COMPOSSITE ASSESSMENT REVIEW BOARD

BETWEEN:

La Societe Franco Canadienne de Calgary

Complainant

-and-

Foothill County Assessor

Respondent

Book of Authorities of the Complainant

La Societe Franco-Canadienne

Roll Number: 2004257520

Hearing Date: November 5th, 2024

WILSON LAYCRAFT
Barristers & Solicitors
#650, 211 – 11th Avenue SW
Calgary, AB T2R 0C6
Attn.: Gilbert J. Ludwig, K.C.

TAB 1

Province of Alberta

MUNICIPAL GOVERNMENT ACT

Revised Statutes of Alberta 2000
Chapter M-26

Current as of June 21, 2024

Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2022 c16 s9(63) amends s297; s9(64) amends s298(1)(y); s9(65) repeals and substitutes s354(3.1).

2024 c11 s2(24) amends s317(d); s2(25) amends s363.

2017 c13 s1(4) repeals Division 5 of Part 3; s1(39) repeals and substitutes Division 4 of Part 10 ss380.1 to 380.5; s1(40) amends s410(e); s1(41) amends s437(c); s1(61) (repealed by 2013 cS-19.3 s3 - effective December 31, 2023) amends s666; s1(62) (repealed by 2013 cS-19.3 s3 - effective December 31, 2023) amends s667; s1(63) (repealed by 2013 cS-19.3 s3 - effective December 31, 2023) amends s670(1); s1(64) (repealed by 2013 cS-19.3 s3 - effective December 31, 2023) adds s670.2.

2020 c35 s24 amends s596(1)(b).

2024 c11 s2 amends ss162, 168(1)(a); repeals and substitutes the heading preceding s169; amends ss169, 170; adds ss172.1 and 172.2; amends s175; adds s175.1; adds Part 5, Division 8.1 and s179.1; amends s199; repeals and substitutes s201.1(1) and (2); amends ss216.4, 240.1(2), 240.2(4)(a), 240.3(a), 240.7, 240.8; repeals and substitutes ss240.9 and 240.91(1) and (2); amends s240.92(1); adds s240.941; amends ss304(1), 364.2, 437(c)(iii), 540(d.1); adds ss603.01 and 615.11; amends ss670.1, 694(1).

Regulations

The following is a list of the regulations made under the *Municipal Government Act* that are filed as Alberta Regulations under the Regulations Act.

	Alta. Reg.	*Amendments*
Municipal Government Act		
Aeronautics Act Agreements	33/2014	*10/2016, 157/2020*
Airport Vicinity Protection Areas		
Calgary International	177/2009	*192/2010, 71/2014, 186/2017, 177/2018, 124/2019, 158/2020, 34/2021, 163/2021*
Edmonton International	55/2006	*86/2016, 185/2017, 83/2022, 22/2024*
Business Improvement Area	93/2016	*123/2021, 91/2024*
Calgary Metropolitan Region Board	190/2017	*102/2021, 53/2022, 218/2022*
Canmore Undermining Exemption from Liability	113/97	*221/2004*
Canmore Undermining Review	34/2020	
City of Airdrie Downtown Community Revitalization Levy	253/2022	
City of Calgary Charter, 2018	40/2018	*18/2019, 56/2019, 187/2019, 216/2022, 218/2022, 99/2024*
NOTE: Certain provisions of AR 18/2019 *come into force on later dates. See AR 40/2018.*		
City of Calgary Rivers District Community Revitalization Levy	232/2006	*181/2016, 266/2018, 85/2024*
City of Edmonton Belvedere Community Revitalization Levy	57/2010	*234/2020, 86/2024*
City of Edmonton Capital City Downtown Community Revitalization Levy	141/2013	*131/2023*
City of Edmonton Charter, 2018	39/2018	*19/2019, 56/2019, 187/2019, 216/2022, 218/2022, 100/2024*
NOTE: Certain provisions of AR 19/2019 come into force on later dates. See AR 39/2018.		
City of Edmonton the Quarters Downtown Community Revitalization Levy	173/2010	*235/2020, 87/2024*
Clean Energy Improvements	212/2018	*153/2020*
Cochrane Community Revitalization Levy	204/2012	*254/2022, 88/2024*
Code of Conduct for Elected Officials	200/2017	
Community Aggregate Payment Levy	263/2005	*187/2010, 175/2015, 196/2017, 205/2022*

MUNICIPAL GOVERNMENT ACT

Chapter M-26

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Preamble

WHEREAS Alberta's municipalities, governed by democratically elected officials, are established by the Province, and are empowered to provide responsible and accountable local governance in order to create and sustain safe and viable communities;

WHEREAS Alberta's municipalities play an important role in Alberta's economic, environmental and social prosperity today and in the future;

WHEREAS the Government of Alberta recognizes the importance of working together with Alberta's municipalities in a spirit of partnership to co-operatively and collaboratively advance the interests of Albertans generally; and

WHEREAS the Government of Alberta recognizes that Alberta's municipalities have varying interests and capacity levels that require flexible approaches to support local, intermunicipal and regional needs;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

(a) "ALSA regional plan" means a regional plan as defined in the *Alberta Land Stewardship Act*;

(a.1) "business" means

(i) a commercial, merchandising or industrial activity or undertaking,

(ii) a profession, trade, occupation, calling or employment, or

(iii) an activity providing goods or services,

whether or not for profit and however organized or formed, including a co-operative or association of persons;

(b) "by-election" means an election to fill a vacancy on a council other than at a general election;

(c) "chief administrative officer" means a person appointed to a position under section 205;

(d) "chief elected official" means the person elected or appointed as chief elected official under section 150;

(e) "council" means

(i) the council of a city, town, village, summer village, municipal district or specialized municipality,

(ii) repealed 1995 c24 s2,

(iii) the council of a town under the *Parks Towns Act*, or

(iv) the council of a municipality incorporated by a special Act;

(f) "council committee" means a committee, board or other body established by a council under this Act but does not include an assessment review board established under section 454 or a subdivision and development appeal board established under section 627;

(g) "councillor" includes the chief elected official;

(h) "designated officer" means a person appointed to a position established under section 210(1);

(i) "elector" means a person who is eligible to vote in the election for a councillor under the *Local Authorities Election Act*;

(j) "enactment" means

(i) an Act of the Legislature of Alberta and a regulation made under an Act of the Legislature of Alberta, and

(ii) an Act of the Parliament of Canada and a statutory instrument made under an Act of the Parliament of Canada,

but does not include a bylaw made by a council;

(k) "general election" means an election held to fill vacancies on council caused by the passage of time, and includes a first election;

(k.1) "growth management board" means a growth management board established under Part 17.1;

(k.2) "Indian band" means a band within the meaning of the *Indian Act* (Canada);

(k.3) "Indian reserve" means a reserve within the meaning of the *Indian Act* (Canada);

(l) "Land and Property Rights Tribunal" means the Land and Property Rights Tribunal established under the *Land and Property Rights Tribunal Act*;

(m) "local authority" means

(i) a municipal authority,

(ii) a provincial health agency or regional health authority under the *Provincial Health Agencies Act*,

(iii) a regional services commission, and

(iv) the board of trustees of a school division under the *Education Act*;

(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

(o) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

(p) "municipal authority" means a municipality, improvement district and special area and, if the context requires, in the case of an improvement district and special area,

(i) the geographical area of the improvement district or special area, or

(ii) the Minister, where the improvement district or special area is authorized or required to act;

(q) repealed 2020 cL-2.3 s24(2);

(r) "municipal purposes" means the purposes set out in section 3;

(s) "municipality" means

(i) a city, town, village, summer village, municipal district or specialized municipality,

(ii) repealed 1995 c24 s2,

(iii) a town under the *Parks Towns Act*, or

(iv) a municipality formed by special Act,

or, if the context requires, the geographical area within the boundaries of a municipality described in subclauses (i) to (iv);

(t) "natural person powers" means the capacity, rights, powers and privileges of a natural person;

(u) "owner" means

(i) in respect of unpatented land, the Crown,

(ii) in respect of other land, the person who is registered under the *Land Titles Act* as the owner of the fee simple estate in the land, and

(iii) in respect of any property other than land, the person in lawful possession of it;

(v) "parcel of land" means

(i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;

(ii) where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;

(iii) a quarter section of land according to the system of surveys under the *Surveys Act* or any other area of land described on a certificate of title;

(w) "pecuniary interest" means pecuniary interest within the meaning of Part 5, Division 6;

(x) "population" means population as determined by, and specified by order of, the Minister under section 604.1;

(y) "public utility" means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:

(i) water or steam;

(ii) sewage disposal;

(iii) public transportation operated by or on behalf of the municipality;

(iv) irrigation;

(v) drainage;

(vi) fuel;

(vii) electric power;

(viii) heat;

(ix) waste management;

(x) residential and commercial street lighting,

and includes the thing that is provided for public consumption, benefit, convenience or use;

(y.1) "regional services commission" means a regional services commission under Part 15.1;

(z) "road" means land

(i) shown as a road on a plan of survey that has been filed or registered in a land titles office, or

(ii) used as a public road,

and includes a bridge forming part of a public road and any structure incidental to a public road;

(z.1) "summer village residence" means a parcel of land having at least one building the whole or any part of which was designed or intended for, or is used as, a residence by one person or as a shared residence by 2 or more persons, whether on a permanent, seasonal or occasional basis;

(aa) "tax" means

(i) a property tax,

(ii) a business tax,

(iii) a business improvement area tax,

(iii.1) a community revitalization levy,

(iv) a special tax,

(v) a well drilling equipment tax,

(v.1) a clean energy improvement tax,

(vi) a local improvement tax, and

(vii) a community aggregate payment levy;

(bb) "taxpayer" means a person liable to pay a tax;

(cc) "whole council" means

(i) all of the councillors that comprise the council under section 143,

(ii) if there is a vacancy on council and the council is not required to hold a by-election under section 162 or 163, the remaining councillors, or

(iii) if there is a vacancy on council and the Minister orders that the remaining councillors constitute a quorum under section 160 or 168, the remaining councillors.

(1.1) Repealed 2019 c22 s10(2).

(1.2) In this Act, a reference to a body of water is to be interpreted as a reference to

(a) a permanent and naturally occurring water body, or

(b) a naturally occurring river, stream, watercourse or lake.

(2) For the purposes of this Act, a municipality or group of municipalities controls a corporation if

(a) the municipality or group of municipalities hold, other than by way of security only, securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation and, if exercised, are sufficient to elect a majority of the directors of the corporation, or

(b) all or a majority of its members or directors are appointed by the municipality or group of municipalities.

(2.1) For the purposes of the definition of "summer village residence" in subsection (1)(z.1), "building" includes

(a) a manufactured home, as defined in section 284(1)(m),

(b) a mobile home, as defined in section 284(1)(n.1),

(c) a modular home, as defined in section 284(1)(n.2), or

(d) a travel trailer, as defined in section 284(1)(w.1),

but does not include a tent.

(3) For the purposes of this Act, a meeting or part of a meeting is considered to be closed to the public if

(a) any members of the public are not permitted to attend the entire meeting or part of the meeting,

(b) the council, committee or other body holding the meeting instructs any member of the public to leave the meeting or part of the meeting, other than for improper conduct, or

(c) the council, committee or other body holding the meeting holds any discussions separate from the public during the meeting or part of the meeting.

RSA 2000 cM-26 s1;2005 c14 s2;2012 cE-0.3 s279;2013 c17 s2;2015 c8 s2;2016 c24 s4;2017 c13 s1(2);2017 c22 s38;2018 c6 s2;2019 c22 s10(2);2020 cL-2.3 s24(2);2022 c16 s9(2);2023 c9 s19(2) 2024 c10 s31

Application of Act

2(1) This Act applies to all municipalities and improvement districts.

(2) If there is an inconsistency between this Act and

(a) repealed 1995 c24 s3,

(b) the *Parks Towns Act*, or

(c) a special Act forming a municipality,

the other Act prevails.

1994 cM-26.1 s2;1995 c24 s3

(7) The Minister may make regulations respecting financial plans and capital plans, including, without limitation, regulations

(a) respecting the form and contents of financial plans and capital plans;

(b) specifying the first financial year required to be reflected in a financial plan;

(c) specifying the first financial year required to be reflected in a capital plan.

2015 c8 s40

Part 9
Assessment of Property

Interpretation provisions for Parts 9 to 12

284(1) In this Part and Parts 10, 11 and 12,

(a) "assessed person" means a person who is named on an assessment roll in accordance with section 304;

(b) "assessed property" means property in respect of which an assessment has been prepared;

(c) "assessment" means a value of property determined in accordance with this Part and the regulations;

(d) "assessor" means

(i) the provincial assessor, or

(ii) a municipal assessor,

and includes any person to whom those duties and responsibilities are delegated by the person referred to in subclause (i) or (ii);

(e) "council" includes

(i) a collecting board that is authorized under section 177 of the *Education Act* to impose and collect taxes in a school division as defined in that Act, and

(ii) the Minister, in respect of an improvement district or special area;

(f) "Crown" means the Crown in right of Alberta, and includes a Provincial agency as defined in the *Financial*

Administration Act and an agent of the Crown in right of Alberta;

(f.01) "designated industrial property" means

(i) facilities regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator,

(ii) linear property,

(iii) property designated as a major plant by the regulations,

(iv) land and improvements in respect of a parcel of land where that parcel of land contains property described in subclause (i) or (iii), and

(v) land and improvements in respect of land in which a leasehold interest is held where the land is not registered in a land titles office and contains property described in subclause (i) or (iii);

(f.1) "designated manufactured home" means a manufactured home, mobile home, modular home or travel trailer;

(g) repealed 2016 c24 s21;

(g.1) "extended area network" has the meaning given to it in the regulations;

(h) "farm building" has the meaning given to it in the regulations;

(i) "farming operations" has the meaning given to it in the regulations;

(j) "improvement" means

(i) a structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

(iii) a designated manufactured home,

(iii.1) linear property, and

(iv) machinery and equipment;

(k) "linear property" means

(i) electric power systems, which has the meaning given to that term in the regulations,

(ii) street lighting systems, which has the meaning given to that term in the regulations,

(iii) telecommunication systems, which has the meaning given to that term in the regulations,

(iv) pipelines, which has the meaning given to that term in the regulations,

(v) railway property, which has the meaning given to that term in the regulations, and

(vi) wells, which has the meaning given to that term in the regulations;

(l) "machinery and equipment" has the meaning given to it in the regulations;

(m) "manufactured home" means any structure, whether ordinarily equipped with wheels or not, that is manufactured to meet or exceed the Canadian Standards Association standard CSA Z240 and that is used as a residence or for any other purpose;

(n) "manufactured home community" means a parcel of land that

(i) is designated in the land use bylaw of a municipality as a manufactured home community, and

(ii) includes at least 3 designated manufactured home sites that are rented or available for rent;

(n.1) "mobile home" means a structure that is designed to be towed or carried from place to place and that is used as a residence or for any other purpose, but that does not meet Canadian Standards Association standard CSA Z240;

(n.2) "modular home" means a home that is constructed from a number of pre-assembled units that are intended for delivery to and assembly at a residential site;

(n.3) "municipal assessment roll" means the assessment roll prepared by a municipality under section 302(1);

(n.4) "municipal assessor" means a designated officer appointed under section 284.2 to carry out the functions, duties and powers of a municipal assessor under this Act;

(o) "municipality" includes

(i) a school division, as defined in the *Education Act*, in which a collecting board is authorized under section 177 of that Act to impose and collect taxes or, where the school division is authorized or required to act, the collecting board, and

(ii) an improvement district and a special area or, where the improvement district or special area is authorized or required to act, the Minister;

(o.1) "operational" has the meaning given to it in the regulations;

(p) "operator" has the meaning given to it in the regulations;

(q) "owner", in respect of a designated manufactured home, means the owner of the designated manufactured home and not the person in lawful possession of it;

(r) "property" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it;

(r.1) "provincial assessment roll" means the assessment roll prepared by the provincial assessor under section 302(2);

(r.2) "provincial assessor" means the provincial assessor designated under section 284.1;

(s), (t) repealed 2016 c24 s21;

(u) "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;

(u.1) "SuperNet" has the meaning given to it in the regulations;

(v), (w) repealed 2016 c24 s21;

(w.1) "travel trailer" means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road;

(x) "year" means a 12-month period beginning on January 1 and ending on the next December 31.

(2) In this Part and Parts 10, 11 and 12, a reference to a parcel of land that is held under a lease, licence or permit from the Crown in right of Alberta or Canada includes a part of the parcel.

(2.1) For the purposes of subsection (1)(f.01)(i), a facility regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator includes all components of the facility, including any machinery and equipment, buildings and structures servicing or related to the facility and land on which the facility is located.

(3) For the purposes of this Part and Parts 10, 11 and 12, any document, including an assessment notice and a tax notice, that is required to be sent to a person is deemed to be sent on the day the document is mailed or otherwise delivered to that person.

(4) In this Part and Parts 11 and 12, "complaint deadline" means 60 days after the notice of assessment date set under section 308.1 or 324(2)(a.1).

RSA 2000 cM-26 s284; 2007 cA-37.2 s82(17);2007 c42 s3; 2009 c29 s2;2012 cE-0.3 s279;2015 c8 s41;2016 c24 ss21,140; 2017 c13 s1(20);2021 c22 s2;2022 c16 s9(62)

Provincial assessor

284.1(1) The Minister must designate a person having the qualifications set out in the regulations as the provincial assessor to carry out the functions, duties and powers of the provincial assessor under this Act.

(2) Subject to the regulations, the provincial assessor may delegate to any person any power or duty conferred or imposed on the provincial assessor by this Act.

(3) The provincial assessor is not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of the provincial assessor's functions, duties or powers under this Act or any other enactment.

2016 c24 s22

Municipal assessor

284.2(1) A municipality must appoint a person having the qualifications set out in the regulations to the position of designated

officer to carry out the functions, duties and powers of a municipal assessor under this Act.

(2) Subject to the regulations, a municipal assessor may delegate to any person any power or duty conferred or imposed on the municipal assessor by this Act.

(3) A municipal assessor is not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of the municipal assessor's functions, duties or powers under this Act or any other enactment.

2016 c24 s22

Division 1
Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except designated industrial property and the property listed in section 298.

RSA 2000 cM-26 s285;2002 c19 s2;2016 c24 s135

286 Repealed 1994 cM-26.1 s286.

287 Repealed 1994 cM-26.1 s287.

288 Repealed 1994 cM-26.1 s288.

Assessments for property other than designated industrial property

289(1) Assessments for all property in a municipality, other than designated industrial property, must be prepared by the municipal assessor.

(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

(2.1) If the provincial assessor and a municipal assessor assess the same property, the municipality in which the property is situated must rescind the municipal assessment and notify the assessed person.

(3), (4) Repealed 2016 c24 s23.

RSA 2000 cM-26 s289;2009 c29 s3;2016 c24 s23

Land to be assessed as a parcel

290(1) If a parcel of land is located in more than one municipality, the assessor must prepare an assessment for the part of the parcel that is located in the municipality in which the assessor has the authority to act, as if that part of the parcel is a separate parcel of land.

(2) Any area of land forming part of a right of way for a railway, irrigation works as defined in the *Irrigation Districts Act* or drainage works as defined in the *Drainage Districts Act* but used for purposes other than the operation of the railway, irrigation works or drainage works must be assessed as if it is a parcel of land.

(3) Any area of land that is owned by the Crown in right of Alberta or Canada and is the subject of a grazing lease or grazing permit granted by either Crown must be assessed as if it is a parcel of land.

(4) Repealed 1995 c24 s37.

1994 cM-26.1 s290;1995 c24 s37;1999 cI-11.7 s214

Assessment of condominium unit

290.1(1) Each unit and the share in the common property that is assigned to the unit must be assessed

(a) in the case of a bare land condominium, as if it is a parcel of land, or

(b) in any other case, as if it is a parcel of land and the improvements to it.

(2) In this section, "unit" and "share in the common property" have the meanings given to them in the *Condominium Property Act*.

1995 c24 s38

Assessment of strata space

290.2 Each strata space as defined in section 86 of the *Land Titles Act* must be assessed as if it is a parcel of land and the improvements to it.

1995 c24 s38

Rules for assessing improvements

291(1) Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose.

(2) No assessment is to be prepared

(a) for new linear property that is not operational on or before October 31,

(b) for new improvements, other than designated industrial property improvements, that are intended to be used for or in connection with a manufacturing or processing operation and that are not operational on or before December 31,

(c) for new designated industrial property improvements, other than linear property, that are intended to be used for or in connection with a manufacturing or processing operation and that are not operational on or before October 31,

(d) for new improvements, other than designated industrial property improvements, that are intended to be used for the storage of materials manufactured or processed by the improvements referred to in clause (b), if the improvements referred to in clause (b) are not operational on or before December 31, or

(e) for new designated industrial property improvements, other than linear property, that are intended to be used for the storage of materials manufactured or processed by the improvements referred to in clause (c), if the improvements referred to in clause (c) are not operational on or before October 31.

(2.1) Notwithstanding subsection (2), an assessment must be prepared for new improvements, whether complete or not, on a property or a portion of a property where the improvements do not contain machinery and equipment intended to be used in connection with the manufacturing and processing operation even if another portion of the property contains a manufacturing or processing operation.

(3) to **(5)** Repealed 2016 c24 s24.

RSA 2000 cM-26 s291;2008 c24 s2;2016 c24 s24;
2019 c22 s10(8)

Assessments for designated industrial property

292(1) Assessments for designated industrial property must be prepared by the provincial assessor.

(2) Each assessment must reflect

(a) the valuation standard set out in the regulations for designated industrial property, and

(b) the specifications and characteristics of the designated industrial property as specified in the regulations.

(2.1) The specifications and characteristics of the designated industrial property referred to in subsection (2)(b) must reflect

(a) the records of the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator, as the case may be, on October 31 of the year prior to the year in which the tax is imposed under Part 10 in respect of the designated industrial property, and

(b) any other source of information that the provincial assessor considers relevant, as at October 31 of the year prior to the year in which the tax is imposed under Part 10 in respect of the designated industrial property.

(2.2) Information received by the provincial assessor from the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator is deemed to be correct for the purposes of preparing assessments.

(3) to **(5)** Repealed 2016 c24 s25.

RSA 2000 cM-26 s292;2007 cA-37.2 s82(17);
2008 c37 s2;2012 cR-17.3 s95;2016 c24 s25;
2022 c16 s9(62)

Duties of assessors

293(1) In preparing an assessment, an assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

(3) The municipal assessor must, in accordance with the regulations, provide the Minister or the provincial assessor with information that the Minister or the provincial assessor requires about property in the municipality.

RSA 2000 cM-26 s293;2002 c19 s3;2009 c29 s4;
2016 c24 s26

Right to enter on and inspect property

294(1) After giving reasonable notice to the owner or occupier of any property, an assessor may at any reasonable time, for the purpose of carrying out the duties and responsibilities of the assessor under Parts 9 to 12 and the regulations,

(a) enter on and inspect the property,

(b) request anything to be produced, and

(c) make copies of anything necessary to the inspection.

(2) When carrying out duties under subsection (1), an assessor must produce identification on request.

(3) An assessor must, in accordance with the regulations, inform the owner or occupier of any property of the purpose for which information is being collected under this section and section 295.

RSA 2000 cM-26 s294;2002 c19 s4;2017 c13 s1(21)

Duty to provide information

295(1) A person must provide, on request by an assessor, any information necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.

(2) The Alberta Safety Codes Authority or an agency accredited under the *Safety Codes Act* must release, on request by an assessor, information or documents respecting a permit issued under the *Safety Codes Act*.

(3) An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.

(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of designated industrial property, under section 492(1) about an assessment if the person has failed to provide any information requested under subsection (1) within 60 days from the date of the request.

(5) Information collected under this section must be reported to the Minister on the Minister's request.

(6) Despite section 294(1) and subsection (1) of this section, where an assessment of property is the subject of a complaint under Part 11 or 12 by the person assessed in respect of that property,

(a) the assessed person is not obligated to provide information or produce anything to an assessor in respect of that assessment, and

(b) the assessor has no authority under section 294(1)(c) to make copies of anything the assessed person refuses to provide or produce relating to that assessment

until after the complaint has been heard and decided by the assessment review board or the Land and Property Rights Tribunal, as the case may be.

RSA 2000 cM-26 s295;2002 c19 s5;2016 c24 s27;
2017 c13 s2(6);2020 cL-2.3 24(41)

Assessor not bound by information received

295.1 An assessor is not bound by the information received under section 294 or 295 if the assessor has reasonable grounds to believe that the information is inaccurate.

2019 c22 s10(9)

Court authorized inspection and enforcement

296(1) The provincial assessor or a municipality may apply to the Court of King's Bench for an order under subsection (2) if any person

(a) refuses to allow or interferes with an entry or inspection by an assessor, or

(b) refuses to produce anything requested by an assessor to assist the assessor in preparing an assessment or determining if property is to be assessed.

(2) The Court may make an order

(a) restraining a person from preventing or interfering with an assessor's entry or inspection, or

(b) requiring a person to produce anything requested by an assessor under section 294 or 295.

(3) A copy of the application and each affidavit in support must be served at least 3 days before the day named in the application for the hearing.

RSA 2000 cM-26 s296;2009 c53 s119;2016 c24 s28;AR 217/2022

Assigning assessment classes to property

297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

(a) class 1 - residential;

(b) class 2 - non-residential;

(c) class 3 - farm land;

(d) class 4 - machinery and equipment.

(2) A council may by bylaw divide class 1 into sub-classes on any basis it considers appropriate, and if the council does so, the assessor may assign one or more sub-classes to property in class 1.

(2.1) A council may by bylaw divide class 2 into the sub-classes prescribed by the regulations, and if the council does so, the assessor must assign one or more of the prescribed sub-classes to a property in class 2.

(3) If more than one assessment class or sub-class is assigned to a property, the assessor must provide a breakdown of the assessment, showing each assessment class or sub-class assigned and the portion of the assessment attributable to each assessment class or sub-class.

(4) In this section,

(a) "farm land" means land used for farming operations as defined in the regulations;

(a.1) "machinery and equipment" does not include

(i) any thing that falls within the definition of linear property as set out in section 284(1)(k), or

(ii) any component of a manufacturing or processing facility that is used for the cogeneration of power;

(b) "non-residential", in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by a council, but does not include farm land or land that is used or intended to be used for permanent living accommodation;

(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

RSA 2000 cM-26 s297;2002 c19 s6;
2016 c24 s29;2017 c13 s2(7)

Non-assessable property

298(1) No assessment is to be prepared for the following property:

(a) a facility, works or system for

(i) the collection, treatment, conveyance or disposal of sanitary sewage, or

(ii) storm sewer drainage,

that is owned by the Crown in right of Alberta or Canada, a municipality or a regional services commission;

(b) a facility, works or system for the storage, conveyance, treatment, distribution or supply of water that is owned by the Crown in right of Alberta or Canada, a municipality or a regional services commission;

(b.1) a water supply and distribution system, including metering facilities, that is owned or operated by an individual or a corporation and used primarily to provide a domestic water supply service;

(c) irrigation works as defined in the *Irrigation Districts Act* and the land on which they are located when they are held by an irrigation district, but not including any residence or the land attributable to the residence;

(d) canals, dams, dikes, weirs, breakwaters, ditches, basins, reservoirs, cribs and embankments;

(e) flood-gates, drains, tunnels, bridges, culverts, headworks, flumes, penstocks and aqueducts

(i) located at a dam,

(ii) used in the operation of a dam, and

(iii) used for water conservation or flood control, but not for the generation of electric power;

(f) land on which any property listed in clause (d) or (e) is located

(i) if the land is a dam site, and

(ii) whether or not the property located on the land is used for water conservation, flood control or the generation of electric power;

(g) a water conveyance system operated in connection with a manufacturing or processing plant, including any facilities designed and used to treat water to meet municipal standards, but not including any improvement designed and used for

(i) the further treatment of the water supply to meet specific water standards for a manufacturing or processing operation,

(ii) water reuse,

(iii) fire protection, or

(iv) the production or transmission of a natural resource;

(h) a sewage conveyance system operated in connection with a manufacturing or processing plant, including any facilities designed and used to treat and dispose of domestic sewage, but not including any improvement designed and used for the treatment of other effluent from the manufacturing or processing plant;

(i) roads, but not including a road right of way that is held under a lease, licence or permit from the Crown in right of Alberta or Canada or from a municipality and that is used for a purpose other than as a road;

(i.1) weigh scales, inspection stations and other improvements necessary to maintain the roads referred to in clause (i) and to keep those roads and users safe, but not including a street lighting system owned by a corporation, a municipality or a corporation controlled by a municipality;

(j) property held by the Crown in right of Alberta or Canada in a municipal district, improvement district, special area or specialized municipality that

(i) is not used or actively occupied by the Crown, or

(ii) is not occupied under an interest or right granted by the Crown,

unless the property is located in a hamlet or in an urban service area as defined in an order creating a specialized municipality;

(k) any provincial park or recreation area, including any campground, day use area or administration and maintenance facility held by the Crown in right of Alberta or operated under a facility operation contract or service contract with the Crown in right of Alberta, but not including the following:

(i) a residence and the land attributable to it;

(ii) property that is the subject of a disposition under the *Provincial Parks Act* or the *Public Lands Act*;

(iii) a downhill ski hill, golf course, food concession, store or restaurant, and the land attributable to it, operated under a facility operation contract or a service contract with the Crown in right of Alberta;

(k.1) any national park held by the Crown in right of Canada, but not including a parcel of land, an improvement, or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Canada;

(l) property held by the Crown in right of Alberta or Canada and forming part of an undertaking in respect of the conservation, reclamation, rehabilitation or reforestation of land, but not including any residence or the land attributable to the residence;

(m) property used for or in connection with a forestry tower that is not accessible by road;

(n) any interest under a timber disposition under the *Forests Act* and the timber harvest or cut authorized by the disposition;

(o) any interest under a permit or authorization for the grazing of stock under the *Forests Act* or the *Forest Reserves Act*;

(p) wheel loaders, wheel trucks and haulers, crawler type shovels, hoes and dozers;

(q) linear property used exclusively for farming operations;

(r) linear property forming part of a rural gas distribution system and gas conveyance pipelines situated in a rural municipality where that linear property is owned by a municipality or a rural gas co-operative association organized under the *Rural Utilities Act*, but not including gas conveyance pipelines owned by rural gas co-operative associations,

(i) from the regulating and metering station to an industrial customer consuming more than 10 000 gigajoules of gas during any period that starts on November 1 in one year and ends on October 31 in the next year and that precedes the year in which the assessment for those pipelines is to be used for the purpose of imposing a tax under Part 10, or

(ii) that serve or deliver gas to

(A) a city, town, village, summer village or hamlet, or

(B) an urban service area as defined in an order creating a specialized municipality

that has a population of more than 500 people;

(r.1) linear property forming part of a rural gas distribution system where that gas distribution system is subject to a franchise area approval under the *Gas Distribution Act*;

(s) cairns and monuments;

(t) property in Indian reserves;

(u) property in Metis settlements;

(v) minerals;

(w) growing crops;

(x) the following improvements owned or leased by a regional airports authority created under section 5(2) of the *Regional Airports Authorities Act*:

(i) runways;

(ii) paving;

(iii) roads and sidewalks;

(iv) reservoirs;

(v) water and sewer lines;

(vi) fencing;

(vii) conveyor belts, cranes, weigh scales, loading bridges and machinery and equipment;

(viii) pole lines, transmission lines, light standards and unenclosed communications towers;

(y) farm buildings, except to the extent prescribed in the regulations;

(z) machinery and equipment, except to the extent prescribed in the regulations;

(aa) designated manufactured homes held in storage and forming part of the inventory of a manufacturer of or dealer in designated manufactured homes;

(bb) travel trailers that are

(i) not connected to any utility services provided by a public utility, and

(ii) not attached or connected to any structure;

(cc) linear property in the extended area network that is used for SuperNet purposes.

(2) In subsection (1)(r)(i), "industrial customer" means a customer that operates a factory, plant, works or industrial process related to manufacturing and processing.

(3) Despite subsection (1)(cc), where linear property referred to in that provision is used for business, the linear property is, subject to the regulations, assessable to the extent the linear property is used for business.

RSA 2000 cM-26 s298;2005 c14 s4;2015 c8 s42

Access to municipal assessment record

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive information prescribed by the regulations that is in the municipal assessor's possession at the time of the request, showing how the municipal assessor prepared the assessment of that person's property.

(2) Subject to subsection (3) and the regulations, the municipality must comply with a request under subsection (1).

(3) Where a complaint is filed under section 461 by the person assessed in respect of property, a municipality is not obligated to respond to a request by that person for information under this section in respect of an assessment of that property until the complaint has been heard and decided by an assessment review board.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

RSA 2000 cM-26 s299;2009 c29 s5;2016 c24 s30;2017 c13 s2(8)

Access to provincial assessment record

299.1(1) An assessed person may ask the provincial assessor, in the manner required by the provincial assessor, to let the assessed

person see or receive information prescribed by the regulations in the provincial assessor's possession at the time of the request, showing how the provincial assessor prepared the assessment of that person's designated industrial property.

(2) Subject to subsection (3) and the regulations, the provincial assessor must comply with a request under subsection (1).

(3) Where a complaint described in section 492(1) is filed under section 491(1) by the person assessed in respect of designated industrial property, the provincial assessor is not obligated to respond to a request by that person for information under this section in respect of an assessment of that designated industrial property until the complaint has been heard and decided by the Land and Property Rights Tribunal.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

2016 c24 s30;2017 c13 s2(8);2020 cL-2.3 s24(41)

Municipal access to provincial assessment record

299.2(1) A municipality may ask the provincial assessor, in the manner required by the provincial assessor, to let the municipality see or receive information in the provincial assessor's possession at the time of the request, showing how the provincial assessor prepared the assessment of designated industrial property in the municipality.

