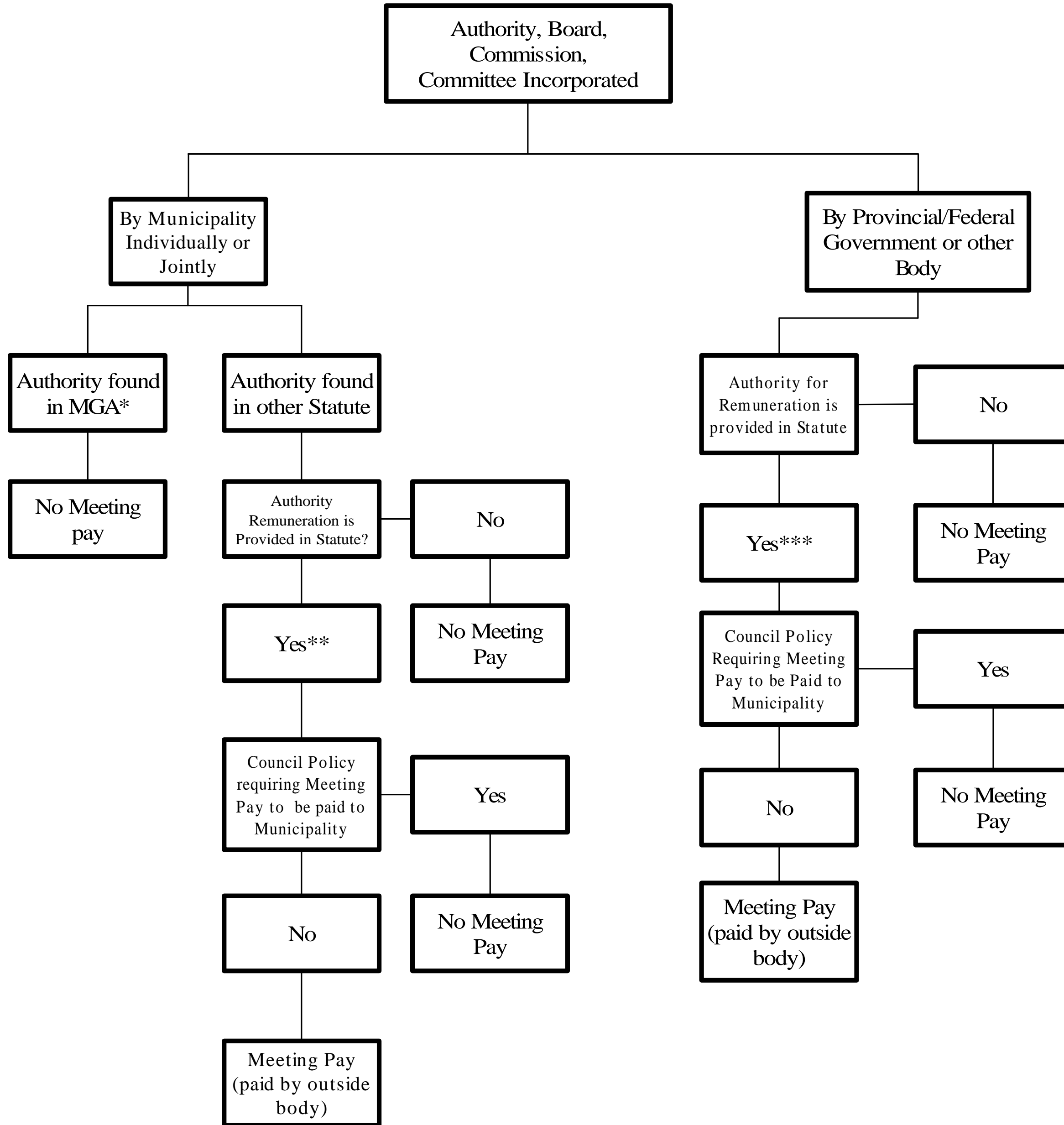
Note: The reader is cautioned that preparation of this and subsequent Information Bulletins containing practical suggestions must necessarily involve interpretation of legislation as it applies in general situations. Specific situations may require careful legal analysis and therefore reference should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

Council Remuneration - Decision Chart



* eg. Joint Service Management (ie: Solid Waste, Transit Authority), District Planning Commission, PAC's, etc.
** eg. Homes for Special Care Act, Municipal Housing Corporation Act.
*** eg. Halifax Dartmouth Bridge Commission

Council Remuneration - Decision Chart



* eg. Joint Service Management (ie: Solid Waste, Transit Authority), District Planning Commission, PAC's, etc.
** eg. Homes for Special Care Act, Municipal Housing Corporation Act.
*** eg. Halifax Dartmouth Bridge Commission

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INFORMATION BULLETIN #7

OPEN MEETINGS

- Revised -

Summary: Council and committee meetings are open to the public except in specified cases.

Legislation: Specific - Section 22

Related - Sections 19, 23, 24(4), 203, 408, 473, 524

Discussion: Council meetings are open to the public unless closed to discuss one or more of the following:

- acquisition, sale, lease or security of municipal property
- minimum price to accept at a tax sale: ss141(3), 143(4)
- personnel matters
- labour relations
- contract negotiations
- litigation
- legal advice
- public security

Committee meetings may be closed for the same limited number of subjects.

Essentially all council and committee meetings are open to the public. The appropriate notice of these meetings is to be determined by the council by policy: S. 23(1)(a). Regular council meetings do not require notice, S.19(1), since they are always held at the same time and place. Other council meetings require at least two days notice to the members of the council: S.19(2).

Closing a Meeting

The decision to go into a closed meeting must be made by the council or committee in open (public) session, but the chair of council or a committee may call a special meeting that would be closed. However, there must still be public notice of the meeting: S. 19(5); S. 24(4).

Decisions

The only decisions that may be made at a closed council meeting are in regards to a procedural matter (such as an adjournment) or to give direction to staff or solicitor: S. 22(3). Council cannot make a decision at a closed meeting which would bind council. Binding decisions must be made in an open meeting.

Closed meetings are intended to provide a forum for council to discuss these specified items in private, prior to making a decision. An example of giving direction to staff could be in the form of requesting staff to investigate alternative courses of action, or suggesting maximum or minimum values concerning land sales or acquisitions or wage settlements. Staff can only be directed to carry out actions that they have the authority to do. For example, staff could not enter into or accept a contract on behalf of Council, except as authorized by legislation, for example S. 31 of the MGA. They could, however, negotiate within the parameters given at a closed meeting with council giving the final approval at an open meeting.

Since substantive decisions may not be made at closed meetings, council cannot simply ratify the action agreed in the closed meeting, that is, for example, council cannot "ratify the action recommended at the April 2 closed meeting." Council at an open meeting must put the specific motion on the "floor" to discuss and vote on, for example: "resolve to dismiss [name]" or "agree to purchase the Smith property for the price of $97,000".

Every closed meeting must have a public record stating that a private meeting was held, the general subject matter using the appropriate clause from S. 22(2), and the date: S. 22(4).

The same rules apply to committee meetings: S. 22(5).

Meetings of planning advisory committees, joint planning advisory committees, area planning advisory committees and district planning commissions are open unless moved into private to discuss personnel, labour relations, contract negotiations, litigation or legal advice: S. 203(1). These meetings may also be closed to discuss potential applications for development permits, land-use by-law amendments and development agreements or amendments to them. This exception does not apply once the application has been made.

Community council meetings are subject to rules similar to those that apply to council meetings: open unless closed for a specific reason set out in Section 524. No decision may be made at a closed meeting.

Community committees are subject to the same rules as other committees. Accordingly their meetings would normally be open.

Freedom of Information

Section 473 permits the "responsible officer" under the freedom of information provisions of the MGA (Part XX) to refuse to disclose information that might disclose any minutes or the substance of the deliberations of a closed meeting authorized by law. Obviously, closed meetings that do not meet the standards of the MGA (apart from being illegal) are not eligible for confidentiality.

Information that is ten years old must, however, be released. Background information supplied to the closed meeting of the council or committee that is five years old, or where the decision made at the meeting has been made public or has been implemented must also be released. Note that if the information tends to disclose information about a particular individual, it probably cannot be released without that individual's consent. See the separate notes on Freedom of Information and Protection of Privacy.

The record that a closed meeting was held, and the general subject matter, as noted above, is public information.

Villages

The same provisions do not apply to villages. All village commission meetings are open to the public: S. 408(4). Villages are subject to Part XX, Freedom of Information and Protection of Privacy. They are included in the definition of "municipality" that applies to that Part: S. 461(e).

Date Produced: February 1999

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INFORMATION BULLETIN #8

TAX RELIEF

- Revised -

Summary: Municipalities may provide tax exemptions for low-income taxpayers and may provide for tax deferral.

Legislation: Specific - Sections 69, 70

Discussion: Various provisions of the *Municipal Government Act* allow for tax relief. This note is concerned with the low-income exemption (Section 69) and the postponed payment of taxes (Section 70).

Low-income Exemption

The low-income exemption is what was sometimes called the widows' and orphans' exemption. The exemption applies to everyone whose income is below the amount set by council.

The amount of the exemption is set by council by policy. The exemption amount is the tax reduction council wishes to provide. The exemption may be limited to property occupied as the taxpayer's principal residence. Generally, the provisions are the same as in the predecessor legislation, although the final date to apply is now at least thirty days after the assessment roll is filed, not twenty-one.

The low-income exemption allows municipalities to make the property tax more progressive (closer to ability to pay) by reducing the tax paid by poorer taxpayers.

Tax Deferral

For most municipal units the power to permit the postponement of the payment of all or part of a person's taxes is new. In order

to exercise the power, the postponement option must be adopted by by-law. The by-law sets out a program available to all who qualify. There is no discretion in the application of the program.

The by-law must

- ! define the income amount for people who would qualify.

- ! specify for how long the taxes are to be postponed. Common end dates would be so long as the property is occupied by the taxpayer, or the taxpayer's income remains below the set amount, or the property is sold or transferred. Most often it would be the earliest of the contingencies specified. Note that the tax lien and other limitation periods are extended for the full period of the postponement: s.70(3).

- ! include appropriate procedural provisions, including forms, affidavits to verify income and the like and other forms.

- ! specify whether to charge interest on the taxes postponed, and if so, at what rate.

Most councils that choose to implement a tax postponement bylaw will want to charge interest, but possibly not as much as is usually charged on outstanding taxes. Interest charges on taxes are generally set at a rate that encourages prompt payment. In instances where tax deferrals are appropriate, a council may want to alleviate this additional burden. See generally s.70(2).

A municipality may choose to postpone only a portion of the annual taxes that fall due. It is possible to establish a range or scale of postponed taxes, possibly related to income so that the lower the person's income the larger the portion of taxes that could be deferred or postponed. This is a matter for council to determine.

The Act provides that if some part of the taxes continues to be payable, but are not paid, when the taxes are three years in arrears the postponement ends: s.70(4). This essentially means that if there are tax arrears for which tax sale proceedings must be started as required by Section 134(2), the sale will be for all outstanding taxes including those that have been postponed. As

this would greatly increase the amount the taxpayer would have to pay to stop the sale, it should be a strong incentive to keep the reduced tax payments up to date.

Tax deferral is usually seen as a way to help low-income taxpayers remain in their homes.

Income Defined

For purposes of both provisions, income is defined in subsection 69(1). Income means total income from all sources for the preceding calendar year (the same year people file income tax returns for). Council can determine to what extent income from others in the same household should be included. Income from pensions under the *War Veterans' Allowance Act* (federal war veterans' pensions) and under the *Pension Act* (death and disability pensions for veterans and their dependents) is specifically excluded as income.

Date Produced: February 1999

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INFORMATION BULLETIN #9

MINIMUM TAX

Summary: New authority for most municipalities is a minimum property tax per dwelling unit.

Legislation: Specific - Section 74

Discussion: Section 74 of the *Municipal Government Act* permits councils to establish a minimum tax per dwelling unit as part of the budget process. The tax must be adopted by policy and is not simply part of the tax rate resolution.

The usual reason for considering a minimum tax is that a municipality has a large number of low-valued homes occupied by people whose income is at least the municipal average. In these communities, the usual rough correspondence between the assessed value of a home and the income of its residents has failed significantly. Otherwise, the minimum tax could be regressive (a tax on the poor).

The tax applies only to residential dwelling units. The number of dwelling units in a property is determined by the assessors. The minimum tax can be set at different levels in different parts of the municipality. This might be appropriate if service levels differ widely or if the municipality uses urban, suburban or rural tax rates.

How the tax works is that the usual tax is first calculated (rate times assessment). If the result for any dwelling unit is less than the minimum set by council, an additional tax is payable to bring the total tax payable up to the minimum. For example, if council establishes a minimum tax of $400, and the normal property tax is only $300, then an additional $100 is payable. In the case of multi-unit buildings, each dwelling unit is subject to the minimum

tax. To continue the example, if the total tax bill on a three-unit building is $1,000, an additional $200 would be payable since the minimum for that property would be $400 times three, or $1,200. Of course, council has complete freedom to set the minimum at whatever level it considers appropriate, or not to levy a minimum tax at all.

Critics of a minimum tax tend to target the potential regressive nature of this tax policy. However, a minimum tax policy is one component of an overall taxation framework, with a municipal council empowered to provide tax deferrals and tax exemption if it so chooses to address issues of regressivity.

The minimum tax is not completely new money, and budgeting may be more complex than at first appears. Because a minimum tax applies only to residential property, and because budgeting for it can be complex, councils should be careful to consider the importance and impact of the minimum tax in their municipality before implementing it.

Date Produced: February 1999

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Municipal Government Act

progressive powers for municipalities

INFORMATION BULLETIN #10

DEEDS REQUIRED - SUBDIVISIONS WHICH CONSOLIDATE

- Revised -

Summary: A percentage of plans and instruments of subdivision approved by development officers consolidate all or part of a lot with an adjacent lot. The deed to effect this consolidation will now have to be registered in the registry of deeds at the same time as the subdivision.

Legislation: *MGA - s.269(5) and s.282*
Provincial Subdivision Regulations - s.56 and s.70
New Provision

Discussion: An application for subdivision approval submitted on or after April 1, 1999 which includes a consolidation cannot be approved until the development officer receives the executed deed (and the fees to register the deed) to effect the consolidation. Even if the same party owns both pieces of land, a deed is required. The development officer will register the deed together with the plan or instrument of subdivision. ***Effective June 8, 2000, if the same person owns both pieces of land, a deed is not required***.

Some subdividers or their solicitors may choose to submit the executed deed and the fees with the subdivision application. Others may wish to see if the subdivision will be approved before having the deed drawn up. Development officers could provide for the latter by processing the subdivision and then notifying the subdivider that the subdivision will be approved and sent to the registry of deeds when the executed deeds and fees are submitted.

~~Some municipalities collect a deed transfer tax. For registrars who collect the deed transfer tax on behalf of the municipality the plan or instrument of subdivision shall be accompanied by the deed transfer tax. In other municipalities, a certification from the municipality indicating that the deed transfer tax has been paid is required.~~

The Provincial Subdivision Regulations require that a plan or instrument of subdivision that adds or consolidates areas or parcels of land must also be accompanied by the deed transfer affidavit of value and the deed transfer tax if applicable, before it can be approved by the development officer. These would be deliverable to the development officer at the same time as the executed deed and registry fees are delivered. This requirement does not apply if the pieces of land are under one ownership as no deed is required. The deed transfer tax is applicable if the municipality has chosen to collect the tax. The deed transfer affidavit is required in all municipalities. In some municipalities, the registrars of deeds collect the tax on behalf of the municipality. In the others, the municipal treasurer collects the tax and completes a certification on the affidavit form that the deed transfer tax has been paid; this certification is required to register the deed.

The development officer should contact the ***municipal treasurer or*** registrar to determine which of the above will apply.

The legislation states that the deed must be "suitable for registering". This means that the deed must be signed and include a certificate of execution signed by a lawyer, commissioner or notary public. It does not mean that a development officer is required to read the deed to determine if it correctly describes the parcel being consolidated.

If a deed not suitable for registering is sent to the registrar, the registrar will merely return it to the development officer for the necessary changes.

Related:

Registrars should ensure that any subdivision that creates a consolidation, ***other than a consolidation of pieces of land that are under one ownership***, has ***a deed*** with it.

Before registering the deed, the registrar will first file ~~or register~~ the plan or instrument of subdivision and then write or stamp the relevant number on the deed before the deed is registered.

The subdivider must also submit an affidavit of value with the deed even if the municipality does not collect a deed transfer tax. This affidavit simply states the value of the land being conveyed by the deed.

Resources: Department of Housing and Municipal Affairs
4th Floor, Summit Place
1601 Lower Water Street
Halifax, Nova Scotia B3J 2M4
(902) 424-7917

Initial Date: March 1999

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.

INFORMATION BULLETIN #11

TRANSPORTATION RESERVES

Summary: In order to protect transportation corridors needed to service future development, it is necessary to identify the route and have a means of protecting it. A council may provide for this protection in its planning documents.

Legislation: *MGA* - Parts 8 and 9, s.224 and s.271(3)(j)
New Provision

Discussion: A transportation reserve can be used to identify property required for widening an existing street or for new streets as well as pathways.

The municipal planning strategy must provide the policy support for the transportation reserve. The land use by-law must provide for any prohibition of development needed to protect the reserve and identify the actual transportation reserve on a map or plan. Any setbacks required from the reserve must also be identified on the map.

The transportation reserve may also be identified in a subdivision by-law and lots in proposed subdivisions that may impede a transportation reserve may be refused if the subdivision by-law so provides.

The land use by-law must establish an alternate zone on the transportation reserve. If the property is not acquired, the alternate zone becomes effective

- five years from the effective date of the provision, or

- one year from the date of a written request from an affected property owner to council, requesting that council acquire the property or an interest in the property.

Resources: Department of Housing and Municipal Affairs
4th Floor, Summit Place
1601 Lower Water Street
Halifax, Nova Scotia B3J 2M4

Phone: 424-7917 or 424-3872

Date Produced: March 1999

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INFORMATION BULLETIN #12

CONCEPT PLANS - SUBDIVISION

Summary: A subdivision by-law may contain procedures and requirements for concept plans. Concept plans provide for an evaluation of the future phases of an area of land being subdivided.

Legislation: *MGA* - Part 9, s.270(3)(f), s.271(3)(l), s.273(11) and s.284
Provincial Subdivision Regulations - s.28-37 incl.
New Provision

Discussion: Concept plans apply where an area of land is being subdivided in phases with proposed streets. Before the first phase proceeds to the tentative or final stage, it may be very beneficial to all parties to evaluate a concept of the subdivision of the entire area of land. In particular, the location of future streets and open space may have an impact on the final design of the early phases. They may also assist in the planning of adjacent subdivisions under separate ownership (i.e. allow roads to link up).

Concept plans are provided for in the *Provincial Subdivision Regulations*. The regulations outline the approval process and the information required to be shown on a concept plan. In the regulations a concept plan is optional but municipalities may choose to make a concept plan mandatory in their subdivision by-laws.

Concept plans are not required to be surveyed. A sketch/diagram is all that is necessary. Concept plans are formally approved or refused by the development officer and the refusal is appealable to the Utility and Review Board.

Resources: Department of Housing and Municipal Affairs
4th Floor, Summit Place
1601 Lower Water Street
Halifax, Nova Scotia B3J 2M4

Phone: 424-7917 or 424-3872

Date Produced: March 1999

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*, *Provincial Subdivision Regulations* other relevant legislation and to legal advisors.

INFORMATION BULLETIN #13

PARKLAND DEDICATION - SUBDIVISION

-Revised-

Summary: If properly supported in the municipal planning strategy, municipalities can require the dedication of up to ten per cent of the land in a new subdivision for park and related purposes.

Legislation: *MGA* Part IX, Section 273

Related: S.269(4), S.271(3)(h)

Discussion: The provisions for dedication of land or equivalent value on subdivision provide considerably more choices for municipalities.

First, there must be clear authority for the transfer of useable land or equivalent value for parks, playgrounds and similar public purposes. No contribution is required unless there is a provision in the subdivision by-law requiring the transfer: s.271(3)(h). The amount may not normally exceed five per cent of the area of the lots shown to be approved on the final plan (or instrument; see s.269(4)). A municipality may increase the contribution to as much as ten per cent if both the requirement and the reasons for it are set out in the municipal planning strategy and incorporated in the subdivision by-law.

The applicant is permitted to provide land only, equivalent value only, or a combination: s.273(2). Equivalent value means cash <u>or</u> facilities, services or other value in kind related to parks, playgrounds and similar public purposes <u>or</u> a combination as determined by the municipality to be equivalent to the value of the land: s.273(1). Essentially, the municipality puts a value on "facilities, services or other value in kind". If the municipal valuation is unacceptable to the subdivider, the subdivider can pay all cash.

Normally, the decision whether to provide land or equivalent value is up to the subdivider. The subdivision by-law can take this choice away from the applicant, but only if specific rules are set out in the subdivision by-law: s.273(3).

The amount of "equivalent value" (cash or in kind, or a combination) is determined by an assessor, based on the market value of the proposed lots (exclusive of streets, easements and residue): s.273(4). Market value is a term used in the *Assessment Act*; however, it means current value, not value as of the assessment date. A provision to allow appeals from the assessor's valuation has been incorporated: s.273(4). The right to appeal applies to both the applicant subdivider and the municipality. The procedure is the same as on an assessment appeal under the *Assessment Act*.