(2) Subject to subsection (3) and the regulations, the provincial assessor must comply with a request under subsection (1).

(3) Where a complaint described in section 492(1) is filed under section 491(1) by a municipality in respect of designated industrial property, the provincial assessor is not obligated to respond to a request by that municipality for information under this section in respect of an assessment of that designated industrial property until the complaint has been heard and decided by the Land and Property Rights Tribunal.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

(5) Information obtained by a municipality under this section must be used only for assessment purposes and must not be disclosed except at the hearing of a complaint before the Land and Property Rights Tribunal.

2016 c24 s30;2017 c13 s2(8);2020 cL-2.3 s24(41)

Access to summary of municipal assessment

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the most recent assessment of any assessed property in the municipality of which the assessed person is not the owner.

(2) For the purposes of subsection (1), a summary of the most recent assessment must include the following information that is in the municipal assessor's possession or under the municipal assessor's control at the time of the request:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property;

(b) the size and measurements of the parcel of land;

(c) the age and size or measurement of any improvements;

(d) the key attributes of any improvements to the parcel of land;

(e) the assessed value and any adjustments to the assessed value of the parcel of land;

(f) any other information prescribed or otherwise described in the regulations.

(3) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s300;2009 c29 s6;2016 c24 s31

Access to summary of provincial assessment

300.1(1) An assessed person may ask the provincial assessor, in the manner required by the provincial assessor, to let the assessed person see or receive a summary of the most recent assessment of any assessed designated industrial property of which the assessed person is not the owner or operator.

(2) For the purposes of subsection (1), a summary of the most recent assessment must include the following information that is in the provincial assessor's possession or under the provincial assessor's control at the time of the request:

(a) a description of the designated industrial property;

(b) the assessed value associated with the designated industrial property;

(c) any other information prescribed or otherwise described in the regulations.

(3) The provincial assessor must, in accordance with the regulations, comply with a request under subsection (1) if the provincial assessor is satisfied that necessary confidentiality will not be breached.

2016 c24 s31

Right to release assessment information

301(1) A municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.

(2) The provincial assessor may provide information that is in the provincial assessor's possession about assessments if the provincial assessor is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s301;2016 c24 s32

Relationship to Freedom of Information and Protection of Privacy Act

301.1 Sections 299 to 301 prevail despite the *Freedom of Information and Protection of Privacy Act*.

1994 cM-26.1 s738

Division 2
Assessment Roll

Preparation of roll

302(1) Each municipality must prepare annually, not later than February 28, an assessment roll for assessed property in the municipality other than designated industrial property.

(2) The provincial assessor must prepare annually, not later than February 28, an assessment roll for assessed designated industrial property.

(3) The provincial assessor must provide to each municipality a copy of that portion of the provincial assessment roll that relates to the designated industrial property situated in the municipality.

RSA 2000 cM-26 s302;2005 c14 s5;2016 c24 s33

Contents of roll

303 The assessment roll prepared by a municipality must show, for each assessed property, the following:

(a) a description sufficient to identify the location of the property;

(b) the name and mailing address of the assessed person;

(c) whether the property is a parcel of land, an improvement or a parcel of land and the improvements to it;

(d) if the property is an improvement, a description showing the type of improvement;

(e) the assessment;

(f) the assessment class or classes;

(f.1) repealed 2017 c13 s1(22);

(g) whether the property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 147 or 148 of the *Education Act*;

(g.1) repealed 2016 c24 s34;

(h) if the property is fully or partially exempt from taxation under Part 10, a notation of that fact;

(h.1) if a deferral of the collection of tax under section 364.1 or 364.2 is in effect for the property, a notation of that fact;

(i) any other information considered appropriate by the municipality or required by the Minister, as the case may be.

RSA 2000 cM-26 s303;2002 c19 s7;2005 c14 s6;
2012 cE-0.3 s279;2016 c24 s34;2017 c13 s1(22);
2019 c6 s3

Contents of provincial assessment roll

303.1 The provincial assessment roll must show, for each assessed designated industrial property, the following:

(a) a description of the type of designated industrial property;

(b) a description sufficient to identify the location of the designated industrial property;

(c) the name and mailing address of the assessed person;

(d) the assessment;

(e) the assessment class or classes;

(f) repealed 2017 c13 s2(9);

(g) whether the designated industrial property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 147 or 148 of the *Education Act*;

(h) if the designated industrial property is exempt from taxation under Part 10, a notation of that fact;

(h.1) if a deferral of the collection of tax under section 364.2 is in effect for the property, a notation of that fact;

(i) any other information considered appropriate by the provincial assessor.

2012 cE-0.3 s279;2016 c24 s35;2017 c13 s2(9);2019 c6 s4

Recording assessed persons

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

	Column 1 Assessed property		Column 2 Assessed person
(a)	a parcel of land, unless otherwise dealt with in this subsection;	(a)	the owner of the parcel of land;
(b)	a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;	(b)	the owner of the parcel of land;
(c)	a parcel of land, an improvement or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Alberta or Canada or a municipality;	(c)	the holder of the lease, licence or permit or, in the case of a parcel of land or a parcel of land and the improvements to it, the person who occupies the land with the consent of that holder or, if the land that was the subject of a lease, licence or permit has been sold under an agreement for sale, the purchaser under that agreement;

	Column 1 Assessed property		Column 2 Assessed person
(d)	a parcel of land forming part of the station grounds of, or of a right of way for, a railway other than railway property, or a right of way for, irrigation works as defined in the *Irrigation Districts Act* or drainage works as defined in the *Drainage Districts Act*, that is held under a lease, licence or permit from the person who operates the railway, or from the irrigation district or the board of trustees of the drainage district;	(d)	the holder of the lease, licence or permit or the person who occupies the land with the consent of that holder;
(d.1)	railway property;	(d.1)	the owner of the railway property;
(e)	a parcel of land and the improvements to it held under a lease, licence or permit from a regional airports authority, where the land and improvements are used in connection with the operation of an airport;	(e)	the holder of the lease, licence or permit or the person who occupies the land with the consent of that holder;
(f)	a parcel of land, or a part of a parcel of land, and the improvements to it held under a lease, licence or permit from the owner of the land where the land and the improvements are used for	(f)	the holder of the lease, licence or permit;

	Column 1 Assessed property		Column 2 Assessed person
	(i) drilling, treating, separating, refining or processing of natural gas, oil, coal, salt, brine or any combination, product or by-product of any of them, (ii) pipeline pumping or compressing, or (iii) working, excavating, transporting or storing any minerals in or under the land referred to in the lease, licence or permit or under land in the vicinity of that land.		
(g)	machinery and equipment used in the excavation or transportation of coal or oil sands as defined in the *Oil Sands Conservation Act*;	(g)	the owner of the machinery and equipment;
(h)	improvements to a parcel of land listed in section 298 for which no assessment is to be prepared;	(h)	the person who owns or has exclusive use of the improvements;
(i)	linear property;	(i)	the operator of the linear property;

	Column 1 Assessed property		Column 2 Assessed person
(j)	a designated manufactured home on a site in a manufactured home community and any other improvements located on the site and owned or occupied by the person occupying the designated manufactured home;	(j)	the owner of (i) the designated manufactured home, or (ii) the manufactured home community if the municipality passes a bylaw to that effect;
(k)	a designated manufactured home located on a parcel of land that is not owned by the owner of the designated manufactured home together with any other improvements located on the site that are owned or occupied by the person occupying the designated manufactured home.	(k)	the owner of the designated manufactured home if the municipality passes a bylaw to that effect.

(2) When land is occupied under the authority of a right of entry order as defined in the *Surface Rights Act* or an order made under any other Act, it is, for the purposes of subsection (1), considered to be occupied under a lease or licence from the owner of the land.

(3) A person who purchases property or in any other manner becomes liable to be shown on the assessment roll as an assessed person

(a) must provide to the provincial assessor, in the case of designated industrial property, or

(b) must provide to the municipality, in the case of property other than designated industrial property,

written notice of a mailing address to which notices under this Part and Part 10 may be sent.

(4) Despite subsection (1)(c), no individual who occupies housing accommodation under a lease, licence or permit from a management body under the *Alberta Housing Act* is to be recorded

as an assessed person if the sole purpose of the lease, licence or permit is to provide housing accommodation for that individual.

(5) Repealed 2016 c24 s36.

(6) A bylaw passed under subsection (1)(j)(ii)

(a) must be advertised,

(b) has no effect until the beginning of the year commencing at least 12 months after the bylaw is passed,

(c) must indicate the criteria used to designate the assessed person, and

(d) may apply to one or more manufactured home communities.

(7) When a bylaw is passed under subsection (1)(j)(ii), the owner of the designated manufactured home is the assessed person for the purpose of making a complaint under section 460(1) relating to the designated manufactured home.

RSA 2000 cM-26 s304;2005 c14 s7;2008 c37 s3; 2016 c24 s36;2017 c13 s1(23)

Correction of roll

305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,

(a) the assessor may correct the assessment roll for the current year only, and

(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.

(1.1) Where an assessor corrects the assessment roll in respect of an assessment about which a complaint has been made, the assessor must send to the assessment review board or the Land and Property Rights Tribunal, as the case may be, no later than the time required by the regulations,

(a) a copy of the amended assessment notice, and

(b) a statement containing the following information:

(i) the reason for which the assessment roll was corrected;

(ii) what correction was made;

(iii) how the correction affected the amount of the assessment.

(1.2) Where the assessor sends a copy of an amended assessment notice under subsection (1.1) before the date of the hearing in respect of the complaint,

(a) the complaint is cancelled,

(b) the complainant's complaint fees must be returned, and

(c) the complainant has a new right of complaint in respect of the amended assessment notice.

(2) If it is discovered that no assessment has been prepared for a property and the property is not listed in section 298, an assessment for the current year only must be prepared and an assessment notice must be prepared and sent to the assessed person.

(3) If exempt property becomes taxable or taxable property becomes exempt under section 364.1, 364.2 or 368, the assessment roll must be corrected for the current year only and an amended assessment notice must be prepared and sent to the assessed person.

(3.1) If the collection of tax on property is deferred under section 364.1 or 364.2 or a deferral under one of those sections is cancelled, the assessment roll must be corrected and an amended assessment notice must be prepared and sent to the assessed person.

(4) The date of every entry made on the assessment roll under this section or section 477 or 517 must be shown on the roll.

(5), (6) Repealed 2016 c24 s37.

RSA 2000 cM-26 s305;2002 c19 s8;2009 c29 s7;2015 c8 s43; 2016 c24 s37;2017 c13 s1(24);2019 c6 s5;2020 cL-2.3 s24(41)

Report to Minister

305.1 If an assessment roll is corrected under section 305 or changed under section 477 or 517, the municipality must, in the form and within the time prescribed by the regulations, report the correction or change, as the case may be, to the Minister.

2002 c19 s9

Severability of roll

306 The fact that any information shown on the assessment roll contains an error, omission or misdescription does not invalidate any other information on the roll or the roll itself.

1994 cM-26.1 s306

Inspection of roll

307 Any person may inspect the municipal assessment roll during regular business hours on payment of the fee set by the council.

RSA 2000 cM-26 s307;2016 c24 s38

Division 3
Assessment Notices

Assessment notices

308(1) Each municipality must annually

(a) prepare assessment notices for all assessed property, other than designated industrial property, shown on the assessment roll referred to in section 302(1), and

(b) send the assessment notices to the assessed persons in accordance with the regulations.

(2) The provincial assessor must annually

(a) prepare assessment notices for all assessed designated industrial property shown on the provincial assessment roll,

(b) send the assessment notices to the assessed persons in accordance with the regulations, and

(c) send the municipality copies of the assessment notices.

(3) Repealed 2016 c24 s39.

(4) The assessment notice and the tax notice relating to the same property may be sent together or may be combined on one notice.

(5) Repealed 2016 c24 s39.

RSA 2000 cM-26 s308;2005 c14 s8;2016 c24 s39

Notice of assessment date

308.1(1) An assessor must annually set a notice of assessment date, which must be no earlier than January 1 and no later than July 1.

(2) An assessor must set additional notice of assessment dates for amended and supplementary assessment notices, but none of those notice of assessment dates may be later than the date that tax notices are required to be sent under Part 10.

2017 c13 s1(25)

Contents of assessment notice

309(1) An assessment notice or an amended assessment notice must show the following:

(a) the same information that is required to be shown on the assessment roll;

(b) the notice of assessment date;

(c) a statement that the assessed person may file a complaint not later than the complaint deadline;

(d) information respecting filing a complaint in accordance with the regulations.

(2) An assessment notice may be in respect of a number of assessed properties if the same person is the assessed person for all of them.

RSA 2000 cM-26 s309;2009 c29 s8; 2016 c24 s40;2017 c13 s2(10)

Sending assessment notices

310(1) Subject to subsections (1.1) and (3), assessment notices must be sent no later than July 1 of each year.

(1.1) An amended assessment notice must be sent no later than the date the tax notices are required to be sent under Part 10.

(2) If the mailing address of an assessed person is unknown,

(a) a copy of the assessment notice must be sent to the mailing address of the assessed property, and

(b) if the mailing address of the property is also unknown, the assessment notice must be retained by the municipality or the provincial assessor, as the case may be, and is deemed to have been sent to the assessed person.

(3) An assessment notice must be sent at least 7 days prior to the notice of assessment date.

(4) A designated officer must certify the date on which the assessment notice is sent.

(5) The certification of the date referred to in subsection (4) is evidence that the assessment notice has been sent.

RSA 2000 cM-26 s310;2009 c29 s9; 2016 c24 s41;2017 c13 s1(26)

Publication of notice

311(1) Each municipality must publish in one issue of a newspaper having general circulation in the municipality, or in any other manner considered appropriate by the municipality, a notice that the assessment notices have been sent.

(2) All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.

(3) The provincial assessor must publish in The Alberta Gazette a notice that the assessment notices in respect of designated industrial property have been sent.

(4) All assessed persons are deemed as a result of the publication referred to in subsection (3) to have received their assessment notices in respect of designated industrial property.

RSA 2000 cM-26 s311;2005 c14 s9;2016 c24 s42

Correction of notice

312 If it is discovered that there is an error, omission or misdescription in any of the information shown on an assessment notice, an amended assessment notice may be prepared and sent to the assessed person.

1994 cM-26.1 s312

Division 4
Preparation of Supplementary Assessments

Bylaw

313(1) If a municipality wishes to require the preparation of supplementary assessments for improvements, the council must pass a supplementary assessment bylaw authorizing the assessments to be prepared for the purpose of imposing a tax under Part 10 in the same year.

(2) A bylaw under subsection (1) must refer

(a) to all improvements, or

(b) to all designated manufactured homes in the municipality.

(3) A supplementary assessment bylaw or any amendment to it applies to the year in which it is passed, only if it is passed before May 1 of that year.

(4) A supplementary assessment bylaw must not authorize assessments to be prepared by the municipal assessor for designated industrial property.

RSA 2000 cM-26 s313;2016 c24 s135;2018 c11 s13

Supplementary assessment

314(1) The municipal assessor must prepare supplementary assessments for machinery and equipment used in manufacturing

and processing if those improvements are operational in the year in which they are to be taxed under Part 10.

(2) The municipal assessor must prepare supplementary assessments for other improvements if

(a) they are completed in the year in which they are to be taxed under Part 10,

(b) they are occupied during all or any part of the year in which they are to be taxed under Part 10, or

(c) they are moved into the municipality during the year in which they are to be taxed under Part 10 and they will not be taxed in that year by another municipality.

(2.1) The municipal assessor may prepare a supplementary assessment for a designated manufactured home that is moved into the municipality during the year in which it is to be taxed under Part 10 despite that the designated manufactured home will be taxed in that year by another municipality.

(3) A supplementary assessment must reflect

(a) the value of an improvement that has not been previously assessed, or

(b) the increase in the value of an improvement since it was last assessed.

(4) Supplementary assessments must be prepared in the same manner as assessments are prepared under Division 1, but must be prorated to reflect only the number of months during which the improvement is complete, occupied, located in the municipality or in operation, including the whole of the first month in which the improvement was completed, was occupied, was moved into the municipality or began to operate.

RSA 2000 cM-26 s314;2016 c24 s43

Supplementary assessment re designated industrial property

314.1(1) Subject to the regulations, the provincial assessor must prepare supplementary assessments for new designated industrial property that becomes operational after October 31 of the year prior to the year in which the designated industrial property is to be taxed under Part 10.

(2) Supplementary assessments must reflect the valuation standard set out in the regulations for designated industrial property.

(3) Subject to the regulations, supplementary assessments for designated industrial property must be prorated to reflect only the number of months, including the whole of the first month, during which the property is operational.

(4) Despite subsections (1) to (3),

(a) a supplementary assessment must be prepared only for designated industrial property that has not been previously assessed, and only when it becomes operational;

(b) a supplementary assessment must not be prepared in respect of designated industrial property that ceases to operate during the tax year.

2016 c24 s44

Supplementary assessment roll

315(1) Before the end of the year in which supplementary assessments are prepared, the municipality must prepare a supplementary assessment roll.

(2) Before the end of the year in which supplementary assessments are prepared, the provincial assessor must prepare a supplementary assessment roll for designated industrial property.

(3) A supplementary assessment roll must show, for each assessed improvement or designated industrial property, the following:

(a) the same information that is required to be shown on the assessment roll;

(b) in the case of an improvement, the date that the improvement

(i) was completed, occupied or moved into the municipality, or

(ii) became operational.

(4) Sections 304, 305, 306 and 307 apply in respect of a supplementary assessment roll.

(5) The provincial assessor must provide a copy of the supplementary assessment roll for designated industrial property to the municipality.

RSA 2000 cM-26 s315;2016 c24 s45

Supplementary assessment notices

316(1) Before the end of the year in which supplementary assessments are prepared other than for designated industrial property, the municipality must

(a) prepare a supplementary assessment notice for every assessed improvement shown on the supplementary assessment roll referred to in section 315(1), and

(b) send the supplementary assessment notices to the assessed persons.

(2) Before the end of the year in which supplementary assessments for designated industrial property are prepared, the provincial assessor must

(a) prepare supplementary assessment notices for all assessed designated industrial property shown on the supplementary assessment roll referred to in section 315(2),

(b) send the supplementary assessment notices to the assessed persons in accordance with the regulations, and

(c) send the municipality copies of the supplementary assessment notices.

RSA 2000 cM-26 s316;2009 c29 s10;2016 c24 s45

Contents of supplementary assessment notice

316.1(1) A supplementary assessment notice must show, for each assessed improvement, the following:

(a) the same information that is required to be shown on the supplementary assessment roll;

(b) the notice of assessment date;

(c) a statement that the assessed person may file a complaint not later than the complaint deadline;

(d) information respecting filing a complaint in accordance with the regulations.

(2) Sections 308(2), 309(2), 310(1.1) and (3) and 312 apply in respect of supplementary assessment notices.

2016 c24 s45;2017 c13 s2(11)

Division 5
Equalized Assessments

Definition

317 In this Division, "equalized assessment" means an assessment that is prepared by the Minister in accordance with this Division for an entire municipality and reflects

(a) assessments of property in the municipality that is taxable under Part 10,

(b) repealed 2016 c24 s46,

(c) assessments of property in the municipality in respect of which a grant may be paid by the Crown in right of Canada under the *Payments in Lieu of Taxes Act* (Canada),

(d) assessments of property in the municipality made taxable or exempt as a result of a council passing a bylaw under Part 10, except any property made taxable under section 363(1)(d), and

(e) assessments of property in the municipality that is the subject of a tax agreement under section 333.1, 360 or 364.1,

from the year preceding the year in which the equalized assessment is effective.

RSA 2000 cM-26 s317;2015 c8 s44;2016 c24 s46

Supplementary assessments

317.1 Despite section 317, supplementary assessments prepared under a supplementary assessment bylaw under section 313 must not be included in the equalized assessment for a municipality.

1995 c24 s44

Preparation of equalized assessments

318 The Minister must prepare annually, in accordance with the regulations, an equalized assessment for each municipality.

1994 cM-26.1 s318

Duty to provide information

319(1) Each municipality must provide to the Minister annually, not later than the date required by regulations made under section 322(1) or guidelines made under section 322(2), a return containing the information requested by the Minister in the form required by the Minister.

(2) If a municipality does not provide the information requested by the Minister, the Minister must prepare the equalized assessment using whatever information is available about the municipality.

RSA 2000 cM-26 s319;2015 c8 s45

Sending equalized assessments to municipalities

320 The Minister must send to each municipality annually, not later than November 1, a report of all the equalized assessments prepared.

1994 cM-26.1 s320

Appeal of equalized assessment

321 A municipality may make a complaint regarding the amount of an equalized assessment to the Land and Property Rights Tribunal not later than 30 days from the date the Minister sends the municipality the report described in section 320.

RSA 2000 cM-26 s321;2002 c19 s12;2009 c29 s11;2015 c8 s46; 2020 cL-2.3 s24(41)

Division 6
General Powers of the Minister Relating to Assessments and Equalized Assessments

Regulations

322(1) The Minister may make regulations

(a) respecting qualifications to be met by persons authorized to carry out the duties and responsibilities of an assessor under this Act;

(b) defining "electric power systems", "facilities", "farming operations", "farm building", "machinery and equipment", "operator", "pipelines", "railway property", "street lighting systems", "telecommunication systems" and "wells";

(b.01) respecting when property is to be considered operational for the purposes of one or more provisions of this Part;

(b.1) defining "extended area network" and "SuperNet";

(c) respecting the extent to which farm buildings and machinery and equipment may be assessed under section 298;

(c.1) respecting the assessment of linear property referred to in section 298(3), including, without limitation, respecting information to be provided, and by whom it is to be provided, for preparing the assessment;

(d) establishing valuation standards for property;

(d.1) respecting the delegation of the powers, duties and functions of the provincial assessor under section 284.1 or of a municipal assessor under section 284.2;

(d.2) designating major plants and other property as designated industrial property;

(d.3) respecting designated industrial property, including, without limitation, regulations respecting the specifications and characteristics of designated industrial property;

(e) respecting processes and procedures for preparing assessments;

(e.1) respecting the manner in which an assessor must inform an owner or occupier of any property of the purpose for which information is being collected under sections 294 and 295;

(e.11) respecting the providing of information by the provincial assessor to a municipality under section 299.2, including, without limitation, regulations

(i) requiring the provincial assessor and the municipality to enter into a confidentiality agreement with respect to that information, and

(ii) respecting the terms and conditions of a confidentiality agreement;

(e.2) respecting assessment rolls and assessment notices including, without limitation, regulations

(i) respecting the information to be shown on an assessment roll and on an assessment notice;

(ii) providing for the method of determining the assessed person for the purposes of section 304(1);

(iii) respecting the sending of assessment notices;

(f) respecting the allowance of depreciation on machinery and equipment;

(g) prescribing standards to be met by assessors in the preparation of assessments;

(g.01) prescribing sub-classes for the purposes of section 297(2.1);

(g.1) prescribing or otherwise describing information for the purposes of sections 299(1), 299.1(1), 300(2)(f) and 300.1(2)(c);

(g.2) respecting procedures and time-lines to be followed by a municipality in dealing with a request for information under section 299 or a request for a summary of an assessment under section 300;

(g.3) respecting the imposition of penalties or other sanctions against a municipality for failing to comply with a request for information under section 299 or a request for a summary of an assessment under section 300;

(g.4) respecting the dates by which returns referred to in section 319(1) must be provided to the Minister;

(h) respecting equalized assessments;

(h.1) respecting the audit of any matters relating to assessments;

(h.2) respecting the providing of information to an assessor under section 295(1);

(h.3) respecting procedures and time-lines to be followed by a provincial assessor in dealing with a request for information under section 299.1 or 299.2 or a request for a summary of an assessment under section 300.1;

(h.4) respecting supplementary assessments;

(h.5) defining any term or expression that is used but not defined in this Part;

(i) respecting any other matter considered necessary to carry out the intent of this Act.

(2) Where the Minister considers it advisable to do so, the Minister may by order establish guidelines respecting any matter for which the Minister may make a regulation under subsection (1).

(3) A guideline established under subsection (2) is a regulation for the purposes of this Act, but is exempted from the application of the *Regulations Act*.

(4) The Minister must

(a) publish in The Alberta Gazette a notice of any guideline established under subsection (2) and information about

where copies of the guideline may be obtained or are available to the public;

(b) ensure that any guideline established under subsection (2) is published in a form and manner that the Minister considers appropriate.

(5) Subsection (4) applies only to guidelines established under subsection (2) on or after July 1, 2007.

(6) In designating by regulation a major plant as designated industrial property, the Minister may include as a major plant any parcel of land, improvements or other property.

(7) The inclusion of property pursuant to subsection (6) is not invalid even if the property is used for residential or agricultural purposes, or is vacant.

(8) If an application is made to a court in respect of the validity of a regulation designating a major plant as designated industrial property,

(a) the application shall be limited to whether a specific parcel of land, improvement or other property for which the applicant is the assessed person is or is not all or a part of a major plant;

(b) evidence of the inclusion of property pursuant to subsection (6) or of property not designated as a major plant pursuant to subsection (6) is not admissible to demonstrate the invalidity of the regulation or any part of it.

RSA 2000 cM-26 s322;2002 c19 s14;2005 c14 s10;
2007 c16 s2;2009 c29 s12;2015 c8 s47;
2016 c24 s47;2017 c13 ss1(27), 2(12)

Validation of Minister's Guidelines

322.1(1) In this section,

(a) "Minister's Guidelines" means

(i) the following guidelines referred to in the *Matters Relating to Assessment and Taxation Regulation* (AR 220/2004):

(A) Alberta Assessment Quality Minister's Guidelines;

(B) Alberta Farm Land Assessment Minister's Guidelines;

(C) Alberta Linear Property Assessment Minister's Guidelines;

(D) Alberta Machinery and Equipment Assessment Minister's Guidelines;

(E) Alberta Railway Assessment Minister's Guidelines,

(ii) any previous versions of the guidelines named in subclause (i) that are referred to in the previous regulations, and

(iii) the 2005 Construction Cost Reporting Guide established by the Minister and any previous versions of the Construction Cost Reporting Guide established by the Minister,

and includes any manuals, guides and handbooks referred to or incorporated into any of the guidelines or guides referred to in subclauses (i) to (iii);

(b) "previous regulations" means

(i) the *Matters Relating to Assessment and Taxation Regulation* (AR 289/99), and

(ii) the *Standards of Assessment Regulation* (AR 365/94).

(2) The Minister's Guidelines are declared valid as of the dates on which they were established, and no assessment prepared pursuant to the Minister's Guidelines shall be challenged on the basis of the validity of the Minister's Guidelines

(a) in any existing or future proceeding under this or any other Act, or

(b) in any existing or future action, matter or proceeding before a court.

(3) The Minister's Guidelines are deemed to be guidelines established under section 322(2).

2007 c16 s3

Minister's power to prepare assessments

323 If it appears to the Minister that in any year a council will be unable to carry out its obligation under section 285, the Minister may cause any or all of the assessments in the municipality to be prepared and the council is responsible for the costs.

1994 cM-26.1 s323

Minister's power to quash assessments

324(1) If, after an inspection under section 571 or an audit under the regulations is completed, the Minister is of the opinion that an assessment

(a) has not been prepared in accordance with the rules and procedures set out in this Part and the regulations,

(b) is not fair and equitable, taking into consideration assessments of similar property, or

(c) does not meet the standards required by the regulations,

the Minister may quash the assessment and direct that a new assessment be prepared.

(2) On quashing an assessment, the Minister must provide directions as to the manner and times in which

(a) the new assessment is to be prepared,

(a.1) a new notice of assessment date is to be established,

(b) the new assessment is to be placed on the assessment roll, and

(c) amended assessment notices are to be sent to the assessed persons.

(3) The Minister must specify the effective date of a new assessment prepared under this section.

RSA 2000 cM-26 s324;2002 c19 s15;2017 c13 s1(28)

Minister's power to alter an equalized assessment

325 Despite anything in this Act, the Minister may adjust an equalized assessment at any time.

Continuous bylaws — assessment

325.1 Bylaws enacted under section 297 or 313 remain in force after the year in which they are enacted and apply in respect of subsequent years until they are repealed.

2019 c22 s10(10)

Part 10
Taxation

Division 1
General Provisions

Definitions

326(1) In this Part,

(a) "requisition" means

(i) repealed 1995 c24 s45,

(ii) any part of the amount required to be paid into the Alberta School Foundation Fund under section 167 of the *Education Act* that is raised by imposing a rate referred to in section 167 of the *Education Act*,

(iii) any part of the requisition of school boards under Part 6, Division 3 of the *Education Act*,

(iv) repealed 2008 cE-6.6 s55,

(v) the amount required to be paid to a management body under section 7 of the *Alberta Housing Act*, or

(vi) the amount required to recover the costs incurred for matters related to

(A) the assessment of designated industrial property, and

(B) any other matters related to the provincial assessor's operations;

(b) "student dormitory" means a housing unit

(i) that is used in connection with a purpose referred to in section 362(1)(c), (d) or (e) or with a college incorporated under a private Act of the Legislature, and

(ii) the residents of which are students of a facility used in connection with a purpose referred to in section 362(1)(c), (d) or (e) or with a college incorporated under a private Act of the Legislature,

but does not include a single family residence and the land attributable to that residence;

(c) "tax arrears" means taxes that remain unpaid after December 31 of the year in which they are imposed.

(2) For purposes of Divisions 3 and 4, "business" does not include a constituency office of a Member of the Legislative Assembly or any other office used by one or more Members of the Legislative Assembly to carry out their duties and functions as Members.

RSA 2000 cM-26 s326;2008 cE-6.6 s55;2012 cE-0.3 s279; 2015 c8 s48;2016 c24 s48

Tax roll

327(1) Each municipality must prepare a tax roll annually.

(2) The tax roll may consist of one roll for all taxes imposed under this Part or a separate roll for each tax imposed under this Part.

(3) The tax roll for property tax may be a continuation of the assessment roll prepared under Part 9 or may be separate from the assessment roll.

(4) The fact that any information shown on the tax roll contains an error, omission or misdescription does not invalidate any other information on the roll or the roll itself.

1994 cM-26.1 s327

Duty to provide information

328 Taxpayers must provide, on request by the municipality, any information necessary for the municipality to prepare its tax roll.

1994 cM-26.1 s328

Contents of tax roll

329 The tax roll must show, for each taxable property or business, the following:

(a) a description sufficient to identify the location of the property or business;

(b) the name and mailing address of the taxpayer;

(c) the assessment;

(d) the name, tax rate and amount of each tax imposed in respect of the property or business;

(e) the total amount of all taxes imposed in respect of the property or business;

(f) the amount of tax arrears, if any;

(g) if any property in the municipality is the subject of an agreement between the taxpayer and the municipality under section 347(1) relating to tax arrears, a notation of that fact;

(g.1) if any property in the municipality is the subject of a bylaw or agreement under section 364.1 to defer the collection of tax, a notation of the amount deferred and the taxation year or years to which the amount relates;

(g.2) if any property in the municipality is the subject of a deferral granted under section 364.2, a notation of the amount deferred and the taxation year or years to which the amount relates;

(h) any other information considered appropriate by the municipality.

RSA 2000 cM-26 s329;2016 c24 s49;2019 c6 s6

Correction of roll

330(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the tax roll, the municipality may correct the tax roll for the current year only and on correcting the roll, it must prepare and send an amended tax notice to the taxpayer.

(2) If it is discovered that no tax has been imposed on a taxable property or business, the municipality may impose the tax for the current year only and prepare and send a tax notice to the taxpayer.

(3) If exempt property becomes taxable or taxable property becomes exempt under section 368, the municipality must correct the tax roll and on correcting the roll, it must send an amended tax notice to the taxpayer.

(4) The date of every entry made on the tax roll under this section must be shown on the roll.

1994 cM-26.1 s330

Person liable to pay taxes

331(1) Subject to subsection (3) and the regulations, the person liable to pay a property tax imposed under this Part is the person who

(a) at the time the assessment is prepared under Part 9, is the assessed person, or

(b) subsequently becomes the assessed person.

(2) The person liable to pay any other tax imposed under this Part is the person who

(a) at the time the tax is imposed, is liable in accordance with this Part or a regulation made under this Part to pay the tax, or

(b) subsequently becomes liable in accordance with this Part or a regulation made under this Part to pay it.

(3) If a tax on linear property or on machinery and equipment remains unpaid after the due date shown on the tax notice, the owner of the linear property or the machinery and equipment becomes liable, jointly and severally with the person who is the assessed person in respect of the linear property or machinery and equipment, to pay the tax debt.

RSA 2000 cM-26 s331;2005 c14 s11;2021 c22 s3

Taxes imposed on January 1

332 Taxes imposed under this Part, other than a supplementary property tax and a supplementary business tax, are deemed to have been imposed on January 1.

1994 cM-26.1 s332

Tax notices

333(1) Each municipality must annually

(a) prepare tax notices for all taxable property and businesses shown on the tax roll of the municipality, and

(b) send the tax notices to the taxpayers.

(2) A tax notice may include a number of taxable properties and taxable businesses if the same person is the taxpayer for all of them.

(3) A tax notice may consist of one notice for all taxes imposed under this Part, a separate notice for each tax or several notices showing one or more taxes.

(4) The assessment notice and the tax notice relating to the same property may be sent together or may be combined on one notice.

1994 cM-26.1 s333

Tax agreements

333.1(1) The council of a municipality may make a tax agreement with an assessed person who occupies or manages

(a) the municipality's property, including property under the direction, control and management of

(i) the municipality, or

(ii) a non-profit organization that holds the property on behalf of the municipality,

or

(b) property for the purpose of operating a professional sports franchise.

(2) A tax agreement may provide that, instead of paying the taxes imposed under this Part and any other fees or charges payable to the municipality, the assessed person may make an annual payment to the municipality calculated under the agreement.