Cash transferred must be used for the acquisition of, and capital improvements to, parks, playgrounds and similar public purposes: s.273(5). The simplest way to define a capital improvement is as one that the municipality may borrow to make. ***Cash transferred also may be transferred to a village or non-profit organization that is providing parks, playgrounds or other recreational facilities within the municipality, for those purposes.*** The interest (only) on funds not used for capital purposes may be devoted to operating costs: s.273(5). A fund can therefore be established to assist in operating expenses. ***The interest, also, may be transferred to a village or non-profit organization that provides recreational facilities for their operating or maintenance costs.*** There is no requirement that the money received be spent in the same area as the subdivision. That is a matter for the council in setting its priorities.

If land is to be conveyed, it must be useable. It must also be free and clear of all encumbrances except easements or rights of way that do not materially interfere with the use of the land. The municipality would be well-advised to include a definition (standards) of what constitutes useable land in the subdivision by-law: s.273(6). Relevant factors are minimum area, minimum dimensions, maximum slope, street frontage, location and minimum quality. These must be objective standards that can be applied by everyone. The opinion of the development officer is not a sufficient standard. Note that if the land meets the definition of useable, the municipality has to accept it: s.273(9). It is very important that the definition be carefully drawn up.

Useable land to be conveyed does not include streets or easements: 273 (7). The area is calculated based on the area of the lots approved, excluding streets and any residual: 273(8).

If council approves, it can accept an area of land outside the area being subdivided: s.273(10). This might be, for example, an addition to an existing park.

Council can also agree to accept a bond or other security for the conveyance of land in a future phase of the subdivision; this is sometimes desirable in order to get all of the land in one place, or in the right spot in a phased development: s.273(11).

Land conveyed to the municipality must be free and clear of all encumbrances except easements or rights of way that do not materially interfere with the use of the land: s.273(12)(a). Municipalities will have to decide whether to have the developer's solicitor certify clear title to the municipality, which is likely cheaper for both parties, or perhaps to have the municipal solicitor check the title. The ability to charge the cost of a title search back to a developer is questionable.

Land conveyed to the municipality must be used for parks, playgrounds and similar public purposes: s.273(12)(b). It cannot be used for sewage easements or streets or other public purposes unrelated to parks and playgrounds and like recreational uses.

Where the land may no longer be needed for parks, playgrounds or similar public purposes, it may be sold by the council after notifying the owners of the lots in the subdivision with respect to which the land was conveyed to the municipality. This notice must be an advertisement. The proceeds must be used for parks, playgrounds or similar public purposes: s.273(13).

Land conveyed to a municipality for parks etc. has to be deeded to the municipality. Note that an acquisition of land by a municipality for municipal purposes is exempt from the requirement for subdivision approval: s.268(2)(e). The deed of conveyance should include an affidavit specifying the exemption from subdivision approval and the facts supporting it: s.268(3).

Resources: Service Nova Scotia and Municipal Relations

Date Produced: March 1999

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INFORMATION BULLETIN #14

AREA RATES

- Revised -

Summary: Municipalities have a broad range of area rate powers.

Legislation: Specific - Part IV, Section 75

Related: s.56, s.71(2) and (5), s.73, s.526

See the Municipal Accounting and Reporting Manual, Section 3040 for the accounting treatment of Area Rates.

Discussion: The area rate powers that municipalities have under the *Municipal Government Act* are much more extensive than the powers formerly exercised by rural municipalities and regional municipalities.

These powers may be used by all municipal units, including towns.

The key provision is Section 75 of the *Municipal Government Act*, which in part outlines the following:

! Area rates may be used to finance all or part of the cost of any municipal service or facility that council deems to be of benefit for an area.

! Subsidies from the general rate are permitted if council so determines: s.75(2), s.75(3) (a) and s.75(6). This means that a council can use a combination of area rates and the general rate to finance certain services if council so chooses. The cost of a service does not have to come all from area rates or all from the general rate.

- The rate may apply to all taxable property and occupancy assessments.

- The rate may apply to only residential property, only commercial property, only business occupancy assessments or to some combination: s.75 (2), s.75(3)(b). The choice is up to the council, but must be specified in the resolution setting the rate.

- Instead of a rate applied to assessment, an area levy may be a uniform charge per assessment, or per dwelling unit in the area: s.75(4).

- Area rates are first liens, the same as any other taxes.

Council accordingly has a great deal of discretion as to when and how to apply area rates. These are policy decisions to be made by the council. There are no plebiscite or petition requirements, although council is free to permit them as evidence of the wishes of the people.

Other Area Rate Powers

Other area rate powers include community council area rates (s.526, applicable only to Halifax Regional Municipality) and the equivalent of the business improvement district rates, levied by council, permitted by Section 56. Note that the Section 56 rates can be levied at different rates on business occupancy and commercial property, and can provide for minimum and maximum tax amounts.

Under Section 73, the council may set separate urban, suburban and rural tax rates (mandatory in Halifax Regional Municipality). These will be the subject of a future Information Bulletin, but should be considered when establishing the appropriate tax structure.

Council should keep area rates in mind when determining exemptions from taxation, or reduced taxation, under Section 71. Subsection 71(5) provides that unless it is stated in the exempting by-law, an exemption from taxation granted by the council does not extend to area rates. If council wishes the exemption to apply to area rates as well as the general tax rate, it

must be stated in the by-law. However, the reduction from commercial to residential rates, authorized by subsection 71(2), applies automatically to area rates.

The following issue paper raises many of the points that should be considered in designing an appropriate area rate structure. Area rates are not mandatory, and councils can continue their present practices under the MGA. There is time to carefully consider the broad range of options that the MGA provides to tailor the rate structure to the specific requirements of each municipality.

Resources: Attached Issue Paper, Area Tax Rates Based on Services, 1993.

Date Produced: March 1999

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ISSUE PAPER

Appendix to Information Bulletin #14 - Area Rates

AREA TAX RATES BASED ON SERVICES

In Nova Scotia, the urban areas have had few opportunities to establish a tax rate structure that reflects the services provided. The assumption appears to have been made that the level of services provided was reflected in the assessment. Residents on the edges of some of the towns received relatively few services, but paid the same tax rates. Given the generally lower values of properties in such situations, the total tax bill was less, and this has been regarded as a reasonably fair resolution.

There have been some exceptions, generally related to the downtown cores. Special rates for parking commissions in some of the larger towns were followed by the more generally applied business improvement district rates.

In rural municipalities, the area rate structure reflecting different tax rates for different services has been carried to extreme lengths in some parts of the province. An extensive network of rates for different services has arisen. These include separate rates for street lighting, fire protection, garbage collection, supplementary police protection, sidewalks, school trustee levies, and other services.

Some units have modified the structure of area rates and others have ignored them. Those modifying the basic structure include municipalities with large urban areas, where single urban service area rates have been set combining a typical package of urban services, applied over a number of polling districts of roughly similar character. Halifax County Municipality has an area rate for each of the two large urban communities, recommended in each case by a community council.

Those rural municipalities that have chosen not to have area rates, or to move away from them, have done so for several reasons. In at least one case, where the unit is dominated by a large industry, it was considered fairer to have that industry effectively subsidize all area rates rather than allow its benefit to be captured by only one relatively small area. Another regarded the system as tending towards the creation of separate district-based empires, diverting councillors from consideration of the needs of the municipality as a whole, and lending itself to potential abuse. As well, individual councillors tended to compete for the limited development available for their district, since it would reduce the area rate burden on their voters.

One potential resolution of part of the problem with area rates would be to allow them to be subsidized from the general commercial rate, but then impose the area rate itself only on residential property. This would effectively require revenue sharing across the region for all commercial property, and eliminate the incentive for competition among councillors for commercial development. It would not allow recovery by area rate of services provided to commercial properties. However, the correlation between the taxes obtained from commercial properties and the services provided to them is particularly weak and no significant inequity would result.

A possibility would be a general rate applicable to all properties in the municipality, both urban and rural, with a second urban services rate applicable in the urban area. There would, in effect, be only one area rate. The new council will have to judge whether this answer is preferable to adopting several area rates reflecting different cost levels and services mixes.

In recent years there has also been a considerable increase in the use of user charges, charges relating specifically to the service being provided. Water rates are the most obvious case of a user charge, where the amount of the bill relates to consumption of water (actual or estimated). Sewers are increasingly being funded in whole or in part by specific user charges, including some capital charges.

In a restructured municipal unit, some areas will have significantly different levels of services than others. To a considerable extent, these will result from the different characters of the areas, most often related to differences in the degree of urbanization.

People generally consider that if there is a difference in the range of services available, there should be a difference in the tax burden. Differences in the value of property do not reflect the whole of this necessary difference, and are not closely correlated with the service differentials. In order to provide the necessary allowance in the tax rate, services that are not provided at a reasonably uniform level throughout the new municipal unit should be financed, to the extent possible, through user charges, and secondarily through area rates. One or a few urban service area rates for the major urban areas of the new unit would be the best way to accommodate additional services. A more extended use of user charges will have to be balanced with the understanding that increased reliance on user charges tends to shift the cost of municipal services towards the residential sector, which, of course, puts the heaviest demands on these services.

The tax rate would then reflect differences in the services provided, and it would be readily apparent to an unserviced taxpayer that the urban dweller was paying more for a higher level of services.

February 26, 1993

INFORMATION BULLETIN #15

BOUNDARY REVIEWS AND SIZE OF COUNCIL - TOWNS

Summary: Towns are required to review their ward boundaries every eight years starting in 1999, and all towns must review the size of the council.

Legislation: Specific - Part XVI, Section 369

Related - Sections 10, 368, 370, and 568

Discussion: The *Municipal Boundaries and Representation Act* has been replaced by Part XVI Boundaries and Part XVII Municipal Incorporation of the *Municipal Government Act*.

The provisions respecting reviews of municipal polling districts have been extended to include a requirement to review town wards periodically. The first review will be in 1999.

Wards

The requirement in Section 369 is to study the fairness and reasonableness of the number and the boundaries of polling districts (wards). The criteria to consider are those which the Utility and Review Board is bound to consider under s.368(4), number of electors, relative parity of voting power, population density, community of interest and geographic size. *Before the end of the calendar year an application must be made to the Board for changes or confirmation.*

Subsequent reviews will be required in 2006 and every eighth year thereafter. Note that beginning with the council to be elected in 2000, the term of office of the council has been extended to four years. The change is made by an amendment to Section 10 of the *Municipal Elections Act* made by subsections 568(1) and (2) of the MGA.

Size of Council

The review also requires a review of the size of the council (the number of councillors). Thus, all towns will be required to conduct a review and apply to the Board for confirmation (or change) of the size of the council. The relevant factors are population and geographic size: s. 368 (5).

Section 368 sets out the basic powers of the Board on an application, who may apply and the factors to be taken into account.

Section 370 makes it clear that unless the Board has good reason to order otherwise, the new boundaries only come into effect at the next municipal elections.

Section 10 provides that there may be two councils per ward in a town.

In deciding on the best council size, councils will want to balance considerations such as representation, the workload of individual councillors, and the fact that larger councils tend to be unwieldy.

Date Produced: March 1999

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INFORMATION BULLETIN #16

BOUNDARY REVIEWS AND SIZE OF COUNCIL - REGIONAL MUNICIPALITIES, COUNTY and DISTRICT MUNICIPALITIES

Summary: Regional municipalities and county or district municipalities are required to review the number and boundaries of polling districts every eight years; the first review is in 1999. This includes a review of council size.

Legislation: Specific - Part XVI, Section 369

Related - Sections 10, 368, 370, 555, 568

Discussion: The *Municipal Boundaries and Representation Act* has been replaced by Part XVI Boundaries and Part XVII Municipal Incorporation of the *Municipal Government Act*.

The provisions respecting reviews of municipal polling districts have been continued. The first review will be in 1999 (the same year required by the preceding legislation).

Polling Districts

The requirement in Section 369 is to study the fairness and reasonableness of the number and the boundaries of polling districts. The criteria to consider are those which the Utility and Review Board is bound to consider under s.368 (4), number of electors, relative parity of voting power, population density, community of interest and geographic size. *Before the end of the calendar year an application must be made to the Board for changes or confirmation.*

Subsequent reviews will be required in 2006 and every eighth year thereafter. Note that beginning with the council to be elected in 2000, the term of office of council has been extended to four years. The change is made by an amendment to Section 10 of the *Municipal Elections Act* made by subsections 568(1) and (2) of the *MGA*.

Size of Council

The review also requires a review of the size of the council (the number of councillors). All municipalities will be required to conduct a review and apply to the Board for confirmation (or change) of the size of the council, as well as polling district numbers and boundaries. The relevant factors are population and geographic size: s.368(5).

Section 368 sets out the basic powers of the Board on an application, who may apply and the factors to be taken into account.

Section 370 makes it clear that unless the Board has good reason to order otherwise, the new boundaries only come into effect at the next municipal elections.

Similar changes have been made in the *Education Act* for school boards (*MGA* s.555, *Education Act*, s.43), although the review after 1999 will be in 2007 and continue generally a year behind municipal revisions. This will permit municipal changes to be taken into account by the school boards.

Section 10 provides that there may only be one councillor for each polling district in a county or district municipality or a regional municipality.

See comments at bottom of Boundary Reviews - Towns.

Related: County or district municipalities contemplating a change to electing the head of the council at large under s. 12 (8) will normally want to make that decision before applying to alter or confirm the polling districts.

Date Produced: March 1999

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Municipal Government Act

progressive powers for municipalities

INFORMATION BULLETIN #17

PUBLIC-PRIVATE PARTNERING

Summary: Public-private partnering is specifically authorized.

Legislation: Part III, Section 61

Discussion: Municipal governments have engaged in various forms of public-private partnering for many years. The most usual form is a contract for services. In recent years different ways to organize a private-public partnership have been developed. The *Municipal Government Act* contains some additional authority for municipalities in this respect in Section 61.

Subsection 61(1) restates the general municipal authority to contract for services, and clarifies that this power extends to the ability to contract for facilities.

Subsection 61(2) permits the municipal unit (including a village) to sell or dispose of property that may still be needed by the municipality or village to the private partner as part of the arrangement.

Normally, property cannot be sold if it is still required for the purposes of the municipality: s.50(5)(b).

Subsection 61(2) does not override the requirement to sell for market value and accordingly the municipality or village must receive money or money's worth equal to the market value of the property.

Note that Section 61 does not permit municipal guarantees of borrowings by the private partner. There are circumstances where borrowing guarantees are specifically authorized, for example, section89. Any guarantee must be approved by the Minister of Housing and Municipal Affairs.

The *Municipal Government Act* does not authorize joint ownership of assets with private partners. A municipality can only borrow for an asset that it will own: s.66(2). The only permitted exception is for joint undertakings with other municipalities, where borrowing is permitted regardless of which municipality will own the facility: s.66(3), and for street improvements to public highways: s.66(4)(a).

Public-Private Partnering arrangements will frequently exceed one year in length and exceed a total payable by the municipality under the agreement of $100,000, rendering them subject to the requirement for approval from the Minister of Housing and Municipal Affairs under Section 88(4).

Normally, property owned by a private sector partner is taxable under the *Assessment Act*. Some exemptions exist for named properties such as court houses, public school houses and town halls. The specific agreement will normally include property taxes as part of the costs to be recovered.

Date Produced: March 1999

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Municipal Government Act
progressive powers for municipalities

INFORMATION BULLETIN #18

INTERMUNICIPAL SERVICE AGREEMENTS

- Revised -

Summary: Intermunicipal service agreements, greatly expanded in scope, will provide the basis for intermunicipal cooperation.

Legislation: Specific - Part III, Section 60

Related - Sections 24(5), 540, 541, 542; *Interpretation Act*, Section 15

Discussion: Intermunicipal Service Agreements can cover a large range of activities and the statutory authority is broadly drawn so as to allow them to be adapted to different circumstances.

The authority is contained in Section 60 of the *Municipal Government Act*.

Parties

The parties to an agreement have been expanded to include villages and service commissions, the federal and provincial governments, and a band council under the *Indian Act*, as well as other municipal units: Subsection 60(1). Accordingly, a municipality or village may agree with a band council or a senior government to provide some services, such as snow removal.

Services

An agreement may apply to any service that a municipality or village may provide. The services may be provided outside the boundaries of the municipality or village: subsection 60(2). The agreement may relate to the provision or administration of a service: subsection 60(1).

Content of Agreement

An agreement may include, essentially, whatever is necessary to make it work. The statute lists **some** possibilities:

- delegation of power to provide the service to an intermunicipal committee, a district planning commission, or a ~~municipality or village~~ ***party to the agreement***: s.60(2)(c).
- description of services to be provided: s.60(3)(a).
- area in which the service is to be provided: s.60(3)(b).
- who is to provide the service and who is to administer it: s.60(3)(c).
- how the cost of the service is to be paid:
    - current (operating)
    - capital
    - proportion to be paid by each party (or a formula to determine how much each pays)
    - when payments are to be made (e.g. monthly, quarterly, annually)
    - rate of interest charged on late payments: s.60(3)(d)
- if the power to provide the service is delegated to a committee, whether that committee is a separate body corporate, and its corporate powers: s.60(3)(e). See below for a further discussion of this option: s.60(3)(e).
- the ownership of any capital assets created under the agreement: s.60(3)(f).
- procedures respecting the disposition of capital assets
    - before termination of the agreement (e.g. require municipal approval if above a certain value)

- P on termination (how the parties will share them): s.60(3)(g).

- ! procedures respecting the sharing of liabilities, before termination or on termination: s.60(3)(h).

- ! provisions to amend, review or terminate: s.60(3)(I).

- ! dispute resolution (e.g. arbitration, conciliation): s.60(3)(j).

- ! other agreed terms: s.60(3)(k).

Body Corporate

It is possible to make the intermunicipal committee a body corporate, so that the service is provided by a separate legal entity. Under the *Interpretation Act*, s.15, a body corporate has power to sue and be sued, to contract, to have a seal and to acquire or hold personal property, and limited liability for its members.

If the parties agree that a separate body corporate is required, then the agreement must be drafted to provide for the governing committee to be a body corporate and must identify what corporate powers it may exercise. For example, can it borrow? Can it own real property? The agreement should also address the issue of whether the participating municipalities may guarantee the committee's borrowings: s.60(4)(b). In considering the corporate powers, note that s.66(3), which limits municipal borrowing authority to projects that will be owned by a municipality (although not necessarily the borrowing municipality), does not apply to a separate body corporate.

The *Interpretation Act* does not automatically give a body corporate the authority to own real property (land and buildings). That could be provided in the agreement, as one of the corporate powers that the committee may exercise: s.60(3)(e).

If the committee is to be a body corporate, a copy of the agreement must be filed with the Registrar of Joint Stock Companies: s.60(4)(a). Of course, the Registrar's attention should be drawn to the reason for the filing, and any other relevant information ought to be provided. The address of the corporation is an important example. For additional information please see the attached.

Note that even if the governing agency is a separate body corporate, it is still a committee, and subject to the provisions of Section 24(5) to the effect that council members are not entitled for additional remuneration for sitting on the committee. However, their expenses may be paid.

An intermunicipal committee that is a body corporate, if given borrowing authority by the agreement, becomes a municipal enterprise for purposes of the *Municipal Finance Corporation Act* and accordingly must borrow through that agency. This result comes about simply because any body corporate whose debts may be guaranteed by a municipality is a municipal enterprise: *Municipal Finance Corporation Act*, s.2(f).

~~Technically, perhaps, any~~ Borrowings by the intermunicipal committee ~~do not~~ require the approval of the Minister ***(s.88(1)).*** ~~of Housing and Municipal Affairs. This is a matter for a legal interpretation in each case, because, depending on its powers, the committee may be a service commission as defined by s.3(bn). If it is, the approval of the Minister is required. As a practical matter it is unlikely to make a significant difference, since~~ ***In addition,*** the Municipal Finance Corporation will likely require the guarantee of each municipality for any borrowing by the committee, and the Minster's approval is required for the guarantee.

It is apparent that there are a great many choices to be made and that the legislation provides for a very flexible instrument adaptable to a great many different circumstances. It is important to obtain legal advice in drafting the agreement.

Related:

Under Section 540, industrial commissions are dissolved. Municipalities may transfer the assets to a nonprofit incorporated body incorporated for purposes related to the improvement of the economy and commerce of the municipality. One choice could be to transfer the assets to a body corporate established pursuant to an intermunicipal services agreement.

Under Section 541, regional transit authorities are dissolved, but the service is continued under a deemed intermunicipal services agreement. It is probably advisable for the participating municipalities to enter into a formal agreement in order to avoid any difficulties interpreting the content of the deemed agreement.

Section 542 dissolves waterfront development corporations, parking commissions, tree commissions, parks commissions and recreation commissions. Municipalities may transfer the assets to a nonprofit incorporated body incorporated for purposes related to the improvement of the economy and commerce of the municipality. One choice could be to transfer the assets to a body corporate established pursuant to an intermunicipal services agreement. Note that some special-purpose commissions (*e.g.* rink commissions) are not dissolved.

Resources: Attached Appendix, Creating A Body Corporate - Information Related to Filing with Registrar of Joint Stock Companies

Incorporating a Society under the *Societies Act*

Registry of Joint Stocks
P.O. Box 1529
Halifax, N.S. B3J 2Y4
9th floor, Maritime Centre
1505 Barrington Street
Halifax, N.S. B3J 2Y4
Tel: (902) 424-7770
Fax: (902) 424-4633
http://www.gov.ns.ca/bacs/rjsc

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Appendix to Information Bulletin #18 - Intermunicipal Service Agreements

CREATING A BODY CORPORATE - INFORMATION RELATED TO FILING WITH REGISTRAR OF JOINT STOCK COMPANIES

Clause 60(4)(a) of the *Municipal Government Act* provides that if an intermunicipal services agreement creates a body corporate, that a copy of the agreement creating the body corporate must be filed with the Registrar of Joint Stock Companies.

The Registry of Joint Stock Companies can be of assistance prior to the filing of the agreement, as well. The Registry will do a name search, free of charge, of the type done for proposed societies, in response to a web site request or faxed request. The request should be addressed as at the end of the bulletin and should reference that a body corporate is proposed to be created by agreement under Section 60 of the *Municipal Government Act*. It should indicate the proposed name or names and request the Registry do a search for similar names. The Registry usually will report back within two days. The names may include words such as “committee, commission, authority, corporation or incorporated” but should not include “society, association or partnership” as these types of bodies are created under other legislation.

When filing a copy of an agreement that creates a body corporate with the Registry, it is necessary that the agreement be accompanied by a letter indicating

- that the agreement that is attached creates a body corporate under Section 60 of the *Municipal Government Act*
- the date that the body corporate was or is created
- the name of the body corporate
- the address(es) of the body corporate (both the civic address and mailing address, if different, should be included) (please keep this information up to date)
- the contact person to whom correspondence and inquiries may be addressed

The agreement should provide for the services that the body corporate will provide but if this information is not easy to extract from the agreement, the letter to the Registrar may include a list of the services (or objects or purposes) of the body corporate. The agreement may reference that the body corporate will operate on a not-for-profit basis; if it does not, this information may be provided in the letter as well. This information is of use to Revenue Canada.

INFORMATION BULLETIN #19

BORROWING APPROVALS and LONG-TERM COMMITMENTS

- Revised -

Summary: Capital borrowing, guarantees and long-term commitments must be approved by the Minister of Service Nova Scotia and Municipal Relations.

Legislation: Specific - Part IV, Sections 66 and 88

Related - Sections 65, 84, 87, 91-98

Regulations Prescribing Definition of "Commitment"

The Municipal Accounting and Reporting Manual, Sections 3125, 3210 and 4030 for the accounting treatment for long-term commitments.

Discussion: **Borrowing Authority**

The basic authority for capital borrowing comes from Section 66 of the *Municipal Government Act*. The municipality may borrow to carry out an authority to expend funds for capital purposes provided that authority is in a statute. Section 65 contains a lengthy list of specific expenditure authority, and other expenditure authority can be found in the MGA and in other statutes.

Borrowing authority may be exercised in respect of assets that the municipality owns regardless of where they are located: s.66(2). The municipality may also borrow for assets it does not own, provided that

- the asset is owned by another municipality (not a separate body corporate); and

- there is an intermunicipal services agreement: s.66(3); or
- the asset is a hospital: s.65(at); or
- the asset is a street (including sidewalks and drainage) that is owned by the Province *if* the Minister of Transportation and Public Works approves: s.66(4)(a)***; or***
- ***the asset is a trail on Provincial land: S. 66(4)(d).***

Borrowing Authority may be exercised for other than capital purposes only if expressly authorized. The municipality may borrow for the following purposes:

- ***to pay and retire debentures: S. 66(4)(b);***
- ***to honour a gurarantee: S. 66(4)(c);***
- ***to demolish former school building: S. 66(4)(da); and***
- ***to make a loan to registered fire department or a registered emergency services provider.***

Approvals

In the *Municipal Government Act*, Section 88 provides:

1. all borrowing must be approved by the Minister of Housing and Municipal Affairs;
2. an approval is not required for current borrowing under ~~s.84~~ ***s.88*** (operating float);
3. any guarantee of a borrowing must be approved by the Minister;
4. *long-term commitments (as described below) that extend beyond the end of the current fiscal year and exceed $100,000 in total must be approved by the Minister* (employment contracts and collective agreements are specifically excluded).

Long-term Commitments

It is important to see that item 4, s.88(4) goes somewhat beyond the ordinary concept of a capital lease in accounting terms ***(Municipal Accounting and Reporting Manual, Section 3125)***. Essentially it applies to all long-term commitments with respect to the possession, use or control of physical or intellectual property, (i.e. software). Please see attached ministerial regulation.

The purpose of this provision is to identify long-term commitments that should be considered as a component of a municipality's overall financial exposure. Thus operating leases for physical property that meet a definition of "commitment" are to be included whereas a long-term service contract, such as a garbage contract, would not require ministerial approval.

The total payout under the commitment must exceed $100,000. Otherwise the approval of the Minister is not required.

The total payout under the commitment must go beyond the end of the current fiscal year (that is, it must impact the budget of future years in some way). Otherwise the approval of the Minister is not required.

Not all long-term commitments for which the Minister's approval is required will be accounted for as capital commitments. Reference should be made to the *Municipal Accounting and Reporting Manual*, ***Section 4030*** for direction in determining which commitments would be capital in nature and which would be operating.

Employment contracts and collective agreements are specifically excluded: s.88(5).

An application for ministerial approval of a commitment under s.88(4) will usually involve a letter from the municipality describing the nature, purpose and amount of the commitment and the approving authority (normally council, but occasionally the CAO or other official under delegated authority). The Minister will approve by letter, which should be maintained by the municipal unit in an approval file for audit purposes. This is the same procedure for obtaining approval for capital leases.

Borrowing

All other borrowing requiring the approval of the Minister must meet the following requirements:

a) submission of the three-year capital budget approved by the council, signed and sealed in the form prescribed by the Minister s.87.

b) written request, specifying purpose and amount, and whether the borrowing is temporary (twelve months or twenty-four months) pending the issue of debentures, or whether repayment over a period of up to ten years is intended. If it is intended to repay the loan over a period of up to ten years, a repayment schedule must be included.

c) resolution of council.

Guarantees

Guarantees must meet the same requirements as a borrowing. The request should specify the particulars of the borrowing to be guaranteed, including particulars of the borrowing entity, and the statutory authority for the guarantee. Refer to subsection 88(3).

Debentures

The provisions of the MGA respecting debentures are relatively unchanged: Sections 91 to 98. The debenture approval process has been streamlined.

The MGA now provides that council sets an upper limit on borrowing costs and the mayor or warden and the clerk may issue the debentures at any interest rate that does not exceed the limit set by the council. This should reduce the time required to arrange long-term financing through the Municipal Finance Corporation since a second council meeting to approve the debenture documents will no longer be necessary.

The provisions of the *Municipal Finance Corporation Act* requiring municipalities and the municipal enterprises to borrow only from the Nova Scotia Municipal Finance Corporation (except for temporary borrowings) are still in effect: Section 16 MFC Act.

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INFORMATION BULLETIN #20

TRANSITION

Summary: Procedures for the adoption of by-laws, including planning documents, where the by-law will not be finally adopted until after the MGA takes effect, should follow the most stringent provisions of both existing legislation and the MGA.

Legislation: Specific - Part XXIII, Section 538

Related - *Interpretation Act*, ss.7(3), 8

Discussion: The *Municipal Government Act* creates many new rules for the passage of by-laws including planning documents. Section 538 continues all existing by-laws, orders, policies (formerly recorded resolutions) and resolutions in force, *provided they are authorized by the MGA or another statute*. For example, a council remuneration by-law or resolution remains in force, but any provision for meeting pay ceases to have effect since it is no longer authorized by a statute. The law is clear that where the authority for a by-law has been repealed the by-law ceases to have effect.[1]

The *Interpretation Act*, which applies to the interpretation of every statute passed by the provincial Legislature, provides some guidance on the transition from the existing legislation to the *Municipal Government Act*.

Section 8 of the *Interpretation Act* provides that where an enactment is not to come into force immediately on being passed (the MGA comes into effect April 1, 1999 although it was passed

[1] The legal authority for this statement is based on the fundamental rules that a by-law must be authorized by statutory authority, and when a statute is repealed it is as if it had never existed. See, for example, *Watson* v. *Winch*, [1916] 1 K.B. 688; *Blakey & Co.* v. *The King*, [1935] Ex. C.R. 223; *Motor Car Supply Co. of Canada Ltd.* v. *Attorney-General of Alberta*, [1938] 4 D.L.R. 489. Refer to Côté, *The Interpretation of Legislation in Canada*, pp. 77-79.

December 3, 1998), and it confers power to make regulations (defined to include by-laws), the power may be exercised before the Act comes into effect but the regulation (by-law) does not come into effect until the Act comes into force, that is, April 1, 1999.

Accordingly, it is possible to pass by-laws not authorized under current legislation but authorized by the MGA. Of course, any such by-law has no effect until the MGA comes into effect April 1, 1999.

As for procedural matters, such as the procedure for adopting a by-law, the existing procedure applies until the MGA comes into effect, after which the MGA procedures must be followed.

It is recommended that in passing by-laws now, where the process will not likely be completed until the MGA comes into force, or where the by-law is only authorized by the MGA, *a combination of the most stringent provisions of both the existing legislation and the MGA should be followed*. That is, for most by-laws the prior notice provisions and third reading (unless final passage will be after April 1) should be followed even though they are not required under the MGA. For planning documents (municipal planning strategy, implementing land-use by-laws and subdivision by-law) the MGA requires fourteen days notice of a public hearing: s.206(2). The *Planning Act*, s.42, requires twenty-one clear days notice. This provision is effective until April 1 and must be followed until then.

If a planning matter subject to an appeal is adopted near the end of March, the appeal period will continue to be twenty-one days. Thus, a development agreement passed on or before March 31, regardless of when it is advertised, has a twenty-one day appeal period. If passed after March 31, the appeal period is fourteen days.

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INFORMATION BULLETIN #21

MINISTERIAL APPROVAL OF PLANNING DOCUMENTS

Summary: All planning documents must be submitted for review to the Provincial Director of Planning (Director) to determine if they require the approval of the Minister of Housing & Municipal Affairs.

Legislation: MGA - Part VIII, s.208 and Part IX, s.271(9)

Discussion: Approval of planning documents has been simplified for municipalities. Planning documents include municipal planning strategies and land use bylaws adopted to implement the strategy, amendments to planning strategies and land use bylaw amendments necessary to carry out the strategy and subdivision bylaws and amendments (s.191(n)). Development agreements and amendments to land use bylaws that do not implement a change in a municipal planning strategy are not subject to provincial review.

Once adopted by council four certified copies of planning documents must be submitted to the Director for review. No other documentation or information is required. The Director will review the documents to decide if they:

- appear to affect a provincial interest
- may not be reasonably consistent with an applicable statement of provincial interest
- appear to conflict with the law
- in the case of the subdivision bylaw, may conflict with the provincial subdivision regulations.

If unsure whether the planning documents may conflict with any of the above, they should be submitted to the Planning Services Section of the Department of Housing and Municipal Affairs for a preliminary review.

Within 30 days of receipt of the planning documents the Director must take one of two courses of action. If it is determined the planning documents do not require Ministerial approval two of the certified copies are returned to the clerk with a letter attached to them, stating that they were not subject to Ministerial approval.

If the Director determines the planning documents require Ministerial approval, a letter explaining the reason for the requirement is sent to the clerk (30-day letter). The Minister must then approve, approve with amendments, or refuse to approve the documents within 60 days of the date of the 30-day letter. Again two copies of the planning documents are returned to the clerk, together with reasons for the Minister's decision. If the Minister takes no action, the planning documents are deemed to be approved on the sixty-first day.

In all cases (expect for refusal) the planning documents are effective on the date a notice is published in a newspaper circulating in the area saying that the planning documents are in effect.

Municipal compliance with the adoption procedures found in Sections 205 and 206 (such as notice requirements) are not subject to review by the Director or Minister. Any person who feels planning documents were adopted illegally may apply to a judge of the Supreme Court of Nova Scotia to have the documents quashed (s.189).

Planning documents required to be reviewed by the Director are not subject to appeal to the Utility and Review Board even if the Director determines Ministerial approval is not required.

Resources: Department of Housing and Municipal Affairs
4th Floor, Summit Place
1601 Lower Water Street
Halifax, Nova Scotia B3J 2M4

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INFORMATION BULLETIN #22

PLANNING FEES AND EXPENSES

Summary: The MGA allows for a range of fees for permits and other planning applications.

Legislation: Part III, Section 49; Part VIII, Sections 211, 220(4)(l), 221(2), 232(4), 237(3), 270(3)(e), 271(3)(f), 282(1)(b)

Discussion: The *Municipal Government Act* provides clearer direction for the recovery of municipal costs incurred with respect to applications for various permits and changes needed for planning permission for developments.

Section 220(4)(l) permits a municipality to include in its land-use by-law fees for applications to amend the land-use by-law; for entering into a development agreement, for a site plan (see s.231) and for a variance (see s.235). Supporting municipal planning strategy policy is not required.

Provincial subdivision regulations may include provisions for fees for the processing of applications for approval or repeal of a subdivision, including recording and filing fees: s.270(3)(e). The regulations now include a processing fee of $50.00. The same (or higher) may be included in a municipal subdivision by-law: s.271(3)(f). The fees for registering deeds required to effect a consolidation must be provided to the development officer before the subdivision (consolidation) is approved: s.282(1)(b).

The processing fees set out in a land-use by-law or a subdivision by-law may be amended by policy: s.211, and therefore do not require a public hearing once they are provided for in the by-law. (Refer to Section 48 for the procedure for passing policies.)

Council may by resolution require any person applying for a land-use by-law amendment, a development agreement or an amendment to a development agreement to pay the costs of required advertising, as well as, if required by the land use by-law, notifying affected landowners and posting a sign: s.221(2). These costs are in addition to the fees authorized by s.220(4)(l). Similar provisions apply to site plan approval: s.232(4), and to applications for a variance: s.237(3). Council may also lay reasonable charges for copies of proposed documents that are subject to a public hearing (s.206(4)).

Council may establish fees by policy for any permit, application or approval required to be obtained from the municipality pursuant to a by-law or an enactment: s.49. This provision does not apply where the statute specifically has determined how some fees are to be set, but can apply in areas, such as development permits, where the legislation is silent.

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INFORMATION BULLETIN #23

DISTRICT PLANNING COMMISSIONS

Summary: Existing District Planning Commissions are continued, but the participating municipalities are deemed to have entered into an intermunicipal services agreement; new arrangements for intermunicipal sharing of planning and related services will be implemented directly through an intermunicipal services agreement.

Legislation: Part VIII, Sections 253 to 258

Related - Part III, Section 60

Discussion: District Planning Commissions, which were incorporated by a ministerial order under the former *Planning Act* are continued as separate bodies corporate: s.253(1). However, the processes for changing the agreements are changed significantly. The member municipalities are deemed to have entered into an intermunicipal services agreement on the same terms as the order establishing the commission: s.253(2). Accordingly, any changes must be agreed upon by the participating municipalities and incorporated in an amendment to that agreement. The approval of the Minister of Housing and Municipal Affairs is not required. See Section 60 and Bulletin #18 - Intermunicipal Service Agreements.

A municipality wishing to withdraw from a commission must give the other participating municipalities at least one year's *notice* before the beginning of the fiscal year: s.253(3). A municipality that withdraws is not entitled to any share of the assets of the commission (unless the remaining municipalities agree), and remains responsible for its share of liabilities existing when it withdraws. It is also responsible for severance or other costs imposed by its withdrawal: s.253(4).

If all municipalities agree to dissolve the commission, they divide the assets and liabilities in whatever manner they agree: s.253(5). In the event they cannot agree one or more municipalities can make application to the Supreme Court of Nova Scotia to make the allocation: s.253(6).

Commissions continue to have the same basic powers as under the *Planning* Act: s.255. The financial reporting and budget approval requirements are essentially the same although the due date for the financial and annual reports has been changed to June 30 in each year. Annual estimates for budgetary purposes are still required by January 15.

The provisions of Section 203, respecting open meetings, apply to a commission. Meeting notices must be posted in a municipal office or other conspicuous place as determined by the commission (s.203(2)).

A District Planning Commission is subject to the general provisions of the *Municipal Government Act* respecting Freedom of Information and Protection of Privacy (Part XX).

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INFORMATION BULLETIN #24

PASSING A BY-LAW

Summary: By-laws must be read a first time, be advertised, and be read a second time.

Legislation: MGA - Part VII, Sections 168, 169, Part VIII, Sections 205, 206, 211, Part XVIII, Sections 426-435

Related - Sections 48, 49, 172, 189, 208, 437, and 450

Discussion: Passing a by-law under the *Municipal Government Act* is more streamlined than it was under the predecessor legislation.

Authority

The first step, is to ensure that there is authority for the by-law. The new authority is very broad (see particularly Section 172). However, it is best to get legal advice. By-law authority is sometimes much more detailed than the general powers in Section 172, and this can limit municipal authority. Very few by-laws require the approval of the Minister of Housing and Municipal Affairs. As a result, departmental review of the validity of a by-law is no longer built into the process. The Department can provide advice and samples, but the decision as to whether a by-law is authorized by the legislation has become a local responsibility and, perhaps, eventually by the courts, as has always been the case. Legal advice is very important.

Procedure: General By-Laws

The procedure starts with a first reading by the council: s.168(1). This is an approval in principle, and requires a recorded motion for first reading of the by-law. The by-law should be very close to final form at this point. A "reading" means that the title of the by-law is read and a motion is then made that the by-law, by

that title, pass. It is unnecessary to read out the whole text of the by-law at the meeting provided all of the members of the council have copies of the full by-law.

At least fourteen days before the by-law is to be read for the second time (final passage), a notice that council intends to consider the by-law has to be published in a newspaper circulating in the municipality: s.168(2). This notice must include the object of the by-law (what it is intended to do), the date and time when the council will consider it, and where a copy of the by-law can be inspected: s.168(3). That is why the by-law has to be in essentially final form for first reading.

The council has the authority to require additional advertising, either in a particular case or generally, and can allow advertising in the broadcast media to replace a newspaper advertisement (except for planning documents). Council can establish a policy to further refine the process. Refer to s.168(4), (5) and (6).

When the by-law comes up for second reading it is a matter for council to determine whether it wishes to go ahead or not. It is not bound by the first reading. Again, a recorded motion is required for second reading of the by-law.

Since there has been notice to the public, only relatively minor changes can be made on second reading. Anything that changes the overall effect of the by-law would require that the process be started over.

The by-law can also be voted down if council has changed its mind, which could certainly happen as the result of public concern. With respect to amendments to land-use by-laws, other than those implementing a change in the planning strategy, a refusal to amend is subject to appeal.

Once the by-law has been passed, it must be submitted for any provincial approval that may be required. Once a by-law that does not require approval has been passed, or an approved by-law is returned, a notice that the by-law has been passed must be published stating the object of the by-law and the place where a copy may be inspected. The by-law is then in force: s.169. A copy of every by-law passed by the council, whether it requires approval or not, must be filed with the Department of Housing and Municipal Affairs. This requirement allows the Department to maintain a complete file of municipal by-laws, which has been

proven to be of considerable benefit to municipal units both to support their own records and to give others access to useful precedents.

Except for planning documents, considered later, (also see **Information Bulletin #25 - Adopting Planning Documents**) by-laws authorized by the *Municipal Government Act* do not require the Minister's approval. By-laws authorized by other statutes usually do, for example, under the *Heritage Property Act*. Any by-law that requires the approval of another Minister also requires the approval of the Minister of Municipal Affairs and Housing: s.450(1). An example is the *Emergency Measures Act*.

Fees, whether set by by-law or otherwise, can be amended by policy and do not require by-laws to change them: s.49(1)(c).

Village By-Laws

Village by-laws do not have quite the same extensive authority as there is for municipal by-laws (although more than in the past). All require the Minister's approval except those specifically exempting the village from this requirement; for example, tax exemption, tax deferral and tax reduction by-laws. The process for passing village by-laws has not changed and advertising is not required, although the village commission might choose to advertise. Refer generally to Sections 426 to 435.

Planning Documents

Planning documents (municipal planning strategies, land-use by-laws, subdivision by-laws and amendments to them) are by-laws and accordingly are passed in the same way. There must be first reading, advertisement, second reading and publication. There are additional provisions for public hearings and special majorities: s.205. The by-law must be passed by a majority of the full council (the total number of members that the council could have): s.205 (1), and not by a majority of the council members present, which is the general rule. If there are vacancies on the council, or if members of the council are absent from the meeting, they effectively count as negative votes.

Before planning documents are read for a second time, there has to be a public hearing. Notice must be advertised at least fourteen days before the public hearing, specifying the date, time and place of the public hearing, and where the proposed

documents may be inspected: s.206. The advertisement must accurately describe the area to be affected in words or by map. As well, a summary of what is included in an amendment and what the effect is must be included: s.206(3). A second notice a week later is also required. The notice of the public hearing replaces the requirement to advertise second reading: s.205(5). Any prescribed public participation program must be completed before notice of the public hearing is given: s.205(4).