(3) A tax agreement under this section must provide that the municipality accepts payment of the amount calculated under the agreement in place of the taxes and other fees or charges specified in the agreement.

1998 c24 s24

Contents of tax notice

334(1) A tax notice must show the following:

(a) the same information that is required to be shown on the tax roll;

(b) the date the tax notice is sent to the taxpayer;

(c) the amount of the requisitions, any one or more of which may be shown separately or as part of a combined total;

(d) except when the tax is a property tax, the date by which a complaint must be made, which date must not be less than 30 days after the tax notice is sent to the taxpayer;

(e) the name and address of the designated officer with whom a complaint must be filed;

(f) the dates on which penalties may be imposed if the taxes are not paid;

(f.1) information on how to request a receipt for taxes paid;

(g) any other information considered appropriate by the municipality.

(2) A tax notice may show

(a) one tax rate that combines all of the tax rates set by the property tax bylaw, or

(b) each of the tax rates set by the property tax bylaw.

(3) Despite subsection (2), a tax notice must show, separately from all other tax rates shown on the notice, the tax rates set by the

property tax bylaw to raise the revenue to pay the requisitions referred to in section 326(1)(a)(ii) or (vi).

RSA 2000 cM-26 s334;2016 c24 s50;2017 c13 s1(29)

Sending tax notices

335(1) The tax notices must be sent before the end of the year in which the taxes are imposed.

(2) If the mailing address of a taxpayer is unknown

(a) a copy of the tax notice must be sent to the mailing address of the taxable property or business, and

(b) if the mailing address of the taxable property or business is also unknown, the tax notice must be retained by the municipality and is deemed to have been sent to the taxpayer.

1994 cM-26.1 s335

Certification of date of sending tax notice

336(1) A designated officer must certify the date the tax notices are sent under section 335.

(2) The certification of the date referred to in subsection (1) is evidence that the tax notices have been sent and that the taxes have been imposed.

1994 cM-26.1 s336

Deemed receipt of tax notice

337 A tax notice is deemed to have been received 7 days after it is sent.

1994 cM-26.1 s337

Correction of tax notice

338 If it is discovered that there is an error, omission or misdescription in any of the information shown on a tax notice, the municipality may prepare and send an amended tax notice to the taxpayer.

1994 cM-26.1 s338

Incentives

339 A council may by bylaw provide incentives for payment of taxes by the dates set out in the bylaw.

1994 cM-26.1 s339

Instalments

340(1) A council may by bylaw permit taxes to be paid by instalments, at the option of the taxpayer.

(2) A person who wishes to pay taxes by instalments must make an agreement with the council authorizing that method of payment.

(3) When an agreement under subsection (2) is made, the tax notice, or a separate notice enclosed with the tax notice, must state

(a) the amount and due dates of the instalments to be paid in the remainder of the year, and

(b) what happens if an instalment is not paid.

1994 cM-26.1 s340

Deemed receipt of tax payment

341 A tax payment that is sent by mail to a municipality is deemed to have been received by the municipality on the date of the postmark stamped on the envelope.

1994 cM-26.1 s341

Receipt for payment of taxes

342 When taxes are paid to a municipality and the person who paid the tax requests a receipt, the municipality must provide a receipt.

RSA 2000 cM-26 s342;2017 c13 s1(30);2021 c22 s4

Application of tax payment

343(1) A tax payment must be applied first to tax arrears.

(2) If a person does not indicate to which taxable property or business a tax payment is to be applied, a designated officer must decide to which taxable property or business owned by the taxpayer the payment is to be applied.

1994 cM-26.1 s343

Penalty for non-payment in current year

344(1) A council may by bylaw impose penalties in the year in which a tax is imposed if the tax remains unpaid after the date shown on the tax notice.

(2) A penalty under this section is imposed at the rate set out in the bylaw.

(3) The penalty must not be imposed sooner than 30 days after the tax notice is sent out.

1994 cM-26.1 s344

Penalty for non-payment in other years

345(1) A council may by bylaw impose penalties in any year following the year in which a tax is imposed if the tax remains unpaid after December 31 of the year in which it is imposed.

(2) A penalty under this section is imposed at the rate set out in the bylaw.

(3) The penalty must not be imposed sooner than January 1 of the year following the year in which the tax was imposed or any later date specified in the bylaw.

1994 cM-26.1 s345

Penalties

346 A penalty imposed under section 344 or 345 is part of the tax in respect of which it is imposed.

1994 cM-26.1 s346

Cancellation, reduction, refund or deferral of taxes

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

(a) cancel or reduce tax arrears;

(b) cancel or refund all or part of a tax;

(c) defer the collection of a tax.

(2) A council may phase in a tax increase or decrease resulting from the preparation of any new assessment.

1994 cM-26.1 s347

Tax becomes debt to municipality

348 Taxes due to a municipality

(a) are an amount owing to the municipality,

(b) are recoverable as a debt due to the municipality,

(c) take priority over the claims of every person except the Crown, and

(d) are a special lien

(i) on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy, or

(ii) on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax

imposed in respect of a designated manufactured home in a manufactured home community.

RSA 2000 cM-26 s348;2005 c14 s12;2018 c6 s5

Special priority lien for tax debt on linear property or machinery and equipment

348.1(1) In this section,

(a) "assessable", in respect of property or improvements, means property or improvements that have been or are subject to being assessed under Part 9;

(b) "debtor" means a person who owes a debt to a municipality for tax on linear property or on machinery and equipment.

(2) Notwithstanding section 348(c) and (d), taxes due to a municipality on linear property or on machinery and equipment

(a) take priority over the claims of every person except the Crown, and

(b) are a special lien on all the debtor's assessable property located within the municipality, including any assessable improvements to that property.

(3) A lien referred to in subsection (2)(b)

(a) arises when the debtor fails to satisfy the debt when due, and

(b) expires on full satisfaction of the debt.

(4) This section applies to a debt for taxes referred to in subsection (2) regardless of whether the debt became due before or after the coming into force of this section.

2021 c22 s5

Fire insurance proceeds

349(1) Taxes that have been imposed in respect of improvements are a first charge on any money payable under a fire insurance policy for loss or damage to those improvements.

(2) Taxes that have been imposed in respect of a business are a first charge on any money payable under a fire insurance policy for loss or damage to any personal property

(a) that is located on the premises occupied for the purposes of the business, and

(b) that is used in connection with the business and belongs to the taxpayer.

1994 cM-26.1 s349

Tax certificates

350 On request, a designated officer must issue a tax certificate showing

(a) the amount of taxes imposed in the year in respect of the property or business specified on the certificate and the amount of taxes owing,

(b) the total amount of tax arrears, if any, and

(c) the total amount of tax, if any, in respect of which collection is deferred under this Part.

RSA 2000 cM-26 s350;2016 c24 s51

Non-taxable property

351(1) The following are exempt from taxation under this Part:

(a) property listed in section 298;

(b) any property or business in respect of which an exemption from assessment or taxation, or both, was granted before January 1, 1995

(i) by a private Act, or

(ii) by an order of the Lieutenant Governor in Council based on an order of the Local Authorities Board.

(2) A council may by bylaw cancel an exemption referred to in subsection (1)(b), with respect to any property or business.

(3) A council proposing to pass a bylaw under subsection (2) must notify the person or group that will be affected of the proposed bylaw.

(4) A bylaw under subsection (2) has no effect until the expiration of one year after it is passed.

(5) A copy of a bylaw under subsection (2) must be sent to the Minister and if the bylaw amends a private Act the Minister must send a copy to the clerk of the Legislative Assembly.

1994 cM-26.1 s351

Limitation on time for starting proceedings

352(1) An action, suit or other proceedings for the return by a municipality of any money paid to the municipality, whether under

protest or otherwise, as a result of a claim by the municipality, whether valid or invalid, for payment of taxes or tax arrears must be started within 6 months after the payment of the money to the municipality.

(2) If no action, suit or other proceeding is started within the period referred to in subsection (1), the payment made to the municipality is deemed to have been a voluntary payment.

1994 cM-26.1 s352

Division 2
Property Tax

Property tax bylaw

353(1) Each council must pass a property tax bylaw annually.

(2) The property tax bylaw authorizes the council to impose a tax in respect of property in the municipality to raise revenue to be used toward the payment of

(a) the expenditures and transfers set out in the budget of the municipality, and

(b) the requisitions.

(3) The tax must not be imposed in respect of property

(a) that is exempt under section 351, 361 or 362, or

(b) that is exempt under section 363 or 364, unless the bylaw passed under that section makes the property taxable.

1994 cM-26.1 s353

Tax rates

354(1) The property tax bylaw must set and show separately all of the tax rates that must be imposed under this Division to raise the revenue required under section 353(2).

(2) A tax rate must be set for each assessment class or sub-class referred to in section 297.

(3) The tax rate may be different for each assessment class or sub-class referred to in section 297.

(3.1) Despite subsection (3), the tax rate for the class referred to in section 297(1)(d) and the tax rate for the sub-classes referred to in section 297(2.1) must be set in accordance with the regulations.

(4) The tax rates set by the property tax bylaw must not be amended after the municipality sends the tax notices to the taxpayers unless subsection (5) applies.

(5) If after sending out the tax notices the municipality discovers an error or omission that relates to the tax rates set by the property tax bylaw, the municipality may

(a) amend the property tax bylaw to the extent necessary to correct the error or omission, and

(b) send out amended tax notices, if required as a result of the corrections to the property tax bylaw.

(6) A municipality must, within 30 days after passing a property tax bylaw amendment under subsection (5), provide the Minister with a copy of the amended bylaw.

RSA 2000 cM-26 s354;2016 c24 s52;2019 c22 s10(11)

Calculating tax rates

355 A tax rate is calculated by dividing the amount of revenue required by the total assessment of all property on which that tax rate is to be imposed.

1994 cM-26.1 s355;1995 c24 s47

Calculating amount of tax

356 The amount of tax to be imposed under this Division in respect of a property is calculated by multiplying the assessment for the property by the tax rate to be imposed on that property.

1994 cM-26.1 s356

Special provision of property tax bylaw

357(1) Despite anything in this Division, the property tax bylaw may specify a minimum amount payable as property tax.

(1.1) Despite section 353, a council may pass a bylaw separate from the property tax bylaw that provides for compulsory tax instalment payments for designated manufactured homes.

(2) If the property tax bylaw specifies a minimum amount payable as property tax, the tax notice must indicate the tax rates set by the property tax bylaw that raise the revenue required to pay the requisition referred to in section 326(1)(a)(ii).

RSA 2000 cM-26 s357;2016 c24 s53

Tax rate for residential property

357.1 The tax rate to be imposed by a municipality on residential property or on any sub-class of residential property must be greater than zero.

2016 c24 s54

358 Repealed 2016 c24 s55.

Maximum tax ratio

358.1(1) In this section,

(a) "non-conforming municipality" means a municipality that has a tax ratio greater than 5:1 as calculated using the property tax rates set out in its most recently enacted property tax bylaw as at May 31, 2016;

(b) "non-residential" means non-residential as defined in section 297(4);

(c) "tax ratio", in respect of a municipality, means the ratio of the highest non-residential tax rate set out in the municipality's property tax bylaw for a year to the lowest residential tax rate set out in the municipality's property tax bylaw for the same year.

(2) No municipality other than a non-conforming municipality shall in any year have a tax ratio greater than 5:1.

(3) A non-conforming municipality shall not in any year have a tax ratio that is greater than the tax ratio as calculated using the property tax rates set out in its most recently enacted property tax bylaw as at May 31, 2016.

(3.1) If in any year after 2016 a non-conforming municipality has a tax ratio that is greater than 5:1, the non-conforming municipality shall reduce its tax ratio for subsequent years in accordance with the regulations.

(4) If in any year after 2016 a non-conforming municipality has a tax ratio that is less than the tax ratio it had in the previous year but greater than 5:1, the non-conforming municipality shall not in any subsequent year have a tax ratio that is greater than that new tax ratio.

(5) If in any year after 2016 a non-conforming municipality has a tax ratio that is equal to or less than 5:1, the non-conforming municipality shall not in any subsequent year have a tax ratio greater than 5:1.

(6) Where an order to annex land to a municipality contains provisions respecting the tax rate or rates that apply to the annexed land, the tax rate or rates shall not be considered for the purposes of determining the municipality's tax ratio.

(7) For the purposes of this section,

(a) the tax set out in a municipality's property tax bylaw to raise revenue to be used toward the payment of

(i) the expenditures and transfers set out in the budget of the municipality, and

(ii) the requisitions,

shall be considered to be separate tax rates, and

(b) the tax rate for the requisitions shall not be considered for the purposes of determining the municipality's tax ratio.

(8) The Lieutenant Governor in Council may, for the purposes of subsection (3.1), make regulations establishing one or more ranges of tax ratios that must be reduced to 5:1 within a specified period.

2016 c24 s56;2017 c13 s1(31)

Requisitions

359(1) When a requisition applies to only part of a municipality, the revenue needed to pay it must be raised by imposing a tax under this Division in respect of property in that part of the municipality.

(2) In calculating the tax rate required to raise sufficient revenue to pay the requisitions, a municipality may include an allowance for non-collection of taxes at a rate not exceeding the actual rate of taxes uncollected from the previous year's tax levy as determined at the end of that year.

(3) If in any year the property tax imposed to pay the requisitions results in too much or too little revenue being raised for that purpose, the council must accordingly reduce or increase the amount of revenue to be raised for that purpose in the next year.

1994 cM-26.1 s359;1995 c24 s49

Alberta School Foundation Fund requisitions

359.1(1) In this section, "Alberta School Foundation Fund requisition" means a requisition referred to in section 326(1)(a)(ii).

(2) In 1995 and subsequent years, when an Alberta School Foundation Fund requisition applies only to

(a) one of the assessment classes referred to in section 297,

(b) a combination of the assessment classes referred to in section 297, or

(c) designated industrial property,

the revenue needed to pay it must be raised by imposing a tax under this Division only in respect of property to which that one assessment class has been assigned, property to which any assessment class in that combination has been assigned or designated industrial property, as the case may be.

(3) Despite subsection (2), if a council has passed bylaws under sections 364(1.1) and 371, the council may apply an appropriate amount received under the business tax to the payment of the Alberta School Foundation Fund requisition on the non-residential assessment class referred to in section 297 to offset the increase in the tax rate applicable to that class that would otherwise result.

(4) The tax rate required to raise the revenue needed to pay the Alberta School Foundation Fund requisition

(a) must be the same within the assessment class to which the requisition applies if it applies to only one class,

(b) must be the same for all assessment classes that are to be combined if the requisition applies to a combination of assessment classes, and

(c) must be the same for all designated industrial property.

(5), **(6)** Repealed by Revision.

(7) In calculating the tax rate required to raise sufficient revenue to pay an Alberta School Foundation Fund requisition, a municipality

(a) must not include the allowances referred to in section 359(2),

(b) may impose a separate tax to raise the revenue to pay for the allowances referred to in section 359(2), and

(c) may include the amounts referred to in section 359(3).

(8) Section 354 does not apply to tax rates required to raise revenue needed to pay an Alberta School Foundation Fund requisition.

RSA 2000 cM-26 s359.1;2016 c24 s135;2017 c13 s1(32)

School board requisitions

359.2(1) In this section, "school board requisition" means a requisition referred to in section 326(1)(a)(iii).

(2) In 1995 and subsequent years, when a school board requisition applies only to

(a) one of the assessment classes referred to in section 297,

(b) a combination of the assessment classes referred to in section 297, or

(c) designated industrial property,

the revenue needed to pay it must be raised by imposing a tax under this Division only in respect of property to which that one assessment class has been assigned, property to which any assessment class in that combination has been assigned or designated industrial property, as the case may be.

(3) Despite subsection (2), if a council has passed bylaws under sections 364(1.1) and 371, the council may apply an appropriate amount received under the business tax to the payment of the school board requisition on the non-residential assessment class referred to in section 297 to offset the increase in the tax rate applicable to that class that would otherwise result.

(4) The tax rate required to raise the revenue needed to pay the school board requisitions

(a) must be the same within the assessment class to which the requisition applies if it applies to only one class,

(b) must be the same for all assessment classes that are to be combined if the requisition applies to a combination of assessment classes, and

(c) must be the same for all designated industrial property.

(5), **(6)** Repealed by Revision.

(7) In calculating the tax rate required to raise sufficient revenue to pay a school board requisition, a municipality

(a) may include the allowances referred to in section 359(2), and

(b) may include the amounts referred to in section 359(3).

(8) Section 354 does not apply to tax rates required to raise revenue needed to pay school board requisitions.

RSA 2000 cM-26 s359.2;2016 c24 s135;2017 c13 s1(33)

Designated industrial property assessment requisitions

359.3(1) In this section, "designated industrial property requisition" means a requisition referred to in section 326(1)(a)(vi).

(2) The Minister must set the property tax rate for the designated industrial property requisition.

(3) The property tax rate for the designated industrial property requisition must be the same for all designated industrial property.

2016 c24 s57

Cancellation, reduction, refund or deferral of taxes

359.4 If the Minister considers it equitable to do so, the Minister may, generally or with respect to a particular municipality, cancel or reduce the amount of a requisition payable under section 326(1)(a)(vi).

2016 c24 s57

Tax agreement

360(1) In this section, "electric distribution system", "electricity" and "transmission system" have the meanings given to them in the *Electric Utilities Act*.

(1.1) A council may make a tax agreement with an operator of a public utility or of linear property who occupies the municipality's property, including property under the direction, control and management of the municipality.

(2) Instead of paying the tax imposed under this Division and any other fees or charges payable to the municipality, the tax agreement may provide for an annual payment to the municipality by the operator calculated as provided in the agreement.

(3) A tax agreement must provide that the municipality accepts payment of the amount calculated under the agreement in place of the tax and other fees or charges specified in the agreement.

(4) If a tax agreement with the operator of a public utility that supplies fuel provides for the calculation of the payment as a percentage of the gross revenue of the public utility, that gross revenue is the gross revenue of the public utility for the year.

(4.01) No tax agreement with an operator referred to in subsection (4) may provide for the use, in calculating the whole or part of the payment, of a price per gigajoule of fuel that varies periodically according to the market price for fuel.

(4.1) If a tax agreement with the operator of a public utility that transports electricity by way of a transmission system, an electric distribution system or both provides for the calculation of the payment as a percentage of the gross revenue of the public utility,

that gross revenue is the gross revenue received by the public utility under its distribution tariff for the year.

(4.2) No tax agreement with an operator referred to in subsection (4.1) may provide for the use, in calculating the whole or part of the payment, of a price per kilowatt hour of electricity that varies periodically according to the market price for electricity.

(5) An agreement under this section with an operator who is subject to regulation by the Alberta Utilities Commission is of no effect unless it is approved by the Alberta Utilities Commission.

(6) An agreement made under this section before the coming into force of this subsection, and that continues in effect after the coming into force of this subsection, with an operator referred to in subsection (4) or (4.1) who was not, before the coming into force of this subsection, subject to regulation by the Alberta Utilities Commission must be submitted to the Alberta Utilities Commission for approval by the Alberta Utilities Commission.

RSA 2000 cM-26 s360; 2007 cA-37.2 s82(17);2024 c8 s5

Exemptions based on use of property

361 The following are exempt from taxation under this Division:

(a) repealed 1996 c30 s27;

(b) residences and farm buildings to the extent prescribed in the regulations;

(c) environmental reserves, conservation reserves, municipal reserves, school reserves, municipal and school reserves and other undeveloped property reserved for public utilities.

RSA 2000 cM-26 s361;2017 c13 s1(34)

Exemptions for Government, churches and other bodies

362(1) The following are exempt from taxation under this Division:

(a) any interest held by the Crown in right of Alberta or Canada in property other than property that is held by a Provincial corporation as defined in the *Financial Administration Act*;

(b) property held by a municipality, except the following:

(i) property from which the municipality earns revenue and which is not operated as a public benefit;

(ii) property that is operated as a public benefit but that has annual revenue that exceeds the annual operating costs;

(iii) an electric power system;

(iv) a telecommunications system;

(v) a natural gas or propane system located in a hamlet, village, summer village, town or city or in a school division that is authorized under the *Education Act* to impose taxes and has a population in excess of 500 people;

(c) property, other than a student dormitory, used in connection with school purposes and held by

(i) the board of trustees of a school division,

(i.1) the Francophone regional authority of a Francophone education region established under the *Education Act*,

(i.2) the operator of a charter school established under the *Education Act*, or

(ii) the person responsible for the operation of a private school registered under the *Education Act*;

(d) property, other than a student dormitory, used in connection with educational purposes and held by any of the following:

(i) the board of governors of a university, polytechnic institution or comprehensive community college under the *Post-secondary Learning Act*;

(ii) the governing body of an educational institution affiliated with a university under the *Post-secondary Learning Act*;

(iii) a students association or graduate students association of a university under the *Post-secondary Learning Act*;

(iv) a students association of a polytechnic institution or comprehensive community college under the *Post-secondary Learning Act*;

(v) the board of governors of the Banff Centre under the *Post-secondary Learning Act*;

(e) property, other than a student dormitory, used in connection with hospital purposes and held by a hospital board that receives financial assistance from the Crown;

(f) property held by a regional services commission;

(g) repealed by RSA 2000;

(g.1) property used in connection with provincial health agency or regional health authority purposes and held by a provincial health agency or regional health authority under the *Provincial Health Agencies Act* that receives financial assistance from the Crown under any Act;

(h) property

(i) used in connection with the purposes of a continuing care home in respect of which a type A continuing care home licence has been issued under the *Continuing Care Act*, and

(ii) held by the owner or under a lease from the owner of a continuing care home referred to in subclause (i);

(i) repealed 1998 c24 s29;

(j) property used in connection with library purposes and held by a library board established under the *Libraries Act*;

(k) property held by a religious body and used chiefly for divine service, public worship or religious education and any parcel of land that is held by the religious body and used only as a parking area in connection with those purposes;

(l) property consisting of any of the following:

(i) a parcel of land, to a maximum of 10 hectares, that is used as a cemetery as defined in the *Cemeteries Act*;

(ii) any additional land that has been conveyed by the owner of the cemetery to individuals to be used as burial sites;

(iii) any improvement on land described in subclause (i) or (ii) that is used for burial purposes;

(m) property held by

(i) a foundation constituted under the *Senior Citizens Housing Act*, RSA 1980 cS-13, before July 1, 1994, or

(ii) a management body established under the *Alberta Housing Act*,

and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*;

(n) property that is

(i) owned by a municipality and held by a non-profit organization in an official capacity on behalf of the municipality,

(ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,

(iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

(A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization, or

(B) by a non-profit organization,

(iv) held by a non-profit organization and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*, or

(v) held by and used in connection with a society as defined in the *Agricultural Societies Act* or with a community association as defined in the regulations,

and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations;

(o) property

(i) owned by a municipality and used solely for the operation of an airport by the municipality, or

(ii) held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;

(p) a municipal seed cleaning plant constructed under an agreement authorized by section 7 of the *Agricultural Service Board Act*, to the extent of 2/3 of the assessment prepared under Part 9 for the plant, but not including the land attributable to the plant.

(2) Except for properties described in subsection (1)(n)(i), (ii) or (iv), a council may by bylaw make any property that is exempt

from taxation under subsection (1)(n) subject to taxation under this Division to any extent the council considers appropriate.

(3) A council proposing to pass a bylaw under subsection (2) must notify, in writing, any person or group that will be affected of the proposed bylaw.

(4) A bylaw under subsection (2) has no effect until one year after it is passed.

RSA 2000 cM-26 s362;2003 cP-19.5 s142;2012 cE-0.3 s279; 2017 c13 s1(35);2018 c19 s71;2022 cC-26.7 s74.1;2024 c10 s31

Electric energy generation systems exemptions

362.1 Despite sections 359.1(4) and 359.2(4), the Minister may by order exempt, in respect of a taxation year, to any extent the Minister considers appropriate, one or more electric power systems used or intended for use in the generation or gathering of electricity from taxation for the purpose of raising the revenue needed to pay the requisitions referred to in section 326(1)(a)(ii) and (iii).

2017 c13 s1(36)

Exempt property that can be made taxable

363(1) The following are exempt from taxation under this Division:

(a) property held by and used in connection with Ducks Unlimited (Canada) under a lease, licence or permit from the Crown in right of Alberta or Canada;

(b) property held by and used in connection with

(i) the Canadian Hostelling Association -- Northern Alberta District,

(ii) the Southern Alberta Hostelling Association,

(iii) Hostelling International -- Canada -- Northern Alberta, or

(iv) Hostelling International -- Canada -- Southern Alberta,

unless the property is operated for profit or gain;

(c) property held by and used in connection with a branch or local unit of the Royal Canadian Legion, the Army, Navy and Air Force Veterans in Canada or other organization of former members of any allied forces;

(d) student dormitories.

(2) A council may by bylaw make any property listed in subsection (1)(a), (b) or (c) subject to taxation under this Division to any extent the council considers appropriate.

(3) A council may by bylaw make any property referred to in subsection (1)(d) subject to taxation to any extent the council considers appropriate other than for the purpose of raising revenue needed to pay the requisitions referred to in section 326(1)(a).

(4) A council proposing to pass a bylaw under subsection (2) must notify, in writing, the person or group that will be affected of the proposed bylaw.

(5) A bylaw under subsection (2) has no effect until the expiration of one year after it is passed.

RSA 2000 cM-26 s363;2017 c13 s1(37)

Exemptions granted by bylaw

364(1) A council may by bylaw exempt from taxation under this Division property held by a non-profit organization.

(1.1) A council may by bylaw exempt from taxation under this Division machinery and equipment used for manufacturing or processing.

(2) Property is exempt under this section to any extent the council considers appropriate.

1994 cM-26.1 s364;1995 c24 s53

Brownfield tax incentives

364.1(1) In this section, "brownfield property" means property, other than designated industrial property, that

(a) is a commercial or industrial property when a bylaw under subsection (2) is made or an agreement under subsection (11) is entered into in respect of the property, or was a commercial or industrial property at any earlier time, and

(b) in the opinion of the council making the bylaw,

(i) is, or possibly is, contaminated,

(ii) is vacant, derelict or under-utilized, and

(iii) is suitable for development or redevelopment for the general benefit of the municipality when a bylaw under subsection (2) is made or an agreement under subsection (11) is entered into in respect of the property.

(2) A council may by bylaw, for the purpose of encouraging development or redevelopment for the general benefit of the municipality, provide for

(a) full or partial exemptions from taxation under this Division for brownfield properties, or

(b) deferrals of the collection of tax under this Division on brownfield properties.

(3) A bylaw under subsection (2)

(a) must identify the brownfield properties in respect of which an application may be made for a full or partial exemption or for a deferral,

(b) may set criteria to be met for a brownfield property to qualify for an exemption or deferral,

(c) must specify the taxation year or years for which the identified brownfield properties may qualify for an exemption or deferral, and

(d) must specify any conditions the breach of which cancels an exemption or deferral and the taxation year or years to which the condition applies.

(4) Before giving second reading to a bylaw proposed to be made under subsection (2), a council must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

(5) An owner of brownfield property identified in a bylaw under subsection (2) may apply in the form and manner required by the municipality for an exemption or deferral in respect of the property.

(6) If after reviewing the application a designated officer of the municipality determines that the brownfield property meets the requirements of the bylaw for a full or partial exemption or for a deferral of the collection of tax under this Division, the designated officer may issue a certificate granting the exemption or deferral.

(7) The certificate must set out

(a) the taxation years to which the exemption or deferral applies, which must not include any tax year earlier than the tax year in which the certificate is issued,

(b) in the case of a partial exemption, the extent of the exemption, and

(c) all criteria, conditions and taxation years specified in the bylaw in accordance with subsection (3).

(8) If at any time after an exemption or deferral is granted under a bylaw under this section a designated officer of the municipality determines that the property did not meet or has ceased to meet a criterion referred to in subsection (3)(b) or that a condition referred to in subsection (3)(d) has been breached, the designated officer must cancel the exemption or deferral for the taxation year or years in which the criterion was not met or to which the condition applies.

(9) Where a designated officer refuses to grant an exemption or deferral, a written notice of the refusal must be sent to the applicant stating the reasons for the refusal and the date by which any complaint must be made, which date must be 60 days after the written notice of refusal is sent.

(10) An exemption or deferral granted under a bylaw under this section remains valid, subject to subsection (8) and the criteria and conditions on which it was granted, regardless of whether the bylaw is subsequently amended or repealed or otherwise ceases to have effect.

(11) Despite subsections (2) to (10), a council may enter into an agreement with the owner of a brownfield property

(a) exempting, either fully or partially, the brownfield property from taxation under this Division, or

(b) deferring the collection of tax under this Division on the brownfield property.

(12) The agreement must specify

(a) the taxation years to which the exemption or deferral applies, which must not include any tax year earlier than the one in which the agreement is entered into,

(b) the conditions on which the exemption or deferral is granted, and

(c) the consequences, rights and remedies arising in the event of any breach.

(13) Before voting on a resolution to enter into an agreement referred to in subsection (11), a council must hold a public hearing with respect to the proposed agreement in accordance with section 216.4 after giving notice of it in accordance with section 606.

2016 c24 s58;2022 c16 s9(83)

Tax incentives for non-residential property

364.2(1) In this section,

(a) "deferral" means a deferral under this section;

(b) "exemption" means an exemption under this section.

(c) repealed 2019 c21 s2.

(2) A council may, by bylaw, for the purpose of encouraging the development or revitalization of properties in an assessment class specified in section 297(1)(b) or (d) for the general benefit of the municipality, provide for

(a) full or partial exemptions from taxation under this Division for property in one or both of those assessment classes, or

(b) deferrals of the collection of tax under this Division on property referred to in clause (a).

(3) A bylaw under subsection (2)

(a) must set criteria to be met for property to qualify for an exemption or deferral,

(b) must establish a process for the submission and consideration of applications for an exemption or deferral,

(c) must not provide for an exemption or deferral to have effect in respect of a property for more than 15 consecutive taxation years, but may, if the council considers it appropriate, provide for subsequent exemptions or deferrals of 15 consecutive taxation years or less to be applied for and granted in respect of the property, and

(d) if the bylaw provides for any person other than the council, including a designated officer, to refuse to grant an exemption or deferral or to cancel an exemption or deferral, must establish a process for applications to the council for the review of those decisions and must specify the period of time within which the application must be made.

(4) If after reviewing an application the municipality determines that the property meets the requirements for a full or partial exemption or for a deferral, the municipality may grant the exemption or deferral.

(5) An exemption or deferral must be granted in a written form that specifies

(a) the taxation years to which the exemption or deferral applies, which must not include any taxation year earlier than the taxation year in which the exemption or deferral is granted,

(b) in the case of a partial exemption, the extent of the exemption, and

(c) any condition the breach of which will result in cancellation under subsection (6) and the taxation year or years to which the condition applies.

(6) If at any time after an exemption or deferral is granted under a bylaw under this section the municipality determines that the property did not meet or has ceased to meet a criterion referred to in subsection (3)(a) or that a condition referred to in subsection (5)(c) has been breached, the municipality may cancel the exemption or deferral for the taxation year or years in which the criterion was not met or to which the condition applies.

(7) Where a municipality refuses to grant or cancels an exemption or deferral, the municipality must send a written notice to the applicant stating the reasons for the refusal or cancellation and, if a review of the decision is available under subsection (3)(d), the date by which any application for that review must be made.

(8) Where a municipality grants or cancels an exemption or deferral in respect of designated industrial property, the municipality must notify the provincial assessor and provide any other information requested by the provincial assessor respecting the exemption, deferral or cancellation.

(9) Subject to subsection (6), any order referred to in section 127(1.1) and the criteria and conditions on which an exemption or deferral was granted, the exemption or deferral remains valid regardless of whether the bylaw under which it was granted is subsequently amended or repealed or otherwise ceases to have effect.

2019 c6 s7;2019 c21 s2

Judicial review of decision under section 364.2

364.3(1) Where a decision made under a bylaw under section 364.2 in respect of an exemption or deferral is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.

(2) No councillor, designated officer or other person who makes a decision under a bylaw under section 364.2 is liable for costs by reason of or in respect of a judicial review of the decision.

2019 c6 s7;AR 217/2022

Licensed premises

365(1) Property that is licensed under the *Gaming, Liquor and Cannabis Act* is not exempt from taxation under this Division, despite sections 351(1)(b) and 361 to 364.1 and any other Act.

(2) Despite subsection (1), property listed in section 362(1)(n) in respect of which a licence that is specified in the regulations has been issued is exempt from taxation under this Division.

RSA 2000 cM-26 s365;2016 c24 s59;2017 c21 s28

Grants in place of taxes

366(1) Each year a municipality may apply to the Crown for a grant if there is property in the municipality that the Crown has an interest in.

(2) The Crown may pay to the municipality a grant not exceeding the amount that would be recoverable by the municipality if the property that the Crown has an interest in were not exempt from taxation under this Division.

(3) When calculating a grant under this section, the following must not be considered as Crown property unless subsection (4) applies:

(a) property listed in section 298;

(b) museums and historical sites;

(c) public works reserves;

(d) property used in connection with academic, trade, forestry or agricultural schools, colleges or universities, including student dormitories;

(e) property used in connection with hospitals and institutions for mentally disabled persons;

(f) property owned by an agent of the Crown in respect of which another enactment provides for payment of a grant in place of a property tax;

(g) property in respect of which the Crown is not the assessed person.

(4) If any of the property listed in subsection (3) is a single family residence, the property must be considered as Crown property when calculating a grant under this section.

(5) The Crown may pay a grant under this section in respect of property referred to in subsection (3)(g) if in the Crown's opinion it is appropriate to do so.

1994 cM-26.1 s366;1996 c30 s31

Property that is partly exempt and partly taxable

367 A property may contain one or more parts that are exempt from taxation under this Division, but the taxes that are imposed against the taxable part of the property under this Division are recoverable against the entire property.