Second reading may be held any time after the public hearing, but not before council considers the oral and written submissions presented at the public hearing: s.205(6). Only council members present at the public hearing may vote on second reading: s.205(7). If there is a low turnout of councillors at the public hearing it may be impossible for council to approve the by-law, since it requires a majority of the whole council to pass, and the whole process has to be started again, this time at municipal expense (i.e., costs of advertising).

The common practice of having final reading at a council meeting to follow the public hearing is permitted provided some time is allowed for consideration of any submissions made.

If the planning document passes second reading, it must be submitted to the Provincial Director of Planning for a determination of whether it is subject to the approval of the Minister: s.208. When the Director determines that it is not subject to the Minister's approval, the clerk is notified in writing who in turn advertises it in the same manner as other by-laws as being in effect: s.208 (8) and (9). If it is subject to the Minister's approval and such approval is granted, the same process for advertising must be followed. If the time limits for ministerial approval are not complied with for approval, the clerk must advertise the document as deemed to have been approved: s.208(7).

Amendments to land-use by-laws that are undertaken in accordance with the municipal planning strategy but are not implementing an amendment to the municipal planning strategy are not subject to review by the Director but may be appealed to the Nova Scotia Utility and Review Board. In this case the by-law is advertised as having been passed and that there is a right of appeal: s.210. The amendment has effect when the appeal period of fourteen days expires without an appeal, or the appeal has been abandoned or disposed of in the municipality's favour: s.210(8).

The engineering specifications in a subdivision by-law, the processing fees in a land-use by-law or a subdivision by-law and a change to a subdivision by-law resulting from a change in the provincial subdivision regulations can all be adopted by policy and do not have to proceed through the by-law process: s.211. A policy is a council resolution kept in the by-law book. Policies can be changed by motion of council provided seven days notice is given to all of the council members: s.48(1). Only one reading is required and they do not have to be advertised.

*Refer to Tab 7 for Flow Charts and Tab 2 for **Information Bulletin #25 - Adopting Planning Documents** for more detail.*

Challenges

A simple court process to allow the public to challenge municipal by-laws is provided in Section 189 (s.437 for villages).

Date Produced: March 1999

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INFORMATION BULLETIN #25

ADOPTING PLANNING DOCUMENTS

Summary: The procedure for passing planning documents and related documents is generally the same as for municipal by-laws, with additional requirements for public participation, public hearings and special majorities.

Legislation: MGA - Part VIII, Sections 204, 205, 206, 207, 208, 209, 210, 211, 230

Related - Sections 48, 191(n)

Discussion: "**Planning documents**" means a municipal planning strategy and amendment to it; a land-use by-law and an amendment to it that carries out an amendment to a municipal planning strategy; and a subdivision by-law and any amendment to it. This bulletin also deals with passing land-use by-law amendments that do not implement a change in the municipal planning strategy, development agreements and amendments to them. Collectively, all these are sometimes referred to as **documents**, *(e.g.* s.206).

Planning documents and other amendments to the land-use by-law are by-laws and must be adopted according to the general by-law procedures applicable to all municipal by-laws (see **Information Bulletin #24 - Passing a By-law**).

However, there are a number of specific differences in the procedure for the adoption of planning by-laws from the other by-laws.

Technically speaking, development agreements and amendments are adopted by policy rather than by by-law. However, for all particular purposes the process is very similar to that of adopting land use bylaw amendments that do not implement a change in a municipal planning strategy.

Public Participation Program

A public participation program must be adopted concerning the preparation of planning documents which may be different for different types of planning documents (s.204). **Note: this now includes subdivision by-law.** A public participation program for amendments to a land-use by-law that are not required to implement a change in the municipal planning strategy is at the discretion of the council: s.210(2). The MGA is silent respecting public participation programs for development agreements. Any public participation program must be complete before the first advertisement for the public hearing appears in the newspaper: s.205(4).

Public Hearing

Before planning documents are approved, amended or repealed, there must be a public hearing. A public hearing is also required for amendments to land-use by-laws that are not required to implement a change in a planning strategy and for the adoption or amendment of development agreements (s.210(2) and s.230(2). The municipality must place two notices of the hearing in a local newspaper appearing in consecutive weeks. The first must appear at least 14 days before the date set for the public hearing.

The notice must include:

- the date, time and place of the hearing
- where the proposed document may be inspected
- an accurate description of the area affected by map or other sufficient description, including civic number
- a summary of the effect of an amendment to a planning strategy or land-use by-law, or approval or amendment of a development agreement.

A copy of the notice of hearing must be sent to the clerk of every municipality that immediately abuts the area affected and to the clerk of every village in which an affected property is situate. These notices are to be sent when the first advertisement of the public hearing appears: s.206(5), (6).

Second reading may be held any time after the public hearing, but not before council considers any submissions from the public hearing: s.205(6). The common practice of having second reading at a council meeting immediately following the public hearing is still permitted, provided time is allotted for the consideration of any submissions that were made at the public hearing.

Changes to the engineering specifications in a subdivision by-law, the processing fees included in a land-use by-law or a subdivision by-law or to a subdivision by-law to ensure compliance with the provincial subdivision regulations may simply be adopted by policy: s.211. Nor is a public hearing required for changes to items in a development agreement determined in advance not to be substantial.

Special Majorities

To pass planning documents, the motion for second reading must pass by a majority vote of the total number of members that may be elected to the council. Effectively this means that members that are absent, and vacancies in the council, count as "no" votes. For example, where a town council consists of six councillors and a mayor, there have to be at least four votes in favour of the by-law for it to pass.

An amendment to a land-use by-law that does not implement a change in the municipal planning strategy needs only a majority of the members of council present at the meeting (assuming all of them were at the public hearing): s.210(2). The same is true for development agreements and amendments to them. Technically speaking development agreements and amendments are adopted by policy rather than by-law. However, for all practical purposes, it is the same process as that of an amendment to a land use by-law.

In all cases, only council members that attended the public hearing may vote on the matter under consideration.

Provincial Review/Appeal

Planning documents must be submitted to the Provincial Director of Planning for review once they have been passed.

(Amendments to a land-use by-law that do not implement a change in the municipal planning strategy or development agreements do not require provincial review.)

The Director determines whether the approval of the Minister will be required. If the documents are not subject to the Minister's approval, the Director advises the municipality. The clerk then inserts the required advertisement in a local newspaper that the planning document is in effect as of the day the ad appears. Otherwise, the clerk inserts the same advertisement when the planning document has been approved by the Minister (or it is deemed approved because the Minister has not taken any action within sixty days. If the Minister refuses to approve the planning document it does not come into effect. (Also see Information Bulletin #21 - Ministerial Approval of Planning Documents)

In the case of amendments to a land-use by-law that do not implement a change in the municipal planning strategy or development agreements, no provincial review is required. Once adopted by council, the clerk must insert an advertisement in a local newspaper stating that they have been adopted and that they may be appealed to the Nova Scotia Utility and Review Board within fourteen days of the date of the advertisement. These decisions come into effect on the expiry of the appeal period, or if an appeal is filed, when the appeal has been abandoned or disposed of or the Board has confirmed council's decision.

Related: Flow Charts, Section 7 of the Resource Guide Binder.

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INFORMATION BULLETIN #26

INFRASTRUCTURE CHARGES

- Revised -

Summary: Municipalities may include provisions for infrastructure charges in their subdivision by-laws if authorized in the municipal planning strategy.

Legislation: MGA - Part IX, Sections 274, 275, 276

Discussion: Infrastructure charges, sometimes referred to as off-site or development charges, are charges that may be imposed on a subdivider to cover all or part of the capital costs of certain specified services, incurred or anticipated to be incurred, that may be necessary because of the development of a new subdivision. These charges are applied to services located outside the area of land being subdivided.

In order to levy an infrastructure charge, there must be policy support in a municipal planning strategy. Unless the planning strategy authorizes the use of infrastructure charges, they may not be levied. Next, the infrastructure charges provisions must be set out in the subdivision by-law. The subdivision by-law must identify the areas in which the infrastructure charges are levied, the purposes for which the charges are to be levied, and the amount of the charge or the method of calculating the charge (i.e. formula): s.274(3).

Purposes

The facilities for which infrastructure charges may be levied are:

- new or expanded water systems
- new or expanded wastewater facilities
- new or expanded stormwater systems
- new or expanded streets
- upgrading intersections, new traffic signs and signals, and new transit bus bays

Each charge should be set and identified separately according to purpose (i.e. water systems, streets, etc.).

Costs that may be included in the capital costs of these services are land, planning, studies, engineering, surveying and legal costs.

An infrastructure charge must be used for the purpose for which it was collected: s.274(6). That is, if a charge is levied for improvements to stormwater systems, that is what the money must be spent on.

Charges

Infrastructure charges may be set at different levels related to the proposed land use, zoning, lot size and number of lots. If infrastructure charges are to vary, the precise way in which they will vary in different circumstances must be set out in the subdivision by-law. Charges for capital costs that are anticipated but that have not yet been incurred should be based on reasonable estimates developed with advice from appropriate professionals, such as, engineers. Anyone proposing to subdivide should be able to calculate the charge from the by-law: s.274(4). That is, if the by-law does not set out a specific charge per lot, it must include a formula for calculation of the charge.

Infrastructure charges may not be levied if they have already been collected for the same land unless further subdivision will impose additional costs: s.274(5).

Trunk sewer taxes levied under previous legislation (*e.g. Municipal Act*, s.122; *Towns Act*, s.112) are deemed to be infrastructure charges: s.274(9). The proceeds from trunk sewer taxes must accordingly be spent only for trunk sewer purposes. *Any changes to a trunk sewer tax will have to be made by way of amendment to the subdivision by-law.* Any municipality that formerly levied a trunk sewer tax should take steps to integrate that tax with its subdivision by-law.

Collection

Infrastructure charges are payable by the subdivider before final approval is given for the subdivision: s.274(7). In order to allow for some flexibility, legislation authorizes an infrastructure charges agreement (Section 275) to provide for the payment of the charges over time and permit final approval, and sale of lots, before the charges are paid in full.

The agreement may

- allow the payment of the charges by installments

- allow an applicant to pay the charges in kind, through the provision or extension of services
- provide for security to ensure the charges are paid when due.

The subdivision by-law should include a determination of the circumstances in which an infrastructure agreement will be entered into, as well as the general terms that should be in the agreement: s.275(2).

Infrastructure charges are a lien on the land subdivided: s.274(8). Accordingly, they will show on a tax certificate. The infrastructure agreement is binding on the land subdivided and must be registered in the registry of deeds. It binds the individual lots in the subdivision to the extent specified in the agreement: s.276. That is, the statute would allow a provision whereby the municipality and the subdivider would agree to release lots individually from the agreement as they are sold, on payment of an appropriate portion *by the original subdivider* of the total amount outstanding. The agreement should also provide for interest on the outstanding balance, and a time period in which all charges must be paid, regardless of the number of lots sold.

In determining the appropriate portion of the total charge payable with respect to each lot, the municipality will probably want to see that the full charge is paid sometime before the last lot is sold. The proportion would therefore be somewhat higher than the average amount due for each lot.

Related: See Section 3045 of the *Municipal Accounting and Reporting Manual* for discussion on accounting treatment.

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INFORMATION BULLETIN #27

INCENTIVE or BONUS ZONING

Summary: The Municipal Government Act clarifies that a zoning technique referred to as incentive or bonus zoning can be incorporated into a land use by-law.

Legislation: MGA - Part VIII, s.191(g), s.220(5)(k)

Definition - Section 191(g)

Discussion: In order to use this zoning technique in the land use bylaw there must be appropriate policy in the municipal planning strategy that explains the uses or classes of uses that may be controlled by this process. The rationale for what Council desires to achieve over and above the standard as-of-right zoning requirements should be carefully explained to ensure there is policy support for the bonus provisions found in the land use by-law.

Incentive or bonus zoning is a flexible zoning technique that permits a trade-off between the as-of-right requirements of the land use bylaw and the desired changes in those requirements by a developer. It allows for the relaxation of certain bylaw requirements in exchange for an increased amenity that would benefit the residents of the development and their neighbours. For example, in exchange for a higher number of units in an apartment building unit, the developer would have to provide an increased level of landscaping or other amenity space that would not otherwise be required by the standard zone provisions. The trade-offs could be applied to a variety of land use bylaw requirements such as the height of buildings, parking requirements, landscaping requirements or any other provision that a land use bylaw would normally control. The principle is that both the municipality and the developer can gain from the application of this technique.

The important thing to remember is that the terms of the trade-off must be clearly stated in the land use bylaw so the development officer can issue a municipal development permit without any ambiguity concerning the requirements of the bonus or incentive offered in the standard provision of the land use bylaw. The choice is up to the developer to use the positive incentive or not--it is not mandatory.

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INFORMATION BULLETIN #28

CITIZEN PARTICIPATION

Summary: Councils are given a wide range of options to encourage citizen participation in municipal government.

Legislation: MGA Sections 24, 25, 26, 27, 200, 204

Related - Section 23(1)(c), Sections 521-528

Discussion: The *Municipal Government Act* provides many ways to encourage and permit citizen participation in local government. Some of the most important are in the committee provisions.

Councils normally deal with committee matters by policy: such as conferring powers on them (except the power to expend funds) s.23(1)(c). Actual appointments to committees are made by resolution.

Councils now have the authority to appoint members of committees who are not councillors: s.24(3). Procedures to appoint outside members to committees is expressly authorized.

To implement citizen appointments to council committees, council will first have to determine which of the committees should have citizen representation. Some, such as the planning advisory committee, must have citizen representation: s.200(3). Council will next have to determine a procedure for choosing people to appoint to the chosen committees. This may be as simple as appointing a nominating committee to find suitable candidates or may involve advertising for members and more formal application criteria. However, council must make all appointments to committees.

Note that citizen members of committees (though not councillors) may be paid an annual honorarium for serving on the committee if council so provides: s.24(6). The same applies to planning advisory committees: s.202(b) and (c). All committee members are entitled to have their expenses reimbursed.

Citizen Advisory

There is special authority for the appointment of citizen advisory committees: s.26. The initial concept was that a citizen advisory committee would gather citizen input about a specific field of council's responsibilities relevant to the entire Municipality and advise the council. The MGA does not limit them in any way, with council determining powers and duties.

Community Committees

Community committees: s.27 could provide citizen input about all services in a specific area. The important element is that council must define the geographic area for which the committee is responsible and set out its duties: s.27(2). Councils may wish to ensure that the councillors representing a community are included as members of the community committee, enhancing communication between council and the community.

Community Councils

Community councils, applicable only in Halifax Regional Municipality (Sections 521 to 528), are another more formalized way to encourage access to municipal government.

Planning

Another form of citizen participation is through the public participation process in the adoption and amendment of planning documents. Councils are required to adopt public participation programs for the preparation of planning documents (municipal planning strategy, implementing land-use by-laws and subdivision by-laws, and amendments): s.204. Public participation must be complete before the first advertisement for a public hearing regarding the planning documents appears. Although not mandatory, council may also have a public participation program for other types of planning process such as development agreements.

Date Produced: March 1999

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INFORMATION BULLETIN #29

CHIEF ADMINISTRATIVE OFFICER

Summary: The Chief Administrative Officer exercises many of the administrative powers of a municipality. In municipalities that do not have a CAO, these powers are exercised by council or the employee to whom council has delegated the powers.

Legislation: Part II, Sections 28 to 33, 37, 39, 41

Discussion: The *Municipal Government Act* provides for the appointment of a chief administrative officer to lead the municipal administration. This appointment is mandatory in a regional municipality, but other municipalities have the choice whether to do so or to continue with another form of administration: s.28 (for example, clerk and committees). Where a council does not appoint a chief administrative officer (CAO), the council must perform the duties and may exercise the powers of the CAO, and may delegate some or all of them to another municipal employee: s.29. Note that unless council delegates these powers, they can only be exercised by council. There is no implied authority in the clerk or another employee to exercise them.

Council when exercising or delegating the powers of a CAO would normally act by resolution.

Where there is a chief administrative officer, the CAO is the head of the municipal administration: s.30(1). Communication with employees (except for information) must be directed through the CAO: s.30(2); direction must be provided to the CAO and not to employees directly: s.30(3), (4). If the CAO is to be held responsible for the administration of the municipality, which is the intent of a CAO system, then council must not go behind his or her back to the employees directly since it undermines the authority of the position. If this proves unacceptable to the

council, then a different form of administrative structure should be adopted in order to make it very clear that council has accepted responsibility for administration as well as policy.

The basic duties of the CAO (and of council where there is no CAO) are set out in subsection 31(1). They include responsibility for the budget, municipal property, by-laws and policies and such additional duties as council may direct. Powers of the CAO include the right to attend all council and committee meetings, control over municipal employees, collective bargaining, financial matters (subject to any overriding council policy), legal proceedings, leasing, and control over the directors of departments: s.31, s.32.

Directors of departments may present objections to recommendations to the council through the CAO, who is obliged to provide them to council: s.32(3). Reports or recommendations from the municipal solicitor must be presented directly to the council, but the CAO must be informed in advance (unless the subject is the CAO): s.32(2).

Other Senior Officials

Municipalities must have a number of officials (employees with designated duties) and unless there are incumbents (for example, clerk), the appointments should be made to be effective April 1, 1999 when the Municipal Government Act comes into force. For most municipalities, the necessary appointments likely include the administrator and perhaps the engineer.

! A municipality must have a clerk, who is a municipal employee designated by the CAO (or council where there is no CAO) to perform the statutory duties of the clerk: s.33. The clerk has several obligations under the MGA and other statutes that are not incorporated in Section 33, but at a minimum the clerk is responsible for the books and records of the council and for ensuring appropriate public notice is provided when required.

! A municipality must have a treasurer, who is a municipal employee designated by the CAO (or council where there is no CAO) to perform the statutory duties of the treasurer: s.37. The duties of the treasurer are primarily financial, and include tax collection matters covered under Part VI of the MGA.

- A municipality must have an engineer, who is a municipal employee designated by the CAO (or council where there is no CAO) to perform the statutory duties of the engineer: s.39. The "engineer" under the *Municipal Government Act* need not be a professional engineer, although the duties of the position tend to relate to engineering and works matters such as streets and sewers.

- A municipality must also have an administrator, who is a municipal employee designated by the CAO (or council where there is no CAO) to perform the statutory duties of the administrator responsible for the dangerous and unsightly premises provisions of the *Municipal Government Act*: s.41.

The *Municipal Government Act* does not require that these positions necessarily be held by different people or that they not have other responsibilities. Many units that have not appointed a CAO have a clerk-treasurer, who performs the duties of both the clerk and the treasurer. The director of works or equivalent in smaller units might be appointed the engineer, and might also be the administrator, or perhaps the building inspector might be the administrator. The CAO may fill one or more of these positions if council approves: s.31(4). So long as some employee has been designated to perform the duties of the position, the exact mix of who does what is up to the CAO or the council.

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INFORMATION BULLETIN #30

TAX EXEMPTION and REDUCTION BY-LAWS

- Revised -

Summary: Municipalities may, by by-law, provide complete or partial tax exemptions for properties used for the public benefit.

Legislation: Part IV, Sections 71***, 71A, 71B***

Related - Sections 3(av), 429, 547

Discussion: Municipalities ~~have~~ had the authority to provide full or partial tax exemptions for certain classes of property for many years. These powers ~~have been~~ ***were*** taken out of the *Assessment Act* and added to the *Municipal Government Act*. ***In addition, new authority was added in 2004 respecting taxable commercial property of licensed day cares.*** For consistency of treatment and to facilitate the requirement that these exemptions show as a municipal cost, all properties that have the benefit of a municipal tax exemption will show as taxable on the assessment roll in future years.

Exemptions

Council may provide full or partial tax exemptions, subject to any conditions set out in the by-law, for

- property of a specific registered charity *if used directly and solely for a charitable purpose* (case law confirms that this does not include fundraising)

- property of a nonprofit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization *if council considers the organization provides a service that might otherwise have to be provided by the council*

- ~~property of a fire department registered under Part X *if used directly and solely for community purposes or fund raising activities of the fire department*~~

- ~~property of an emergency services provider registered under Part X *if used directly and solely for community purposes or fund raising activities of the emergency services provider*~~

- buildings, pump stations, deep well pumps, main transmission lines, distribution lines, metres and associated plant and equipment of a municipal water utility (including village and service commission water utilities).

The exemptions must be granted by by-law. The property and the organization being benefited must be named in the by-law. Council has complete discretion to grant or refuse a benefit.

Exemptions do not apply to area rates ***or fire protection rates*** *unless* the by-law specifically states that the exemption applies to area rates ***or fire protection rates*** as well as the general rate.

Existing by-laws under the *Assessment Act* are continued if authorized by the *Municipal Government Act*. Accordingly, most tax exemption and partial tax exemption by-laws continue in force.

Tax Reduction

Council may allow a tax reduction for the property of any nonprofit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization ***or day care licensed under the Day Care Act*** from commercial tax rates to residential tax rates. Area rates (which can be different for residential and commercial taxpayers) would be covered by the reduction. ***(Fire protection rates are charged at the same rate for both residential and commercial properties.)***

The reductions must be granted by by-law. The organization and the specific property must be named in the by-law.

Council also may exempt licensed day cares from business occupancy taxes by by-law.

Villages

Villages have the same authority as municipalities to pass tax exemption and reduction by-laws: s.429. These by-laws do not require the approval of the Minister of Service Nova Scotia and Municipal Relations. The by-laws apply only to taxes levied by the village.