1994 cM-26.1 s367

Changes in taxable status of property

368(1) An exempt property or part of an exempt property becomes taxable if

(a) the use of the property changes to one that does not qualify for the exemption, or

(b) the occupant of the property changes to one who does not qualify for the exemption.

(2) A taxable property or part of a taxable property becomes exempt if

(a) the use of the property changes to one that qualifies for the exemption, or

(b) the occupant of the property changes to one who qualifies for the exemption.

(3) If the taxable status of property changes, a tax imposed in respect of it must be prorated so that the tax is payable only for the part of the year in which the property, or part of it, is not exempt.

(4) When a designated manufactured home is moved out of a municipality,

(a) it becomes exempt from taxation by that municipality when it is moved, and

(b) it becomes taxable by another municipality when it is located in that other municipality.

1994 cM-26.1 s368;1996 c30 s32;1998 c24 s31

Supplementary property tax bylaw

369(1) If in any year a council passes a bylaw authorizing supplementary assessments to be prepared in respect of property, the council must, in the same year, pass a bylaw authorizing it to impose a supplementary tax in respect of that property.

(2) A council that passes a bylaw referred to in subsection (1) must use the tax rates set by its property tax bylaw as the supplementary tax rates to be imposed.

(2.01) A council may pass a bylaw authorizing it to impose a supplementary tax for designated industrial property only if it passes a bylaw authorizing it to impose a supplementary tax in respect of all other property in the municipality.

(2.1) Despite subsection (2), the tax rates required to raise the revenue to pay requisitions referred to in section 175 of the *Education Act* must not be applied as supplementary tax rates.

(3) The municipality must prepare a supplementary property tax roll, which may be a continuation of the supplementary property assessment roll prepared under Part 9 or may be separate from that roll.

(4) A supplementary property tax roll must show

(a) the same information that is required to be shown on the property tax roll, and

(b) the date for determining the tax that may be imposed under the supplementary property tax bylaw.

(5) Sections 327(4), 328, 330 and 331 apply in respect of a supplementary property tax roll.

(6) The municipality must

(a) prepare supplementary property tax notices for all taxable property shown on the supplementary property tax roll of the municipality, and

(b) send the supplementary property tax notices to the persons liable to pay the taxes.

(7) Sections 333(4), 334, 335, 336, 337 and 338 apply in respect of supplementary property tax notices.

RSA 2000 cM-26 s369;2012 cE-0.3 s279;2016 c24 s60

Continuous tax bylaws — tax

369.1 Bylaws enacted under section 369(1), 371 or 379 remain in force after the year in which they are enacted and apply in respect of subsequent years until they are repealed.

2019 c22 s10(12)

Regulations

370 The Minister may make regulations

(a) prescribing the extent to which residences and farm buildings are exempt from taxation under this Division;

(b) respecting the calculation of a tax rate to be imposed on linear property;

(b.1) respecting the setting of tax rates referred to in section 354(3.1);

(c) describing other property that is exempt from taxation pursuant to section 362(1)(n), and respecting the qualifications and conditions required for the purposes of section 362(1)(n);

(c.1) respecting tax rolls and tax notices including, without limitation, regulations

(i) respecting the information to be shown on a tax roll and a tax notice;

(ii) providing for the method of determining the person liable to pay a property or other tax imposed under this Part;

(iii) respecting the sending of tax notices;

(c.2) respecting designated industrial property assessment requisitions and designated industrial property requisition tax bylaws, including, without limitation, regulations respecting the application of any provision of this Act, with or without modification, to a designated industrial property assessment requisition or a designated industrial property requisition tax bylaw, or both;

(c.3) respecting tax exemptions and deferrals under section 364.1;

(d) specifying licences for the purposes of section 365(2);

(e) defining a community association for the purposes of this Act;

(f) respecting the circumstances in which property is to be considered to be used in connection with a purpose, activity or other thing for the purposes of one or more provisions of this Part;

(g) respecting the circumstances in which property is to be considered to be held by a person or entity for the purposes of one or more provisions of this Part.

RSA 2000 cM-26 s370;2005 c14 s13;
2016 c24 s61;2017 c13 s1(38)

Division 3
Business Tax

Business tax bylaw

371(1) Each council may pass a business tax bylaw.

(2) A business tax bylaw or any amendment to it applies to the year in which it is passed, only if it is passed before May 1 of that year.

1994 cM-26.1 s371

Taxable business

372(1) The business tax bylaw authorizes the council to impose a tax in respect of all businesses operating in the municipality except businesses that are exempt in accordance with that bylaw.

(2) The tax must not be imposed in respect of a business that is exempt under section 351, 375 or 376.

1994 cM-26.1 s372

Person liable to pay business tax

373(1) A tax imposed under this Division must be paid by the person who operates the business.

(2) A person who purchases a business or in any other manner becomes liable to be shown on the tax roll as a taxpayer must give the municipality written notice of a mailing address to which notices under this Division may be sent.

1994 cM-26.1 s373

Contents of business tax bylaw

374(1) The business tax bylaw must

(a) require assessments of businesses operating in the municipality to be prepared and recorded on a business assessment roll;

(b) specify one or more of the following methods of assessment as the method or methods to be used to prepare the assessments:

(i) assessment based on a percentage of the gross annual rental value of the premises;

(i.1) assessment based on a percentage of the net annual rental value of the premises;

(ii) assessment based on storage capacity of the premises occupied for the purposes of the business;

(iii) assessment based on floor space, being the area of all of the floors in a building and the area outside the building that are occupied for the purposes of that business;

(iv) assessment based on a percentage of the assessment prepared under Part 9 for the premises occupied for the purposes of the business;

(c) specify the basis on which a business tax may be imposed by prescribing the following:

(i) for the assessment method referred to in clause (b)(i), the percentage of the gross annual rental value;

(i.1) for the assessment method referred to in clause (b)(i.1), the percentage of the net annual rental value;

(ii) for the assessment method referred to in clause (b)(ii), the dollar rate per unit of storage capacity;

(iii) for the assessment method referred to in clause (b)(iii), the dollar rate per unit of floor space;

(iv) for the assessment method referred to in clause (b)(iv), the percentage of the assessment;

(d) establish a procedure for prorating and rebating business taxes.

(2) A business tax bylaw may

(a) establish classes of business for the purpose of grouping businesses,

(b) specify classes of business that are exempt from taxation under this Division,

(c) require that taxes imposed under this Division be paid by instalments, or

(d) include any other information considered appropriate by the municipality.

(3) A business tax bylaw may provide that when a lessee who is liable to pay the tax imposed under this Division in respect of any leased premises sublets the whole or part of the premises, the municipality may require the lessee or the sub-lessee to pay the tax in respect of the whole or part of the premises.

1994 cM-26.1 s374;1999 c11 s19

Assessment not required

374.1 Despite section 374(1)(a), a municipality is not required to prepare an assessment for any business in a class of business that is exempt from taxation under the business tax bylaw.

1998 c24 s33

Exempt businesses

375 The following are exempt from taxation under this Division:

(a) a business operated by the Crown;

(b) an airport operated by a regional airports authority created under section 5(2) of the *Regional Airports Authorities Act*;

(c) property

(i) owned by a municipality and used solely for the operation of an airport by the municipality, or

(ii) held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;

(d) a business operated by a non-profit organization on property that is exempt from taxation under section 362(1)(n).

1994 cM-26.1 s375;1995 c24 s57;1998 c24 s34

Exemption when tax is payable under Division 2

376(1) When machinery and equipment or linear property is located on premises occupied for the purposes of a business and a property tax has been imposed in respect of the machinery and equipment or linear property under Division 2 of this Part in any year, the premises on which that property is located are exempt from taxation under this Division in that year.

(2) If in any year the activities that result from the operation of the machinery and equipment or linear property are not the chief

business carried on at the premises, the premises on which that property is located are not exempt from taxation under this Division in that year.

1994 cM-26.1 s376

Business tax rate bylaw

377(1) Each council that has passed a business tax bylaw must pass a business tax rate bylaw annually.

(2) The business tax rate bylaw must set a business tax rate.

(3) If the business tax bylaw establishes classes of business, the business tax rate bylaw must set a business tax rate for each class.

(4) The business tax rate may be different for each class of business established by the business tax bylaw.

(5) The tax rates set by the business tax rate bylaw must not be amended after the municipality sends the tax notices to the taxpayers.

1994 cM-26.1 s377

Calculating amount of tax

378 The amount of tax to be imposed under this Division in respect of a business is calculated by multiplying the assessment for the business by the tax rate to be imposed on that business.

1994 cM-26.1 s378

Supplementary business tax bylaw

379(1) If in any year a council passes a bylaw authorizing supplementary assessments to be prepared in respect of businesses, the council must, in the same year, pass a bylaw authorizing it to impose a supplementary tax in respect of those businesses.

(2) A council that passes a bylaw referred to in subsection (1) must use the tax rates set by its business tax rate bylaw as the supplementary tax rates to be imposed.

(3) The supplementary business tax must be imposed

(a) on each person who operates a business for a temporary period and whose name is not entered on the business tax roll,

(b) on each person who moves into new premises or opens new premises or branches of an existing business, although the person's name is entered on the business tax roll,

(c) on each person who begins operating a business and whose name is not entered on the business tax roll, and

(d) on each person who increases the storage capacity or floor space of the premises occupied for the purposes of a business after the business tax roll has been prepared.

(4) The municipality must prepare a supplementary business tax roll, which may be a continuation of the supplementary business assessment roll or may be separate from that roll.

(5) A supplementary business tax roll must show

(a) the same information that is required to be shown on the business tax roll, and

(b) the date for determining the tax that may be imposed under the supplementary business tax bylaw.

(6) Sections 327(4), 328, 330 and 331 apply in respect of a supplementary business tax roll.

(7) The municipality must

(a) prepare supplementary business tax notices for all taxable businesses shown on the supplementary business tax roll of the municipality, and

(b) send the supplementary business tax notices to the persons liable to pay the taxes.

(8) Sections 333(4), 334, 335, 336, 337 and 338 apply in respect of supplementary business tax notices.

1994 cM-26.1 s379

Grants in place of taxes

380(1) Each year a municipality may apply to the Crown for a grant if there is a business in the municipality operated by the Crown.

(2) The Crown may pay to the municipality a grant not exceeding the amount that would be recoverable by the municipality if the business operated by the Crown were not exempt from taxation under this Division.

1994 cM-26.1 s380

Division 4
Business Improvement Area Tax

Regulations

381 The Minister may make regulations respecting a business improvement area tax.

RSA 2000 cM-26 s381;2015 c8 s50

Division 4.1
Community Revitalization Levy

Definitions

381.1 In this Division,

(a) "incremental assessed value" means the increase in the assessed value of property located in a community revitalization levy area after the date the community revitalization levy bylaw is approved by the Minister under section 381.2(3);

(b) "levy" means a community revitalization levy imposed under section 381.2(2).

2005 c14 s14;2022 c16 s9(66)

Community revitalization levy bylaw

381.2(1) Each council may pass a community revitalization levy bylaw.

(2) A community revitalization levy bylaw authorizes the council to impose a levy in respect of the incremental assessed value of property in a community revitalization levy area to raise revenue to be used toward the payment of infrastructure and other costs associated with the redevelopment of property in the community revitalization levy area.

(3) A community revitalization levy bylaw, or any amendment to it, has no effect unless it is approved by the Minister.

(4) The Minister may approve a community revitalization levy bylaw in whole or in part or with variations and subject to conditions.

2005 c14 s14;2022 c16 s9(67)

Person liable to pay levy

381.3 A levy imposed under this Division must be paid by the assessed persons of the property in the community revitalization levy area.

2005 c14 s14

Incremental assessed value not subject to equalized assessment or requisition

381.4(1) Subject to subsection (2), the incremental assessed value of property in a community revitalization levy area shall not be included for the purpose of calculating

(a) an equalized assessment under Part 9, or

(b) the amount of a requisition under Part 10.

(2) Subsection (1) applies in respect of property in a community revitalization levy area

(a) for a period of 20 years, or

(b) for such other period as determined by the Lieutenant Governor in Council under section 381.5(1)(e.1), which period may not exceed 40 years,

from the year in which the community revitalization levy bylaw is made.

2005 c14 s14;2018 c20 s12

Regulations

381.5(1) The Lieutenant Governor in Council may make regulations

(a) establishing any area in Alberta as a community revitalization levy area;

(b) respecting a levy including, without limitation, regulations respecting the minimum and maximum levy that may be imposed and the application of the levy;

(c) respecting the assessment of property, including identifying or otherwise describing the assessed person in respect of the property, in a community revitalization levy area;

(d) respecting assessment rolls, assessment notices, tax rolls and tax notices in respect of property in a community revitalization levy area;

(e) respecting the application of any provision of this Act, with or without modification, to a community revitalization levy bylaw or a community revitalization levy, or both;

(e.1) determining the period for which section 381.4(1) applies to a community revitalization levy area;

(f) respecting any other matter necessary or advisable to carry out the intent and purpose of this Division.

(2) A regulation under subsection (1) may be specific to a municipality or general in its application.

2005 c14 s14;2018 c20 s12

Division 5
Special Tax

Special tax bylaw

382(1) Each council may pass a special tax bylaw to raise revenue to pay for a specific service or purpose by imposing one or more of the following special taxes:

(a) a waterworks tax;

(b) a sewer tax;

(c) a boulevard tax;

(d) a dust treatment tax;

(e) a paving tax;

(f) a tax to cover the cost of repair and maintenance of roads, boulevards, sewer facilities and water facilities;

(g) repealed 2008 cE-6.6 s55;

(h) a tax to enable the municipality to provide incentives to health professionals to reside and practice their professions in the municipality;

(i) a fire protection area tax;

(j) a drainage ditch tax;

(k) a tax to provide a supply of water for the residents of a hamlet;

(l) a recreational services tax.

(2) A special tax bylaw must be passed annually.

RSA 2000 cM-26 s382;2008 cE-6.6 s55

Taxable property

383(1) The special tax bylaw authorizes the council to impose the tax in respect of property in any area of the municipality that will benefit from the specific service or purpose stated in the bylaw.

(2) The tax must not be imposed in respect of property that is exempt under section 351.

1994 cM-26.1 s383

Contents of special tax bylaw

384 The special tax bylaw must

(a) state the specific service or purpose for which the bylaw is passed,

(b) describe the area of the municipality that will benefit from the service or purpose and in which the special tax is to be imposed,

(c) state the estimated cost of the service or purpose, and

(d) state whether the tax rate is to be based on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

and set the tax rate to be imposed in each case.

1994 cM-26.1 s384

Condition

385 A special tax bylaw must not be passed unless the estimated cost of the specific service or purpose for which the tax is imposed is included in the budget of the municipality as an estimated expenditure.

1994 cM-26.1 s385

Use of revenue

386(1) The revenue raised by a special tax bylaw must be applied to the specific service or purpose stated in the bylaw.

(2) If there is any excess revenue, the municipality must advertise the use to which it proposes to put the excess revenue.

1994 cM-26.1 s386

Person liable to pay special tax

387 The person liable to pay the tax imposed in accordance with a special tax bylaw is the owner of the property in respect of which the tax is imposed.

1994 cM-26.1 s387;1999 c11 s20

Division 6
Well Drilling Equipment Tax

Well drilling equipment tax bylaw

388(1) Each council may pass a well drilling equipment tax bylaw.

(2) The well drilling equipment tax bylaw authorizes the council to impose a tax in respect of equipment used to drill a well for which a licence is required under the *Oil and Gas Conservation Act*.

1994 cM-26.1 s388

Person liable to pay the tax

389 A tax imposed under this Division must be paid by the person who holds the licence required under the *Oil and Gas Conservation Act* in respect of the well being drilled.

1994 cM-26.1 s389

Calculation of the tax

390(1) The Minister may make regulations prescribing the well drilling equipment tax rate.

(2) A tax imposed under this Division must be calculated in accordance with the tax rate prescribed under subsection (1).

1994 cM-26.1 s390

Division 6.1
Clean Energy Improvement Tax

Interpretation

390.1(1) In this Division, "clean energy improvement" means, subject to the regulations, a renovation, adaptation or installation on eligible private property that

(a) will increase energy efficiency or the use of renewable energy on that property, and

(b) will be paid for in whole or in part by a tax imposed under this Division,

but does not include improvements referred to in section 284(1)(j)(iii), (iii.1) or (iv).

(2) For the purposes of this Division, the amount required to recover the costs of a clean energy improvement may include

(a) the capital cost of undertaking the clean energy improvement,

(b) the cost of professional services needed for the clean energy improvement,

(c) a proportionate share of the costs associated with the administration of a clean energy improvement program,

(d) the cost of financing the clean energy improvement, and

(e) other expenses incidental to the undertaking of the clean energy improvement and to the raising of revenue to pay for it.

2018 c6 s6;2021 c22 s6

Eligibility of properties for clean energy improvements

390.2 Subject to section 390.3(4)(a), property is eligible for a clean energy improvement if the property is

(a) located in a municipality that has passed a clean energy improvement tax bylaw,

(b) one of the following types of private property:

(i) residential;

(ii) non-residential;

(iii) farm land,

and

(c) not designated industrial property.

2018 c6 s6

Clean energy improvement tax bylaw

390.3(1) Each council may pass a clean energy improvement tax bylaw

(a) to establish a clean energy improvement program,

(b) notwithstanding section 251, to authorize the municipality to make a borrowing for the purpose of financing clean energy improvements, and

(c) to enable clean energy improvements to be made to eligible properties.

(2) Before a clean energy improvement is made to any property, a council must pass a clean energy improvement tax bylaw.

(3) A clean energy improvement tax bylaw authorizes the council to impose a clean energy improvement tax in respect of each clean energy improvement made to a property to raise revenue to pay the amount required to recover the costs of those clean energy improvements.

(4) A clean energy improvement tax bylaw must, subject to the regulations,

(a) set out

(i) the types of private property that are eligible for a clean energy improvement, and

(ii) eligible clean energy improvements,

(b) set out

(i) the amount of money to be borrowed for the purpose of financing clean energy improvements,

(ii) the maximum rate of interest, the term and the terms of repayment of the borrowing, and

(iii) the source or sources of money to be used to pay the principal and interest owing under the borrowing,

(c) indicate that, where a municipality has entered into a clean energy improvement agreement with the owner of a property, a clean energy improvement tax will be charged based on the clean energy improvement agreement,

(d) identify the period over which the cost of each eligible clean energy improvement will be spread, which period may vary from improvement to improvement, but the period shall not exceed the probable lifetime of the improvement,

(e) indicate the process by which the owner of a property can apply to the municipality for a clean energy improvement,

(f) include any other information the council considers necessary or advisable, and

(g) include any requirements imposed by the regulations.

(5) Before giving second reading to a proposed clean energy improvement tax bylaw, the council must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

2018 c6 s6;2022 c16 s9(83)

Clean energy improvement agreement

390.4(1) A municipality and the owner of a property shall enter into a clean energy improvement agreement before a clean energy improvement is made to that property.

(2) A clean energy improvement agreement must, subject to the regulations,

(a) describe the proposed clean energy improvement,

(b) identify the property in respect of which the clean energy improvement tax will be imposed,

(c) indicate that the owner of the property will be liable to pay the clean energy improvement tax,

(d) include the amount required to recover the costs of the clean energy improvement and the method of calculation used to determine that amount,

(e) state the period over which the amount required to recover the costs of the clean energy improvement will be paid,

(f) state the portion of the amount required to recover the costs of the clean energy improvement to be paid

(i) by the municipality,

(ii) from revenue raised by the clean energy improvement tax, and

(iii) from other sources of revenue,

(g) describe how the clean energy improvement tax will be revised in the event of a subdivision of the property or a consolidation of the property with any other property, and

(h) include any other information the municipality considers necessary or advisable.

2018 c6 s6

Person liable to pay clean energy improvement tax

390.5(1) The person liable to pay a tax imposed in accordance with a clean energy improvement tax bylaw is the owner of the property in respect of which the tax is imposed.

(2) Repealed 2023 c9 s19(6).

2018 c6 s6;2023 c9 s19(6)

Paying off a clean energy improvement tax

390.6 The owner of a property in respect of which a clean energy improvement tax is imposed may pay the tax at any time.

2018 c6 s6

Refinancing of debt by council

390.7 If, after a clean energy improvement agreement has been made, the council refinances the debt created to pay for the clean energy improvement that is the subject of that agreement at an

interest rate other than the rate estimated when the clean energy improvement agreement was made, the council, with respect to future years, may revise the amount required to recover the costs of the clean energy improvement included in that agreement to reflect the change in the interest rate.

2018 c6 s6

Petitions

390.8(1) Notwithstanding section 232(2), electors of a municipality may petition the municipality to

(a) pass a clean energy improvement tax bylaw, or

(b) amend or repeal a clean energy improvement tax bylaw.

(2) For greater certainty, the amendment or repeal of a clean energy improvement tax bylaw does not affect clean energy improvement agreements entered into prior to the passage of that bylaw or the imposition of a clean energy improvement tax in relation to a property where a clean energy improvement has been made.

2018 c6 s6

Regulations

390.9 The Minister may make regulations respecting clean energy improvements, including, without limitation, regulations

(a) respecting eligibility requirements for clean energy improvements;

(b) respecting clean energy improvement agreements;

(c) respecting clean energy improvement tax bylaws;

(d) respecting types of renovations, adaptations or installations for which clean energy improvement agreements may be made and types of renovations, adaptations or installations for which clean energy improvement agreements may not be made;

(e) respecting the disclosure of clean energy improvement agreements to prospective purchasers of property;

(f) respecting limits on the number of improvements to a single property or a type of eligible property for which a tax may be imposed under this Division;

(g) respecting limits on the capital costs of undertaking clean energy improvements on a single property or a type of eligible property under this Division;

(h) respecting clean energy improvement programs, including the administration of clean energy improvement programs.

2018 c6 s6

Division 7
Local Improvement Tax

Definition

391 In this Division, "local improvement" means a project

(a) that the council considers to be of greater benefit to an area of the municipality than to the whole municipality, and

(b) that is to be paid for in whole or in part by a tax imposed under this Division.

1994 cM-26.1 s391

Petitioning rules

392(1) Sections 222 to 226 apply to petitions under this Division, except as they are modified by this section.

(2) A petition is not a sufficient petition unless

(a) it is signed by 2/3 of the owners who would be liable to pay the local improvement tax, and

(b) the owners who sign the petition represent at least 1/2 of the value of the assessments prepared under Part 9 for the parcels of land in respect of which the tax will be imposed.

(3) If a parcel of land is owned by more than one owner, the owners are considered as one owner for the purpose of subsection (2).

(4) If a municipality, school division or provincial health agency or regional health authority under the *Provincial Health Agencies Act* is entitled to sign a petition under this Division, it may give notice to the council prior to or at the time the petition is presented to the council that its name and the assessment prepared for its land under Part 9 are not to be counted in determining the sufficiency of a petition under subsection (2), and the council must comply with the notice.

(5) If a corporation, church, organization, estate or other entity is entitled to sign a petition under this Division, the petition may be signed on its behalf by a person who

(a) is at least 18 years old, and

(b) produces on request a certificate authorizing the person to sign the petition.

RSA 2000 cM-26 s392;2012 cE-0.3 s279;2024 c10 s31

Proposal of local improvement

393(1) A council may on its own initiative propose a local improvement.

(2) A group of owners in a municipality may petition the council for a local improvement.

1994 cM-26.1 s393

Local improvement plan

394 If a local improvement is proposed, the municipality must prepare a local improvement plan.

1994 cM-26.1 s394

Contents of plan

395(1) A local improvement plan must

(a) describe the proposed local improvement and its location,

(b) identify

(i) the parcels of land in respect of which the local improvement tax will be imposed, and

(ii) the person who will be liable to pay the local improvement tax,

(c) state whether the tax rate is to be based on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

(d) include the estimated cost of the local improvement,

(e) state the period over which the cost of the local improvement will be spread,

(f) state the portion of the estimated cost of the local improvement proposed to be paid

(i) by the municipality,

(ii) from revenue raised by the local improvement tax, and

(iii) from other sources of revenue,

and

(g) include any other information the proponents of the local improvement consider necessary.

(2) The estimated cost of a local improvement may include

(a) the actual cost of buying land necessary for the local improvement,

(b) the capital cost of undertaking the local improvement,

(c) the cost of professional services needed for the local improvement,

(d) the cost of repaying any existing debt on a facility that is to be replaced or rehabilitated, and

(e) other expenses incidental to the undertaking of the local improvement and to the raising of revenue to pay for it.

1994 cM-26.1 s395

Procedure after plan is prepared

396(1) When a local improvement plan has been prepared, the municipality must send a notice to the persons who will be liable to pay the local improvement tax.

(2) A notice under subsection (1) must include a summary of the information included in the local improvement plan.

(3) Subject to subsection (3.1), if a petition objecting to the local improvement is filed with the chief administrative officer within 30 days from the notices' being sent under subsection (1) and the chief administrative officer declares the petition to be sufficient, the council must not proceed with the local improvement.

(3.1) The council may, after the expiry of one year after the petition is declared to be sufficient, re-notify in accordance with subsections (1) and (2) the persons who would be liable to pay the local improvement tax.

(4) If a sufficient petition objecting to the local improvement is not filed with the chief administrative officer within 30 days from sending the notices under subsection (1), the council may undertake the local improvement and impose the local improvement tax at any time in the 3 years following the sending of the notices.

(5) When a council is authorized under subsection (4) to undertake a local improvement and

(a) the project has not been started, or

(b) the project has been started but is not complete,

the council may impose the local improvement tax for one year, after which the tax must not be imposed until the local improvement has been completed or is operational.

1994 cM-26.1 s396;1995 c24 s58

Local improvement tax bylaw

397(1) A council must pass a local improvement tax bylaw in respect of each local improvement.

(2) A local improvement tax bylaw authorizes the council to impose a local improvement tax in respect of all land in a particular area of the municipality to raise revenue to pay for the local improvement that benefits that area of the municipality.

(2.1) Despite subsection (2), where the local improvement that is the subject of a local improvement tax bylaw of a council of a municipality is a road to benefit Crown land within an area of the municipality, the local improvement tax bylaw does not authorize the council to impose a local improvement tax to raise revenue to pay for the local improvement unless, before it receives second reading, the bylaw is approved by the Minister responsible for the administration of the Crown land.

(3) Despite section 351(1), no land is exempt from taxation under this section.

RSA 2000 cM-26 s397;2015 c8 s51

Contents of bylaw

398(1) A local improvement tax bylaw must

(a) include all of the information required to be included in the local improvement plan,

(b) provide for equal payments during each year in the period over which the cost of the local improvement will be spread,

(c) set a uniform tax rate to be imposed on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

based on the cost of the local improvement less any financial assistance provided to the municipality by the Crown in right of Canada or Alberta, and

(d) include any other information the council considers necessary.

(2) The local improvement tax bylaw may set the uniform tax rate based on estimated average costs throughout the municipality for a similar type of local improvement and that rate applies whether the actual cost of the local improvement is greater or less than the uniform tax rate.

1994 cM-26.1 s398

Start-up of a local improvement

399 The undertaking of a local improvement may be started, the local improvement tax bylaw may be passed and debentures may be issued before or after the actual cost of the local improvement has been determined.

1994 cM-26.1 s399

Person liable to pay local improvement tax

400 The person liable to pay the tax imposed in accordance with a local improvement tax bylaw is the owner of the parcel of land in respect of which the tax is imposed.

1994 cM-26.1 s400

Paying off a local improvement tax

401(1) The owner of a parcel of land in respect of which a local improvement tax is imposed may pay the tax at any time.

(2) If the local improvement tax rate is subsequently reduced under section 402 or 403, the council must refund to the owner the appropriate portion of the tax paid.

1994 cM-26.1 s401

Variation of local improvement tax bylaw

402(1) If, after a local improvement tax has been imposed, there is

(a) a subdivision affecting a parcel of land, or

(b) a consolidation of 2 or more parcels of land,

in respect of which a local improvement tax is payable, the council, with respect to future years, must revise the local improvement tax bylaw so that each of the new parcels of land bears an appropriate share of the local improvement tax.

(2) If, after a local improvement tax has been imposed,

(a) there is a change in a plan of subdivision affecting an area that had not previously been subject to a local improvement tax, and

(b) the council is of the opinion that as a result of the change the new parcels of land receive a benefit from the local improvement,

the council, with respect to future years, must revise the local improvement tax bylaw so that each benefitting parcel of land bears an appropriate share of the local improvement tax.

1994 cM-26.1 s402

Variation of local improvement tax rate

403(1) If, after a local improvement tax rate has been set, the council

(a) receives financial assistance from the Crown in right of Canada or Alberta or from other sources that is greater than the amount estimated when the local improvement tax rate was set, or

(b) refinances the debt created to pay for the local improvement at an interest rate lower than the rate estimated when the local improvement tax rate was set,

the council, with respect to future years, may revise the rate so that each benefitting parcel of land bears an appropriate share of the actual cost of the local improvement.

(2) If, after a local improvement tax rate has been set, an alteration is necessary following a complaint under Part 11 or an appeal under Part 12 that is sufficient to reduce or increase the revenue raised by the local improvement tax bylaw in any year by more than 5%, the council, with respect to future years, may revise the rate so that the local improvement tax bylaw will raise the revenue originally anticipated for those years.

(3) If, after a local improvement tax rate has been set, it is discovered that the actual cost of the local improvement is higher than the estimated cost on which the local improvement tax rate is based, the council may revise, once only over the life of the local improvement, the rate with respect to future years so that the local improvement tax bylaw will raise sufficient revenue to pay the actual cost of the local improvement.

1994 cM-26.1 s403;1999 c11 s21

Unusual parcels

404 If some parcels of land in respect of which a local improvement tax is to be imposed appear to call for a smaller or larger proportionate share of the tax because they are corner lots or are differently sized or shaped from other parcels, those parcels may be assigned the number of units of measurement the council considers appropriate to ensure that they will bear a fair portion of the local improvement tax.

1994 cM-26.1 s404

Municipality's share of the cost

405(1) A council may by bylaw require the municipality to pay the cost of any part of a local improvement that the council considers to be of benefit to the whole municipality.

(2) A bylaw under subsection (1) must be advertised if the cost to be paid by the municipality exceeds 50% of the cost of the local improvement less any financial assistance provided to the municipality by the Crown in right of Canada or Alberta.

(3) If financial assistance is provided to the municipality by the Crown in right of Canada or Alberta for a local improvement, the council must apply the assistance to the cost of the local improvement.

1994 cM-26.1 s405

Land required for local improvement

406(1) If a parcel of land is required before a local improvement can be proceeded with, the council may agree with the owner of the parcel that in consideration of

(a) the dedication or gift to the municipality of the parcel of land required, or

(b) a release of or reduction in the owner's claim for compensation for the parcel of land,

the remainder of the owner's land is exempt from all or part of the local improvement tax that would otherwise be imposed.

(2) The tax roll referred to in section 327 must be prepared in accordance with an agreement under this section, despite anything to the contrary in this Act.

1994 cM-26.1 s406

Exemption from local improvement tax

407(1) If a sanitary or storm sewer or a water main is constructed along a road or constructed in addition to or as a replacement of an existing facility

(a) along which it would not have been constructed except to reach some other area of the municipality, or

(b) in order to provide capacity for future development and the existing sanitary and storm sewers and water mains are sufficient for the existing development in the area,

the council may exempt from taxation under the local improvement tax bylaw, to the extent the council considers fair, the parcels of land abutting the road or place.

(2) If a local improvement tax is imposed for a local improvement that replaces a similar type of local improvement,

(a) the balance owing on the existing local improvement tax must be added to the cost of the new local improvement, or

(b) the council must exempt the parcels of land in respect of which the existing local improvement tax is imposed from the tax that would be imposed for the new local improvement.

1994 cM-26.1 s407

Sewers

408(1) A municipality may construct a local improvement for sewer if

(a) the council approves the construction,

(b) the construction is recommended by the Minister of Health or the medical health officer, and

(c) the council considers it to be in the public interest to do so.

(2) The owners of the parcels of land that benefit from a local improvement for sewer have no right to petition against its construction.

RSA 2000 cM-26 s408;2013 c10 s37

Private connection to a local improvement

409(1) If a local improvement for sewer or water has been constructed, the municipality may construct private connections from the local improvement to the street line if the council approves the construction.

(2) The cost of constructing a private connection must be imposed against the parcel of land that benefits from it and the owner of the parcel has no right to petition against its construction.

1994 cM-26.1 s409

Division 7.1
Community Aggregate Payment Levy

Community aggregate payment levy bylaw

409.1(1) Each council may pass a community aggregate payment levy bylaw.

(2) A community aggregate payment levy bylaw authorizes the council to impose a levy in respect of all sand and gravel businesses operating in the municipality to raise revenue to be used toward the payment of infrastructure and other costs in the municipality.

2005 c14 s15

Person liable to pay levy

409.2 A levy imposed under this Division must be paid by the persons who operate sand and gravel operations in the municipality.

2005 c14 s15

Regulations

409.3(1) The Minister may make regulations

(a) respecting a levy referred to in section 409.1(2), including, without limitation, regulations respecting the maximum levy that may be imposed and the application of the levy;

(b) respecting the application of any provision of this Act, with or without modification, to a community aggregate payment levy bylaw or a community aggregate payment levy, or both;

(c) respecting any other matter necessary or advisable to carry out the intent and purpose of this Division.

(2) A regulation under subsection (1) may be specific to a municipality or general in its application.