Municipal tax exemption and reduction by-laws do not apply to village taxes.

Accounting & Reporting

The tax exemption or reduction must be shown on the tax bill, perhaps as a credit against the full taxes payable. The municipality must account for it as an expenditure, not a reduction in revenue.

Tax exemption and reduction by-laws have effect in the fiscal year following the year in which they are published, unless the by-law provides otherwise, and are in effect until repealed or replaced.

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Municipal Government Act

progressive powers for municipalities

INFORMATION BULLETIN #31

FIRE PROTECTION RATE

- Revised -

Summary: Municipalities may levy a special fire protection rate, often referred to as hydrant rental, with limited exemptions.

Legislation: Part IV, Section 80

Discussion: The fire protection rate authorized by Section 80 of the *Municipal Government Act* is a type of area rate that has very few exemptions. However, it is not mandatory.

The fire protection rate is intended to cover that portion of the cost of a water utility that is attributable to fire protection, sometimes referred to as hydrant rental. In practice, this amount is determined by the Nova Scotia Utility and Review Board as part of the water rates. It is the amount the municipality must pay to the utility for fire protection. It is *not* related to the cost of other fire protection services such as the fire department.

The rate is charged on all assessments located in the area council has determined by policy to be served by a water utility. *There is no provision for different rates on commercial and residential properties* as there is for other area rates. Only property of the federal and provincial governments ***or property specifically exempt by by-law*** is exempt from the charge. ~~***however, they do pay***~~ ***Note that the governments pay a grant in lieu for fire protection charges***.

The main reasons a municipality might choose to levy a fire protection rate include the limited exemptions from it or to separate it from the general rate. Otherwise it is the same as an area rate. Many municipalities have area rates to recover hydrant rental charges. These rates can continue as area rates, be blended into the general tax rate, or be converted to fire protection rates at the option of the council.

Date Produced: March 1999

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INFORMATION BULLETIN #32

REVENUE SHARING

Summary: Municipalities are empowered to negotiate revenue sharing arrangements among themselves.

Legislation: MGA Section 68

Related - Section 57(2)

Discussion: The *Municipal Government Act* states "A municipality may agree with another municipality to share taxes or grants in lieu of taxes paid or payable to the municipality." Section 68.

Municipalities have previously had this authority only as members of joint industrial commissions or through special legislation. For example, Windsor and West Hants agreed to share equally the revenues from taxes on property in an industrial park, regardless of where in the park the property was located: S.N.S. 1980, c.79. North Sydney and Sydney Mines entered into a similar agreement: S.N.S. 1987, c.62. In each case there was a special provision concerning tax levels, which is not authorized by the MGA. In fact, the MGA prohibits tax concessions or other forms of direct financial assistance to industry: s.57(2).

While municipalities may choose any form of tax sharing they think best, probably the most common arrangements will deal with industrial location in a jointly owned industrial park, or with industries attracted to an area by reason of a joint attraction program or other joint activity.

An agreement for revenue sharing is most often entered into before any development occurs, although that is not required. The agreement must be approved by the council of each municipality involved. An agreement is normally straightforward, defining the percentage of taxes to go to each unit and for how long the agreement will last.

When municipalities share revenue, the uniform assessment associated with the properties that are subject to the agreement is allocated among the municipalities receiving the revenues: *Municipal Grants Act*, s.14(2). Accordingly, it is important that copies of any revenue sharing agreements be filed with the Department of Housing and Municipal Affairs to ensure that uniform assessment is properly calculated.

Date Produced: March 1999

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.

Municipal Government Act
progressive powers for municipalities

INFORMATION BULLETIN #33

MUNICIPAL PROPERTY: TRANSFER and SALE

Summary: Municipalities must normally sell property for market value. In order to sell property for less, a public hearing and two thirds majority vote of the council is required, unless the property is essentially unuseable and is being sold to an abutting land owner.

Legislation: Part III, Sections 50, 51, 51A
Related – Sections 52, 61, 99(3)(a), 273(13)

Discussion: Municipalities have the power to acquire property required for purposes of the municipality or for the use of the public. This power extends to taking property in trust and holding it for the terms of the trust (for example, as a park). Municipalities also have expropriation powers (s.52); procedures are governed by the *Expropriation Act*.

Property owned by a municipality is under the management and control of the council unless a statute provides otherwise. An example of an exception is a street, which may be owned by the municipality but is controlled in different ways as set out in the *Motor Vehicle Act*, as well as by the municipality (see Part XII).

It is not longer possible to get title to municipal property by adverse possession (squatters' rights): s.50(4). However, if the necessary period of adverse possession was completed before April 1, 1999 (when the MGA came into effect), the municipality may have lost title.

SALE OF PROPERTY

Municipalities may sell or lease property, subject to any trusts imposed when it was acquired by the municipality, provided

- the property is no longer required for the purposes of the municipality; and
- the sale or lease is at market value.

Market value is generally defined as the amount a willing seller would take

and a buyer would pay for the property in question. In order to ensure municipalities receive market value for land, it should be sold by tender. This provides reasonably satisfactory evidence that the best price is being obtained. Alternatively, property can be listed for sale with a realtor at the recommended price. When a private transaction is arranged, an appraisal may be the best way to protect the municipality.

The law considers that councils, as well as individual councillors, are in a fiduciary position when making decisions respecting the sale or disposition of municipal property. That means that council and its members must exercise its powers in good faith for the benefit of the public. Of course, no one in a fiduciary position may make a personal profit from the transaction. See also the *Municipal Conflict of Interest Act*.

Funds received from the sale of property are to be credited to the Capital Reserve Fund: s.99(3)(a). A municipality may not normally take back a mortgage as part of the purchase price. Sometimes in a property transaction, instead of the full purchase price a purchaser will pay part and defer the balance, secured by a mortgage to the vendor. A mortgage is not a permitted investment for capital reserve funds unless authorized by an investment policy approved by the Minister: s.100(1).

Note that these provisions apply to all municipal property, not just to land and buildings.

Land transferred by a developer pursuant to the subdivision by-law for parks, playgrounds and similar public purposes (Section 273), may be sold but there are special notification provisions and limits on how the sale proceeds may be used. The owners of the lots in the subdivision in respect of which the land was conveyed must be notified by a notice in the newspaper 14 days before the meeting when council makes the decision, and the proceeds must be used for parks, playgrounds and similar public purposes: s.273(13).

The approval of the Minister of Service Nova Scotia and Municipal Relations for any sale of municipal property is not required.

SALE AT LESS THAN MARKET VALUE

The *Municipal Government Act* recognizes that there may be times when a municipality wants to give property away or sell it for less than market value. Section 51 establishes a mechanism to ensure that such decisions are thoroughly considered in a public forum.

The requirements for a sale or lease at less than market value are:

- the recipient must be a non-profit organization

- the organization must be carrying on an activity council considers beneficial to the municipality

- the resolution must be passed by at least two-thirds of the council members present and voting.

If it is proposed to sell property valued at more than $10,000, council must also hold a public hearing respecting the sale: s.51(3). The hearing must be advertised. The first advertisement must appear in a local newspaper at least fourteen days before the hearing, and the second usually about a week later: s.51(4). The notice of the hearing must set out the date and time of the hearing, the property proposed to be sold for less than market value, the estimated value of the property and the purpose of the sale: s.51(5).

Generally speaking, transfers to another municipality or to the Province are permitted under Section 51 for less than market value since they are considered to be non-profit organizations. The other requirements of the Section (public notice, public hearing, special majority) must still be followed.

The resolution should set out the elements that bring the transaction within the requirements of Section 51, specifically naming the organization, identifying it as non-profit, and reciting the activity that council considers beneficial to the municipality.

Section 51A allows council to dispense with the requirements of Section 51 where

- the land is of insufficient size or dimensions to be capable of any reasonable use (in the opinion of the council), and

- the land is to be sold to an abutting land owner.

The most common situation would arise if a street is realigned and a small slice of it is no longer needed. This land often becomes valuable only to the abutting property owner, and is an embarrassment to the municipality, because it will either by unkempt or it will absorb municipal resources with a better use elsewhere. The land is not without value, though the value is mostly to the abutting owner, and its best use is as part of the adjacent property. A below-market deal may have to be struck to get the property off the municipality's hands and in the possession of someone with a more direct interest in taking care of it. In such cases a price less than market value may be set and the requirements of Section 51 do not apply. However, the basic requirement of subsection 50(5) still applies, that the property be no longer required for the purposes of the municipality.

PUBLIC-PRIVATE PARTNERING

Subsection 61(2) provides for the transfer of municipal property to a partner who will provide a service or capital facility for a municipality, pursuant to an agreement. Generally the partners will be private-sector, though this is not a requirement. The transfer is authorized even if it could be said that the property was still needed by the municipality. *A transfer at less than market value is not authorized*

DATE PRODUCED: March 1999; updated September 2004, October 2006.

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INFORMATION BULLETIN #34

URBAN, RURAL AND SUBURBAN TAX RATES

Summary: All municipalities are permitted to levy three general tax rates, for urban, rural and suburban areas of the municipality.

Legislation: Specific - MGA Section 73
Related - Section 72

Discussion: Section 72 of the *Municipal Government Act* provides that after estimating how much revenue council needs from taxation for the coming year, it sets a commercial tax rate and a residential tax rate that, between them, will raise the required amount. Section 73 gives municipalities additional choices.

The additional choices are that council may set different residential and commercial rates in the area it considers urban, the area it considers suburban, and the area it considers rural. In Halifax Regional Municipality, council must use this three-tier rate structure.

In order to apply the three-tier rate structure, council must first determine the boundaries of the areas it considers urban, those it considers suburban and those it considers rural. Council then has to determine how much it wants to recover from the three types of development. Usually this decision will be affected by council's view of the level of services provided to each of the three, since service levels are intended to guide council's decision as to the boundaries of the three.

Some councils have viewed an urban rate as a combination of a basic general rate and the combined area rates required to provide the additional services in all of the urban areas. A similar analysis applies to determining the suburban rate, generally at a somewhat lower level of services. The rural rate would usually be about the same as the general rate.

Other councils may feel more comfortable using an area rate structure instead, usually because the urban areas do not all receive the same services. Although area rates can be used along with the three-tier rate structure, some councils may regard that concept as too complex.

Of course, if a three-tier rate structure is used (involving up to six different tax rates), the total projected to be raised must at least equal the funds council requires. The balancing act is actually relatively simple.

One commercial rate across the municipality is another possibility.

Whether a council will want to use three sets of general rates, possibly supplemented by area rates in some cases depends a lot on the characteristics of the municipality. If the entire municipality is virtually the same character, the existing tax rate structure may be most appropriate. If there is a large rural area with some suburban developments receiving a different level of service that is roughly the same for all of them, separate rate structures may be desirable.

It is possible to have just an urban and rural rate, or a suburban and rural rate. A larger town might even have just an urban and a suburban rate.

Finally, it is not mandatory that a municipality (except HRM) adopt any of the three rates. The choice exists to allow municipalities to develop a structure of tax rates that best suits its own situation.

If council would like to develop a tax structure using the choices permitted by the *Municipal Government Act*, there may be a concern that the changes are too big to implement all at once. Transitional procedures could space these changes over a number of years and reduce year to year disruption. The easiest way to introduce a new rate structure could be to phase in the changes. The Act does not specify exactly how to calculate an urban, suburban or rural tax rate. Therefore council could construct a phased in approach that, for example, reduced or increased) the suburban rate over three to five years (depending on how big the changes were).

Date Produced: May 1999

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INFORMATION BULLETIN #35

TAX BILLING AND INTEREST CALCULATION

- Revised -

Summary: Municipalities must issue tax bills to collect taxes; there are several options in setting the interest rate on overdue taxes.

Legislation: Specific - Part VI, Sections 111 to 117, Section 167

Related - Section 49(1)(a), Section 72(3)

Discussion: The first step in recovering taxes is setting the tax rate: s.72. When the rate is set, the council also sets the due date for taxes: clause 111(1)(a). If no due date is prescribed, taxes are due and payable as soon as the tax rate is set: subsection 111(2).

Council may also determine whether the taxes are to be paid in one sum or instalments. If the taxes are payable in instalments, the municipality may provide that if one instalment is not paid, the balance of the taxes are immediately due and payable (termed an acceleration clause): subsection 111(3). Few if any municipalities in Nova Scotia have adopted instalment payments of taxes after the rate is set. It is far more common for municipalities to provide for the early payment of taxes, usually referred to as interim billing: subsection 112

Interim Billing

Section 112 is the legal framework for interim billing. Many municipalities use interim billing as a way to improve their cash flow. The requirement to implement interim billing is a policy that sets the date on which the instalment is due and the way it is to be calculated, normally half of the taxes for the previous year.

Interest

Discounts are permitted to encourage the early payment of taxes if a municipality so chooses: subsection 113(1).

Interest may be charged on overdue taxes. The rate is set by policy: subsections 49(1) and 113(2). Rather than setting a fixed rate, effective until the policy is changed, a council can instead adopt a formula by which the rate of interest may be determined and automatically adjusted: s.167. Examples of formulas include "four percentage points over the municipality's bank borrowing rate" or "six percentage points above bank prime lending rate". The bank should be specified. If a formula is adopted, it must be clear enough that any ratepayer can recheck the calculations. Refer to subsection 113(7).

Interest forms part of the taxes: subsection 113(3). As a result, the interest is as much a lien on the property as the original taxes.

Council is now empowered, specifically, to provide that interest on overdue taxes is compounded, not more than monthly: subsection 113(5). If the council does not provide for compounding interest, it is likely that only simple interest can be charged even if taxes are very substantially in arrears.

Council may also provide that if taxes are not paid within thirty days of the due date, interest will be charged back to the day the tax rate was set: subsection 113(6). This can amount to a penalty similar to the penalty for late payment of water or electric bills.

Interest and discounts apply to area rates and taxes collected for other bodies (villages and service commissions) in the same manner as for general rates unless the council specifically provides otherwise: subsection 113(8).

Collection

A separate guide for tax collection has been prepared.

Taxes are recoverable even though the assessment on which they are based is under appeal: s.114. Once the appeal is finalized, any overpayment must be refunded with interest at the

rate council prescribes: subsection 114(2). This rate could be determined by formula: s.167. *If council does not set a rate of interest, the rate will be the same as the rate on overdue taxes*: subsection 114(3).

Since this rate is normally much higher than the interest rate the municipality earns on its investments, municipalities should consider setting a lower rate, perhaps related to the rate of interest that the municipality receives on its short-term investments.

Tax Bills

Tax bills must be sent out at least annually: s.117. The bill should show the amount due and the due date, and distinguish between taxes for the current year and arrears. There should also be an explanation of any incentives for early payment and the interest on overdue taxes. Any tax exemption or reduction under Section 72 must be shown on the tax bill: subsection 72(3).

If the address of the person assessed cannot be ascertained, the tax bill is to be posted on the property.

Date Produced: May 1999

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INFORMATION BULLETIN #36

RECOVERY OF COSTS INCURRED

Summary:

Municipalities are generally entitled to recover the cost of any curative measures they undertake on a property, and the cost is a lien on the property.

Legislation:

Specific - Definitions Section 3(bz),
Part III, Section 63(7),
Part VI, Sections 132(1)(c), 139, 141(1)
Part VII, Sections 172(1)(l)(ii), 181(4), 185,
Part VIII, Sections 264, 265, 266(3),
Part XII, Sections 318, 320, 321
Part XIV, Sections 329 to 332 incl., 335, 337, 339 to 341 incl.
Part XV, Sections 348, 350,
Part XXI, Sections 503, 507

Discussion:

When a municipal council, village commission, committee, community council, engineer, administrator or another employee lawfully directs the owner of the property to take remedial action on their property, and it is not done, the appropriate municipal representative may have the work carried out at the expense of the person in default: s.503 (1). The important point in this provision is that the direction must be properly authorized. In practical terms, it should be possible to find the exact section of the *Municipal Government Act* that authorizes the direction or the by-law pursuant to which the direction was made.

The cost incurred by a municipality in doing the work, with interest at the rate prescribed by the council by policy, is a first lien on the property upon which, or for the benefit of which, the work was done: s.507. As a result, the sums can be recovered through the tax sale process, since municipal charges that are liens are included in the definition of taxes: s.3 (bz), and these sums must be shown on a tax certificate: s.132 (1) (c).

By-laws may contain provisions allowing an appropriate municipal official to direct that the work is done, with power to do

the work and collect the costs as a first lien on the property: s.172 (1) (l) (ii).

Where there is the authority to undertake the work in default, no action can be taken against the municipality or any agent or employee of the municipality: s.503 (2). Only if there is gross negligence can there be liability for other damages: s.185. These provisions, however, do not protect a municipality when doing work it was unauthorized to do.

Authorization for municipalities or their employees to order work done (and to recover the cost from the owner) is contained in the following provisions of the MGA:

- removal of trees: s.63 (7)
- minimum standards: s.181(4) (**court order required**)
- breach of development agreement: s.264
- breach of a site-plan: s.265
- various planning matters: s.266(3) (**court order required**)
- obstruction of a street: s.318
- signs or billboards: s.320
- trees and shrubs which are a source of danger to traffic: s.321
- building service connections: s.329
- blocking abandoned sewer connections: s.330
- malfunctioning connections: s.331
- new service connections: s.332, 340
- control service access: s.335
- removal of a septic tank, privy, cesspit: s.337
- private wastewater facilities: s.339, 340, 341
- dangerous and unsightly premises: s.348, 350

Other cost recovery sections include recovery of the cost of a title search and survey, in addition to other expenses, on the sale of land for taxes: s.139; 141 (1). Some cost recovery is also permitted under Part 20, Freedom of Information and Protection of Privacy. Refer to the supplementary information packages on this topic in the User Guides Section.

Date Produced: September 1999

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INFORMATION BULLETIN #37

CAMPAIGN CONTRIBUTIONS

Summary: Effective April 1, 1999, there are reporting requirements for municipal and school board campaign contributions.

Legislation: Specific - *Municipal Elections Act*, Sections 49A, 49B and 70, enacted by *Municipal Government Act*, Part 23, Sections 568 (11) and (12).

Discussion: Reporting requirements for municipal and school board campaign contributions were enacted by amendments to the *Municipal Elections Act* and the adoption of the *Municipal Government Act*. Like other parts of the MGA, they have been in effect from April 1, 1999.

A candidate may act as his or her own official agent. A candidate is also considered to be his or her own official agent until a declaration, naming another person as the official agent, is filed with the clerk of the municipality or the secretary of the school board. If an association is established to further the election of a candidate (for example, the "Committee to elect John Doe"), an agent must be appointed. Form 17, attached, is used for appointing an official agent.

All contributions must be kept in a separate account and may be paid only to the candidate's official agent. For each contribution, the agent must record the full name, residential or business address and the amount contributed.

Contributions include money, services and other property. Volunteers' time and driving are not counted. Anonymous contributions cannot be accepted. If the anonymous contribution cannot be returned to the contributor, then it must be given to the treasurer of the municipality or school board.

Within sixty days after the polling day, a disclosure statement must be filed with the clerk of a municipality or the secretary of

the school board listing each contributor whose total contributions exceeded fifty dollars ($50.00) since the last election. The form would list: the full name of the contributor; their residential or business address (a post office box number is acceptable if that is the only available address); and the total amount of the contribution(s).

Contributions to a candidate who is not nominated need not be reported.

If a candidate does not receive any contributions, which totals over $50.00 from any one contributor, a disclosure statement of that fact is required.

All disclosure statements are open to inspection by anyone at any time during regular office hours at the municipality or school board, and copies are available for the cost of copying.

The disclosure statement must be in the prescribed form (Form 40 or 41, see attached) depending on whether or not there is an association to elect the candidate.

To summarize, any contribution made to a candidate after April 1, 1999, must be disclosed if the total contributions from the same person exceed $50.00 between elections. Thus, if a person contributes $20.00 three times, the contributions have to be disclosed.

The Act applies only to contributions made with respect to elections called after April 1, 1999 and to contributions made after April 1, 1999.

The *Candidates Guide to Municipal Elections and the Municipal Elections Handbook* provides all the necessary information for candidates and associations and may be obtained for municipal and special elections after April 1, 1999.

Date Produced: September 1999

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FORM 17

SECTION 70

APPOINTMENT OF OFFICIAL AGENT

I, the undersigned, a candidate for the office of ________________________________,
(place a check mark next to the applicable statement)

_____ appoint ______________________ of _____________________ as my official
(*name*) (*address*)
agent with authority to represent me in the manner provided by the *Municipal Elections Act* at the election being held on___________________, _______.

OR

_____ declare that I will act personally as official agent in the manner provided by the *Municipal Elections Act* at the election being held on __________________________, _______.

OATH OR AFFIRMATION OF OFFICIAL AGENT

I, the undersigned, appointed by the foregoing candidate to be his/her official agent at the election to be held in the Town/Municipality/Regional Municipality of ____ on the _________________ day of ___________________, _______, swear (or solemnly affirm) that I will not attempt in any way unlawfully to ascertain the candidate or candidates for whom a voter has voted and will not in any way aid in the unlawful discovery of the same, and that I will keep secret all knowledge which may come to me of the candidates for whom any voter has voted.

Sworn (or affirmed) at ___________________

in the County of ________________________

this __________ day of _________________,

________, before me

__________________________________ __________________________________
See Section 146 Official Agent

____
Signature of Candidate

FORM 40

SECTIONS 49A and 49B

CANDIDATE'S CAMPAIGN CONTRIBUTIONS DISCLOSURE STATEMENT

Name of Candidate:

Name of Agent:

Municipality/School Region:

Date of Election:

List of Contributors (see note below):

Contributor	Address	Contributions
______________	____________________________________	_______________
______________	____________________________________	_______________
______________	____________________________________	_______________
______________	____________________________________	_______________
______________	____________________________________	_______________

Note: Insert full name of contributor and residential or business address. Use street address, not postal address. Contributions must be shown for every contributor whose contributions totalled more than $50.00 since April 1, 1999 or since the most recent election, whichever is the shorter period.

I, , a candidate in the municipal/school board/CSAP election on (date), certify that the foregoing statement of disclosure is a true and complete disclosure of all contributions made to me and to my official agent as required by Sections 49A and 49B of the *Municipal Elections Act.*

____
Candidate

(to be filed within 60 days after regular polling day with the clerk of the municipality/ secretary of school board)

FORM 41

SECTIONS 49A and 49B

ASSOCIATION'S CAMPAIGN CONTRIBUTIONS DISCLOSURE STATEMENT

Name of Association:

Name of Agent:

Name of Candidate Supported:

Municipality/School Region:

Date of Election:

List of Contributors (see note below):

Contributor	Address	Contributions
______________	____________________________________	_______________
______________	____________________________________	_______________
______________	____________________________________	_______________
______________	____________________________________	_______________
______________	____________________________________	_______________

Note: Insert full name of contributor and residential or business address. Use street address, not postal address. Contributions must be shown for every contributor whose contributions totalled more than $50.00 since April 1, 1999 or since the most recent election, whichever is the shorter period.

I, , the appointed agent of (name of association) in the municipal/school board/CSAP election on (date) certify that the foregoing statement of disclosure is a true and complete disclosure of all contributions made to me as agent of the said association as required by Sections 49A and 49B of the *Municipal Elections Act.*

____
Agent of Association

(to be filed within 60 days after regular polling day with the clerk of the municipality/ secretary of school board)

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.

Date Produced: September 1999

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INFORMATION BULLETIN #39

RESERVE FUNDS

Summary: The only reserve fund required under the *Municipal Government Act (MGA)* is a capital reserve fund. Municipalities have the option of maintaining other reserve funds at councils' discretion. The MGA does not require Ministerial approval for borrowing or withdrawals from the reserve funds. Any borrowing or withdrawal from the capital reserve fund must be for the purpose of the designated fund and by council resolution.

Legislation: Specific - Part IV, Sections 98 to 100;
Part VI, Section 147(5);
Part XVIII; Section 444

Related - See the *Municipal Accounting and Reporting Manual* Sections 3240 and 3242 for the accounting treatment of these reserve funds.

Discussion: Previous legislation provided for a special reserve fund consisting of three sections: a capital-reserve section, an equipment-reserve section and an operating-reserve section. Withdrawals from these reserve funds were limited to specific purposes. The *Municipal Affairs Act* stipulated that any withdrawals from the capital-reserve section required written Ministerial approval, while withdrawals from the equipment-reserve and operating-reserve sections required a resolution from council. This has since been replaced by the MGA.

The *Municipal Government Act* states that a capital reserve fund shall be maintained by a municipality (Section 99(1)) and a village (Section 444(1)). Municipalities may maintain other reserve funds for such purposes that the council may determine: Section 99(6). Any withdrawal from the capital reserve funds shall be authorized by council, by resolution: Section 99(4). Ministerial approval is no longer required.

A withdrawal from the capital reserve fund may only be used for:

a. capital expenditures for which the municipality may borrow;

b. repayment of the principal portion of capital debt; and

c. landfill closure and post closure costs: Section 99(4).

If a municipality only has a capital reserve fund, any withdrawals from that fund are limited to the items listed above. Therefore, if the municipality wishes to set aside monies for purposes other than those listed in the capital reserve fund such as operating costs, the municipality should set up separate reserve funds. Once these funds are created, the municipality may begin allocating money into these funds to be withdrawn at a later time.

The capital reserve fund shall include:

a. the remaining funds of the capital reserve section of the special reserve funds: Section 99(2);

b. funds received from the sale of property;

c. the proceeds of insurance resulting from the loss or damage of property that is not used for the replacement, repair or reconstruction of the property;

d. any surplus from the sale of debentures that was not used for the purpose for which the debentures were issued;

e. any surplus remaining in a sinking fund when the debentures for which it was established are repaid;

f. any capital grant not expended in the year it was paid;

g. the proceeds from the winding up of a municipal enterprise;

h. the current fiscal year's accrual for landfill closure and post closure costs;

i. money transferred to the fund by council: Section 99(3); and

j. any balance in a tax sale surplus account, twenty years after the sale: Section 147(5).

A council may borrow from a capital reserve fund, provided it passes a resolution and the resolution contains the terms of repayment, including interest. The interest rate must not be less than the interest rate that the municipality would pay to borrow the funds from another source: Section 99(5). A council may also pledge any investments of the capital reserve fund as collateral security for a borrowing for a capital purpose: Section 100(3).

The funds of a reserve fund shall be either deposited in an interest-bearing account in a bank doing business in Nova Scotia; invested according to an investment policy adopted by council and approved by the Minister; or invested in investments in which a trustee is permitted to invest, in accordance with the Trustee Act: Section 100(1). All income from the investment of a fund shall remain part of that fund, unless council determines otherwise: Section 100(2).

The capital reserve fund of a village is subject to the same requirements and limitations as a municipal capital reserve fund: Section 444(2).

Date Produced: December 1999

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.

INFORMATION BULLETIN #40

SPECIAL PURPOSE TAX ACCOUNTS

Summary: Municipalities are given discretionary power to establish special purpose tax accounts by resolution. Withdrawals for purposes other than that for which the special tax was levied are subject to a public hearing and a two-thirds majority vote of council.

Legislation: Specific - Definitions 3(br), 3(bs);
Part IV Section 83, and
Part IX, Section 274.

Related - See the *Municipal Accounting and Reporting Manual* Section 3241 for the accounting treatment of Special Purpose Tax Accounts.

Discussion: Municipalities often have to deal with a variety of special projects such as wastewater facilities, transportation systems, waterfront developments or recreation facilities. Section 83 of the MGA provides the option of levying a special purpose tax as a means to raise all or a portion of the capital or operating cost of the special project. The decision to establish a special purpose tax account is for council to make.

A special purpose tax is a tax that the council has designated as a special purpose tax: Section 3(br). The proceeds from the tax must be credited to a special purpose tax account: Section 3(bs). A special purpose tax requires a council resolution, identifying the purpose to which the proceeds of the tax are to be applied: Section 83(4). There is no limit to the number of such accounts that a municipality may establish. Nor is it necessary to establish a separate bank account for each special purpose tax, if the municipality accounts correctly for the funds in the appropriate General Ledger Accounts.

An advantage of a special purpose tax is that it ensures existing and long-range developments have adequate funding, to guarantee their completion and/or operation. It also provides assurance to the public that the portion of municipal tax is going to the specific purpose or project as intended and not into the general revenues.

The council may make a withdrawal from a special purpose tax account for an expenditure for which the fund was established: Section 83(2). These expenditures may be paid in whole or in part from the special purpose tax fund.

If the special purpose tax fund has more money in it than required for the purpose for which the fund was established, council may return the remaining funds to the contributors: Section 83(3).

Council can withdraw funds from a special purpose tax account for another municipal purpose, but only if:

- a public hearing is held respecting the withdrawal: Section 83(4)(a); and

- council votes by a two-thirds majority to authorize the withdrawal: Section 83(4)(b).

A council may also borrow from the special purpose tax account for another purpose, however, that requires a council resolution. Furthermore, the resolution must include the repayment terms, which must include an interest rate which is at least as high as the municipality would have to pay to borrow from an outside lender: Section 83(5).

As with other public hearings required by the MGA, the public hearing must be advertised at least twice in a local newspaper, the first advertisement appearing at least fourteen days before the hearing. The notice must specify the date, time and place of the hearing and the new purpose for which the municipality wishes to use the funds: Section 83(4)(b).

Infrastructure charges under Section 274 have many of the same attributes as special purpose taxes, but there are also some significant differences. For further information refer to the bulletin **Infrastructure Charges Bulletin Number 26**.

An area rate may be designated as a special purpose tax. For further information on this topic, refer to the **Area Rates Bulletin Number 14**.

Date Produced: December 1999

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.

INFORMATION BULLETIN #41

OUTSTANDING TAXES AND PERSONAL PROPERTY

Summary: Sections 128 and 129 of the *Municipal Government Act* were repealed and replaced by Section 128, 129 and 129A to ensure that taxes can be collected when sales are being held to collect for other liens and judgements.

Legislation: MGA Sections 128, 129 and 129A

Discussion: Effective November 30, 2000, the *Justice and Administration Reform (2000) Act* repealed and replaced Sections 128 and 129 of the *Municipal Government Act*. These sections of the MGA concern the seizure or sale of property by a secured party under a security agreement or a sheriff under a judgement or other legal process, when there are outstanding taxes.

Originally, these sections were carried forward from the *Assessment Act* into the *Municipal Government Act* in April 1999, with slight amendments to clarify an issue that had arisen in a court decision. The sections were intended to ensure that the taxes would be collected or paid by the person collecting these other liens and judgements. The Department of Justice however, noted that these sections presented obstacles to the sheriffs being able to ascertain what taxes were outstanding so that payment could be made either before or after a sheriff's sale. As outstanding taxes could not be ascertained conveniently in respect to personal property or mobile homes because this would require tax certificates from all 55 municipalities, the provisions were a deterrent to the sale, or were ignored.

Under the new Sections 128, 129 and 129A, there are now three categories for property that is being sold to collect on a debt:

- personal property other than mobile homes,
- mobile homes that are not attached to real property, and
- real property.

The amendments deal with each in the following way:

- Personal property other than mobile homes:

  The amendments:

  1) limit the taxes that must be paid and the tax certificate that must be obtained in respect to personal property to the business occupancy taxes owed by the owner or the person who had possession of the personal property to the municipality in which it is seized (rather than taxes owed by the owner or person in possession in all municipalities, as previously required);

  2) provide that the business occupancy taxes must be paid either before the sale or out of the proceeds of the sale; and

  3) if the property is not sold within six months of seizure, make the holder liable for the outstanding business occupancy taxes (based on the assumption that the holder has kept the property for his or her own use).

- Mobile homes that are not attached to real property:

  The amendments:

  1) limit the tax certificate that must be obtained in respect to mobile homes to taxes owing in respect to the mobile home in the municipality in which it is seized (rather than taxes owed by the owner in all municipalities, as previously required);

  2) provide that the taxes owing with respect to the mobile home must be paid either before the sale or out of the proceeds of the sale; and

3) if the mobile home is not sold within six months of seizure, make the holder liable for the taxes.

- Real property:

The amendments provide that any taxes levied with respect to the real property must be paid either before the sale or out of the proceeds of the sale.

In respect to all three categories:

- The holder of the security interest, sheriff or other person selling the property is personally liable for the municipal taxes that are required to be paid to the extent of the total proceeds from the sale, minus the cost of conducting the sale.

- Sheriffs or creditors will request tax certificates from municipalities in order to ascertain what taxes should be paid before or out of the proceeds of a sale of a debtor's property.

Date Produced: January 2001

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.

INFORMATION BULLETIN #42

Tax Reductions for Property Damage

Summary: Section 69A of the *Municipal Government Act* was added to permit municipalities to provide tax reductions to people whose properties are damaged by fire, storm or otherwise.

Legislation: Part IV, Section 69A

Discussion: The legislation permits council to adopt a policy allowing a tax reduction where a person's property is destroyed or partially destroyed by fire, storm or otherwise and the resulting reduction in value is not reflected in the assessment.

Generally, any damage to property occurring after December 1 in any year (the assessment "state date"), is not reflected in the assessment of a property until the following year. Thus, a property that may have lost half its value due to a fire on December 15, 2000, would still be assessed at full value for the 2001-02 municipal taxation year. Probably the damage would have been substantially repaired by December 1, 2001. Thus, a property owner would have been deprived of a substantial part of the value of the property for the better part of a year but would still have paid taxes on it.

The policy can provide for the reimbursement of any overpayment that results from the reduction. This could either be because taxes are paid before the damage occurs, or are paid before the reduction is authorized, or because council agrees to make the policy retroactive. The legislation permits the policy to be made retroactive to April 1, 1999.

The assessors on request will provide a new valuation for purposes of council's policy, but will not change the assessment. Thus, in the case of a house assessed at $100,000, the assessment will continue to be $100,000 but the assessors will provide a new estimate if the property is damaged, say $50,000.

In this example, if the council has adopted a policy authorizing a tax reduction, the person will be rebated half of the taxes paid or payable, depending on the terms of the policy.

Council has full discretion whether to adopt a policy or not, and also how to determine the amount of the reduction or rebate.

The legislation may authorize council to make the decisions on a case by case basis but it is preferable to adopt a general policy, if only to ensure that council cannot be accused of being partial in a particular case. In the absence of a general policy, council may be unable to effectively refuse a request in an individual case if it has once granted such a request.

A typical policy would authorize a tax reduction for persons whose property was destroyed in whole or in part by fire or storm or other like cause (perhaps flooding). The policy should probably specifically exclude intentional destruction, as in demolition.

The policy might include a threshold amount, such that the damage must be at least equal to X% of the assessment value of the property.

The policy could also include a limit on the amount of the reduction. It might also provide that any reduction is prorated over the remaining portion of the taxation year, after the damage was sustained. That is, if the damage took place September 30, half way through the taxation year, the reduction for the year could be half. If the damage took place in December of a year, after the “state date”, the reduction for that taxation year might be 1/4 of what it would otherwise be (three months out of twelve), but for the next taxation year it would be for the full year, or perhaps until it was restored, since the assessment for that year was already fixed by December 1 of the year before.

Using restoration or reinstatement as the termination for a reduction would require careful drafting, probably close liaison with the building inspector in practice, and possibly extra billing or a delay in granting all or part of the reduction until after restoration and the exact period the property was out of use can be determined. If the restoration does not take place until after an assessment that takes the reduction into account has effect, of course, then the reduction granted by the municipality will terminate.

The policy would also establish application forms, method of applying, appropriate supporting information and the like. It should specify the effective date, as April 1, 1999, or the date council adopts the policy, or a future date chosen by the council.

Even if council chooses to deal with these applications on a case by case basis, it is important to establish ground rules and at least have some discussion of the available options to permit more informed decision-making.

Date Produced: August 2001

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INFORMATION BULLETIN #43

Deed Transfer Tax

Summary:

The *Deed Transfer Tax Act* has been replaced by Part V of the *Municipal Government Act*. There are now fewer exemption provisions and the maximum tax rate has been increased to one and one half per cent of the value of the property for all municipal units. The *Deed Transfer Affidavit of Value Regulations*, including the affidavit form, have been replaced as of August 1, 2001.

Legislation:

Part	Section(s)
Definitions	3(t), (bk), (bz)
V	101 to 110
Tab 6-Updates	*Deed Transfer Affidavit of Value Regulations*

Discussion:

The deed transfer tax is a tax levied on the transfer of real property (land and buildings), which is payable at the time of the conveyance of the title. The tax is usually collected by the Treasurer of the municipality and it is based on the purchase price.

Council may set the rate of the deed transfer tax with a by-law, provided it does not exceed up to one and one half per cent of the value of the property: s 102.

All deeds must be accompanied by an affidavit of value (s. 101) and the “deed” and “sale price or value” is defined in Section 3. In the case of older deeds, which are dated prior to the time the municipality imposed a deed transfer tax and the sale price cannot be practically determined, the affidavit may recite those facts in lieu of the sale price: s. 101(7).

The deed transfer tax must be paid within 10 days of the transfer: s. 104. The Treasurer may refuse to accept and endorse the deed if the sale price in the affidavit is in question. In such cases the Treasurer shall notify the grantee. The grantee may tender either a revised affidavit or appeal to the regional assessment appeal court, whose decision is final: s. 105.

When the grantee does not pay the deed transfer tax after 10 days from when the land was transferred, interest shall be paid at a rate determined by council through a policy. If after 30 days from the time the land was transferred and the grantee has not paid the deed transfer tax and interest, an additional penalty of ten percent on the deed transfer tax shall be assessed: s. 107. The deed transfer tax, interest and penalty shall be a lien upon the property: s. 108.

If the deed or the agreement of purchase and sale for a property transaction is signed prior to the imposition of a deed transfer tax, or an increase in the rate of deed transfer tax, the deed is not subject to the tax, or is subject to it at the lower rate: ss. 109 (5), (6).

If a property crosses one or more municipal boundaries, the appropriate deed transfer tax would go to each municipality based on the sale price, land area in each municipality and deed transfer tax rate, as determined by the Director of Assessment: s. 103.

The exemptions from the deed transfer tax have been altered. The legislation authorizing the tax, effective April 1, 1999, has been changed from the *Deed Transfer Tax Act* or a regional municipal act (which were repealed) to Part V of the *Municipal Government Act*.

Exemptions (S.109) now extend to:

- transfers between people married to each other: 109(1)(a) (Note that due to amendments to the *Vital Statistics Act*, people “married to each other” includes persons who have filed a “domestic-partner” declaration under that Act.)

- transfers between people formerly married to each other, if the transfer is for the purpose of division of marital assets: 109(1)(b) (Note that due to amendments to the *Vital Statistics Act*, people "married to each other" includes persons who have filed a "domestic-partner" declaration under that Act.)
- transfers by way of gift, notwithstanding that there is assumption of an encumbrance or there is nominal consideration paid: 109(1)(c)
- deeds that confirm, correct, modify or supplement earlier deeds *if* there is no consideration beyond $1.00 and the deed does not include more property than the deed previously given [deeds of confirmation and deeds of rectification are the most common]: 109(2)
- deeds from the Nova Scotia Farm Loan Board to a borrower [normally when the loan is paid out in whole or in part]: 109(3)
- tax sale deeds: 109(4)
- deeds signed before the municipality adopted the deed transfer tax by-law: 109(5)
- deeds that transfer property pursuant to an agreement of purchase and sale entered into before the municipality adopted the deed transfer tax by-law: 109(6)
- deeds to registered Canadian charities where the property is not to be used for commercial, industrial, rental or other business purpose: 109(7); however, if the property is used for such business purposes within three years of filing an affidavit of the charitable use of the land, the grantee is liable to pay the deed transfer tax and interest (at a rate of ten per cent per annum)

Note:

- Intercorporate transfers are no longer exempt.
- If a municipality is passing a deed transfer tax by-law for the first time, it should be sure to notify the local Registrar of Deeds in advance of the effective date so that the Registry can refuse deeds that are not accompanied by the Treasurer's certificate.
- If a municipality wishes to arrange for the Registrar of Deeds to collect the deed transfer tax, this can be arranged through the local Registry of Deeds office. In these situations, the Registrar of Deeds will collect the tax on behalf of the Treasurer and remit it to the municipality. It is the responsibility of the municipality to advise the Registrar in advance of any rate change: s. 110.

The Deed Transfer Affidavit of Value Regulations have changed effective August 1, 2001. The new regulations, affidavit and cover sheet that explains the changes have been distributed. Copies are also available from the Bar Society's web page (http://www.nsbs.ns.ca/property/property.htm) or the Registry of Deeds Offices.

Date Produced: August 2001

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INFORMATION BULLETIN #44

ELECTION OF VILLAGE COMMISSIONERS

Summary: Village commissioners are usually elected at the annual meeting, but may be elected at a special election.

Legislation: Specific - Part XVIII, sections 403, 407, 410, 415 - 418, 426
Related - *Municipal Elections Act*, ss. 14, 15, 138

Discussion: Villages are unlike other forms of municipal government in Nova Scotia in that they are governed by commissioners that, in most cases, are elected at public meetings.

Entitlement to Vote
Those entitled to vote for a commissioner are called electors. They are residents of the village entitled to vote at municipal elections. They have to have resided in the village for at least six months before election day. MGA, s. 403.

A person who is entitled to vote at a municipal election is 18 years old, a Canadian citizen and resident in the municipality, but cannot be a person serving a sentence in a penal or reform institution, someone who has been convicted of bribery under the *Municipal Elections Act* in the preceding six years, or the returning officer. *Municipal Elections Act*, ss. 14 and 15.

Where the turnout for a village election is so large that the election officials are not familiar with the qualifications to vote of all those present, it may be desirable to check the people against a recent municipal electoral list for the village, if available, and swear in those not appearing on the list. Another method may be to have sheets containing the basic qualifications for an elector that everyone wishing to vote must sign. While picture identifications are useful in establishing current address, they do not indicate how long the person has lived at that address.

Qualification as Commissioner
To qualify for election as a village commissioner, a person must be an elector. MGA, s. 407 (1).

Nominations
Usually commissioners are nominated at the meeting at which they are to be elected, but a village may pass a nomination day by-law (MGA, s. 410) requiring that nominations be filed before the election. A nomination day by-law could be passed because a village might wish to permit people who are running for commissioner a short period of campaigning before the election or just let them become better known to those who may be voting at the election. If a village has an elections by-law, providing for a separate election, a nomination day by-law may be essential.