2005 c14 s15

Division 8
Recovery of Taxes Related to Land

Definitions

410 In this Division,

(a) "encumbrance" means an encumbrance as defined in the *Land Titles Act*;

(b) "encumbrancee" means the owner of an encumbrance;

(b.1) "parcel of land" means a parcel of land and the improvements on it;

(c) "Registrar" means the Registrar, as defined in the *Land Titles Act*, of the appropriate Land Titles Office;

(c.1) "remedial costs" means all expenses incurred by the Government of Alberta to perform work under an environmental protection order or an enforcement order issued under the *Environmental Protection and Enhancement Act*;

(d) "reserve bid" means the minimum price at which a municipality is willing to sell a parcel of land at a public auction;

(e) "tax" means a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy;

(f) "tax recovery notification" means a notice, in writing, that part or all of the taxes imposed in respect of a parcel of land by a municipality are in arrears.

RSA 2000 cM-26 s410;2005 c14 s16;2018 c6 s7

Methods of recovering taxes in arrears

411(1) A municipality may attempt to recover tax arrears in respect of a parcel of land

(a) in accordance with this Division, and

(b) subject to subsection (2), in accordance with any other Act or common law right.

(2) A municipality may start an action under subsection (1)(b) at any time before

(a) the parcel is sold at a public auction under section 418, or

(b) the parcel is disposed of in accordance with section 425,

whichever occurs first.

1994 cM-26.1 s411

Tax arrears list

412(1) A municipality must annually, not later than March 31,

(a) prepare a tax arrears list showing the parcels of land in the municipality in respect of which there are tax arrears for more than one year,

(b) send 2 copies of the tax arrears list to the Registrar,

(b.1) send a copy of the tax arrears list to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act*, and

(c) post a copy of the tax arrears list in a place that is accessible to the public during regular business hours.

(2) A tax arrears list must not include a parcel of land in respect of which there is in existence a tax recovery notification from previous years, unless that notification has been removed from the certificate of title for that parcel.

(3) The municipality must notify the persons who are liable to pay the tax arrears that a tax arrears list has been prepared and sent to the Registrar.

RSA 2000 cM-26 s412;2007 cU-1.5 s73

Tax recovery notification

413(1) The Registrar must endorse on the certificate of title for each parcel of land shown on the tax arrears list a tax recovery notification.

(2) The Registrar must certify, on a copy of the tax arrears list, that tax recovery notifications have been endorsed in accordance with subsection (1) and return the certified copy of the tax arrears list to the municipality with a statement of the costs payable to the Land Titles Office by the municipality.

(3) The municipality is responsible for the payment of the costs referred to in subsection (2) but may add the costs to the taxes owing in respect of the parcels of land shown on the tax arrears list.

(4) The Registrar must not remove a tax recovery notification from a certificate of title until the municipality at whose request it was endorsed on the certificate of title requests its removal.

1994 cM-26.1 s413

Removal of improvements

414 When a tax recovery notification has been endorsed on a certificate of title for a parcel of land, the person who is liable to pay the taxes must not remove from the parcel, unless the municipality at whose request the notification was endorsed on the certificate of title consents, any improvements for which that person is also liable to pay the taxes.

1994 cM-26.1 s414

Right to pay tax arrears

415(1) After a tax recovery notification has been endorsed on the certificate of title for a parcel of land, any person may pay the tax arrears in respect of the parcel.

(2) On payment of the tax arrears under subsection (1), the municipality must ask the Registrar to remove the tax recovery notification.

(3) Subject to section 423(3), a person may exercise the right under subsection (1) at any time before the municipality disposes of the parcel in accordance with section 425.

1994 cM-26.1 s415

Right to collect rent to pay tax arrears

416(1) After a tax recovery notification has been endorsed on the certificate of title for a parcel of land, the municipality may send a notice to any person who holds the parcel under a lease from the owner, requiring that person to pay the rent as it becomes due to the municipality until the tax arrears have been paid.

(2) Not less than 14 days before a municipality sends a notice under subsection (1), it must send a notice to the owner of the parcel of land advising the owner of the municipality's intention to proceed under subsection (1).

(2.1) When a parcel of land shown on a tax arrears list is land described in section 304(1)(c) in respect of another municipality, or in section 304(1)(d) or (e), the municipality may send a notice to any person who holds the parcel or a portion of it under a lease, licence or permit from the assessed person to pay the rent, licence fees or permit fees, as the case may be, to the municipality as they become due until the tax arrears have been paid.

(2.2) Not less than 14 days before a municipality sends a notice under subsection (2.1), it must send a notice to the assessed person advising the person of the municipality's intention to proceed under subsection (2.1).

(2.3) Where a parcel of land described in section 304(1)(c) is held under a lease, licence or permit from the Crown in right of Alberta,

(a) the Crown must, on a quarterly basis, notify the municipality in which the parcel is located of any changes in the status of the lease, licence or permit, as the case may be, and

(b) the municipality must send to the Crown that portion of the tax arrears list showing the parcels of land described in section 304(1)(c) that are held by the Crown.

(3) This section does not prevent the municipality from exercising any other right it has to collect the tax arrears.

RSA 2000 cM-26 s416;2015 c8 s52

Warning of sale

417(1) Not later than the August 1 following receipt of a copy of the tax arrears list, the Registrar must, in respect of each parcel of land shown on the tax arrears list, send a notice to

(a) the owner of the parcel of land,

(b) any person who has an interest in the parcel that is evidenced by a caveat registered by the Registrar, and

(c) each encumbrancee shown on the certificate of title for the parcel.

(2) The notice must state

(a) that if the tax arrears in respect of the parcel of land are not paid before March 31 in the next year, the municipality will offer the parcel for sale at a public auction, and

(b) that the municipality may become the owner of the parcel after the public auction if the parcel is not sold at the public auction.

(3) The notice must be sent to the address shown on the records of the Land Titles Office for each person referred to in subsection (1).

1994 cM-26.1 s417;1995 c24 s61

Offer of parcel for sale

418(1) Each municipality must offer for sale at a public auction any parcel of land shown on its tax arrears list if the tax arrears are not paid.

(2) Unless subsection (4) applies, the public auction must be held in the period beginning on the date referred to in section 417(2)(a) and ending on March 31 of the year immediately following that date.

(3) Subsection (1) does not apply to a parcel in respect of which the municipality has started an action under section 411(2) to recover the tax arrears before the date of the public auction.

(4) The municipality may enter into an agreement with the owner of a parcel of land shown on its tax arrears list providing for the payment of the tax arrears over a period not exceeding 3 years, and in that event the parcel need not be offered for sale under subsection (1) until

(a) the agreement has expired, or

(b) the owner of the parcel breaches the agreement,

whichever occurs first.

1994 cM-26.1 s418;1995 c24 s62;1996 c30 s35

Reserve bid and conditions of sale

419 The council must set

(a) for each parcel of land to be offered for sale at a public auction, a reserve bid that is as close as reasonably possible to the market value of the parcel, and

(b) any conditions that apply to the sale.

1994 cM-26.1 s419

Right to possession

420(1) From the date on which a parcel of land is offered for sale at a public auction, the municipality is entitled to possession of the parcel.

(2) For the purposes of obtaining possession of a parcel of land, a designated officer may enter the parcel and take possession of it for and in the name of the municipality and, if in so doing resistance is encountered, the municipality may apply to the Court of King's Bench for an order for the possession of the parcel.

RSA 2000 cM-26 s420;2009 c53 s119;AR 217/2022

Advertisement of public auction

421(1) The municipality must advertise the public auction

(a) in one issue of The Alberta Gazette, not less than 40 days and not more than 90 days before the date on which the public auction is to be held, and

(b) in one issue of a newspaper having general circulation in the municipality, not less than 10 days and not more than 20 days before the date on which the public auction is to be held.

(2) The advertisement must specify the date, time and location of the public auction, the conditions of sale and a description of each parcel of land to be offered for sale.

(3) The advertisement must state that the municipality may, after the public auction, become the owner of any parcel of land not sold at the public auction.

(4) Not less than 30 days before the date of the public auction, the municipality must send a copy of the advertisement referred to in subsection (1)(a) to

(a) the owner of each parcel of land to be offered for sale,

(b) each person who has an interest in any parcel to be offered for sale that is evidenced by a caveat registered by the Registrar, and

(c) each encumbrancee shown on the certificate of title for each parcel to be offered for sale.

RSA 2000 cM-26 s421;2023 c9 s19(7)

Adjournment of auction

422(1) The municipality may adjourn the holding of a public auction to any date within 60 days after the advertised date.

(2) If a public auction is adjourned, the municipality must post a notice in a place that is accessible to the public during regular business hours, showing the new date on which the public auction is to be held.

(3) If a public auction is cancelled as a result of the tax arrears being paid, the municipality must post a notice in a place that is accessible to the public during regular business hours stating that the auction is cancelled.

RSA 2000 cM-26 s422;2023 c9 s19(8)

Right to a clear title

423(1) A person who purchases a parcel of land at a public auction acquires the land free of all encumbrances, except

(a) encumbrances arising from claims of the Crown in right of Canada,

(b) irrigation or drainage debentures,

(c) caveats referred to in section 39.2(11) of the *Condominium Property Act*,

(d) registered easements and instruments registered pursuant to section 69 of the *Land Titles Act*,

(e) right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*,

(e.1) a caveat that, pursuant to section 3.1(6)(f)(iv) of the *New Home Buyer Protection Act*, remains registered against the certificate of title to the land,

(f) a notice of lien filed pursuant to section 38 of the *Rural Utilities Act*,

(g) a notice of lien filed pursuant to section 20 of the *Rural Electrification Loan Act*, and

(h) liens registered pursuant to section 21 of the *Rural Electrification Long-term Financing Act*.

(2) A parcel of land is sold at a public auction when the person who is acting as the auctioneer declares the parcel sold.

(3) There is no right under section 415 to pay the tax arrears in respect of a parcel after it is declared sold.

RSA 2000 cM-26 s423;2014 c10 s59;2015 c8 s53

Transfer of parcel to municipality

424(1) The municipality at whose request a tax recovery notification was endorsed on the certificate of title for a parcel of land may become the owner of the parcel after the public auction, if the parcel is not sold at the public auction.

(2) If the municipality wishes to become the owner of the parcel of land, it must request the Registrar to cancel the existing certificate of title for the parcel of land and issue a certificate of title in the name of the municipality.

(3) A municipality that becomes the owner of a parcel of land pursuant to subsection (1) acquires the land free of all encumbrances, except

(a) encumbrances arising from claims of the Crown in right of Canada,

(b) irrigation or drainage debentures,

(c) registered easements and instruments registered pursuant to section 69 of the *Land Titles Act*,

(d) right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*,

(e) a notice of lien filed pursuant to section 38 of the *Rural Utilities Act*,

(f) a notice of lien filed pursuant to section 20 of the *Rural Electrification Loan Act*, and

(g) liens registered pursuant to section 21 of the *Rural Electrification Long-term Financing Act*.

(4) A certificate of title issued to the municipality under this section must be marked "Tax Forfeiture" by the Registrar.

1994 cM-26.1 s424;1995 c24 s64;1996 c30 s36;1998 c24 s38; 1999 c11 s23

Right to dispose of parcel

425(1) A municipality that becomes the owner of a parcel of land pursuant to section 424 may dispose of the parcel

(a) by selling it at a price that is as close as reasonably possible to the market value of the parcel, or

(b) by depositing in the account referred to in section 427(1)(a) an amount of money equal to the price at which the municipality would be willing to sell the parcel under clause (a).

(2) The municipality may grant a lease, licence or permit in respect of the parcel.

(3) Repealed 1995 c24 s65.

(4) If a parcel of land is disposed of under subsection (1), the municipality must request the Registrar to delete the words "Tax Forfeiture" from the certificate of title issued in the name of the municipality for the parcel.

1994 cM-26.1 s425;1995 c24 s65

Minister's authority to transfer parcel

425.1(1) The Minister may administer, transfer to another Minister, transfer to the municipality in which the land is situated or, subject to section 425, dispose of any parcel of land acquired by the Minister under this Part or a predecessor of this Part.

(2) The Minister may cancel the tax arrears on any land referred to in subsection (1) and require the Registrar to remove the tax recovery notification caveat respecting those tax arrears.

1995 c24 s66

Revival of title on payment of arrears

426(1) If the tax arrears in respect of a parcel of land are paid after the municipality becomes the owner of the parcel under section 424 but before the municipality disposes of the parcel under section 425(1), the municipality must notify the Registrar.

(2) The Registrar must cancel the certificate of title issued under section 424(2) and revive the certificate of title that was cancelled under section 424(2).

(3) A certificate of title revived by the Registrar is subject

(a) to the same notifications, charges and encumbrances to which it would have been subject if it had not been cancelled under section 424(2), and

(b) to any estate, interest or encumbrance created while the parcel was registered in the name of the municipality.

1994 cM-26.1 s426;1996 c30 s37

Separate account for sale proceeds

427(1) The money paid for a parcel of land at a public auction or pursuant to section 425

(a) must be deposited by the municipality in an account that is established solely for the purpose of depositing money from the sale or disposition of land under this Division, and

(b) must be paid out in accordance with this section and section 428.

(2) The following must be paid first and in the following order:

(a) any remedial costs relating to the parcel;

(a.1) the tax arrears in respect of the parcel;

(b) any lawful expenses of the municipality in respect of the parcel;

(c) any expenses owing to the Crown that have been charged against the parcel of land under section 553;

(d) an administration fee of 5% of the amount paid for the parcel, payable to the municipality.

(3) If there is any money remaining after payment of the tax arrears and costs listed in subsection (2), the municipality must notify the previous owner that there is money remaining.

(3.1) Subject to subsection (3.3), if the municipality is satisfied that there are no debts that are secured by an encumbrance on the certificate of title for the parcel of land, the municipality may pay the money remaining to the previous owner.

(3.2) If the municipality is not satisfied that there are no debts that are secured by an encumbrance on the certificate of title for the parcel of land, the municipality must notify the previous owner that an application may be made under section 428(1) to recover all or part of the money.

(3.3) For the purposes of this Division, "previous owner" includes the Crown in right of Alberta if the municipality has been notified by the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* that the land has vested in the Crown, and any money remaining after payment of the tax arrears and costs set out in subsection (2) must be paid to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act*.

(4) Money paid to a municipality under a lease, licence or permit granted under section 425(2) must be placed in the account referred to in subsection (1) and distributed in accordance with this section and section 428.

RSA 2000 cM-26 s427;2007 cU-1.5 s73

Distribution of surplus sale proceeds

428(1) A person may apply to the Court of King's Bench for an order declaring that the person is entitled to a part of the money in the account referred to in section 427(1).

(2) An application under this section must be made within 10 years after

(a) the date of the public auction, if the parcel was sold at a public auction, or

(b) the date of a sale under section 425, if the parcel was sold at a sale under that section.

(3) The Court must decide if notice must be given to any person other than the applicant and in that event the hearing must be adjourned to allow notice to be given.

(4) In making an order, the Court must have regard to the priorities in which sale proceeds are distributed in a foreclosure action.

RSA 2000 cM-26 s428;2009 c53 s119;AR 217/2022

Payment of undistributed money to municipality

428.1 If no application is made under section 428 within the 10-year period referred to in section 428(2), the municipality may, for any purpose, use the money deposited in accordance with section 427 that remains undistributed.

1995 c24 s68

Transfer to municipality after 15 years

428.2(1) Despite anything in this Division, where a parcel of land has been offered for sale but not sold at a public auction and the certificate of title for the parcel has been marked "Tax Forfeiture" by the Registrar, the municipality may request the Registrar to cancel the existing certificate of title for the parcel of land and issue a certificate of title in the name of the municipality on the expiry of 15 years following the date of the public auction.

(1.1) This section does not apply to land respecting which the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* has notified the municipality that the land has vested in the Crown.

(2) On the issuance of a certificate of title in the name of the municipality, all responsibilities of the municipality under this Division to the previous owner of the parcel of land cease.

(3) Where a certificate of title is issued to a municipality under subsection (1) and there are remedial costs owing in respect of the parcel of land, the municipality must reimburse the Crown in right of Alberta the lesser of

(a) the fair market value of the parcel of land, and

(b) the amount of the remedial costs.

(4) A municipality that becomes the owner of a parcel of land pursuant to subsection (1) acquires the land free of all encumbrances, except

(a) encumbrances arising from claims of the Crown in right of Canada,

(b) irrigation or drainage debentures,

(c) registered easements and instruments registered pursuant to section 69 of the *Land Titles Act*,

(d) right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*,

(e) a notice of lien filed pursuant to section 38 of the *Rural Utilities Act*,

(f) a notice of lien filed pursuant to section 20 of the *Rural Electrification Loan Act*, and

(g) liens registered pursuant to section 21 of the *Rural Electrification Long-term Financing Act*.

RSA 2000 cM-26 s428.2;2007 cU-1.5 s73;2019 c20 s23

Prohibited bidding and buying

429(1) When a municipality holds a public auction or another sale under section 425, the auctioneer, the councillors, the chief administrative officer and the designated officers and employees of the municipality must not bid for or buy, or act as an agent in buying, any parcel of land offered for sale, unless subsection (2) applies.

(2) A municipality may direct a designated officer or employee of the municipality to bid for or buy a parcel of land that the municipality wishes to become the owner of.

1994 cM-26.1 s429

Right to place tax arrears on new parcels of land

429.1 When there are tax arrears in respect of a parcel of land that is to be subdivided, the municipality may distribute the tax arrears and any taxes that may be imposed in respect of the parcel among the parcels of land that are created by the subdivision in a manner the municipality considers appropriate.

1995 c24 s69

Minerals

430 If, as a result of proceedings under this Act or any other Act providing for the forfeiture of land or minerals, or both, for arrears of taxes, minerals are vested in the Minister or in a municipality that later passed or passes to the control of the Minister, the minerals are the property of the Crown and no person has any claim to or interest in them, despite anything in this Act or the Act under which the minerals were forfeited.

1994 cM-26.1 s430

Acquisition of minerals

431(1) In respect of any parcel of land or minerals

(a) acquired by a municipality before or after March 5, 1948, pursuant to a tax recovery notification or caveat endorsed on the certificate of title by the Registrar, and

(b) subsequently registered in the name of the municipality,

the municipality is deemed to have taken or to take title only to those minerals that the municipality was authorized and empowered to assess at the time of the issuance of the certificate of title in the name of the municipality, and any corrections to the

records of any Land Titles Office made before March 5, 1948 to effect this purpose are hereby confirmed and validated.

(2) A municipality must not transfer, lease, mortgage or otherwise dispose of or deal in any minerals or any interest in minerals without first obtaining the written consent of the Minister, and any disposition or dealing made without the consent of the Minister has no effect.

(3) Any certificate of title issued in the name of a municipality before or after March 5, 1948 to or including any minerals, other than minerals that the municipality was authorized and empowered to assess at the time of the acquisition, may be corrected under the *Land Titles Act* to limit the certificate of title to the minerals the municipality was authorized and empowered to acquire, and all other necessary corrections may be made under the *Land Titles Act* on other certificates of title.

(4) This section does not affect an interest in minerals acquired by any person from a municipality before March 5, 1948.

1994 cM-26.1 s431

Right of way

432 After the date on which a municipality becomes the owner of a parcel of land under section 424, if an application is made to a municipality

(a) for a right of entry by an operator entitled to apply for a right of entry order under the *Surface Rights Act*, or

(b) for a right of way for a railway, pipeline, transmission line, pole line, conduit, irrigation or drainage ditch or other similar purpose, by an applicant entitled to expropriate for that purpose under any Act,

the municipality may grant the right of entry or right of way.

1994 cM-26.1 s432

When parcel becomes part of another municipality

433(1) If proceedings affecting a parcel of land have been started under this Division and the parcel of land later becomes part of another municipality, the proceedings must be continued by that municipality as if the parcel had always been included in it, and that municipality must pay to the municipality that started the proceedings, to the extent that municipality receives sufficient money to do so, the costs incurred by the original municipality in connection with the parcel.

(2) When a parcel of land becomes part of another municipality, the Registrar must, on receipt of an order of the Minister, issue a new certificate of title showing the parcel to be registered in the name of that municipality.

1994 cM-26.1 s433

Non-liability for condition of land

434 If the Minister becomes the owner of a parcel of land pursuant to this Division, the Minister is not liable in respect of the state and condition of the parcel or any improvements to it.

1994 cM-26.1 s434

Action for condition of land prohibited

434.1(1) No action for damages may be commenced against a municipality with respect to the state and condition of a parcel of land, or any improvements to it, shown on the tax arrears list of the municipality unless

(a) after the date on which the municipality is entitled to possession of the parcel under section 420, or

(b) after the date on which the municipality becomes the owner of the parcel under section 424,

the municipality releases on that parcel a new or additional substance into the environment that may cause, is causing or has caused an adverse effect or the municipality aggravates the adverse effect of the release of a substance into the environment on that parcel.

(2) Subsection (1) does not relieve a municipality of liability respecting a parcel of land, or any improvement to it, that was owned by the municipality before the parcel was placed on the municipality's tax arrears list.

1996 c30 s40

Continuation of proceedings

435(1) With respect to Edmonton, Calgary and Medicine Hat, all proceedings taken or that were required to be taken under any predecessor of this Act, as modified or varied by any special provisions of the charters of the respective cities, must be continued or taken, as the case may be, under this Division wherever possible.

(2) The Minister may make regulations or orders for the purpose of overcoming any procedural or other difficulty occasioned by the differences between this Division and the charters of Edmonton, Calgary and Medicine Hat.

1994 cM-26.1 s435

Deemed compliance with Act

436 Any municipality that acquired land under a predecessor of this Act is deemed to have complied with the requirements of that Act.

1994 cM-26.1 s436

Division 8.1
Recovery of Taxes Related to Designated Manufactured Homes

Definitions

436.01 In this Division,

(a) "financing change statement" means a financing change statement as defined in the *Personal Property Security Act*;

(b) "financing statement" means a financing statement as defined in the *Personal Property Security Act*;

(c) "register", except where the context otherwise requires, means to register by means of a financing statement in the Registry in accordance with the *Personal Property Security Act* and the regulations made under that Act;

(d) "Registry" means the Personal Property Registry;

(e) "reserve bid" means the minimum price at which a municipality is willing to sell a designated manufactured home at a public auction;

(f) "security interest" means a security interest as defined in the *Personal Property Security Act*;

(g) "tax" means a property tax or a community revitalization levy imposed in respect of property referred to in section 304(1)(j)(i) or (k);

(h) "tax arrears list" means a tax arrears list prepared by a municipality under section 436.03(1)(a);

(i) "tax recovery lien" means a charge to secure the amount of taxes owing to a municipality in respect of a designated manufactured home.

RSA 2000 cM-26 s436.01;2005 c14 s17

Methods of recovering taxes in arrears

436.02(1) A municipality may attempt to recover tax arrears in respect of a designated manufactured home

(a) in accordance with this Division, or

(b) subject to subsection (2), in accordance with Division 9 or with any other Act or common law right.

(2) A municipality may start an action under subsection (1)(b) at any time before

(a) the designated manufactured home is sold at a public auction under section 436.09, or

(b) the designated manufactured home is disposed of in accordance with section 436.15(a),

whichever occurs first.

1998 c24 s40

Tax arrears list

436.03(1) A municipality must annually, not later than March 31,

(a) prepare a tax arrears list that shows the designated manufactured homes in the municipality in respect of which there are tax arrears for more than one year, and that may also show the designated manufactured homes in the municipality in respect of which there are tax arrears for less than one year,

(b) register a tax recovery lien against each designated manufactured home shown on the tax arrears list, and

(c) post a copy of the tax arrears list in a place that is accessible to the public during regular business hours.

(2) A municipality must not register a tax recovery lien against a designated manufactured home in respect of which there exists a tax recovery lien registered from previous years unless that lien has first been discharged.

(3) If a subsequent tax recovery lien is registered in error, it is deemed to be of no effect.

(4) The municipality must give written notice to the owner of each designated manufactured home shown on the tax arrears list that a tax recovery lien has been registered against the designated manufactured home.

(5) The municipality must give written notice to the owner of each manufactured home community containing one or more designated manufactured homes shown on the tax arrears list that a tax recovery lien has been registered against the designated manufactured home or homes.

1998 c24 s40

Costs of recovery

436.04(1) A municipality is responsible for the payment of the costs it incurs in carrying out the measures referred to in section 436.03, but it may add the costs to the tax roll in respect of the designated manufactured home shown on the tax arrears list.

(2) No person shall register a financing change statement to discharge the registration of a tax recovery lien against a designated manufactured home without the authorization of the municipality in whose favour the lien is registered.

(3) If a tax recovery lien is discharged in error, the municipality may, within 30 days after the discharge and without any administration fee charged by the Government of Alberta, re-register the tax recovery lien, which has the same effect as if the original tax recovery lien had not been discharged.

1998 c24 s40

Removal of designated manufactured home or improvements

436.05 When a tax recovery lien has been registered against a designated manufactured home, no person shall remove from the site the designated manufactured home or any other improvements located on the site for which the owner of the designated manufactured home is also liable to pay the taxes, unless the municipality that registered the lien consents.

1998 c24 s40

Right to pay tax arrears

436.06(1) When a tax recovery lien has been registered against a designated manufactured home, any person may pay the tax arrears in respect of that designated manufactured home.

(2) On payment of the tax arrears under subsection (1), the municipality must register a financing change statement to discharge the registration of the tax recovery lien.

(3) A person may exercise the right under subsection (1) at any time before

(a) the designated manufactured home is sold at a public auction under section 436.09, or

(b) the designated manufactured home is disposed of in accordance with section 436.15(a).

1998 c24 s40

Right to collect rent to pay tax arrears

436.07(1) When a tax recovery lien has been registered against a designated manufactured home, the municipality may send a

written notice to any person who rents or leases the designated manufactured home from the owner of the designated manufactured home, requiring that person to pay the rent or lease payments, as the case may be, to the municipality until the tax arrears have been paid.

(2) Not less than 14 days before a municipality sends a notice under subsection (1), it must send a notice to the owner of the designated manufactured home advising the owner of the municipality's intention to proceed under subsection (1).

(3) The municipality must send a copy of the notice under subsection (2) to the owner of the manufactured home community where the designated manufactured home is located.

(4) This section does not prevent the municipality from exercising any other right it has to collect the tax arrears.

1998 c24 s40

Warning of sale

436.08(1) Not later than August 1 following preparation of the tax arrears list, the municipality must, in respect of each designated manufactured home shown on the tax arrears list, send a written notice to

(a) the owner of the designated manufactured home,

(b) the owner of the manufactured home community where the designated manufactured home is located, and

(c) each person who has a security interest in or a lien, writ, charge or other encumbrance against the designated manufactured home as disclosed by a search of the Registry using the serial number of the designated manufactured home.

(2) The notice must state that if the tax arrears in respect of the designated manufactured home are not paid before March 31 in the next year, the municipality will offer the designated manufactured home for sale at a public auction.

(3) The notice under subsection (1) must be sent to the address shown on the records of the Registry for each person referred to in subsection (1)(c).

1998 c24 s40;1999 c11 s25

Offer of designated manufactured home for sale

436.09(1) Each municipality must offer for sale at a public auction any designated manufactured home shown on its tax arrears list if the tax arrears are not paid.

(2) Unless subsection (4) applies, the public auction must be held in the period beginning on the date referred to in section 436.08(2) and ending on March 31 of the year immediately following that date.

(3) Subsection (1) does not apply to a designated manufactured home in respect of which the municipality has started an action under section 436.02(2) to recover the tax arrears before the date of the public auction.

(4) The municipality may enter into an agreement with the owner of a designated manufactured home shown on its tax arrears list providing for the payment of the tax arrears over a period not exceeding 3 years, and in that event the designated manufactured home need not be offered for sale under subsection (1) until

(a) the agreement has expired, or

(b) the owner of the designated manufactured home breaches the agreement,

whichever occurs first.

1998 c24 s40

Reserve bid and conditions for sale

436.1 The council must set for each designated manufactured home to be offered for sale at a public auction,

(a) a reserve bid that is as close as reasonably possible to the market value of the designated manufactured home, and

(b) any conditions that apply to the sale.

1998 c24 s40

Right to possession

436.11(1) From the date on which a designated manufactured home is offered for sale at a public auction, the municipality is entitled to possession of the designated manufactured home.

(2) For the purpose of obtaining possession of a designated manufactured home, a designated officer may enter the designated manufactured home and take possession of it for and in the name of the municipality, and if in so doing the designated officer encounters resistance, the municipality may apply to the Court of King's Bench for an order for possession of the designated manufactured home.

RSA 2000 cM-26 s436.11;2009 c53 s119;AR 217/2022

Advertisement of public auction

436.12(1) The municipality must advertise the public auction in at least one issue of a newspaper having general circulation in the municipality, not less than 10 days and not more than 30 days before the date on which the public auction is to be held.

(2) The advertisement must specify the date, time and location of the public auction, the conditions of sale and a description of each designated manufactured home to be offered for sale.

(3) Not less than 30 days before the date of the public auction, the municipality must send a copy of the advertisement referred to in subsection (1) to each person referred to in section 436.08(1).

RSA 2000 cM-26 s436.12;2023 c9 s19(9)

Adjournment of auction

436.13(1) The municipality may adjourn the holding of a public auction to any date within 60 days after the advertised date.

(2) If a public auction is adjourned, the municipality must

(a) post a notice in a place that is accessible to the public during regular business hours, showing the new date on which the public auction is to be held, and

(b) send a copy of the notice to each person referred to in section 436.08(1).

(3) If a public auction is cancelled as a result of the payment of the tax arrears, the municipality must

(a) post a notice in a place that is accessible to the public during regular business hours stating that the auction is cancelled, and

(b) send a copy of the notice to each person referred to in section 436.08(1).

RSA 2000 cM-26 s436.13;2023 c9 s19(10)

Unencumbered ownership

436.14(1) A person who purchases a designated manufactured home at a public auction or pursuant to section 436.15(a) acquires the designated manufactured home free of all security interests, liens, writs, charges and other encumbrances, except encumbrances arising from claims of the Crown in right of Canada, and all obligations secured by the security interests, liens, writs, charges and other encumbrances are, as regards the purchaser, deemed performed.

(2) When a person purchases a designated manufactured home at a public auction or pursuant to section 436.15(a), the municipality must, in respect of any security interest in or lien, writ, charge or other encumbrance against the designated manufactured home that exists on the date of sale as disclosed by a search of the Registry using the serial number of the designated manufactured home, register a financing change statement

(a) to amend the collateral description in the registration to exclude the designated manufactured home, or

(b) if the designated manufactured home is the only collateral described in the registration, to discharge the registration.

(3) Subsection (2) does not apply to a registration for which the purchaser is named as a debtor in a registered financing statement.

(4) Subsection (2) operates despite section 68 of the *Personal Property Security Act*.

(5) A designated manufactured home is sold at a public auction when the person who is acting as the auctioneer declares the designated manufactured home sold.

1998 c24 s40

Right to sell or dispose of designated manufactured home

436.15 If a designated manufactured home is not sold at a public auction under section 436.09, the municipality may

(a) dispose of it

(i) by selling it at a price that is as close as reasonably possible to the market value of the designated manufactured home, or

(ii) by depositing in the account referred to in section 436.17(1)(a) an amount of money equal to the price at which the municipality would be willing to sell the designated manufactured home under subclause (i),

or

(b) grant a lease in respect of it.

1998 c24 s40

Payment of tax arrears

436.16(1) If the tax arrears in respect of a designated manufactured home are paid before the municipality disposes of it under section 436.15(a) or while the designated manufactured

home is being leased under section 436.15(b), the municipality must return the designated manufactured home to its owner.

(2) Before returning the designated manufactured home to its owner under subsection (1), the municipality must send a written notice

(a) to each person referred to in section 436.08(1), and

(b) if the municipality has leased the designated manufactured home under section 436.15(b), to the person leasing it.

(3) The notice must state that

(a) the designated manufactured home will be returned to the owner after 30 days from the date of the notice, and

(b) despite any provision to the contrary in a lease agreement in respect of the designated manufactured home, the lease expires 30 days after the date of the notice.

(4) Subsection (3) applies despite anything contained in the *Residential Tenancies Act*.

1998 c24 s40

Separate account for sale proceeds

436.17(1) The money paid for a designated manufactured home at a public auction or pursuant to section 436.15(a)

(a) must be deposited by the municipality in an account that is established solely for the purpose of depositing money from the sale or disposition of designated manufactured homes under this Division, and

(b) must be paid out in accordance with this section and section 436.18.

(2) Money paid to a municipality as rent under a lease granted under section 436.15(b) must be placed in the account referred to in subsection (1) and distributed in accordance with this section and section 436.18.

(3) The following must be paid first and in the following order:

(a) the tax arrears in respect of the designated manufactured home;

(b) any lawful expenses of the municipality in respect of the designated manufactured home;

(c) an administration fee of 5% of the amount deposited in respect of the designated manufactured home pursuant to subsection (1), payable to the municipality.

(4) If there is any money remaining after payment of the tax arrears and costs listed in subsection (3), the municipality must notify the previous owner of the designated manufactured home that there is money remaining.

(5) If the municipality is satisfied after a search of the Registry using the serial number of the designated manufactured home that there are no security interests in or liens, writs, charges or other encumbrances against the designated manufactured home, the municipality may pay the money remaining after the payments under subsection (3) to the previous owner of the designated manufactured home.

(6) If the municipality is not satisfied after a search of the Registry using the serial number of the designated manufactured home that there are no security interests in or liens, writs, charges or other encumbrances against the designated manufactured home, the municipality must notify the previous owner that an application may be made under section 436.18 to recover all or part of the money.

1998 c24 s40

Distribution of surplus sale proceeds

436.18(1) A person may apply to the Court of King's Bench for an order declaring that the person is entitled to a part of the money in the account referred to in section 436.17(1).

(2) An application under this section must be made within 5 years after

(a) the date of the public auction, if the designated manufactured home was sold at a public auction, or

(b) the date of a sale under section 436.15(a), if the designated manufactured home was sold under that section.