Election at Annual Meeting
In most villages commissioners are elected at the annual meeting, after the presentation of the report and financial statements for the preceding year. Two electors are chosen as scrutineers. There is a separate ballot for each position to be filled, unless the village has provided by by-law that there only be one ballot (MGA, s. 415).

Conduct
The *Municipal Government Act* provides relatively little guidance on the conduct of a village election. It was anticipated that by-laws pursuant to clauses 426 (a) and (b) would fill any gaps. Usually, nominations are called for, and if there is no special by-law then an election is held, by secret ballot (MGA, s. 417) as the procedures of the village require. If there is a second position, the same procedure is repeated. Since there is no rule against running in the second election if you are defeated in the first, many villages prefer to just have a single ballot where you can vote for as many as are to be elected, and the two (or three) with the most votes are declared elected. The *Municipal Elections Act* does not govern village elections unless adopted as part of an election's by-law.

The Count
The count is undertaken by the village clerk in the presence of the two scrutineers appointed by the meeting. There is no right for candidates or their agents to be present. The clerk declares the result of the election. If there is a tie the clerk draws lots (see *Municipal Elections Act*, s. 138). MGA, s. 417. There is provision for a recount by the clerk if demanded: MGA, s. 418.

Separate elections

Some of the larger villages have determined to have a separate election day to give people a better chance to vote. The framework is provided by an elections by-law: MGA, s. 416. The election is held on a day within the week following the annual meeting. The by-law specifies the day, the hours that the polls are open, the appointment of two scrutineers, and "any matter or thing necessary to effectively conduct the election". An elections by-law will likely adopt those provisions of the *Municipal Elections Act* that are suitable for the election being conducted, while ignoring those that are not. An elections by-law ought to provide for a separate nomination day and for a single ballot regardless of the number of positions to be filled. An advance poll could be considered so long as it fell within the same week.

Oath of Office

A commissioner must be sworn into office, MGA, s. 407 (2), at the beginning of every term of office. Thus, commissioners who have been re-elected will be sworn in together with those elected for the first time.

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INFORMATION BULLETIN #45

BY-ELECTIONS IN VILLAGES

Summary: When the office of a village commissioner becomes vacant, a by-election to fill the vacancy must normally take place within thirty days.

Legislation: Specific - Part XVIII, sections 411, 412, 419
Related - Part XVIII, sections 410, 416, 426

Discussion: When a vacancy occurs in the office of a village commissioner, a by-election must be held to fill the vacancy.

Vacancies
A village commissioner ceases to hold office if the commissioner dies or resigns (by delivering a signed declaration to the clerk) as of the date of death or resignation.

A village commissioner ceases to hold office if the commissioner ceases to be qualified to hold office because the commissioner is no longer ordinarily resident in the village. In the absence of a resignation, the commissioners may have to make this determination at their next meeting. In that event the commissioner's office becomes vacant as of the date of that meeting.

A village commissioner ceases to hold office if the commissioner ceases to be qualified to hold office because the commissioner has been absent from three consecutive meetings of the village commission without the leave of the commission. In that event the commissioner's office becomes vacant as of the end of the third meeting, and the commission should so declare at that meeting.

Refer to MGA, s. 412.

By-Elections
The vacancy may be filled at the next annual meeting, or the election held in conjunction with it, if the vacancy occurs within six months of the next annual meeting, unless the village commission or the Minister determine otherwise. Unless the term of office of the commissioner who has vacated office would expire at the forthcoming annual meeting or election, it is necessary to hold the election to fill the vacancy separately since the term would be less than the conventional three-year term.

Otherwise, the village commissioners must, within thirty days after the vacancy occurs, call a special meeting of the electors to conduct a by-election, or an election pursuant to the elections by-law shall be held within that thirty days. If a special meeting is called, there must be at least 14 days notice: MGA, s. 419. The meeting itself may take place after the thirty day period.

If the village has an elections by-law, it cannot fill a vacancy at a special meeting, but must instead conduct the by-election in accordance with the terms of its elections by-law.

Refer to MGA, s. 411.

Conduct of a By-Election
The provisions of the nominations by-law and either the elections by-law or the rules of procedure govern the conduct of a by-election. Essentially, the procedures are the same as at a regular election, and the qualifications of electors and candidates are the same, allowing for the different date of the election. S. 411.

In the event there are no nominations to fill the vacancy, it is necessary to consider this as a fresh vacancy and conduct a further election unless this fresh vacancy is within six months of the next annual meeting or election.

Term
A commissioner elected at a by-election does not hold office for a full three year term, but only for the unexpired term of the commissioner he or she has been elected to replace. MGA, ss. 411 (2).

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INFORMATION BULLETIN #46

SALE OR LEASE OF PROPERTY BY VILLAGES

Summary: Villages may sell or lease property, with the consent of the Minister, provided they get market value for it.

Legislation: Specific - Part XVIII, section 446
Related - sections 99, 444

Discussion: A village may sell property:

(A) with the consent of the Minister;

(B) if it is no longer required for the use of the village; and

(C) if it is sold for market value.

The consent of the Minister is not required if the property has a value below $25,000.00.

This provision (MGA, s. 446) applies to both real property (land and buildings) and personal property (moveables, such as pipe, trucks, copiers and the like). The most likely piece of personal property to be sold for $25,000 or more might be a fire truck. Apart from large items like these, the requirement for the Minister's approval would usually apply to sales of land.

Even if the Minister's approval is not required, the village is obliged to get market value for any item sold. It cannot give away land or other property, or sell it for a low price, even for a good cause. It cannot lease land or other property for less than market value, either. The village cannot take a mortgage back as part of the purchase price.

A village may want to establish a policy for the disposal of surplus assets that reflects a fair process that will achieve maximum value for the taxpayers while at the same time leaving no openings for accusations of bias or favouritism.

The proceeds from the sale of any property must be paid into the village's capital reserve fund. MGA, s. 444, and see s. 99.

In order to obtain the Minister's consent, the village commissioners must pass a resolution authorizing the sale. The price must be set out in the resolution. The resolution must also state that the property is no longer required for the use of the village. A description of the property, including serial number in the case of personal property and a legal description in the case of land, must be attached to the resolution.

Finally, the Minister must be assured that the village is getting market value for the property. In the case of land, this normally means an appraisal by a qualified appraiser. For other property, an equivalent, such as a valuation by a motor vehicle dealer, would be required. Just because tenders have been called for an item does not mean that is the best price attainable, although it may be. If a property has been listed at a certain price for a reasonable length of time and the village accepts an offer in that price range, that might be sufficient to convince the Minister value is being obtained.

The Minister's consent is required for a lease, even if the value of the lease payments is less than $25,000, if the value of the property being leased is $25,000 or more.

Where the consent of the Minister is required for a sale or lease, three copies of the resolution of the commission should be provided, each bearing original signatures. One will be kept in the Department's files and two will be returned: one for the village files and one to be attached to a deed or provided to the purchaser in another form.

It is common to affix a copy of the resolution, approved by the Minister, to any deed. That saves trouble proving the consent if questioned in a future transaction.

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INFORMATION BULLETIN #47

VILLAGE COMMISSIONERS

Summary: Village commissioners make up the village commission, the council of a village. The village commissioners are responsible for the conduct of the government of the village.

Legislation: Specific - Part XVIII, sections 407, 408, 409, 411, 423
Municipal Elections Act, s. 147
Income Tax Act (Canada), s. 81 (3)
Related - Part XVIII

Discussion: Before beginning the task of acting as a village commissioner, the commissioner-elect must be sworn in: s. 407 (2). This oath must be taken by a commissioner each time he or she is elected. The oath of office is the same as that prescribed under the Municipal Elections Act. The text is attached as Appendix A to this bulletin.

The oath of office may be sworn before a judge (including justices of the Supreme Court and provincial court judges), a justice of the peace, and the mayor or warden, or clerk, of the municipality in which the village is situate. See Municipal Elections Act, s. 147, the text of which is as follows:

> 147 (1) A councillor shall, before entering upon the duties of his office, be sworn by taking the oath of allegiance and of office in prescribed form.
>
> (2) The oath shall be administered by a judge, justice of the peace, the mayor or warden, or the clerk.
>
> (3) The clerk shall enter a certificate of the taking of the oath in the minutes.

(4) The oath shall be taken and subscribed by each councillor at the first meeting of the council after his election, or within such extended time as the council allows.

(5) A councillor who refuses or fails to take the oath shall be deemed to have forfeited his office as councillor. R.S., c. 300, s. 147.

The village commissioners elect their own chair from among themselves. MGA, s. 408. They also elect a vice-chair.

Each commissioner holds office for three years (s. 409), unless elected to fill out the term of an office that has become vacant: s. 411 (2).

A village commissioner as such has no individual authority. The authority of the commissioners is exercised jointly by the village commission, speaking through the chair or a person delegated to perform a specific function such as the clerk treasurer (MGA, s. 420). See, for example, s. 423, "The village commission may expend money . . .", s. 422, "The village commission may employ . . .", s. 420, "The village commission shall appoint . . ." and many other references in Part XVIII of the MGA.

The village commission sets general policies, establishes the budget, passes by-laws and generally conducts the government of the village. It employs staff to carry out its directions in accordance with established policies and the law.

Village commissioners may be paid, MGA s. 423 (1) (o), but there must be a motion of the village commission and there ought to be a policy in place specifying remuneration. This remuneration is taxable, in the same manner as salaries or wages, and appropriate deductions for taxes and other statutory deductions must be made.

Under the federal Income Tax Act, up to one-third of the total remuneration paid to a commissioner may be classified as an allowance for expenses incident to the discharge of the person's duties as such officer. This designation must be done by the village, not by the commissioner, and therefore should be included in the remuneration resolution.

Section 81 (3) of the Income Tax Act (Canada) provides:

> (3) Where a person who is
>
> (a) an elected officer of an incorporated municipality,
>
> (b) an officer of a municipal utilities board, commission or corporation or any other similar body, the incumbent of whose office as such an officer is elected by popular vote, or
>
> (c) a member of a public or separate school board or similar body governing a school district,
>
> has been paid by the municipal corporation or the body of which the person was such an officer or member (in this subsection referred to as the person's "employer") an amount as an allowance in a taxation year for expenses incident to the discharge of the person's duties as such an officer or member, the allowance shall not be included in computing the person's income for the year unless it exceeds 1/2 of the amount that was paid to the person in the year by the person's to the person in the year by the person's employer as salary or other remuneration as such an officer or member, in which event there shall be included in computing the person's income for the year only the amount by which the allowance exceeds 1/2 of the amount so paid to the person by way of salary or remuneration.

See also CCRA bulletin IT-292. CCRA bulletin P-097R2 indicates that an HST rebate is available from CCRA with respect to the allowance.

Commissioners are also entitled to be reimbursed for their actual expenses. In most villages there will not be any cost to attend meetings, so an expense policy is unnecessary. If there is no expense policy the commission must approve any claim for reimbursement of expenses on village business. If the expenses do not relate to meetings, they must be authorized by the commission in advance. Reimbursement of actual expenses incurred is not taxable income: bulletin IT-292.

The village is authorized to pay the reasonable expenses incurred by commissioners for attendance at meetings or conferences. The easiest way to ensure that the expenses are "reasonable" is to have an expense policy in place defining what expenses will be reimbursed. Either the commission must approve the attendance at the meeting or conference in advance, or the attendance must be in accord with a resolution of the village commission. This kind of resolution may be as simple as a provision that each commissioner is entitled to attend two conferences per year at the expense of the village provided

the cost does not exceed $x in each case (or $y in total). MGA, s. 423 (1) (p).

Villages are not limited in determining how commissioners are paid, assuming the village commission has determined to pay the commissioners. One way is to pay so much for each meeting attended. This form of remuneration tends to keep up attendance, but also tends to lead to too many meetings. Regional municipalities, towns and municipalities of a county or district are required to pay their council members on an annual salary, paid regularly throughout the year (ranging from every two weeks to every quarter). Experience suggests that annual remuneration is simpler to administer and less open to abuse or inefficiency than meeting pay. An annual remuneration may be payable in monthly instalments, but it is more usual to see it paid quarterly or even half-yearly.

The remuneration and expenses received by each individual commissioner, if any, must be recorded in the financial statements each year.

Date Produced: June 2003

Date Revised: September 2004

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.

Appendix A

OATH OF ALLEGIANCE AND OF OFFICE

I,____________________________ , swear (or solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law; (the name of and reference to the sovereign to be changed as occasion requires.)

And that I am duly qualified as required by law for the office of_____________________of the________________of________________;

And that I will truly, faithfully and impartially execute the duties of the office to which I have been elected to the best of my knowledge and ability;

And that I have not received and will not receive any payment or reward or promise thereof for the exercise of any partiality or other undue execution of the duties of my office.

Sworn (or affirmed) at______________
in the County of___________________
this_____day of____________________,
_______, before me

____
(Judge, Justice of the Peace,
Mayor, Warden or Municipal Clerk)

INFORMATION BULLETIN #48

VILLAGE BY-LAWS

Summary: Village commissions may pass by-laws to regulate a number of activities in the village.

Legislation: Specific - Part XVIII, sections 410, 416, 426-31, 433-35, 437
Related - Part IV, sections 69 - 71; Part XIV, section 333

Discussion: Village by-laws are passed by the village commission. Unless otherwise provided in the village's procedures by-law - see MGA, s. 426 (a) - a by-law may be passed at the same meeting of the commission as it was introduced and there are no special notice or publication provisions. However, it does not come into force until approved by the Minister: s. 433.

In order to speed the approval process, it is strongly recommended that a draft of the proposed by-law be provided to the departmental solicitor in advance to allow for any recommended or required changes.

By-laws are laws that apply in part of the province, in this case, a village. Everyone within the village must obey the by-law. Since this is a restriction on normal freedoms, by-laws can only be made win accordance with specific statutory authority. Villages can make by-laws respecting sewers (s. 333), nominations and elections (ss. 410, 416), meetings and public property (s. 426), snow clearing (s. 427), payment of charges for various services (s. 428), special tax provisions (s. 429, and see ss. 69, 69A, 70 and 71), sewer connections (s. 430) and penalties (s. 431). Note that the special tax provisions, s. 429, do not require the approval of the Minister.

The first step in preparing a by-law is to ensure that there is authority for what is proposed. Villages have different by-law authority than other municipalities. It is best to get legal advice from the village solicitor before proceeding too far.

Once passed, by-law records must be kept by the village clerk, who must keep current copies available for sale to the public: s. 434.

There is a relatively simple process to challenge the validity of by-laws: s. 437.

Date Produced: June 2003

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.

INFORMATION BULLETIN #49

VILLAGE BORROWING

Summary: Villages may borrow money for capital purposes with the approval of the electors and of the Minister.

Legislation: Specific - Part XVIII, section 438; Part IV, section 90
Related - sections 88, 91-98, 443

Discussion: A village may borrow money for capital purposes, usually repayable over a term longer than one year, for any village service: MGA s. 438. The borrowing must be authorized by the village commission. Before the money can be borrowed, the borrowing must be authorized by a meeting of the electors of the village (not just ratepayers) and must be approved by the Minister. Borrowing procedures are the same as for any municipality.

In the ordinary course, when a village determines that it is necessary to borrow money, for example to help pay for a new fire truck or for an extension to a sewerage system, the clerk contacts the appropriate advisor in the Department of Service Nova Scotia and Municipal Relations. The advisor can give a preliminary indication as to whether approval for the borrowing will likely be forthcoming. Normally a borrowing approval is only refused if the village is in questionable financial circumstances, or if the borrowing is for a purpose not authorized by the MGA. For example, a village could not borrow to build a school since it has no authority to provide educational services.

The advisor will also provide the appropriate form of resolution to be passed by the commission to authorize the borrowing. Usually, this is a temporary borrowing resolution, authorizing borrowing from a financial institution prior to setting the loan up on a long term repayment schedule. This allows borrowing during the term of a project to make progress payments and the like. Once the project is finished or the asset is acquired, an issuing resolution for debentures sold to the Municipal Finance Corporation or a long-term temporary borrowing resolution, also with fixed terms of repayment, will be passed.

The resolution should be passed after approval for the borrowing has been given at the public meeting of the electors. The meeting is held in accordance with any by-law governing meetings of the electors: MGA s. 426 (b). The meeting must be called by a newspaper advertisement appearing at least fourteen days before the meeting (it is best to allow a couple of extra days to avoid counting problems), and must also be posted in at least two conspicuous places in the village: MGA, s. 90. It is not necessary to go through this procedure when the purpose of the borrowing is to replace existing debentures at maturity, but this is fairly rare.

A village may borrow for current expenditures (usually pending the receipt of taxes) if approved by the village commission. The approval of the electors is not required, nor is the approval of the Minister. MGA, sections 443 and 90. Loans under this authorization may not ever exceed half of the tax levy for the current year. These loans are repaid during the year in which they were borrowed.

Date Produced: June 2003

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.

INFORMATION BULLETIN #50

Elimination of Business Occupancy Tax: Practical Considerations

Summary:

Beginning April 1, 2006 business occupancy taxation will be phased out.

The challenges for municipalities lie in replacing the lost revenue and in managing the transitional provisions. Tax payers will in all likelihood have questions about the implications of the changes.

The summary below is necessarily simplified and for completely accurate reference see the Municipal Law Amendment (2005) Act, S.N.S. 2005, c. 9, proclaimed in force July 14, 2005 to have effect commencing April 1, 2006.

Legislation:

Part IV, sections 65(au), 65(va), 71A(1), 71A(2), 72(6A), 75(7), 78A, 80(4), 85(5)
Part XVII, sections 429(3), 439(3A), 439(3B), 530(4A)
Part XXII, section 536A

Discussion:

First, all businesses formerly considered to be in the 25% class will be completely exempt from the tax beginning April 1, 2006. These businesses include service stations, restaurants, “roofed accommodations” (hotels and motels), camping establishments and motor vehicle dealers.

Second, those businesses regarded as seasonal tourist businesses will be specially identified on the assessment roll and will be subject to a municipal tax rate of 75% of the full commercial rate. Note that this revenue loss will not be shown on the assessment roll, and in effect results in an additional special tax rate. This change is also effective April 1, 2006.

In order to qualify as a seasonal tourist business, the business must be open for at least part of the year, but must be closed for at least four months in the year. This designation applies only for restaurants, roofed accommodations and camping establishments. The owner must apply to the director of assessment before **September 1** in the year preceding the taxation year. That is, to take advantage of the special commercial tax rate the owner must notify the assessors of the address, space occupied by the seasonal tourist business and dates the business will open and close, and request that the business be identified on the roll as a seasonal business. The application must be made each year. The application form is available on-line at the Service Nova Scotia website or at assessment offices, municipal offices and Access Nova Scotia. Unless the business is identified on the assessment roll as a seasonal tourist business, the special (75%) commercial tax rate does not apply to it.

Businesses in the 75% category (banks, credit unions, loan companies, trust companies, insurance companies, investment dealers, mortgage companies and collection agencies) will continue to pay business occupancy assessment tax on the full 75% business occupancy assessment until April 1, 2013.

All other businesses, the 50% class, will be phased out over five years. That is, the business occupancy assessment will be calculated at 40% beginning April 1, 2006, 30% beginning April 1, 2007, 20% beginning April 1. 2008, 10% beginning April 1, 2009, and will be completely exempt from April 1, 2010 forward.

All of these changes will be reflected on the assessment roll each year. Neither tax payers nor municipalities (except for seasonal tourist businesses) will need to make application. From the point of view of a municipality, the issue will be determining how to make up the lost revenue. A municipality may decide that the revenue has to come from commercial property, in which case an increase in the commercial tax rate will be required. If a municipality decides to recover the revenue from all taxpayers, both rates will rise.

Area rates have normally been applied equally to both residential and commercial property. The change in business occupancy assessment would result in a shift in tax burden from commercial to residential properties. Therefore, the area rate provisions of the Municipal Government Act (s. 75) have been changed to permit a dual rate (different residential and commercial area rates). There are no limits on the acceptable variation.

The same change has been made with respect to the fire protection rate (s. 80).

Elimination of the business occupancy tax and recovery of the revenue from higher commercial tax rates would increase taxes on properties of non-profit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organizations or institutions since they have always been exempt from business occupancy tax. Municipalities may wish to alleviate this added tax load.

One way to assist these organizations while at the same time retaining control of the assistance is to provide grants. Accordingly, the power to make grants in Section 65 (au) of the MGA has been expanded. The former limit on the total these grants could amount to was removed in 2004. However, a list of grants must be published each year. If the organization rents its premises, grants are the only way to provide assistance.

If a municipality has exempted day care centres from business occupancy tax, their taxes may go up. There is now authority to pay grants to day cares that could be used to compensate for this tax shift.

Another way to provide assistance on a more permanent basis is to give the organization a partial tax exemption. See Section 71 of the MGA. The exemption need not even be as much as the reduction from commercial to residential, but just be enough to compensate for the increase in the commercial rate. If this path is chosen, however, the exemption will have to be changed each year until 2010 because of the phased nature of the elimination of the business occupancy tax. A tax exemption or reduction must be set out in a by-law, and the by-law must be published before the beginning of the next fiscal year or specify a different effective date, including retroactivity to the beginning of the current tax year–s. 71(6), as amended.