(3) The Court must decide if notice must be given to any person other than the applicant and in that event the hearing must be adjourned to allow notice to be given.

RSA 2000 cM-26 s436.18;2009 c53 s119;AR 217/2022

Payment of undistributed money to municipality

436.19 If no application is made under section 436.18 within the 5-year period referred to in section 436.18, the municipality may,

for any purpose, use the money deposited in accordance with section 436.17 that remains undistributed.

1998 c24 s40

Transfer to municipality after 10 years

436.2(1) Despite anything in this Division, where a designated manufactured home has been offered for sale but not sold at a public auction and the municipality has not disposed of it under section 436.15(a) within 10 years following the date of the public auction,

(a) sections 436.16, 436.17 and 436.18 cease to apply with respect to that designated manufactured home, and

(b) the municipality becomes the owner of the designated manufactured home free of all security interests, liens, writs, charges and other encumbrances, except encumbrances arising from claims of the Crown in right of Canada, and all obligations secured by the security interests, liens, writs, charges or encumbrances are, as regards the municipality, deemed performed.

(2) When the municipality becomes the owner of a designated manufactured home under subsection (1), the municipality may, in respect of any security interest in or lien, writ, charge or other encumbrance against the designated manufactured home as disclosed by a search of the Registry using the serial number of the designated manufactured home, register a financing change statement

(a) to amend the collateral description in the registration to exclude the designated manufactured home, or

(b) if the designated manufactured home is the only collateral described in the registration, to discharge the registration.

(3) Subsection (2) operates despite section 68 of the *Personal Property Security Act*.

1998 c24 s40

Prohibited bidding and buying

436.21(1) When a municipality holds a public auction under section 436.09 or a sale under section 436.15(a), the auctioneer, the councillors, the chief administrative officer and the designated officers and employees of the municipality must not bid for or buy, or act as an agent in buying, any designated manufactured home offered for sale, unless subsection (2) applies.

(2) A municipality may direct a designated officer or employee of the municipality to bid for or buy a designated manufactured home of which the municipality wishes to become the owner.

1998 c24 s40

Manufactured home moved to another municipality

436.22 If, after tax recovery proceedings affecting a designated manufactured home are started under this Division, the designated manufactured home is moved to another municipality or its site becomes part of another municipality,

(a) the proceedings must be continued by that other municipality as if the designated manufactured home had always been included in it, and

(b) the other municipality must pay to the municipality that commenced the proceedings, to the extent that the other municipality receives sufficient money to do so, the costs incurred by the original municipality in connection with the tax recovery proceedings.

1998 c24 s40

Regulations

436.23 The Minister may make regulations

(a) respecting the rights and obligations of a municipality in relation to its possession of a designated manufactured home under this Division;

(b) respecting any other matter related to the recovery of taxes under this Division that the Minister considers necessary to carry out the intent of this Division.

1998 c24 s40

Reporting requirements

436.24(1) Unless a municipality passes a bylaw to the contrary, the owner of a manufactured home community must provide monthly reports to the chief administrative officer or a designated officer of the municipality regarding

(a) the ownership of all designated manufactured homes in the manufactured home community, including the serial numbers of the designated manufactured homes, and

(b) the movement of all designated manufactured homes in and out of the manufactured home community.

(2) Despite subsection (1), a municipality may pass a bylaw requiring the owner of the manufactured home community to provide the reports required under subsection (1) to the

municipality on the dates specified by the municipality, but not more than once a month.

1998 c24 s40

Division 9
Recovery of Taxes Not Related to Land

Definitions

437 In this Division,

(a) "distress warrant" means a written instruction to seize goods of the person named in the warrant;

(b) "period for payment" means,

(i) in respect of tax imposed on linear property, machinery and equipment or property referred to in section 304(1)(f), the 120 days following the sending of the tax notice by the municipality, or

(ii) in respect of tax imposed on any other property,

(A) if the person liable to pay the tax is a resident of the municipality, the 14 days following the sending of the tax notice by the municipality, or

(B) if the person liable to pay the tax is not a resident of the municipality, the 30 days following the sending of the tax notice by the municipality;

(c) "tax" means

(i) a business tax,

(ii) a well drilling equipment tax,

(ii.1) a community aggregate payment levy, or

(iii) a property tax or community revitalization levy imposed in respect of property referred to in section 304(1)(c), (f), (g), (h), (i), (j)(i) or (k);

(d) "tax arrears" means taxes that remain unpaid after the expiry of the period for payment.

RSA 2000 cM-26 s437;2005 c14 s18;2021 c22 s7

Methods of recovering taxes in arrears

438(1) A municipality may attempt to recover tax arrears

(a) in accordance with this Division, and

(b) subject to subsection (2), in accordance with any other Act or common law right.

(2) A municipality may start an action under subsection (1)(b) at any time before the goods are sold at a public auction or the municipality becomes the owner of the goods under section 448, whichever occurs first.

1994 cM-26.1 s438

Right to issue distress warrant

439(1) A municipality wishing to recover tax arrears pursuant to this Division may issue a distress warrant.

(2) Each municipality may, in writing, authorize a designated officer or appoint a person to the position of designated officer to prepare and issue distress warrants and seize goods pursuant to distress warrants on behalf of the municipality.

1994 cM-26.1 s439

Seizure of goods

440(1) When a distress warrant has been issued, a civil enforcement agency or a person referred to in section 439(2) must place sufficient goods under seizure to satisfy the amount of the claim shown in the warrant.

(2) The person placing goods under seizure may ask the person who owns or has possession of the seized goods to sign a bailee's undertaking agreeing to hold the seized goods for the municipality.

(3) If a person refuses to sign a bailee's undertaking, the person placing goods under seizure may remove the goods from the premises.

(4) When a bailee's undertaking has been signed under subsection (2), the goods specified in it are deemed to have been seized.

(5) A seizure under this section continues until the municipality

(a) abandons the seizure by written notice, or

(b) sells the goods.

(6) The municipality is not liable for wrongful or illegal seizure or for loss of or damage to goods held under a seizure under this section if a bailee's undertaking relating to the seized goods has been signed pursuant to subsection (2).

1994 cM-26.1 s440;1994 cC-10.5 s146;1997 c19 s3

Goods affected by distress warrant

441(1) A person may seize the following goods pursuant to a distress warrant:

(a) goods belonging to the person who is liable to pay the tax arrears or in which that person has an interest;

(b) goods of a business that is liable to pay business tax arrears, even if the goods have been sold to a purchaser of the business;

(c) goods of a corporation that are in the hands of

(i) a receiver appointed for the benefit of creditors,

(ii) an authorized trustee in bankruptcy, or

(iii) a liquidator appointed under a winding-up order.

(2) If a person who is liable to pay tax arrears is in possession of goods belonging to others for the purpose of storing the goods, those goods must not be seized pursuant to the distress warrant.

1994 cM-26.1 s441

Date for issuing distress warrant

442(1) A distress warrant must not be issued until the period for payment expires, unless subsection (2) applies.

(2) If, before the period for payment expires, a municipality has reason to believe that a person is about to move out of the municipality goods that are to be seized under a distress warrant, the municipality may apply to a justice of the peace for an order authorizing the municipality to issue the distress warrant before the period for payment expires.

1994 cM-26.1 s442

Right to pay tax arrears

443(1) After goods have been seized under a distress warrant, any person may pay the tax arrears.

(2) On payment of the tax arrears under subsection (1), the municipality must release the goods from seizure.

(3) A person may exercise the right under subsection (1) at any time before the municipality sells the goods at a public auction or becomes the owner of the goods under section 448.

1994 cM-26.1 s443

Right to collect rent to pay tax arrears

444(1) If a distress warrant has been issued to recover tax arrears in respect of a business and the person who is liable to pay the business tax arrears owns property that is leased to one or more tenants, the municipality may send a notice to each tenant requiring the tenant to pay the rent as it becomes due to the municipality until the business tax arrears have been paid.

(2) Not less than 14 days before a municipality sends a notice under subsection (1), it must send a notice to the owner of the property advising the owner of the municipality's intention to proceed under subsection (1).

(3) This section does not prevent the municipality from exercising any other right it has to collect the tax arrears.

1994 cM-26.1 s444

Sale of property

445(1) The municipality must offer for sale at a public auction goods that have been seized under a distress warrant if the tax arrears are not paid, unless the municipality starts an action under section 438(2) to recover the tax arrears before the date of the public auction.

(2) The municipality must advertise a public auction by posting a notice in at least 3 public places in the municipality near the goods to be sold not less than 10 days before the date of the auction.

(3) The advertisement must specify the date, time and location of the public auction, the conditions of sale, a description of the goods to be sold and the name of the person whose goods are to be sold.

(4) The advertisement must state that the municipality will become the owner of any goods not sold at the public auction, immediately after the public auction.

1994 cM-26.1 s445

Date of public auction

446(1) The public auction must be held not more than 60 days after the goods are seized under the distress warrant.

(2) The municipality may adjourn the holding of a public auction but must post a notice in accordance with section 445(2) showing the new date on which the public auction is to be held.

1994 cM-26.1 s446

Exception to sale at auction

447 Despite section 445(1), a municipality may have grain seized under a distress warrant hauled to the nearest elevator or other

convenient place of storage and may dispose of the grain at the current market price.

1994 cM-26.1 s447

Transfer to municipality

448 The municipality becomes the owner of any goods offered for sale but not sold at a public auction, immediately after the public auction and may dispose of the goods by selling them.

1994 cM-26.1 s448

Separate account for sale proceeds

449(1) The money paid for goods at a public auction or pursuant to section 448

(a) must be deposited by the municipality in an account that is established solely for the purpose of depositing money from the sale of goods under this Division, and

(b) must be paid out in accordance with this section and section 450.

(2) The following must be paid first and in the following order:

(a) the tax arrears;

(b) any lawful expenses of the municipality in respect of the goods.

(3) If there is any money remaining after payment of the tax arrears and expenses listed in subsection (2), the municipality must notify the previous owner that there is money remaining and that an application may be made under section 450 to recover all or part of the money.

1994 cM-26.1 s449

Distribution of surplus sale proceeds

450(1) A person may apply to the Court of King's Bench for an order declaring that the person is entitled to a part of the money in the account referred to in section 449(1).

(2) An application under this section may be made within 5 years after the date of the public auction.

(3) The Court must decide if notice must be given to any person other than the applicant and in that event the hearing must be adjourned to allow notice to be given.

RSA 2000 cM-26 s450;2009 c53 s119;AR 217/2022

Seizure of designated manufactured home

451 Part 10 of the *Civil Enforcement Act* does not apply to a designated manufactured home in a manufactured home community that has been seized under a distress warrant.

1994 cM-26.1 s451;1994 cC-10.5 s146;1998 c24 s41

Regulations

452 The Minister may make regulations respecting any other matter related to the recovery of taxes under this Division that is considered necessary to carry out the intent of this Division.

1994 cM-26.1 s452

Part 11
Assessment Review Boards

Division 1
Establishment and Function of Assessment Review Boards

Interpretation

453(1) In this Part,

(a) "assessment notice" includes an amended assessment notice and a supplementary assessment notice;

(b) "assessment roll" includes a supplementary assessment roll;

(c) "chair" means the member of an assessment review board designated as chair under section 454.1(2), 454.2(2) or 455(2);

(d) "clerk", in respect of a local assessment review board or composite assessment review board having jurisdiction in one or more municipalities, means the clerk appointed under section 456;

(e) "composite assessment review board" means a composite assessment review board established by a council under section 454(b) or jointly established by 2 or more councils under section 455;

(f) "local assessment review board" means a local assessment review board established by a council under section 454(a) or jointly established by 2 or more councils under section 455;

(g) "provincial member" means a person appointed by the Minister under section 454.21(2);

(h) "tax notice" includes a supplementary tax notice;

(i) "tax roll" includes a supplementary tax roll.

(2) In this Part, a reference to an assessment review board

(a) means a local assessment review board or a composite assessment review board, as the case requires, and

(b) includes a panel of the board convened under section 454.11 or 454.21.

2016 c24 s62;2019 c22 s10(13)

Assessment review boards to be established

454 A council must by bylaw establish

(a) a local assessment review board to hear complaints referred to in section 460.1(1), and

(b) a composite assessment review board to hear complaints referred to in section 460.1(2).

2016 c24 s62

Appointment of members to local assessment review board

454.1(1) A council must

(a) appoint at least 3 persons as members of the local assessment review board,

(b) prescribe the term of office of each member appointed under clause (a), and

(c) prescribe the remuneration and expenses, if any, payable to each member appointed under clause (a).

(2) The council must designate one of the members appointed under subsection (1) as the chair of the local assessment review board and must prescribe the chair's term of office and the remuneration and expenses, if any, payable to the chair.

(3) The chair may delegate to any other member appointed under subsection (1) any of the powers, duties or functions of the chair.

2016 c24 s62

Panels of local assessment review board

454.11(1) Where a hearing is to be held in respect of a complaint referred to in section 460.1(1), the chair of the local assessment review board must convene a panel of 3 of its members to hear the complaint.

(2) Despite subsection (1) but subject to subsection (3)(b) and any conditions prescribed by the regulations under section 484.1(c), a panel of a local assessment review board may consist of only one member appointed by the chair.

(3) Unless an order of the Minister authorizes otherwise, the chair must not appoint

(a) more than one councillor to a 3-member panel, or

(b) a councillor as the only member of a one-member panel.

(4) Where a panel consists of 3 members, the panel members must choose a presiding officer from among themselves.

(5) Where a panel has only one member, that member is the presiding officer.

2016 c24 s62;2018 c11 s13

Appointment of members to composite assessment review board

454.2(1) A council must

(a) appoint at least 2 persons as members of the composite assessment review board,

(b) prescribe the term of office of each member appointed under clause (a), and

(c) prescribe the remuneration and expenses, if any, payable to each member appointed under clause (a).

(2) The council must designate one of the members appointed under subsection (1) as the chair of the composite assessment review board and must prescribe the chair's term of office and the remuneration and expenses, if any, payable to the chair.

(3) The chair may delegate to another member appointed under subsection (1) any of the powers, duties or functions of the chair.

2016 c24 s62

Panels of composite assessment review board

454.21(1) Where a hearing is to be held in respect of a complaint referred to in section 460.1(2), the chair of the composite assessment review board must convene a panel to hear the complaint.

(2) The panel must consist of 2 members of the composite assessment review board appointed by the chair and one provincial

member appointed by the Minister in accordance with the regulations.

(3) Unless an order of the Minister authorizes otherwise, the chair must not appoint more than one councillor to a panel.

(4) Despite subsection (2) but subject to any conditions prescribed by the regulations under section 484.1(d), a panel of a composite assessment review board may consist of only the provincial member.

(5) The provincial member is the presiding officer of every panel of a composite assessment review board.

2016 c24 s62

Qualifications of members

454.3 A member of an assessment review board may not participate in a hearing of the board unless the member is qualified as provided for in the regulations.

2016 c24 s62

Joint establishment of assessment review boards

455(1) Two or more councils may agree to jointly establish the local assessment review board or the composite assessment review board, or both, to have jurisdiction in their municipalities.

(2) Where an assessment review board is jointly established,

(a) the councils must jointly designate one of the board members as chair and must jointly prescribe the chair's term of office and the remuneration and expenses, if any, payable to the chair, and

(b) the chair may delegate any of the powers, duties or functions of the chair to another board member but not to the provincial member of a panel of the board.

2016 c24 s62

Clerk

456(1) The council of a municipality must appoint a person as the clerk of the assessment review boards having jurisdiction in the municipality.

(2) Where an assessment review board is jointly established, the councils must jointly appoint the clerk.

(3) The clerk must not be an assessor or a designated officer having authority to grant or cancel tax exemptions or deferrals under section 364.1.

(4) The council or councils appointing the clerk must prescribe the clerk's remuneration and duties.

2016 c24 s62;2019 c22 s10(14)

Replacement of panel members

457 In circumstances provided for by the regulations, the chair of an assessment review board may replace a member of a panel.

2016 c24 s62

Quorum

458(1) Where a panel of a local assessment review board consists of 3 members, a quorum is 2 members.

(2) Where a panel of a composite assessment review board consists of 3 members, a quorum is 2 members, one of whom must be the provincial member.

2016 c24 s62

Decision

459 A decision of a panel of an assessment review board is the decision of the assessment review board.

2016 c24 s62

Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

(3) A complaint may be made only by an assessed person or a taxpayer.

(4) A complaint may relate to any assessed property or business.

(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

(a) the description of a property or business;

(b) the name and mailing address of an assessed person or taxpayer;

(c) an assessment;

(d) an assessment class;

(e) an assessment sub-class;

(f) the type of property;

(g) the type of improvement;

(h) school support;

(i) whether the property is assessable;

(j) whether the property or business is exempt from taxation under Part 10;

(k) any extent to which the property is exempt from taxation under a bylaw under section 364.1;

(l) whether the collection of tax on the property is deferred under a bylaw under section 364.1.

(6) A complaint may be made about a designated officer's refusal to grant an exemption or deferral under a bylaw under section 364.1.

(7) Despite subsection (5)(j),

(a) there is no right to make a complaint about an exemption or deferral given by agreement under section 364.1(11) unless the agreement expressly provides for that right, and

(b) there is no right to make a complaint about a decision made under a bylaw under section 364.2 in respect of an exemption or deferral.

(8) There is no right to make a complaint about any tax rate.

(9) A complaint under subsection (5) must

(a) indicate what information shown on an assessment notice or tax notice is incorrect,

(b) explain in what respect that information is incorrect,

(c) indicate what the correct information is, and

(d) identify the requested assessed value, if the complaint relates to an assessment.

(9.1) A complaint about a tax imposed in accordance with a clean energy improvement tax bylaw must be made within one year after the tax is first imposed.

(10) A complaint about a local improvement tax must be made within one year after it is first imposed.

(11) Despite subsection (10), where a local improvement tax rate has been revised under section 403(3), a complaint may be made about the revised local improvement tax whether or not a complaint was made about the tax within the year after it was first imposed.

(12) A complaint under subsection (11) must be made within one year after the local improvement tax rate is revised.

(13) A complaint must include the mailing address of the complainant except where, in the case of a complaint under subsection (5), the correct mailing address of the complainant is shown on the assessment notice or tax notice.

(14) An assessment review board has no jurisdiction to deal with a complaint about designated industrial property or an amount prepared by the Minister under Part 9 as the equalized assessment for a municipality.

(15) An assessment review board has no jurisdiction to deal with a complaint about any matter relating to an exemption or deferral under section 364.2, including a refusal to grant an exemption or deferral or a cancellation of an exemption or deferral under that section.

2016 c24 s62;2019 c6 s8;2023 c9 s19(11)

Jurisdiction of assessment review boards

460.1(1) A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

(a) an assessment notice for

(i) residential property with 3 or fewer dwelling units, or

(ii) farm land,

or

(b) a tax notice other than a property tax notice, business tax notice or improvement tax notice.

(2) Subject to section 460(14) and (15), a composite assessment review board has jurisdiction to hear complaints about

(a) any matter referred to in section 460(5) that is shown on

(i) an assessment notice for property other than property described in subsection (1)(a), or

(ii) a business tax notice or an improvement tax notice,

or

(b) a designated officer's decision to refuse to grant an exemption or deferral under section 364.1.

(3) In this section, a reference to "improvement tax" includes a business improvement area tax in Part 10, Division 4 and a local improvement tax in Part 10, Division 7.

2016 c24 s62;2017 c22 s37;2019 c6 s9

Address to which a complaint is sent

461(1) A complaint must be filed with the assessment review board at the address shown on the assessment or tax notice for the property

(a) in the case of a complaint about a designated officer's decision to refuse to grant an exemption or deferral under section 364.1, not later than the date stated on the written notice of refusal under section 364.1(9), or

(b) in any other case, not later than the complaint deadline.

(1.1) A complaint filed after the complaint deadline is invalid.

(2) The applicable filing fee must be paid when a complaint is filed.

(3) On receiving a complaint, the clerk must set a date, time and location for a hearing before an assessment review board in accordance with the regulations.

2016 c24 s62;2017 c13 s2(13)

Notice of assessment review board hearing

462(1) If a complaint is to be heard by a local assessment review board, the clerk must

(a) within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and

(b) within the time prescribed by the regulations, notify the municipality, the complainant and any assessed person other than the complainant who is directly affected by the complaint of the date, time and location of the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the clerk must

(a) within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and

(b) within the time prescribed by the regulations, notify the Minister, the municipality, the complainant and any assessed person other than the complainant who is directly affected by the complaint of the date, time and location of the hearing.

2016 c24 s62

Absence from hearing

463 If any person who is given notice of the hearing does not attend, the assessment review board must proceed to deal with the complaint if

(a) all persons required to be notified were given notice of the hearing, and

(b) no request for a postponement or an adjournment was received by the board or, if a request was received, no postponement or adjournment was granted by the board.

2016 c24 s62

Proceedings before assessment review board

464(1) Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have power to determine the admissibility, relevance and weight of any evidence.

(2) Assessment review boards may require any person giving evidence before them to do so under oath.

(3) Members of assessment review boards, including provincial members of panels of composite assessment review boards, are commissioners for oaths while acting in their official capacities.

2016 c24 s62

Hearings open to public

464.1(1) Subject to subsections (2) and (3), all hearings by an assessment review board are open to the public.

(2) If an assessment review board considers it necessary to prevent the disclosure of intimate personal, financial or commercial matters or other matters because, in the circumstances, the need to protect the confidentiality of those matters outweighs the desirability of an open hearing, the assessment review board may conduct all or part of the hearing in private.

(3) If all or any part of a hearing is to be held in private, no party may attend the hearing unless the party files an undertaking stating that the party will hold in confidence any evidence heard in private.

(4) Subject to subsection (5), all documents filed in respect of a matter before an assessment review board must be placed on the public record.

(5) An assessment review board may exclude a document from the public record

(a) if the assessment review board is of the opinion that disclosure of the document could reasonably be expected to disclose intimate personal, financial or commercial matters or other matters, and

(b) the assessment review board considers that a person's interest in confidentiality outweighs the public interest in the disclosure of the document.

(6) Nothing in this section limits the operation of any statutory provision that protects the confidentiality of information or documents.

2016 c24 s62

Notice to attend or produce

465(1) If, in the opinion of an assessment review board hearing a complaint,

(a) the attendance of a person, or

(b) the production of a document or thing,

is required for the purpose of the hearing, the board may, on application, cause a notice to be served on a person requiring a person to attend or to attend and produce the document or thing.

(2) An application under subsection (1) must be made in accordance with the regulations made under section 484.1(n.1).

(3) If a person fails or refuses to comply with a notice served under subsection (1), the assessment review board may apply to the Court of King's Bench and the Court may issue a warrant requiring the attendance of the person or the attendance of the person to produce a document or thing.

2016 c24 s62;AR 217/2022

Protection of witnesses

466 A witness may be examined under oath on anything relevant to a matter that is before an assessment review board and is not

excused from answering any question on the ground that the answer might tend to

(a) incriminate the witness,

(b) subject the witness to punishment under this or any other Act, or

(c) establish liability of the witness

(i) to a civil proceeding at the instance of the Crown or of any other person, or

(ii) to prosecution under any Act,

but if the answer so given tends to incriminate the witness, subject the witness to punishment or establish liability of the witness, it must not be used or received against the witness in any civil proceedings or in any other proceedings under this or any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

2016 c24 s62

Division 2
Decisions of Assessment Review Boards

Decisions of assessment review board

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(1.1) For greater certainty, the power to make a change under subsection (1) includes the power to increase or decrease an assessed value shown on an assessment roll or tax roll.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(9).

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

(4) An assessment review board must not alter any assessment of farm land, machinery and equipment or railway property that has been prepared correctly in accordance with the regulations.

RSA 2000 cM-26 s467;2009 c29 s24;2018 c11 s13; 2019 c22 s10(15)

Appeal to composite assessment review board

467.1 A complaint about a designated officer's decision to refuse to grant an exemption or deferral under section 364.1 is an appeal of the decision and a composite assessment review board may, after hearing the complaint, confirm the designated officer's decision or replace it with the board's decision.

2016 c24 s63

Assessment review board decisions

468(1) Subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) before the end of the taxation year to which the complaint that is the subject of the hearing applies,

whichever is earlier.

(2) Despite subsection (1), in the case of a complaint about a supplementary assessment notice, an amended assessment notice or any tax notice other than a property tax notice, an assessment review board must render its decision in writing in accordance with the regulations.

RSA 2000 cM-26 s468;2009 c29 s25

Costs of proceedings

468.1 A composite assessment review board may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

2009 c29 s26

Effect of order relating to costs

468.2 An order of the composite assessment review board under section 468.1 may be registered in the Personal Property Registry and at any land titles office and, on registration, has the same effect as if it were a registered writ of enforcement issued after judgment has been entered in an action by the Court of King's Bench.

2009 c29 s26;AR 217/2022

Notice of decision

469 The clerk must, within 7 days after an assessment review board renders a decision, send the board's written decision and reasons, including any dissenting reasons, to the persons notified of the hearing under section 462(1)(b) or (2)(b), as the case may be.

RSA 2000 cM-26 s469;2009 c29 s27;2016 c24 s64

Judicial review

470(1) Where a decision of an assessment review board is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.

(2) Notice of an application for judicial review must be given to

(a) the assessment review board that made the decision,

(b) the complainant, other than an applicant for the judicial review,

(c) an assessed person who is directly affected by the decision, other than the complainant,

(d) a municipality, if the decision that is the subject of the judicial review relates to property that is within the boundaries of that municipality, and

(e) the Minister.

(3) If an applicant for judicial review of an assessment review board decision makes a written request for materials to the assessment review board for the purposes of the application, the assessment review board must provide the materials requested within 14 days from the date on which the written request is served.

(4) An assessment review board whose decision is the subject of an application for judicial review must, within 30 days from the date on which the board is served with the application, forward to the clerk of the Court of King's Bench the certified record of proceedings prepared under Part 3 of the Alberta Rules of Court.

(5) Documents excluded from the public record of a hearing by an assessment review board remain excluded from the public record on judicial review unless otherwise ordered by the Court of King's Bench.

(6) No member of an assessment review board, including a provincial member appointed to a panel of a composite assessment

review board, is liable for costs by reason of or in respect of a judicial review under this Act.

RSA 2000 cM-26 s470;2009 c29 s28;2014 c13 s35;2016 c24 s65; AR 217/2022

470.1 Repealed 2016 c24 s65.

Technical irregularities

471(1) If there has been substantial compliance with this Part, the decision of an assessment review board is not invalid because of a defect in form, a technical irregularity or informality.

(2) An assessment review board may correct any error or omission in its decision.

1994 cM-26.1 s471;1996 c30 s44

472 to **476** Repealed 1995 c24 s73.

Division 4
General Matters

Referral of unfair assessment to Minister

476.1 An assessment review board may refer any assessment that it considers unfair and inequitable to the Minister and the Minister may deal with it under sections 324 and 571.

2009 c29 s29

Required changes to rolls

477 The municipality must make any changes to its assessment roll or tax roll, or both, that are necessary to reflect the decision of an assessment review board.

1994 cM-26.1 s477;1995 c24 s74

Right to continue proceedings

478 A person who becomes an assessed person or taxpayer in respect of a property or business when a complaint about the property or business is being dealt with under this Part may become a party to any proceedings started by the previous assessed person or taxpayer.

1994 cM-26.1 s478

Obligation to pay taxes

479 Making a complaint under this Part does not relieve any person from the obligation to pay any taxes owing on any property or business or any penalties imposed for late payment of taxes.

1994 cM-26.1 s479

Prohibition

480(1) A member of an assessment review board must not hear or vote on any decision that relates to a matter in respect of which the member has a pecuniary interest.

(2) For the purposes of subsection (1), a member of an assessment review board has a pecuniary interest in a matter to the same extent that a councillor would have a pecuniary interest in the matter as determined in accordance with section 170.

RSA 2000 cM-26 s480;2009 c29 s30

Fees

481(1) Subject to the regulations made pursuant to section 484.1(q), the council may set fees payable by persons wishing to make complaints or to be involved as a party or intervenor in a hearing before an assessment review board and for obtaining copies of an assessment review board's decisions and other documents.

(2) If the assessment review board makes a decision in favour of the complainant, the fees paid by the complainant under subsection (1) must be refunded.

(3) If

(a) the assessment review board makes a decision that is not in favour of the complainant, and

(b) on judicial review, the Court of King's Bench makes a decision in favour of the complainant,

the fees paid by the complainant under subsection (1) must be refunded.

RSA 2000 cM-26 s481;2009 c29 s31;2016 c24 s66;AR 217/2022

Admissible evidence at hearing

482(1) A copy of

(a) an assessment roll or tax roll or part of it, or

(b) an assessment notice or tax notice,

that is certified by a designated officer as being a true copy of the original roll, part of the roll or notice is proof, in the absence of evidence to the contrary, of the existence and validity of the roll, part of the roll or notice and is admissible in evidence without proof of the appointment or signature of the designated officer.

(2) A statutory declaration signed by a designated officer is admissible in evidence as proof, in the absence of evidence to the contrary, that

(a) an assessment notice was sent at least 7 days prior to the notice of assessment date, or

(b) a tax notice was sent on the date shown on the tax notice.

RSA 2000 cM-26 s482;2017 c13 s1(42)

Decision admissible on judicial review

483 A copy of a decision of an assessment review board that is certified by the clerk as being a true copy of the original decision is proof, in the absence of evidence to the contrary, of the decision and is admissible in evidence without proof of the appointment or signature of the clerk.

RSA 2000 cM-26 s483;2016 c24 s67

Immunity

484 The members of an assessment review board, including a provincial member appointed to a panel of a composite assessment review board, are not personally liable for anything done or omitted to be done in good faith in the exercise or purported exercise of a power, duty or function under this Part.

RSA 2000 cM-26 s484; 2016 c24 s68

Regulations

484.1 The Minister may make regulations

(a) respecting the eligibility of persons to be provincial members;

(b) respecting the appointment of provincial members to panels of composite assessment review boards;

(c) prescribing the conditions under which a chair may convene a panel of a local assessment review board consisting of only one member;

(d) prescribing the conditions under which a chair may convene a panel of a composite assessment review board consisting of only a provincial member;

(e) respecting the training and qualifications of members of assessment review boards and clerks;

(f) respecting the setting by the clerk of the date, time and location of a hearing before an assessment review board;

(g) prescribing the period of time for purposes of section 462(1)(b) and (2)(b);

(h) respecting the procedures and functions of assessment review boards;

(h.1) respecting the replacement of members of a panel of an assessment review board;

(i) governing the disclosure of evidence in a hearing before an assessment review board;

(i.1) governing hearings held in private before an assessment review board;

(i.2) governing the excluding of documents from the public record by an assessment review board;

(j) respecting the jurisdiction of assessment review boards;

(k) respecting the authority of assessment review boards to hear complaints and the manner in which the boards are to hear complaints;

(l) respecting costs that may or must be imposed by a composite assessment review board in respect of a hearing, including, without limitation, regulations respecting

(i) the circumstances in which costs must be imposed, and

(ii) the amount of costs;

(m) respecting the rendering of decisions by assessment review boards;

(n) respecting the circumstances under which a person may act as an agent for an assessed person or taxpayer at a hearing before an assessment review board;

(n.1) respecting applications referred to in section 465(1);

(o) respecting any other matter relating to assessment review boards;

(p) respecting applications for judicial review referred to in section 470;

(q) setting amounts for any fees that a council may set pursuant to section 481(1).

RSA 2000 cM-26 s484.1;2009 c29 s32;2016 c24 s69

Part 12
Land and Property Rights Tribunal

Definitions

485 In this Part,

(a) "chair" means the chair of the Tribunal;

(b) "Tribunal" means the Land and Property Rights Tribunal.

RSA 2000 cM-26 s485;2016 c24 s70;2020 cL-2.3 s24(9)

Division 1
Jurisdiction of the Land and Property Rights Tribunal

486 and **487** Repealed 2020 cL-2.3 s24(11).

Hearing related to assessment

487.1 A member or a panel of the Tribunal may not participate in a hearing related to assessment matters unless the member is or the members of the panel are qualified to do so in accordance with the regulations.

2009 c29 s33;2020 cL-2.3 s24(12)

487.2 Repealed 2020 cL-2.3 s24(13).

Jurisdiction of the Tribunal

488(1) The Tribunal has jurisdiction

(a) to hear complaints about assessments for designated industrial property,

(b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,

(c) repealed 2009 c29 s34,

(d) to decide disputes between a management body and a municipality or between 2 or more management bodies, referred to it by the Minister under the *Alberta Housing Act*,

(e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,

(e.1) to perform any duties assigned to it by the Minister or the Lieutenant Governor in Council,

(f) to deal with annexations in accordance with Part 4,

(g) to decide disputes involving regional services commissions under section 602.2,

(h) to hear appeals pursuant to section 619,

(i) to hear appeals from subdivision decisions pursuant to section 678(2)(a),

(i.1) to hear appeals from development permit decisions pursuant to section 685(2.1)(a),

(j) to decide intermunicipal disputes pursuant to section 690,

(k) to hear appeals pursuant to section 648.1, and

(l) to hear appeals from decisions made under an appeal mechanism or dispute resolution mechanism established by a growth management board under section 708.08.

(2) The Tribunal must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a) and (b).

(3) Sections 495 to 498, 501 to 504 and 507 apply when the Tribunal holds a hearing to decide a dispute, or to hear an appeal, referred to in subsection (1).

RSA 2000 cM-26 s488;2009 c29 s34;2015 c8 s54;2016 c24 s74;2020 c25 s11;2020 cL-2.3 s24(14);2020 c39 s10(2);2022 c16 s9(68)

ALSA regional plans

488.01 In carrying out its functions and in exercising its jurisdiction under this Act and other enactments, the Tribunal must act in accordance with any applicable ALSA regional plan.