The change in business occupancy taxation means that all commercial taxes will be paid by the owners. A great deal of commercial property is leased. To avoid a shift of tax burden from tenants to landlords, every commercial lease is now deemed to have a tax escalation clause. That will permit the landlord to recover any tax increase through rents. If needed, either a landlord or a tenant could apply to the Assessment Division once to get all of the business occupancy assessments for the property in order to help ensure a fair division of the increased taxes on the landlord.

In a village, the elimination of the business occupancy tax could result in a significant shift of taxation from commercial to residential property owners. To allow village commissions to deal with this issue, villages are now permitted to levy different commercial and residential tax rates. The commercial tax rate cannot exceed one and a half times the residential rate. A village ought to be careful not to use up all of the permitted differential in the first year, since the phased nature of the elimination of business occupancy tax means that more taxes will be shifted to residential property owners each subsequent year until the tax is totally eliminated in 2010.

In the event a village levies an area rate, differential residential and commercial area rates are also permitted.

Identical provisions have been included in the *Rural Fire District Act* for rural fire districts.

Changes have been made in the calculation of uniform assessment to accommodate the other tax changes. Seasonal tourist businesses will be included at 75% of full value since that is the rate of commercial tax they will have to pay. Property exempted by by-law will be excluded to the extent of the exemption, but **only** if a copy of the authorizing by-law is provided to the Minister by September 1 of the year to which the by-law relates. That is, if a by-law is passed to accommodate some of the concerns noted above, to have effect in 2006-07 taxation year, the copy must be filed with the Minister by September 1, 2006.

Time Limits:

- September 1 to apply to qualify as a seasonal tourist business
- September 1 to provide copy of by-law exempting property for current year

Date Produced: October 2005

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.

Municipal Government Act

progressive powers for municipalities

INFORMATION BULLETIN #51

Elimination of Business Occupancy Tax: Practical Considerations for Villages

Summary:

Beginning April 1, 2006 business occupancy taxation will be phased out.

The challenges for villages lie in replacing the lost revenue.

The summary below is necessarily simplified and for completely accurate reference see the Municipal Law Amendment (2005) Act, S.N.S. 2005, c. 9, proclaimed in force July 14, 2005 to have effect commencing April 1, 2006.

Legislation:

Part IV, sections 65(au), 65(va), 71A(1), 71A(2), 72(6A), 75(7), 78A, 80(4), 85(5)
Part XVII, sections 429(3), 439(3A), 439(3B), 530(4A)
Part XXII, section 536A

Discussion:

First, all businesses formerly considered to be in the 25% class will be completely exempt from the tax beginning April 1, 2006. These businesses include service stations, restaurants, "roofed accommodations" (hotels and motels), camping establishments and motor vehicle dealers.

Second, those businesses regarded as seasonal tourist businesses will be specially identified on the assessment roll and will be subject to a municipal tax rate of 75% of the full commercial rate. Note that this revenue loss will not be shown on the assessment roll, and in effect results in an additional special tax rate. This change is also effective April 1, 2006.

In order to qualify as a seasonal tourist business, the business must be open for at least part of the year, but must be closed for at least four months in the year. This designation applies only for restaurants, roofed accommodations and camping establishments. The owner must apply to the director of assessment before September 1 in the year preceding the taxation year. That is, to take advantage of the special commercial tax rate the owner must notify the assessors of the address, space occupied by the seasonal tourist business and dates the business will open and close, and request that the business be identified on the roll as a seasonal business. The application must be made each year. The application form is available on-line at the Service Nova Scotia website or at assessment offices, municipal offices and Access Nova Scotia. Unless the business is identified on the assessment roll as a seasonal tourist business, the special (75%) commercial tax rate does not apply to it. This 75% rate does not apply to any village commercial tax rate adopted by the village commission.

Businesses in the 75% category (banks, credit unions, loan companies, trust companies, insurance companies, investment dealers, mortgage companies and collection agencies) will continue to pay business occupancy assessment tax on the full 75% business occupancy assessment until April 1, 2013.

All other businesses, the 50% class, will be phased out over five years. That is, the business occupancy assessment will be calculated at 40% beginning April 1, 2006, 30% beginning April 1, 2007, 20% beginning April 1. 2008, 10% beginning April 1, 2009, and will be completely exempt from April 1, 2010 forward.

All of these changes will be reflected on the assessment roll each year. Neither tax payers nor municipalities will need to make application, except for seasonal tourist businesses. From the point of view of a village, the issue will be determining how to make up the lost revenue. A municipality may decide that the revenue has to come from commercial property, in which case an increase in the commercial tax rate will be required. If a municipality decides to recover the revenue from all taxpayers, both rates will rise.

In a village, the elimination of the business occupancy tax could result in a significant shift of taxation from commercial to residential property owners. To allow village commissions to deal with this issue, villages are now permitted to levy different commercial and residential tax rates. The commercial tax rate cannot exceed one and a half times the residential rate. A village ought to be careful not to use up all of the permitted differential in the first year, since the phased nature of the elimination of business occupancy tax means that more taxes will be shifted to residential property owners each subsequent year until the tax is totally eliminated in 2010.

As an example, perhaps a village in year one of the changes will have a decrease in total commercial assessment (including business occupancy assessment) of, say, 12%. That is, the commercial assessment base in 2006-07 may be only 88% of what it was in 2005-06. In order to recover the same amount from commercial taxpayers in 2006-07, the commercial tax rate would in this example have to be increased between 11% and 12% (the amount of lost revenue divided by the new assessment) to recover it, not counting any other need for new revenue, or growth in the assessment base.

Because the changes are phased in, the amount of "lost" assessment will be higher in the second year, and so on until the phase in is completed in 2010. If a village increases its commercial rate the full allowable amount (50%) in 2006-07, the residential taxpayers will pick up a significant portion of the decline in revenue from business occupancy assessment in future years. If the goal is to insulate residential taxpayers from these changes, the commercial tax rate ought to be increased in phases that more or less match the phasing out of business occupancy assessment.

It is not essential that a village introduce separate commercial and residential rates. If business occupancy assessment in the village is very small or non-existent, the impact on the residential property owners may be so small that a two-rate structure is not justified. It is a matter for the village commission to determine.

In the event a village levies an area rate, differential residential and commercial area rates are also permitted.

Date Produced: October 2005

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.

INFORMATION BULLETIN #52

Elimination of Business Occupancy Tax: Practical Considerations for Rural Fire Districts

Summary:

Beginning April 1, 2006 business occupancy taxation will be phased out.

The challenges for rural fire districts lie in replacing the lost revenue without exceptional increases in taxes for residential ratepayers. Where the assessment base for the rural fire district has only a relatively small business occupancy assessment in relation to total taxable assessment, the effect of the tax change on residential taxpayers may be small enough to ignore.

The summary below is necessarily simplified and for completely accurate reference see the Municipal Law Amendment (2005) Act, S.N.S. 2005, c. 9, proclaimed in force July 14, 2005 to have effect commencing April 1, 2006.

Legislation:

Part IV, sections 65(au), 65(va), 71A(1), 71A(2), 72(6A), 75(7), 78A, 80(4), 85(5)
Part XVII, sections 429(3), 439(3A), 439(3B), 530(4A)
Part XXII, section 536A

Discussion:

First, all businesses formerly considered to be in the 25% class will be completely exempt from the tax beginning April 1, 2006. These businesses include service stations, restaurants, "roofed accommodations" (hotels and motels), camping establishments and motor vehicle dealers.

Second, those businesses regarded as seasonal tourist businesses will be specially identified on the assessment roll and will be subject to a municipal tax rate of 75% of the full commercial rate. Note that this revenue loss will not be shown

on the assessment roll, and in effect results in an additional special tax rate. This change is also effective April 1, 2006.

In order to qualify as a seasonal tourist business, the business must be open for at least part of the year, but must be closed for at least four months in the year. This designation applies only for restaurants, roofed accommodations and camping establishments. The owner must apply to the director of assessment before September 1 in the year preceding the taxation year. That is, to take advantage of the special commercial tax rate the owner must notify the assessors of the address, space occupied by the seasonal tourist business and dates the business will open and close, and request that the business be identified on the roll as a seasonal business. The application must be made each year. The application form is available on-line at the Service Nova Scotia website or at assessment offices, municipal offices and Access Nova Scotia. Unless the business is identified on the assessment roll as a seasonal tourist business, the special (75%) commercial tax rate does not apply to it. This 75% rate does not apply to any commercial tax rate adopted by the rural fire district.

Businesses in the 75% category (banks, credit unions, loan companies, trust companies, insurance companies, investment dealers, mortgage companies and collection agencies) will continue to pay business occupancy assessment tax on the full 75% business occupancy assessment until April 1, 2013.

All other businesses, the 50% class, will be phased out over five years. That is, the business occupancy assessment will be calculated at 40% beginning April 1, 2006, 30% beginning April 1, 2007, 20% beginning April 1. 2008, 10% beginning April 1, 2009, and will be completely exempt from April 1, 2010 forward.

All of these changes will be reflected on the assessment roll each year. Neither tax payers nor municipalities will need to make application, apart from the seasonal tourist businesses. From the point of view of a rural fire district, the issue will be determining how to make up the lost revenue. A municipality may decide that the revenue has to come from commercial property, in which case an increase in the commercial tax rate will be required. If a municipality decides to recover the revenue from all taxpayers, both rates will rise.

In a rural fire district, the elimination of the business occupancy tax could result in a significant shift of taxation from commercial to residential property owners. To allow rural fire districts to deal with this issue, the Rural Fire District Act has been amended to permit rural fire districts to levy different commercial and residential tax rates. The commercial tax rate cannot exceed one and a half times the residential rate. A rural fire district ought to be careful not to use up all of the permitted differential in the first year, since the phased nature of the elimination of business occupancy tax means that more taxes will be shifted to residential property owners each subsequent year until the tax is totally eliminated in 2010.

As an example, perhaps in year one of the changes total commercial assessment (including business occupancy assessment) will go down, say, 12%. That is, the commercial assessment base in 2006-07 may be only 88% of what it was in 2005-06. In order to recover the same amount from commercial taxpayers in 2006-07, the commercial tax rate would in this example have to be increased between 11% and 12% (the amount of lost revenue divided by the new assessment) to recover it, not counting any other need for new revenue, or growth in the assessment base.

Because the changes are phased in, the amount of "lost" assessment will be higher in the second year, and so on until the phase in is completed in 2010. If the commercial rate is increased by the full allowable amount (50%) in 2006-07, the residential taxpayers will pick up a significant portion of the decline in revenue from business occupancy assessment in future years. If the goal is to insulate residential taxpayers from these changes, the commercial tax rate ought to be increased in phases that more or less match the phasing out of business occupancy assessment.

It is not essential that a rural fire district introduce separate commercial and residential rates. If business occupancy assessment is very small or non-existent, the impact on the residential property owners may be so small that a two-rate structure is not justified. It is a matter for the rural fire district to determine.

In the event the rural fire district levies an area rate, differential residential and commercial area rates are also permitted.

Date Produced: October 2005

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.

INFORMATION BULLETIN #53

Fees and Taxes

Summary:

The effect of the decision of the Supreme Court of Canada in Re: Eurig on municipalities confirms that municipal charges are those expressly authorized by the legislation, that a fee can only relate to cost recovery unless the legislation provides broader authority and that the power to set taxes cannot be delegated by the governing body.

Legislation:

Sections 49, 79, 172, 174
Related – Section 274

Discussion:

THE EFFECT OF *RE EURIG AND REGISTRAR OF THE ONTARIO COURT (GENERAL DIVISION) ET AL* ON MUNICIPAL USER FEES, LICENCE FEES AND TAXES

Re Eurig Estate, [1998] 2 S.C.R. 565, was a Supreme Court of Canada decision that invalidated Ontario probate fees set by regulation at a level so high as to be a significant source of revenue unrelated to the cost of providing the service. Since there was no connection between the amount of the fee and the service provided (the fees were on a sliding scale relating to the amount of the estate), the Court found that the fees were in fact a tax.

The importance of the decision was that, as a tax, the authorizing legislation had to come from the provincial legislature.

The decision also held the taxes invalid because the legislation authorized fees, not taxes, and did not expressly delegate taxing authority.

Municipalities have always been limited to the powers expressly granted by the authorizing legislation. In the *Municipal Government Act* municipalities have been given broad powers. Accordingly, the Supreme Court of Canada decision in the *Eurig* case should not have a major effect on how they operate.

Under the *Municipal Government Act* municipalities are given broad powers to set taxes, rates, fees and charges of various kinds. It is important in applying these powers to be aware of exactly what the power is, and, equally, what it is not.

The definition of "taxes" in the MGA includes municipal rates, area rates and any rates, charges or debts prescribed by the enactment authorizing them to be a lien on the property. It does not include fees that are not prescribed to be liens so these must be levied as fees, not as taxes. Even "taxes" must be levied in accordance with the section authorizing them. For example, infrastructure charges under S.274, are liens on the property, which makes them taxes, but the wording in the section makes it clear that these are intended to be full or partial cost recovery items, not general tax revenues.

There is also authority for user fees in the *Municipal Government Act*. That authority must, in accordance with the established principles of municipal law, as well as the *Eurig* case, be applied to set fees rather than taxes. The distinction in this context is primarily a difference between reasonable cost recovery and making a profit. Making a profit on fees is prohibited as it turns them into unauthorized taxes. One example of authority for user fees is Section 79, which authorizes the collection of user charges from people who use or benefit from a service. An example of a Section 79 user charge might be a charge for street lighting. The normal way to establish the charge would be as a way of distributing the cost of the service among those benefitting from it. It would likely be invalid if there was no relation to the cost of providing the service. The simplest way to prove the relationship would be to include the cost of the service as an element of the formula used to calculate the charges. The Court in *Eurig* indicated that it need not be an exact relationship, just a reasonable one.

Similarly, in changing fees by policy, this idea of a relationship between the fee and the cost of the service must be remembered.

Another example of a fee that is not within the definition of taxes is a permit fee for an inspection; it should be related to the cost of the inspection, perhaps including an allowance for overhead; otherwise it would be a tax and the authority to set a tax has not been granted.

The *Municipal Government Act* has authority for many fees and broad language authorizing additional fees. There is no particular magic to the form so long as they are calculated on a cost-recovery basis. This is quite easy for most municipal services. If a municipality wishes to introduce a fee that is not authorized by the MGA and that does not come under the catchall clauses in 79, 172(2((e)(I), or 49(1©, it cannot do so unless the legislation is amended. No examples of what additional fees might be wanted are now known. See also Bulletin 22, respecting planning fees and expenses.

The *Eurig* decision has no effect on whether fees can be set by policy or by by-law; the legislation is clear and is not affected by the *Eurig* decision. The important matter is that the fee be set by the council.

Subclause 172(2)(e)(I) specifically authorizes some fees that are higher than cost recovery, that may be a reasonable tax on the activity in question or to raise revenue. This authority extends to all *licences, permits and approvals required under a by-law made pursuant to the Act.* Where the licence, permit or approval is required in another section of the Act, the municipality is not entitled to make a profit on those items. For example, an application for subdivision approval is required by Section 268 of the Act rather than by a by-law so 172(2)(e)(I) does not apply to authorize fees to raise revenues – the fee is limited to reasonable cost recovery. The most likely source of licence, permit or approval fees that are set by by-law is Section 172 itself. For example, clause 172(1)(d) authorizes by-laws respecting burning – this might include a licence and a fee; clause 172(1)(f) authorizes by-laws respecting businesses – this too might include a licence or permit and a fee. Section 173 is authority to pass a by-law to regulate vending and mobile vendors – the power to regulate includes the power to licence so this too might include a fee that could be in the nature of a

reasonable tax on the activity in question. Section 174 also is a source of examples of licence, permit or approval fees set by by-law – it lists possible by-law topics such a regulating rooming or boarding houses and wild and domestic animals, for example. The authority for a fee that may exceed the cost of the service, as noted, applies to all by-laws, whatever the authority.

In summary, taxes must be set in accordance with the provisions authorizing them; user fees must reasonably relate to the cost of the service; fees for a system of licences, permits and approvals created by statute must reasonably relate to the cost of the service; and fees for a system of licences, permits and approvals that is created by a by-law may be in the nature of a reasonable tax for the activity authorized or for the purpose of raising revenue.

DATE PRODUCED: October 2006

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Municipal Government Act

progressive powers for municipalities

INFORMATION BULLETIN #54

Wind Turbine Taxation

- Revised -

Summary: Wind turbines for producing electricity are exempt from regular taxation. A tax based on capacity is payable instead. Associated land and buildings remain taxable.

Legislation: Wind Turbine Facilities Municipal Taxation Act, SNS2006, c.22

Discussion: The **Wind Turbine Facilities Municipal Taxation Act** (Act) provides a special municipal taxation regime for wind energy.

A wind turbine facility includes the wind turbine, the generator, and all electrical equipment including the substation, the tower and all foundations (except building foundations).

All wind turbine facilities with an aggregate of 100 kilowatts or less are completely exempt from taxation.

Taxation of a wind turbine facility commences six months after the facility has been commissioned. "Commissioned" means the facility has been connected to the grid or to a power consumer and has been in continuous operation for at least a day. Information respecting commissioning can be obtained from the Department of Energy (contact information below).

The Act applies to wind turbine facilities starting with the 2005-06 municipal taxation year. Facilities build on or before March 31, 2005 are deemed to have been commissioned on March 1, 2005.

The owner of the wind turbine facility, not the owner of the land, is liable for the facility tax. This provision has been put in place as many facilities are built on leased land. However, the landowner remains responsible for the taxes on land and buildings.

Taxation of the whole wind farm is based partly on regular taxes and partly on a special facility tax. Simply put, land and buildings are taxed conventionally (assessment times rate) while the wind turbine facilities are "exempt" from regular taxation, but subject to a special tax per megawatt of nameplate capacity. Nameplate capacity is the stated maximum output of the wind turbine. This number is on each turbine and can also be obtained from the Department of Energy.

A new facility will have a six month tax holiday after commissioning and then pay a pro-rated amount for the balance of the year. The taxes for the second year will be at the same rate (i.e., no adjustment). The Act also applies to all new Nova Scotia Power wind turbine facilities but not to the ones existing before April 1, 2006.

The special tax on wind turbine facilities over 100 kilowatts is initially based on a rate of $5,500 per megawatt of nameplate capacity. Owners of wind turbine facilities in existence as of March 31, 2005 and deemed to have been commissioned on March 1, 2005, start paying taxes on the facilities as of September 1, 2005. For 2005-06 and 2006-07, the tax rate on facilities is $5,500 per megawatt of nameplate capacity.

For 2007-08 and subsequent years the base rate is subject to one of two separate increases, depending on whether the facility is an existing one or a new one. For existing facilities that commenced paying taxes in 2005-06, the rate is $5,500 per megawatt compounded by one per cent each year. So, in 2007-08, the rate is $5,500 per megawatt; in 2008-09, it is $5,610.55 per megawatt; in 2009-10, it is $5,666.66 per megawatt; and so on.

For new facilities that commence paying taxes after 2006-07, the base rate is $5,500 compounded by the percentage increase in the Canada Consumer Price Index (CPI) each year after 2006-07. The applicable CPA for 2007-08 is 2.0 percent, that is, the 2006 annual CPI published by Statistics Canada. So, the base rate for facilities that start paying taxes in 2007-08 is $5,610 per megawatt.

For illustration purposes, if the CPI at 2.0 percent were to remain constant for the next two years, the respective base rates for new facilities that start paying taxes in 2008-09 and 2009-10 would be $5,722.20 and at $5,836.64 per megawatt.

Once a new facility's base rate is established, its taxes are pro-rated for the balance of the year. In the second year, the facility pays taxes using the same base rate (ie., no adjustment). In the third year and thereafter, the facility pays taxes with the base rate adjusted by compounding one percent each year. For example, the above 2007-08 base rate for new facilities is $5,610 per megawatt. The same rate applies for 2008-09. Thereafter, the base rate is compounded by one percent each year, starting at $5,666.10 in 2010-11

Where there is an existing agreement with Nova Scotia Power Inc. (Signed before March 31, 2006), the tax for the facility owner is $4,500 per megawatt (plus one per cent compounded for each subsequent year starting 2007-08) until the agreement expires, to a maximum of 20 years from April 1, 2005. The Department of Energy will pay municipalities the difference between the $4,500 rate and full taxation (based on the $5,500 rate as increased year to year). In other words, there is no revenue loss to municipalities from this provision (Section 6). The facility tax payment is at the level that would apply were the facility subject to the $5,500 rate from the beginning.

It should be noted that, the Department of Energy will only pay for the capacity stated as necessary to meet the terms of the agreement. If there is a greater capacity than necessary to meet these terms, the extra capacity is subject to full taxes (at the $5,500 rate as applicable) payable by the owner.

Land, improvements to land, and buildings will be taxed as usual. The assessed value will be shown on the annual assessment roll filed with the municipality. This value will include land acquired by Nova Scotia Power for wind turbine facilities after April 1, 2006.

When a wind turbine generator is dismantled, taxes are pro-rated for the part of the year prior to dismantling. No change in tax liability results from reducing the capacity of the wind turbine generator.

The calculation of uniform assessment will use the actual assessments of land and buildings and the capitalized value of the nameplate capacity taxes paid by the owner of the wind

turbine facility and the Department of Energy under the Act, that is, total facility taxes divided by the municipality's commercial rate. The first year of calculation of uniform assessment on this basis will be for 2007-08.

Resources: If there is uncertainty about whether a facility has a contract with NSPI, check with the Department of Energy.

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