2009 cA-26.8 s83;2020 cL-2.3 s24(39)

Limit on Tribunal's jurisdiction

488.1(1) The Tribunal has no jurisdiction under section 488(1) to hear a complaint relating to an equalized assessment set by the Minister under Part 9 if the reason for the complaint is

(a) that the equalized assessment fails to reflect a loss in value where the loss in value has not been reflected in the assessments referred to in section 317,

(b) that information provided to the Minister by a municipality in accordance with section 319(1) does not properly reflect the relationship between assessments and the value of property in the municipality for the year preceding the year in which the assessments were used for the purpose of imposing a tax under Part 10, or

(c) that information relied on by the Minister pursuant to section 319(2) is incorrect.

(2) The Tribunal must not hear a complaint about any issue regarding the validity of a regulation or guideline under this Act as it relates to property.

RSA 2000 cM-26 s488.1;2009 c29 s35;2016 c24 s75;
2020 cL-2.3 s24(39)

489 and **490** Repealed 2020 cL-2.3 s24(15).

Division 2
Hearings Before the Tribunal

Form of complaint

491(1) A complaint about an assessment for designated industrial property or relating to the amount of an equalized assessment that is to be dealt with by a hearing before the Tribunal must be in the form prescribed by the regulations and must be filed with the chair within the following periods:

(a) for a complaint about an assessment for designated industrial property, not later than the complaint deadline;

(b) for a complaint relating to the amount of an equalized assessment, not later than 30 days from the date the Minister sends the municipality the report described in section 320.

(1.1) The form referred to in subsection (1) must be accompanied with the fee, if any, set by regulation under section 527.1.

(2) The form referred to in subsection (1) must include

(a) the reason the matter is being referred to the Tribunal,

(b) a brief explanation of the issues to be decided by the Tribunal, and

(c) an address to which any notice or decision of the Tribunal is to be sent.

(3) In addition to the information described in subsection (2), in respect of a complaint about an assessment for designated industrial property, the form referred to in subsection (1) must

(a) indicate what information on an assessment notice is incorrect,

(b) explain in what respect that information is incorrect,

(c) indicate what the correct information is, and

(d) identify the requested assessed value, if the complaint relates to an assessment.

(4) In addition to the information described in subsection (2), in respect of a complaint about an amount of an equalized assessment, the form referred to in subsection (1) must

(a) explain in what respect the amount is incorrect, and

(b) indicate what the correct amount should be.

RSA 2000 cM-26 s491;2009 c29 s36;2016 c24 s76;
2017 c13 s1(43);2020 cL-2.3 s24(17)

Complaints about designated industrial property

492(1) A complaint about an assessment for designated industrial property may be about any of the following matters, as shown on the assessment notice:

(a) the description of any designated industrial property;

(b) the name and mailing address of an assessed person;

(c) an assessment;

(c.1) an assessment class;

(d) the type of improvement;

(e) school support;

(f) whether the designated industrial property is assessable;

(g) whether the designated industrial property is exempt from taxation under Part 10.

(1.1) Any of the following may make a complaint about an assessment for designated industrial property:

(a) an assessed person;

(b) a municipality, if the complaint relates to property that is within the boundaries of that municipality.

(2) Repealed 1995 c24 s76.

RSA 2000 cM-26 s492;2016 c24 s77

Duty of chair on receiving a form

493(1) On receiving a form referred to in section 491(1), the chair must set a date, time and location for a hearing before the Tribunal in accordance with the regulations.

(2) If the form relates to a complaint about an assessment for designated industrial property, the chair must advise the provincial assessor that the form has been received.

RSA 2000 cM-26 s493;2009 c29 s37;2016 c24 s78;2017 c13 ss1(44),2(14);2020 cL-2.3 s24(39)

Notice of hearing before the Tribunal

494(1) If a matter is to be heard by the Tribunal, the chair must

(a) within 30 days after receiving a form under section 491(1), provide the municipality with a copy of the form, and

(b) within the time prescribed by the regulations, notify

(i) the municipality,

(ii) the person who sent the form to the chair,

(iii) the provincial assessor, and

(iv) any assessed person who is directly affected by the matter

of the date, time and location of the hearing.

(2) Repealed 2009 c29 s38.

RSA 2000 cM-26 s494;2009 c29 s38;2016 c24 s79;2017 c13 ss1(45),2(15);2020 cL-2.3 s24(39)

Absence from hearing

495(1) If any person who is given notice of the hearing does not attend, the Tribunal must proceed to deal with the matter if

(a) all persons required to be notified were given notice of the hearing, and

(b) no request for a postponement or an adjournment was received by the Tribunal or, if a request was received, no postponement or adjournment was granted by the Tribunal.

RSA 2000 cM-26 s495;2009 c29 s39;2020 cL-2.3 s24(18)

496 to **498** Repealed 2020 cL-2.3 s24(19).

Decisions of the Tribunal

499(1) On concluding a hearing, the Tribunal may make any of the following decisions:

(a) make a change with respect to any matter referred to in section 492(1), if the hearing relates to a complaint about an assessment for designated industrial property;

(b) make a change to any equalized assessment, if the hearing relates to an equalized assessment;

(c) decide that no change to an equalized assessment or an assessment roll is required;

(d) decide that a property is not designated industrial property and direct the municipality to appoint an assessor to assess the property.

(2) The Tribunal must dismiss a complaint that was not made within the proper time or that does not comply with section 491(1), (2) or (3).

(3) The Tribunal must not alter

(a) any assessment of designated industrial property that has been prepared correctly in accordance with the regulations, and

(b) any equalized assessment that is fair and equitable, taking into consideration equalized assessments in similar municipalities.

(4) The Tribunal may, in its decision,

(a) include terms and conditions, and

(b) make the decision effective on a future date or for a limited time.

RSA 2000 cM-26 s499;2009 c29 s40;2016 c24 s80;
2020 cL-2.3 s24(39)

Tribunal decisions

500(1) Subject to the regulations, if the hearing relates to a complaint about an assessment for designated industrial property, the Tribunal must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) before the end of the taxation year to which the assessment that is the subject of the hearing applies,

whichever is earlier.

(2) Subject to the regulations, if the hearing relates to a complaint about the amount of an equalized assessment, the Tribunal must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) within 150 days from the date the Minister sends the municipality the report described in section 320,

whichever is earlier.

RSA 2000 cM-26 s500;2002 c19 s18;2009 c29 s41; 2016 c24 s135;2020 cL-2.3 s24(39)

Costs of proceedings

501 The Tribunal may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

RSA 2000 cM-26 s501;2009 c29 s42;2020 cL-2.3 s24(39)

Effect of decision relating to costs

502 An order of the Tribunal under section 501 may be registered in the Personal Property Registry and at any land titles office and, on registration, has the same effect as if it were a registered writ of enforcement issued after judgment has been entered in an action by the Court of King's Bench.

RSA 2000 cM-26 s502;2009 c29 s43;2020 cL-2.3 s24(39);AR 217/2022

503 Repealed 2020 cL-2.3 s24(19).

Rehearing

504 The Tribunal may rehear any matter before making its decision, and may review, rescind or vary any decision made by it.

RSA 2000 cM-26 s504;2020 cL-2.3 s24(39)

Notice of decision

505 The Tribunal must, within 7 days after it renders a decision, send its written decision and reasons, including any dissenting reasons, to the persons notified of the hearing under section 494(1)(b).

RSA 2000 cM-26 s505;2009 c29 s44;2020 cL-2.3 s24(39)

506 and **506.1** Repealed 2016 c24 s81.

507 Repealed 2020 cL-2.3 s24(19).

Intervention by municipality

508(1) When the council of a municipality considers that the interests of the public in the municipality or in a major part of the municipality are sufficiently concerned, the council may authorize

the municipality to become a complainant or intervenor in a hearing before the Tribunal.

(2) For the purposes of subsection (1), a council may take any steps, incur any expense and take any proceedings necessary to place the question in dispute before the Tribunal for a decision.

RSA 2000 cM-26 s508;2020 cL-2.3 s24(39)

Division 3

Repealed 2020 cL-2.3 s24(20).

Division 4
Inquiries by the Tribunal

Referrals to the Tribunal

514(1) The Lieutenant Governor in Council may refer any matter to the Tribunal for its recommendations.

(2) The Minister may by order refer any question or other matter to the Tribunal for its recommendations.

RSA 2000 cM-26 s514;2020 cL-2.3 s24(39)

Report

515(1) On concluding an inquiry, the Tribunal must prepare a report that includes its recommendations.

(2) The Tribunal may make any recommendations it considers appropriate.

(3) The report must be delivered to the Minister.

RSA 2000 cM-26 s515;2020 cL-2.3 s24(39)

Division 5
General Matters

Referral of unfair assessment to Minister

516 The Tribunal may refer any assessment that it considers unfair and inequitable to the Minister and the Minister may deal with it under sections 571 and 324.

RSA 2000 cM-26 s516;2020 cL-2.3 s24(39)

Required changes to rolls

517(1) The municipality must make any changes to its assessment roll or tax roll, or both, that are necessary to reflect the decision of the Tribunal.

(2) The Minister must make any changes to the Minister's assessment roll for designated industrial property that are necessary to reflect the decision of the Tribunal.

RSA 2000 cM-26 s517;2009 c29 s46;2016 c24 s135; 2020 cL-2.3 s24(39)

Right to continue proceedings

518 A person who becomes an assessed person or taxpayer in respect of a property or business when a complaint or an appeal about the property or business is being dealt with under this Part may become a party to any proceedings started by the previous assessed person or taxpayer.

1994 cM-26.1 s518

Obligation to pay taxes

519 Sending a form to the Tribunal under section 491(1) does not relieve any person from the obligation to pay any taxes owing on the property or business or any penalties imposed for late payment of taxes.

RSA 2000 cM-26 s519;2017 c13 s1(46);2020 cL-2.3 s24(39)

520 and **521** Repealed 2020 cL-2.3 s24(22).

522 Repealed 2009 c29 s48.

523 Repealed 2020 cL-2.3 s24(22).

Powers of the Tribunal

524(1) The Tribunal may request copies of statements, reports, documents or information of any kind from the designated officers of any local authority.

(2) The Tribunal may request, in writing, copies of any certificates or certified copies of documents from the Registrars of Titles in the different land registration districts, the Minister responsible for this Act or the Minister of Transportation and Economic Corridors.

(3) The Tribunal or any member of the Tribunal may at any time search the public records of the Land Titles Offices.

RSA 2000 cM-26 s524;2007 c16 s5;2013 c10 s21;2020 cL-2.3 s24(23); 2022 c21 s57

Admissible evidence at hearing

525(1) A document purporting to have been issued by a corporation or any officer, agent or employee of a corporation, or by any other person for or on its behalf, may be considered by the Tribunal as proof, in the absence of evidence to the contrary, that the document was issued by the corporation.

(2) A copy of

(a) an assessment roll or tax roll or part of it, or

(b) an assessment notice or tax notice,

that is certified by a designated officer as being a true copy of the original roll, part of the roll or notice is proof, in the absence of evidence to the contrary, of the existence and validity of the roll, part of the roll or notice and is admissible in evidence without proof of the appointment or signature of the designated officer.

(3) A statutory declaration signed by a designated officer is admissible in evidence as proof, in the absence of evidence to the contrary, that

(a) an assessment notice was sent at least 7 days prior to the notice of assessment date, or

(b) a tax notice was sent on the date shown on the tax notice.

RSA 2000 cM-26 s525;2017 c13 s1(47);2020 cL-2.3 s24(39)

Hearings open to public

525.1(1) Subject to subsections (2) and (3), all hearings are open to the public.

(2) If the Tribunal considers it necessary to prevent the disclosure of intimate personal, financial or commercial matters or other matters because, in the circumstances, the need to protect the confidentiality of those matters outweighs the desirability of an open hearing, the Tribunal may conduct all or part of the hearing in private.

(3) If all or any part of a hearing is to be held in private, no party may attend the hearing unless the party files an undertaking stating that the party will hold in confidence any evidence heard in private.

(4) Subject to subsection (5), all documents filed in respect of a matter before the Tribunal must be placed on the public record.

(5) The Tribunal may exclude a document from the public record

(a) if the Tribunal is of the opinion that disclosure of the document could reasonably be expected to disclose intimate personal, financial or commercial matters or other matters, and

(b) the Tribunal considers that a person's interest in confidentiality outweighs the public interest in the disclosure of the document.

(6) Nothing in this section limits the operation of any statutory provision that protects the confidentiality of information or documents.

2016 c24 s83;2020 cL-2.3 s24(24)

526 and **527** Repealed 2020 cL-2.3 s24(25).

Regulations

527.1 The Minister may make regulations

(a) prescribing the period of time for the purposes of section 494(1)(b);

(b) respecting costs that may or must be imposed by the Tribunal in respect of a hearing, including, without limitation, regulations respecting

(i) the circumstances in which costs must be imposed, and

(ii) the amount of costs;

(c) respecting the circumstances under which a person may act as an agent for an assessed person or taxpayer at a hearing before the Tribunal;

(d) setting fees payable by complainants, or by parties, intervenors or others who appear at hearings before the Tribunal or at inquiries conducted by the Tribunal, and for obtaining copies of the Tribunal's decisions and other documents.

RSA 2000 cM-26 s527.1;2009 c29 s49;2016 c24 s84; 2020 cL-2.3 s24(26)

Part 13
Liability of Municipalities, Enforcement of Municipal Law and Other Legal Matters

Division 1
Liability of Municipalities

Acting in accordance with statutory authority

527.2 Subject to this and any other enactment, a municipality is not liable for damage caused by any thing done or not done by the municipality in accordance with the authority of this or any other enactment unless the cause of action is negligence or any other tort.

1999 c11 s29

Non-negligence actions

528 A municipality is not liable in an action based on nuisance, or on any other tort that does not require a finding of intention or negligence, if the damage arises, directly or indirectly, from roads or from the operation or non-operation of

(a) a public utility, or

(b) a dike, ditch or dam.

1994 cM-26.1 s528

Exercise of discretion

529 A municipality that has the discretion to do something is not liable for deciding not to do that thing in good faith or for not doing that thing.

1994 cM-26.1 s529

Inspections and maintenance

530(1) A municipality is not liable for damage caused by

(a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections, and

(b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency or absence of maintenance.

(2) Repealed 1995 c24 s80.

1994 cM-26.1 s530;1995 c24 s80

Snow on roads

531(1) A municipality is only liable for an injury to a person or damage to property caused by snow, ice or slush on roads or sidewalks in the municipality if the municipality is grossly negligent.

(2) A person who brings an action claiming gross negligence described in subsection (1) must notify the municipality of the event that gives rise to the action within 21 days after the occurrence of the event.

(3) Failure to notify the municipality bars the action unless

(a) there is a reasonable excuse for the lack of notice, and the municipality is not prejudiced by the lack of notice,

(b) death is the result of the event complained of, or

(c) the municipality waives in writing the requirement for notice.

1994 cM-26.1 s531;1996 c30 s49

Repair of roads, public places and public works

532(1) Every road or other public place that is subject to the direction, control and management of the municipality, including all public works in, on or above the roads or public place put there by the municipality or by any other person with the permission of the municipality, must be kept in a reasonable state of repair by the municipality, having regard to

(a) the character of the road, public place or public work, and

(b) the area of the municipality in which it is located.

(2) The municipality is liable for damage caused by the municipality failing to perform its duty under subsection (1).

(3) This section does not apply to any road made or laid out by a private person or any work made or done on a road or place by a private person until the road or work is subject to the direction, control and management of the municipality.

(4) A municipality is not liable under this section unless the claimant has suffered by reason of the default of the municipality a particular loss or damage beyond what is suffered by the claimant in common with all other persons affected by the state of repair.

(5) A municipality is not liable under this section in respect of acts done or omitted to be done by persons exercising powers or authorities conferred on them by law, and over which the municipality has no control, if the municipality is not a party to those acts or omissions.

(6) A municipality is liable under this section only if the municipality knew or should have known of the state of repair.

(7) A municipality is not liable under this section if the municipality proves that it took reasonable steps to prevent the disrepair from arising.

(8) When a traffic control device has been defaced, removed or destroyed by someone other than a designated officer or employee or agent of the municipality, the municipality is liable under this section only if the municipality

(a) had actual notice of the defacement, removal or destruction, and

(b) failed to restore, repair or replace the traffic control device in a reasonable period of time.

(9) A person who brings an action under this section must notify the municipality of the event that gives rise to the action within 30 days after the occurrence of the event.

(10) Failure to notify the municipality bars the action unless

(a) there is a reasonable excuse for the lack of notice, and the municipality is not prejudiced by the lack of notice,

(b) death is the result of the event complained of, or

(c) the municipality waives in writing the requirement for notice.

1994 cM-26.1 s532

Things on or adjacent to roads

533 A municipality is not liable for damage caused

(a) by the presence, absence or type of any wall, fence, guardrail, railing, curb, pavement markings, traffic control device, illumination device or barrier adjacent to or in, along or on a road, or

(b) by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a road that is not on the travelled portion of the road.

1994 cM-26.1 s533

Public works affecting land

534(1) In this section, "injurious affection" means, in respect of land, the permanent reduction in the appraised value of land as a result of the existence, but not the construction, erection or use, of a public work or structure for which the municipality would be liable if the existence of the public work or structure were not under the authority of an enactment.

(2) Within one year after the construction or erection of a public work or structure is completed, as signified by the construction completion certificate, the municipality must deliver or mail to every owner of land that abuts land on which the public work or structure is situated, and place in a newspaper circulating in the municipality, a notice that

(a) identifies the public work or structure,

(b) gives the date of completion, and

(c) states that claims for compensation under this section must be received within 60 days after the notice is published in the newspaper.

(3) Subject to subsection (4), an owner of land that abuts land on which a public work or structure is situated is entitled to compensation from the municipality for injurious affection to the owner's land.

(4) An owner of land described in subsection (3) is entitled to compensation under this section only if the owner files with the municipality a claim within 60 days after notice of the completion of the public work or structure is published in the newspaper.

(5) A claim must state the amount claimed and the particulars of the claim to prove the claim.

(6) The value of any advantage to a claimant's land derived from the existence of the public work or structure must be set off against the amount otherwise payable as compensation for injurious affection.

(7) No compensation is payable for injurious affection caused by

(a) the existence of boulevards or dividers on a road for the purpose of channelling traffic, or

(b) the restriction of traffic to one direction only on any road.

(8) No action or claim for injurious affection may be made except under this section.

(9) If the claimant and the municipality are not able to agree on the amount of compensation for injurious affection, the claimant and the municipality may agree to have the amount determined by binding arbitration under the *Arbitration Act*.

(10) If the claimant and the municipality do not agree to have the amount of compensation for injurious affection determined by binding arbitration, the amount of compensation for injurious affection must be determined by the Land and Property Rights Tribunal.

(11) Subject to the regulations made under subsection (15), the Land and Property Rights Tribunal may follow the practices and procedures used under the *Expropriation Act*.

(12) Except in exceptional circumstances, the Land and Property Rights Tribunal may not award legal costs on a solicitor-client basis in respect of a proceeding under this section.

(13) An appeal lies to the Court of Appeal from any determination or order of the Land and Property Rights Tribunal under this section.

(14) Section 37 of the *Expropriation Act* applies to an appeal under subsection (13).

(15) The Minister may make regulations

(a) respecting the practice and procedure of a proceeding before the Land and Property Rights Tribunal under this section;

(b) subject to subsection (12), respecting costs that may be awarded by the Land and Property Rights Tribunal in respect of a proceeding under this section.

(16) This section applies only in respect of public works and structures for which a construction completion certificate is issued after this section comes into force.

RSA 2000 cM-26 s534;2007 c16 s4;2020 cL-2.3 s24(40)

Division 2
Liability of Councillors and Others

Protection of councillors and municipal officers

535(1) In this section,

(a) "municipal officers" means

(i) the chief administrative officer and designated officers, and

(ii) employees of the municipality;

(b) "volunteer worker" means a volunteer member of a fire or ambulance service or emergency measures organization established by a municipality, or any other volunteer performing duties under the direction of a municipality.

(2) Councillors, council committee members, municipal officers and volunteer workers are not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of their functions, duties or powers under this Act or any other enactment.

(3) Subsection (2) is not a defence if the cause of action is defamation.

(4) This section does not affect the legal liability of a municipality.

RSA 2000 cM-26 s535;2002 c19 s19

Protection of sporting commissions

535.1(1) In this section, "commission" means a commission established by bylaw for controlling and regulating any of the following:

(a) boxing;

(b) wrestling;

(c) full contact karate;

(d) kickboxing;

(e) any other sport that holds contests where opponents strike each other with a hand, foot, knee, elbow or other part of the body.

(2) A commission and its members, officers, employees and any volunteers and officials performing duties under the direction of any of them are not liable for anything said or done or omitted to be done in good faith in the performance or intended performance of their functions, duties or powers under this Act or any other enactment.

(3) Subsection (2) is not a defence if the cause of action is defamation.

2002 c19 s19;2003 c43 s2

Protection of fire service organizations

535.2(1) In this section,

(a) "fire service organization" means

(i) a municipality that provides, through a department, branch or other part of the municipality, fire services for that municipality or on behalf of one or more municipal authorities;

(ii) a regional services commission that provides fire services within its service area;

(iii) a special areas board or the Minister, in the case of a special area or an improvement district, who provides fire services for the special area or improvement district or on behalf of one or more municipal authorities;

(iv) a corporation or other entity, other than a municipal authority or regional services commission, that provides fire services in one or more municipal authorities in

accordance with an agreement with, or at the request of, the municipal authority or municipal authorities;

(b) "firefighter" means a member, including a volunteer, of a fire service organization whose functions, duties or powers are to carry out fire services, notwithstanding that the member may carry out other functions, duties or powers for the fire service organization;

(c) "fire services" means services related to the suppression or prevention of fires, rescue and emergency services and other activities of a firefighter.

(2) Fire service organizations, members of a regional services commission and firefighters are not liable for loss or damage caused by anything done or omitted to be done in good faith in the performance or intended performance of their functions, duties or powers in providing or carrying out fire services.

(3) Subsection (2) does not apply in the case of an accident involving a motor vehicle.

2009 c49 s2

Division 3
Challenging Bylaws and Resolutions

Application to the Court of King's Bench

536(1) A person may apply to the Court of King's Bench for

(a) a declaration that a bylaw or resolution is invalid, or

(b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.

(2) A judge may require an applicant to provide security for costs in an amount and manner established by the judge.

RSA 2000 cM-26 s536;2009 c53 s119;AR 217/2022

Procedure

537 A person who wishes to have a bylaw or resolution declared invalid on the basis that

(a) the proceedings prior to the passing of the bylaw or resolution, or

(b) the manner of passing the bylaw or resolution

does not comply with this or any other enactment must make an application within 60 days after the bylaw or resolution is passed.

1994 cM-26.1 s537

Validity relating to public participation

538 Despite section 537, a person may apply at any time

(a) for a declaration that a bylaw is invalid if

(i) the bylaw is required to be put to a vote of electors and the vote has not been conducted or if the bylaw was not given the required approval in such a vote,

(ii) the bylaw is required to be advertised and it was not advertised, or

(iii) a public hearing is required to be held in respect of the bylaw and the public hearing was not held,

or

(b) for an order requiring a council to pass a bylaw as a result of a vote by the electors.

1994 cM-26.1 s538

Reasonableness

539 No bylaw or resolution may be challenged on the ground that it is unreasonable.

1994 cM-26.1 s539

Effect of councillor being disqualified

540 No bylaw, resolution or proceeding of a council and no resolution or proceeding of a council committee may be challenged on the ground that

(a) a person sitting or voting as a councillor

(i) is not qualified to be on council,

(ii) was not qualified when the person was elected, or

(iii) after the election, ceased to be qualified, or became disqualified,

(b) the election of one or more councillors is invalid,

(c) a councillor has resigned because of disqualification,

(d) a person has been declared disqualified from being a councillor,

(d.1) a councillor is no longer a member of the council as the result of a recall petition declared to be sufficient in accordance with section 240.8(2),

(e) a councillor did not take the oath of office,

(f) a person sitting or voting as a member of a council committee

(i) is not qualified to be on the committee,

(ii) was not qualified when the person was appointed, or

(iii) after being appointed, ceased to be qualified, or became disqualified,

or

(g) there was a defect in the appointment of a councillor or other person to a council committee.

RSA 2000 cM-26 s540;2021 cR-5.7 s71

Division 4
Enforcement of Municipal Law

Definitions

541 In this Division,

(a) "emergency" includes a situation in which there is imminent danger to public safety or of serious harm to property;

(b) "structure" means a structure as defined in section 284;

(c) "unsightly condition",

(i) in respect of a structure, includes a structure whose exterior shows signs of significant physical deterioration, and

(ii) in respect of land, includes land that shows signs of a serious disregard for general maintenance or upkeep.

RSA 2000 cM-26 s541;2023 c9 s19(12)

Municipal inspections and enforcement

542(1) If this or any other enactment or a bylaw authorizes or requires anything to be inspected, remedied, enforced or done by a municipality, a designated officer of the municipality may, after giving reasonable notice to the owner or occupier of land or the structure to be entered to carry out the inspection, remedy, enforcement or action,

(a) enter on that land or structure at any reasonable time, and carry out the inspection, enforcement or action authorized or required by the enactment or bylaw,

(b) request anything to be produced to assist in the inspection, remedy, enforcement or action, and

(c) make copies of anything related to the inspection, remedy, enforcement or action.

(1.1) A consent signed under section 653 is deemed to be a reasonable notice for the purposes of subsection (1).

(2) The designated officer must display or produce on request identification showing that the person is authorized to make the entry.

(3) In an emergency or in extraordinary circumstances, the designated officer need not give reasonable notice or enter at a reasonable hour and may do the things in subsection (1)(a) and (c) without the consent of the owner or occupant.

(4) Nothing in this section authorizes the municipality to remedy the contravention of an enactment or bylaw.

1994 cM-26.1 s542;1995 c24 s81

Court authorized inspections and enforcement

543(1) If a person

(a) refuses to allow or interferes with the entry, inspection, enforcement or action referred to in section 542, or

(b) refuses to produce anything to assist in the inspection, remedy, enforcement or action referred to in section 542,

the municipality may apply to the Court of King's Bench for an order under subsection (2).

(2) The Court may issue an order

(a) restraining a person from preventing or interfering with the entry, inspection, enforcement or action, or

(b) requiring the production of anything to assist in the inspection, remedy, enforcement or action.

(3) A copy of the application and a copy of each affidavit in support must be served at least 3 days before the day named in the application for the hearing.

(4) In an emergency or in extraordinary circumstances, the Court may hear the application without notice to any person.

RSA 2000 cM-26 s543;2009 c53 s119;AR 217/2022

Inspecting meters

544(1) If a designated officer of a municipality believes that a meter that measures a public utility has been tampered with, the designated officer may apply to a judge of the Court of Justice for an order authorizing one or more employees of the municipality

(a) to enter on any land or structure in which the meter is located, and

(b) to inspect and test the meter.

(2) The judge of the Court of Justice may issue the order on being satisfied by evidence of the designated officer under oath that there are reasonable grounds to believe the meter has been tampered with.

(3) The judge of the Court of Justice may hear the application without notice to any person.

RSA 2000 cM-26 s544;2008 c32 s21;AR 75/2023

Order to remedy contraventions

545(1) If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

(2) The order may

(a) direct a person to stop doing something, or to change the way in which the person is doing it;

(b) direct a person to take any action or measures necessary to remedy the contravention of the enactment or bylaw, including the removal or demolition of a structure that has been erected or placed in contravention of a bylaw, and, if necessary, to prevent a re-occurrence of the contravention;

(c) state a time within which the person must comply with the directions;

(d) state that if the person does not comply with the directions within a specified time, the municipality will take the action or measure at the expense of the person.

1994 cM-26.1 s545

Order to remedy dangers and unsightly property

546(0.1) In this section, "detrimental to the surrounding area" includes causing the decline of the market value of property in the surrounding area.

(1) If, in the opinion of a designated officer, a structure, excavation or hole is dangerous to public safety or property, because of its unsightly condition, is detrimental to the surrounding area, the designated officer may by written order

(a) require the owner of the structure to

(i) eliminate the danger to public safety in the manner specified, or

(ii) remove or demolish the structure and level the site;

(b) require the owner of the land that contains the excavation or hole to

(i) eliminate the danger to public safety in the manner specified, or

(ii) fill in the excavation or hole and level the site;

(c) require the owner of the property that is in an unsightly condition to

(i) improve the appearance of the property in the manner specified, or

(ii) if the property is a structure, remove or demolish the structure and level the site.

(2) The order may

(a) state a time within which the person must comply with the order;

(b) state that if the person does not comply with the order within a specified time, the municipality will take the action or measure at the expense of the person.

RSA 2000 cM-26 s546;2023 c9 s19(13)

Caveat

546.1(1) A municipality may register a caveat under the *Land Titles Act* in respect of an order made under section 545 or 546 dealing with a dangerous structure, excavation or hole or unsightly property against the certificate of title for the land that is the subject of the order.

(2) If a municipality registers a caveat under subsection (1), the municipality must discharge the caveat when the order has been complied with or when the municipality has performed the actions or measures referred to in the order.

1999 c11 s32

Review by council

547(1) A person who receives a written order under section 545 or 546 may by written notice request council to review the order within

(a) 14 days after the date the order is received, in the case of an order under section 545, and

(b) 7 days after the date the order is received, in the case of an order under section 546,

or any longer period as specified by bylaw.

(2) After reviewing the order, the council may confirm, vary, substitute or cancel the order.

1994 cM-26.1 s547;1999 c11 s33

Appeal to Court of King's Bench

548(1) A person affected by the decision of a council under section 547 may appeal to the Court of King's Bench if

(a) the procedure required to be followed by this Act is not followed, or

(b) the decision is patently unreasonable.

(1.1) The appeal must be made,

(a) in the case of an appeal of an order under section 545, within 30 days after the date the decision under section 547 is served on the person affected by the decision, and

(b) in the case of an appeal of an order under section 546, within 15 days after the date the decision under section 547 is served on the person affected by the decision.

(2) The application for the appeal must state the reasons for the appeal.

(3) The Court may

(a) confirm the decision, or

(b) declare the decision invalid and send the matter back to the council with directions.

RSA 2000 cM-26 s548;AR 217/2022

Municipality remedying contraventions, dangers and unsightly property

549(1) Subject to subsection (2), a municipality may take whatever actions or measures are necessary to

(a) remedy a contravention of this Act, an enactment that the municipality is authorized to enforce or a bylaw or to prevent a reoccurrence of the contravention, or

(b) eliminate the danger to public safety caused by a structure, excavation or hole or to deal with the unsightly condition of property.

(2) No action or measure shall be taken under subsection (1) unless

(a) the municipality has first given a written order under section 545 or 546 that contains a statement referred to in section 545(2)(d) or 546(2)(b), as the case may be,

(b) the person to whom the order is directed has not complied with the order within the time specified in the order, and

(c) the appeal periods respecting the order have expired or, if an appeal has been made, the appeal has been decided and the decision allows the municipality to take the action or measures.

(3) If an order under section 545(1) directed that premises be put and maintained in a sanitary condition, the municipality may, under this section, close the premises and use reasonable force to remove any occupants.

(4) If a structure is being removed or demolished by a municipality under subsection (1)(b), the municipality may use reasonable force to remove any occupants.

(5) The expenses and costs of an action or measure taken by a municipality under this section are an amount owing to the municipality

(a) in the case of an action or measure taken under subsection (1)(a), by the person who contravened the enactment or bylaw, or

(b) in the case of an action or measure taken under subsection (1)(b), by the person who did not comply with the order under section 546(1) within the time specified in the order.

(6) If the municipality sells all or a part of a structure that has been removed under subsection (1)(b), the proceeds of the sale must be used to pay the expenses and costs of the removal and any excess proceeds must be paid to the person entitled to them.

RSA 2000 cM-26 s549;2022 c16 s9(69)

550 Repealed 2022 c16 s9(70).

Emergencies

551(1) Despite section 549, in an emergency a municipality may take whatever actions or measures are necessary to eliminate the emergency.

(2) This section applies whether or not the emergency involves a contravention of this Act, an enactment that the municipality is authorized to enforce or a bylaw.

(3) A person who receives an oral or written order under this section requiring the person to provide labour, services, equipment or materials must comply with the order.

(4) Any person who provides labour, services, equipment or materials under this section who did not cause the emergency is entitled to reasonable remuneration from the municipality.

(5) The expenses and costs of the actions or measures, including the remuneration referred to in subsection (4), are an amount owing to the municipality by the person who caused the emergency.

RSA 2000 cM-26 s551;2022 c16 s9(71)

Recovery of amounts owing by civil action

552 Except as provided in this or any other enactment, an amount owing to a municipality may be collected by civil action for debt in a court of competent jurisdiction.

1994 cM-26.1 s552

Adding amounts owing to tax roll

553(1) A council may add the following amounts to the tax roll of a parcel of land:

(a) unpaid costs referred to in section 35(4) or 39(2) relating to service connections of a municipal public utility that are owing by the owner of the parcel;

(b) unpaid charges referred to in section 42 for a municipal utility service provided to the parcel by a municipal public utility that are owing by the owner of the parcel;

(c) unpaid expenses and costs referred to in section 549(5)(a), if the parcel's owner contravened the enactment or bylaw and the contravention occurred on all or a part of the parcel;

(d), (e) repealed 1999 c11 s35;

(f) costs associated with tax recovery proceedings related to the parcel;

(g) if the municipality has passed a bylaw making the owner of a parcel liable for expenses and costs related to the municipality extinguishing fires on the parcel, unpaid costs and expenses for extinguishing fires on the parcel;

(g.1) if the municipality has passed a bylaw requiring the owner or occupant of a parcel to keep the sidewalks adjacent to the parcel clear of snow and ice, unpaid expenses and costs incurred by the municipality for removing the snow and ice in respect of the parcel;

(h) unpaid costs awarded by a composite assessment review board under section 468.1 or the Land and Property Rights Tribunal under section 501, if the composite assessment review board or the Land and Property Rights Tribunal has awarded costs against the owner of the parcel in favour of the municipality and the matter before the composite assessment review board or the Land and Property Rights Tribunal was related to the parcel;

(h.1) the expenses and costs of carrying out an order under section 646;

(i) any other amount that may be added to the tax roll under an enactment.

(2) Subject to section 659, when an amount is added to the tax roll of a parcel of land under subsection (1), the amount

(a) is deemed for all purposes to be a tax imposed under Division 2 of Part 10 from the date it was added to the tax roll, and

(b) forms a special lien against the parcel of land in favour of the municipality from the date it was added to the tax roll.

RSA 2000 cM-26 s553;2009 c29 s50;2020 cL-2.3 s24(27); 2022 c16 s9(72)

Adding amounts owing to property tax roll

553.1(1) If a person described in any of the following clauses owes money to a municipality in any of the circumstances described in the following clauses, the municipality may add the amount owing to the tax roll of any property for which the person is the assessed person:

(a) a person who was a licensee under a licence of occupation granted by the municipality and who, under the licence, owes the municipality for the costs incurred by the municipality in restoring the land used under the licence;

(b) an agreement holder referred to in section 27.2(2) who owes money to the municipality under section 27.2(2);

(c) a person who owes money to the municipality under section 549(5)(b) or 551(5).

(2) Subject to section 659, when an amount is added to the tax roll of property under subsection (1), the amount

(a) is deemed for all purposes to be a tax imposed under Division 2 of Part 10 from the date it was added to the tax roll, and

(b) forms a special lien against the property in favour of the municipality from the date it was added to the tax roll.

RSA 2000 cM-26 s553.1;2022 c16 s9(73);2023 c5 s8

Adding amounts owing to business tax roll

553.2(1) In this section, "business tax roll" means the portion of a municipality's tax roll for taxable businesses.

(2) If a person described in any of the following clauses owes money to a municipality in any of the circumstances described in the following clauses, the municipality may add the amount owing to the business tax roll against any business operated by the person:

(a) a person who was a licensee under a licence of occupation granted by the municipality and who, under the licence, owes the municipality for the costs incurred by the municipality in restoring the land used under the licence;

(b) a person who owes money to the municipality under section 549(5)(b) or 551(5).

(3) Subject to section 659, when an amount is added to the business tax roll under subsection (2) against a business, the

amount is deemed for all purposes to be a tax imposed under Division 3 of Part 10 from the date it was added to the tax roll.

RSA 2000 cM-26 s553.2;2022 c16 s9(74)

Injunction

554(1) When

(a) a structure is being constructed in contravention of an enactment that a municipality is authorized to enforce or a bylaw,

(b) a contravention of this Act, another enactment that a municipality is authorized to enforce or a bylaw is of a continuing nature, or

(c) any person is carrying on business or is doing any act, matter or thing without having paid money required to be paid by a bylaw,

in addition to any other remedy and penalty imposed by this or any other enactment or a bylaw, the municipality may apply to the Court of King's Bench for an injunction or other order.

(2) The Court may grant or refuse the injunction or other order or may make any other order that in its opinion the justice of the case requires.

RSA 2000 cM-26 s554;2009 c53 s119;AR 217/2022

Municipality's costs in actions

554.1(1) A municipality is entitled to collect lawful costs in all actions and proceedings to which the municipality is a party.

(2) The costs of a municipality in an action or proceeding in which the municipality is a party are not to be disallowed or reduced because the municipality's lawyer in the action or proceeding is an employee of the municipality.

RSA 2000 cM-26 s554.1;2009 c53 s119

Bylaw enforcement officers

555(1) A person who is appointed as a bylaw enforcement officer is, in the execution of enforcement duties, responsible for the preservation and maintenance of the public peace.

(2) Bylaw enforcement officers must take the official oath prescribed by the *Oaths of Office Act* before starting their duties.

1994 cM-26.1 s555

Powers and duties of bylaw enforcement officers

556 Every council must by bylaw

(a) specify the powers and duties of bylaw enforcement officers, and

(b) establish disciplinary procedures for misuse of power, including penalties and an appeal process applicable to misuse of power by bylaw enforcement officers.

1994 cM-26.1 s556

Division 5
Offences and Penalties

General offences

557 A person who contravenes or does not comply with

(a) a provision of this Division,

(a.1) a provision of Part 17 or the regulations under Part 17,

(a.2) a land use bylaw as defined in Part 17,

(a.3) an order under section 645,

(a.4) a development permit or subdivision approval or a condition of a permit or approval under Part 17,

(a.5) a decision of a subdivision and development appeal board or the Land and Property Rights Tribunal under Part 17,

(a.6) section 436.24,

(b) a direction or order of the Minister,

(c) an order under section 545, 546, 551 or 567, or

(d) section 436.05,

or who obstructs or hinders any person in the exercise or performance of the person's powers under Part 17 or the regulations under Part 17, is guilty of an offence.

RSA 2000 cM-26 s557;2020 cL-2.3 s24(41)

Offences applicable to officials

558 No chief administrative officer or designated officer may

(a) fail to discharge the duties of office imposed by this or any other enactment or bylaw,

(b) sign any statement, report or return required by this or any other enactment or bylaw knowing that it contains a false statement, or

(c) fail to hand over to a successor in office, or to the persons designated in writing by the council or the Minister, all money, books, papers and other property of a municipality.

1994 cM-26.1 s558

Unauthorized use of heraldic emblems

559 No person may use the heraldic emblem of the municipality or anything that is intended to resemble the heraldic emblem without the permission of council.

1994 cM-26.1 s559

Documents used to enforce bylaws

560(1) No person may issue a form that a municipality uses to enforce its bylaws unless the person has the authority to enforce those bylaws.

(2) No person may use a form that resembles a form that a municipality uses to enforce its bylaws with the intent of making others think that the form was issued by the municipality.

1994 cM-26.1 s560

561 Repealed 1994 cM-26.1 s738.

Obstructing construction of public work or utilities

562 No person may interfere with the construction, maintenance, operation or repair of a public work or public utility.

1994 cM-26.1 s562

Stop-cock

563 If a municipality has placed a stop-cock in a building as part of a municipal public utility, no owner or occupant of the building may use the stop-cock except to prevent damage to the building or the system or works of the public utility or to prevent or stop the flooding of the building.

1994 cM-26.1 s563

Operating a business without a licence

564 In a prosecution for contravention of a bylaw against engaging in or operating a business without a licence, proof of one transaction in the business or that the business has been advertised is sufficient to establish that a person is engaged in or operates the business.

1994 cM-26.1 s564

Prosecutions

565 A prosecution under this Act or a bylaw may be commenced within 2 years after the date of the alleged offence, but not afterwards.

1994 cM-26.1 s565

Penalty

566(1) Subject to subsection (2), a person who is found guilty of an offence under this Act is liable to a fine of not more than $10 000 or to imprisonment for not more than one year, or to both fine and imprisonment.

(2) The minimum fine for a person who is found guilty of contravening or not complying with an order under section 546 or 551 is $300.

1994 cM-26.1 s566

Order for compliance

567 If a person is found guilty of an offence under this Act or a bylaw, the court may, in addition to any other penalty imposed, order the person to comply with this Act or bylaw or a licence, permit or other authorization issued under the bylaw, or a condition of any of them.

1994 cM-26.1 s567

Fines and penalties

568 Fines and penalties imposed on a conviction for an offence under this Act or a bylaw are an amount owing to the municipality in which the offence occurred.

1994 cM-26.1 s568

Civil liability not affected

569 A person who is guilty of an offence under this Act may also be liable in a civil proceeding.

1994 cM-26.1 s569

Part 14
General Ministerial Powers

Intermunicipal disagreements

570 If a disagreement between municipalities is referred to the Minister by a council of a municipality or if the Minister is satisfied that it is desirable for the Minister to become involved in a disagreement between municipalities, the Minister may do one or more of the following:

(a) conduct any investigation or inquiry that the Minister considers to be appropriate;

(b) appoint a mediator to assist the municipalities in resolving the disagreement;

(c) make a decision to settle the disagreement and order the municipalities to implement the decision.

1994 cM-26.1 s570;1996 c30 s50

Measures to ensure compliance with ALSA regional plans

570.01(1) If the Minister considers that a municipal authority, regional services commission or growth management board has not complied with an ALSA regional plan, the Minister may take any necessary measures to ensure that the municipal authority, regional services commission or growth management board, as the case may be, complies with the ALSA regional plan.

(2) In subsection (1), all necessary measures includes, without limitation, an order by the Minister

(a) suspending the authority of a council to make bylaws in respect of any matter specified in the order;

(b) exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) removing a suspension of bylaw-making authority, with or without conditions;

(d) withholding money otherwise payable by the Government to the municipal authority, regional services commission or growth management board pending compliance with an order of the Minister;

(e) repealing, amending and making policies and procedures with respect to the municipal authority, regional services commission or growth management board;

(f) suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order;

(g) requiring or prohibiting any other action as necessary to ensure an ALSA regional plan is complied with.

2009 cA-26.8 s83;2013 c17 s3

Information

570.1 The Minister may provide a municipality with any information on the assessment of property the Minister may have whether the property is located in the municipality or elsewhere.

1995 c24 s85

Inspection

571(1) The Minister may require any matter connected with the management, administration or operation of any municipality or any assessment prepared under Part 9 to be inspected

(a) on the Minister's initiative,

(b) on the request of the council of the municipality, or

(c) if the Minister receives a sufficient petition requesting the inspection that is signed,

(i) in the case of a municipality other than a summer village, by electors of the municipality equal in number to at least 20% of the population, and

(ii) in the case of a summer village, by a number of electors of the summer village equal to at least 30% of the number of summer village residences in the summer village.

(1.1) For the purposes of subsection (1), the management, administration or operation of a municipality includes

(a) the affairs of the municipality,

(b) the conduct of a councillor or of an employee or agent of the municipality, and

(c) the conduct of a person who has an agreement with the municipality relating to the duties or obligations of the municipality or the person under the agreement.

(2) The Minister may appoint one or more persons as inspectors for the purpose of carrying out inspections under this section.

(3) An inspector

(a) may require the attendance of any officer of the municipality or of any other person whose presence the inspector considers necessary during the course of the inspection, and

(b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.

(4) When required to do so by an inspector, the chief administrative officer of the municipality must produce for examination and inspection all books and records of the municipality.

(5) After the completion of the inspection, the inspector must make a report to the Minister and, if the inspection was made at the request of a council, to the council.

RSA 2000 cM-26 s571;2016 c24 s85

Inquiry

572(1) The Minister may, on the Minister's initiative, order an inquiry described in subsection (2).

(2) An inquiry may be conducted into

(a) the affairs of the municipality,

(b) the conduct of a councillor, or an employee or agent of the municipality, or

(c) the conduct of a person who has an agreement with the municipality relating to the duties or obligations of the municipality or a person under the agreement.

(3) The Minister may appoint one or more persons to conduct an inquiry under this section.

(4) The person or persons appointed to conduct an inquiry are entitled to the fees and expenses specified by the Minister and the Minister may direct who is to pay for the inquiry.

(5) The person or persons appointed to conduct an inquiry have all the powers and duties of a commissioner appointed under the *Public Inquiries Act*.

(6) The person or persons appointed to conduct an inquiry must report to the Minister and the council.

RSA 2000 cM-26 s572;2016 c24 s86

Bank accounts

573 A bank, an agency of a bank or any other financial institution carrying on business in Alberta must, on request of the Minister, furnish the Minister with a statement showing the balance or condition of the accounts of any municipality having an account with the bank, agency or institution, together with any particulars of the accounts that may be required.

1994 cM-26.1 s573

Directions and dismissal

574(1) If, because of an inspection under section 571, a report of an official administrator under section 575.1, an inquiry under section 572 or an investigation by the Ombudsman, the Minister considers that a municipality is managed in an irregular, improper or improvident manner, the Minister may by order direct the council, the chief administrative officer or a designated officer of the municipality to take any action that the Minister considers proper in the circumstances.

(2) If an order of the Minister under subsection (1) is not carried out to the satisfaction of the Minister and the Minister considers that the municipality continues to be managed in an irregular, improper or improvident manner or if an order of the Minister under section 570(c) is not carried out to the satisfaction of the Minister, and all reasonable efforts to resolve the situation have been attempted and have been unsuccessful, the Minister may make one or more of the following orders:

(a) an order suspending the authority of the council to make bylaws in respect of any matter specified in the order;

(b) an order exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) an order removing a suspension of bylaw-making authority, with or without conditions;

(d) an order withholding money otherwise payable by the Government to the municipal authority pending compliance with an order of the Minister;

(e) an order repealing, amending and making policies and procedures with respect to the municipal authority;

(f) an order suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order;

(g) an order requiring or prohibiting any other action as necessary to ensure an order is complied with;

(h) an order dismissing the council or any member of it or the chief administrative officer.

(2.1) Before making an order under subsection (2), the Minister must give the municipal authority notice of the intended order and at least 14 days in which to respond.

(3) On the dismissal of the council or of any member of it, the Minister may direct the election of a new council or of a member of council to take the place of any member that has been dismissed.

(4) On the dismissal of the chief administrative officer, the Minister may appoint another officer and specify the remuneration that is payable to the officer by the municipality.

(5) The Minister may appoint an official administrator

(a) on the dismissal of a council, or

(b) on the dismissal of one or more councillors if the remaining councillors do not constitute a quorum.

(6) An official administrator appointed under subsection (5) has all the powers and duties of the council.

RSA 2000 cM-26 s574;2016 c24 s87;2017 c13 s1(48);2022 c16 s9(75)

Official administrator as supervisor

575(1) The Minister may at any time appoint an official administrator to supervise a municipality and its council.

(2) So long as the appointment of an official administrator under this section continues,

(a) no bylaw or resolution that authorizes the municipality to incur a liability or to dispose of its money or property has any effect until the bylaw or resolution has been approved in writing by the official administrator, and

(b) the official administrator may at any time within 30 days after the passing of any bylaw or resolution disallow it, and the bylaw or resolution so disallowed becomes and is deemed to have always been void.

1994 cM-26.1 s575

Reports of official administrators

575.1 An official administrator appointed under this Part shall on request of the Minister, and may at any other time, report to the Minister on any matter respecting the municipality or its council or administration or any intermunicipal matter.

2017 c13 s1(49)

Enforcement where municipality under supervision

575.2(1) If the Minister considers that a municipality has, while under the supervision of an official administrator,

(a) incurred a liability or disposed of money or property without the written approval of the official administrator required by section 575(2)(a), or

(b) acted on a bylaw or resolution that has been disallowed by the official administrator under section 575(2)(b),

the Minister may take any necessary measures to address the situation, including, without limitation, making one or more orders referred to in section 574(2)(a) to (h).

(2) Before making an order under subsection (1), the Minister must give the municipal authority notice of the intended order and at least 14 days in which to respond.

2017 c13 s1(49)

Remuneration for official administrator

576 When an official administrator is appointed for a municipality by the Minister under this Act, the remuneration and expenses of the official administrator as set by the Minister must, if required by the Minister, be paid by the municipality.

1994 cM-26.1 s576

Providing Minister with copies and information

577(1) The Minister may direct a municipality to provide a copy of any document in the possession of the municipality to the Minister within the time specified by the Minister.

(2) The Minister may direct a municipality to provide information or statistics respecting the municipality to the Minister within the time specified by the Minister.

(3) A municipality must comply with a direction of the Minister under this section and provide the copy, information or statistics to the Minister without charge.

(4) This section does not apply to documents that have been prepared or information acquired by a municipality that is subject to any type of legal privilege, including solicitor-client privilege.

1994 cM-26.1 s577

Delegation

578(1) The Minister may delegate in writing to any person any power, duty or function of the Minister under this Act, including any power, duty or function that involves the Minister forming an opinion or belief.

(2) Subsection (1) does not apply to any power or duty to make regulations.

1994 cM-26.1 s578

Fees

579(1) The Minister may charge fees in connection with any service, program or other thing done by or under the authority of the Minister under this Act or the regulations.

(2) A person who receives a service, program or other thing done by or under the authority of the Minister is liable to pay the fee established under subsection (1) to the Government of Alberta and

the fee may be collected by civil action for debt in a court of competent jurisdiction.

1994 cM-26.1 s579

Minister's decisions

579.1(1) An applicant seeking injunctive relief from a court against any order, decision or direction of the Minister under this Part must give the Minister at least 10 days' notice of the application.

(2) An order, decision or direction of the Minister under this Part is not stayed by an application for judicial review but remains in effect pending the court's decision on the judicial review application.

2017 c13 s1(50)

Regulations

580 The Minister may make regulations requiring a municipality to publish in a specified manner any information respecting the municipality that is specified in the regulations.

1994 cM-26.1 s580

Part 15
Improvement Districts

Formation order

581 The Lieutenant Governor in Council, on the recommendation of the Minister, may by order form an improvement district.

1994 cM-26.1 s581

Contents of order

582 The formation order must

(a) describe the boundaries of the improvement district, and

(b) give the improvement district an official name.

1994 cM-26.1 s582

Changes to improvement districts

583(1) The Minister may by order

(a) amalgamate 2 or more improvement districts;

(b) divide an improvement district into 2 or more improvement districts;

(c) annex land from an improvement district to another improvement district;

(d) change the name of an improvement district;

(e) establish industrial improvement areas within improvement districts;

(f) dissolve an improvement district.

(2) An order under this section may contain terms and conditions and provisions dealing with transitional matters that the Minister considers to be appropriate that operate despite this or any other enactment.

1994 cM-26.1 s583

Orders published

584 An order of the Lieutenant Governor in Council under section 581 and the Minister under section 583 must be published in The Alberta Gazette.

1994 cM-26.1 s584

Regulations Act

585 The *Regulations Act* does not apply to an order of the Lieutenant Governor in Council under section 581 or to an order of the Minister under this Part.

1994 cM-26.1 s585

Application of other enactments

586 The Minister may by order

(a) provide that provisions of this or any other enactment do not apply to an improvement district,

(b) provide that provisions of this or any other enactment apply to an improvement district with or without modifications, and

(c) specify provisions that are to be added to or replace the provisions of this or any other enactment in respect of an improvement district.

1994 cM-26.1 s586

General power of Minister

587 The Minister may by order do anything in respect of an improvement district that a council of a municipality may do under this or another enactment.

1994 cM-26.1 s587

Council

588(1) The Minister may establish a council for an improvement district.

(2) Unless subsection (3) applies, a council is composed of one or more councillors appointed by the Minister.

(3) The Minister may by order

(a) direct that some or all of the councillors are to be elected,

(b) establish wards for the elected councillors, and

(c) provide for any matter dealing with the transition from an appointed council to a council with some or all elected members.

(4) If the Minister orders that some or all of the councillors are to be elected, the *Local Authorities Election Act* applies to the election as modified by directions given by the Minister.

1994 cM-26.1 s588

588.1 Repealed 2020 c25 s11.

Delegation by Minister

589(1) The Minister may, in writing, delegate to any person or to a council of an improvement district any of the powers, duties and functions of the Minister under this or any other enactment relating to an improvement district, including the powers, duties and functions of being a trustee under section 595.

(2) The Minister may not delegate the power or duty to make a regulation as defined in the *Regulations Act*.

1994 cM-26.1 s589

Hamlets

590(1) The Minister may designate an unincorporated community that is within the boundaries of an improvement district to be a hamlet.

(2) The designation of a hamlet must specify the hamlet's name and boundaries.

1994 cM-26.1 s590

Employees

591 In accordance with the *Public Service Act*, there may be appointed any person necessary for the administration of an improvement district.

1994 cM-26.1 s591

Roads

592(1) The Minister of Transportation and Economic Corridors and the Minister responsible for this Act may enter into an agreement providing that all or part of the direction, control and management of roads within an improvement district is transferred to the Minister responsible for this Act.

(2) An agreement under subsection (1) may provide for the payment of costs with respect to roads within the improvement district.

RSA 2000 cM-26 s592;2013 c10 s21;2022 c21 s57

Estimate of expenditures

593 Before January 1 in each year, every Minister charged with the duty of expending any part of the taxes collected in an improvement district must send to the Minister responsible for this Act a statement, with reference to each improvement district, of the estimated amount required to be expended by the expending Minister in each improvement district during the current year.

1994 cM-26.1 s593

Machinery and equipment and designated industrial property

594(1) The definitions of "designated industrial property" and "machinery and equipment" in Part 9 apply to this section.

(2) The Minister may by order impose, in addition to any other taxes imposed under Part 10, an additional tax on machinery and equipment and designated industrial property located in an industrial improvement area.

(3) The provisions in Parts 9 to 12 relating to machinery and equipment and designated industrial property apply to the additional tax imposed under this section.

RSA 2000 cM-26 s594;2016 c24 s135

Trust account for revenue

595 The taxes and all other revenues collected on behalf of an improvement district must be deposited in a treasury branch, bank or other similar institution to be held in trust by the Minister.

1994 cM-26.1 s595

Expenditures

596(1) The taxes and all other revenues collected on behalf of an improvement district may be expended under the direction of the Minister

(a) to meet the requirements of the improvement district,

(b) to pay requisitions made under the *Education Act*, the *Hospitals Act* and the *Provincial Health Agencies Act*,

(c) to pay the estimated amounts referred to in section 593 or an equally proportionate part of those amounts if the taxes and revenues collected on behalf of the improvement district are not sufficient to cover all of the improvement district's expenditures, or

(d) to pay to other municipalities any portion of the taxes levied and collected that the Minister may by order determine.

(2) The expenses incidental to the assessment and collection of taxes on behalf of an improvement district and any other necessary expenses in connection with the administration of affairs in an improvement district are a first charge on the taxes and other revenue collected on behalf of the district.

RSA 2000 cM-26 s596;2012 cE-0.3 s279;2017 c13 s1(51); 2024 c10 s31

Public accounts

597 The details of expenditures for an improvement district must be published in the public accounts annually submitted to the Legislative Assembly.

1994 cM-26.1 s597

Settlement of accounts

598 If the Minister considers it equitable, the Minister may settle in whole or in part any amounts owing to the Crown or to the Minister under this Act or any other Act relating to an improvement district for rentals, fees or other charges, other than taxes imposed under Part 10.

1994 cM-26.1 s598

Investments

599 With the consent of the President of Treasury Board and Minister of Finance, the Minister may invest any taxes or revenue collected on behalf of an improvement district in investments that the President of Treasury Board and Minister of Finance is authorized to invest in under section 43(1) of the *Financial Administration Act*.

RSA 2000 cM-26 s599;2006 c23 s57;2013 c10 s21

Borrowing

600 The Minister may borrow on the security of the taxes and other revenues of an improvement district any sums required to meet the requirements of the district under this or any other enactment.

1994 cM-26.1 s600

Acquisition of land

601 The Minister may purchase, expropriate or otherwise acquire land required for or in connection with the administration of an improvement district or for the purposes of an agreement entered into under section 602 and the Minister may encumber, lease or otherwise dispose of the land as the circumstances require.

1994 cM-26.1 s601

Agreements for services

602 The Minister may enter into agreements with the Government of Canada or its agencies or with any other public body or person for the purpose of obtaining any service, benefit or other advantages for the whole or part of an improvement district or for its residents.

1994 cM-26.1 s602

Part 15.1
Regional Services Commissions

Interpretation

602.01(1) In this Part,

(a) "board" means the board of directors of a commission;

(b) "borrowing" means a borrowing as defined in section 241(a.1);

(c) "bylaws" means the bylaws of a commission;

(d) "capital property" means capital property as defined in section 241(c);

(e) "commission" means a regional services commission;

(e.1) "debt limit" means the debt limit for a commission determined in accordance with the regulations under section 602.32;

(f) "member" means, in respect of a commission, a municipal authority that is a member of the commission;

(g) "municipal authority" means a municipal authority as defined in section 1(1)(p), and includes a Metis settlement, an Indian reserve and an armed forces base;

(h) "public utility" means a public utility as defined in section 1(1)(y), excluding public transportation operated by or on behalf of a municipality;

(i) "resolution" means a resolution passed by a municipal authority or commission under this Part;

(j) "service" means, in respect of a commission, a service that the bylaws authorize the commission to provide;

(k) "transportation service" means a service to transport people or goods by vehicle, including a vehicle that runs on rails.

(2) A reference to a bylaw or resolution in this Act outside this Part does not include a bylaw or resolution passed by a commission.

RSA 2000 cM-26 s602.1;2020 c25 s11;2023 c9 s19(14)

Division 1
Establishment and Operation

Establishing commissions

602.02(1) Two or more municipal authorities may agree to jointly establish a commission by passing resolutions.

(2) Before being passed under subsection (1), the proposed resolutions must be advertised in accordance with section 606.

(3) Within 60 days of the resolutions being passed under subsection (1), the Minister must be notified of the resolutions.

(4) A notification under subsection (3) must include copies of all the resolutions passed under subsection (1) and provide the commission's office location and contact information.

(5) A commission is not established until an order listing the commission is issued by the Minister under section 602.04.

RSA 2000 cM-26 s602.02;2016 c24 s88;2020 c25 s11

Resolution and notification

602.03(1) A resolution establishing a commission must specify

(a) the name of the commission, and

(b) the names of the members, the first board of directors and the first chair of the commission.

(2) The commission must notify the Minister within 60 days of any change to any of the information provided under section 602.02(4).

(3) If a commission is to be disestablished under section 602.09(1)(g), the commission must notify the Minister within 60 days of the commission's being disestablished.

2020 c25 s11

List of commissions

602.04 The Minister may issue an order listing or updating the list of the names of all the commissions established or disestablished each time the Minister receives a notification under section 602.02(3) or 602.03(2) or (3), as the case may be.

2020 c25 s11

Corporation

602.05 A commission is a corporation.

RSA 2000 cM-26 s602.03;2020 c25 s11

Board of directors

602.06(1) A commission is governed by a board.

(2) Subject to sections 602.03(1)(b) and 602.07, the directors of the board are to be appointed and the chair of the commission designated in accordance with the commission's bylaws.

RSA 2000 cM-26 s602.04;2020 c25 s11

Directors representing Province

602.07(1) If, in the Minister's opinion, a service that a commission is authorized to provide is a service that is provided by the Government of Alberta or that may affect a service provided by the Government of Alberta, the Minister may, despite the bylaws, appoint as many directors of the commission as the Minister considers necessary.

(2) A director appointed under this section has the powers, duties and functions of a director appointed in accordance with the commission's bylaws.

RSA 2000 cM-26 s602.05;2020 c25 s11

Delegation

602.08(1) Subject to subsection (2), a board may delegate any of its or the commission's powers, duties or functions under this Act or any other enactment.

(2) A board may not delegate

(a) the power or duty to pass bylaws,

(b) the power to expropriate,

(c) the power to authorize a borrowing,

(d) the power to adopt budgets, and

(e) the power to approve financial statements.

RSA 2000 cM-26 s602.06;2020 c25 s11

Bylaws

602.09(1) Each board must pass bylaws

(a) respecting the provision of the commission's services;

(b) respecting the administration of the commission;

(c) respecting the process for changing the directors of the board and the chair of the commission and for setting the terms of office of the board and the chair;

(d) respecting the process for adding or removing members;

(e) respecting the fees to be charged by the commission for services provided to its customers or to any class of its customers;

(f) respecting the disposal of assets by the commission;

(g) respecting the process for disestablishment of the commission, including the treatment of assets and liabilities on disestablishment.

(2) The *Regulations Act* does not apply to the bylaws passed under subsection (1).

RSA 2000 cM-26 s602.07;2020 c25 s11

Meetings

602.1(1) Subject to subsection (2), sections 197 and 199 apply to the meetings of a commission.

(2) Notwithstanding sections 197 and 199, for the purposes of this Part, a reference in sections 197 and 199 to a council, councils and council committees shall be read as a reference to a board, boards and board committees, respectively.

RSA 2000 cM-26 s602.08;2015 c8 s55;2019 c22 s10(16);2020 c25 s11

Compliance with growth plan and ALSA regional plan

602.11 In carrying out its functions and in exercising its jurisdiction under this Act and other enactments, a commission must act in accordance with any applicable growth plan under Part 17.1 and any applicable ALSA regional plan.

RSA 2000 cM-26 s602.021;2020 c25 s11

Control of profit corporations

602.12 Division 9 of Part 3 does not apply to a commission.

RSA 2000 cM-26 s602.09;2016 c24 s89;2020 c25 s11

Division 2
Powers and Duties

Natural person powers

602.13 A commission has natural person powers, except to the extent that they are limited by this Act or any other enactment.

RSA 2000 cM-26 s602.1;2020 c25 s11

Service area

602.14 A commission may, as authorized by its bylaws, provide services

(a) within the boundaries of its members, and

(b) outside the boundaries of its members with approval

(i) from the other municipal authority within whose boundaries the services are to be provided, and

(ii) in the case of services to be provided in a part of a province or territory adjoining Alberta, the authority from that province or territory whose jurisdiction includes the provision of the services in that part of the province or territory.

RSA 2000 cM-26 s602.11;2020 c25 s11

Profit and surpluses

602.15 A commission may not

(a) operate for the purposes of making a profit, or

(b) distribute any of its surpluses to its members.

2020 c25 s11

Traffic Safety Act

602.16 A commission that is authorized by its bylaws to provide transportation services is subject to the *Traffic Safety Act*.

RSA 2000 cM-26 s602.12;RSA 2000 cT-6 s205;2020 c25 s11

Acquisition of land

602.17(1) A commission may acquire an estate or interest in land in a province or territory adjoining Alberta if the local government within whose boundaries the land is located consents in writing to the acquisition.

(2) This section does not apply until the commission exercises the right of acquisition under subsection (1).

RSA 2000 cM-26 s602.125;2020 c25 s11

Expropriation

602.18(1) A commission may acquire by expropriation under the *Expropriation Act* an estate or interest in land for the purpose of providing a public utility or a transportation service.

(2) A commission may acquire by expropriation an estate or interest under subsection (1) in land that is outside the boundaries of its members only if the municipal authority in whose boundaries the land is located consents in writing to the acquisition.

RSA 2000 cM-26 s602.13;2020 c25 s11

Public utility disputes

602.19 If there is a dispute between a commission and another commission or a commission and any municipal authority with respect to

(a) rates, tolls or charges for a service that is a public utility,

(b) compensation for the acquisition by the commission of facilities used to provide a service that is a public utility, or

(c) the use of any road, square, bridge, subway or watercourse by the commission to provide a service that is a public utility,

any party involved in the dispute may submit the dispute to the Alberta Utilities Commission, and the Alberta Utilities Commission may issue an order on any terms and conditions that the Alberta Utilities Commission considers appropriate.

RSA 2000 cM-26 s602.14;2007 cA-37.2 s82(17);2020 c25 s11

Other disputes

602.2(1) If

(a) there is a dispute between a commission and another commission or a commission and any municipal authority and the matter in dispute is not under the jurisdiction of the Alberta Utilities Commission or any other board or tribunal created by an enactment, or

(b) there is a dispute between a commission and a municipal authority, other than an improvement district or special area, in respect of an expropriation that requires the consent of the municipal authority under section 602.18(2),

any party involved in the dispute may submit the dispute to the Land and Property Rights Tribunal.

(2) If a dispute is submitted to the Land and Property Rights Tribunal, each party involved in the dispute must submit a written statement to the Tribunal and to the other parties involved in the dispute that sets out

(a) a summary of the facts and its position in the dispute, and

(b) an address to which any notice or decision of the Tribunal is to be sent.

(3) The Land and Property Rights Tribunal must hold a hearing after the written statements have been submitted, or after the expiry of a time period established by the Tribunal for submission of the statements, whichever occurs first.

RSA 2000 cM-26 s602.15;RSA 2000 cT-6 s205; 2007 cA-37.2 s82(17);2020 cL-2.3 s24(28);2020 c25 s11; 2023 c9 s19(15)

Order of Land and Property Rights Tribunal

602.21(1) After hearing a dispute under section 602.2(3), the Land and Property Rights Tribunal may make any order it considers appropriate.

(2) The order under subsection (1) may

(a) include terms and conditions, and

(b) be effective on a future date or for a limited time.

(3) The Land and Property Rights Tribunal must send its order, and its reasons if requested, to the parties involved in the dispute.

(4) An order of the Land and Property Rights Tribunal under this section is binding on the parties involved in the dispute.

RSA 2000 cM-26 s602.16;2020 cL-2.3 s24(41);2020 c25 s11

Division 3
Financial Matters

Financial year

602.22 The financial year of a commission is the calendar year.

RSA 2000 cM-26 s602.18;2020 c25 s11

Operating budget

602.23(1) A commission must adopt an operating budget for each calendar year.

(2) An operating budget must include the estimated amount of each of the following expenditures and transfers:

(a) the amount needed to enable the commission to provide its services;

(b) the amount needed to pay the debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property;

(c) if necessary, the amount needed to provide for a depreciation or depletion allowance, or both, for any public utility the commission is authorized to provide;

(d) the amount to be transferred to reserves;

(e) the amount to be transferred to the capital budget;

(f) the amount needed to recover any shortfall as required under section 602.24.

(3) An operating budget must include the estimated amount of each of the following sources of revenue and transfers:

(a) fees for services provided;

(b) grants;

(c) transfers from the commission's accumulated surplus funds or reserves;

(d) any other source of revenue.

(4) The estimated revenue and transfers under subsection (3) must be at least sufficient to pay the estimated expenditures and transfers under subsection (2).

(5) The Minister may make regulations respecting budgets and that define terms used in this section that are not defined in section 602.01.

RSA 2000 cM-26 ss602.19,602.2;2020 c25 s11

Financial shortfall

602.24(1) Subject to subsection (2), section 244 applies to a commission.

(2) Notwithstanding section 244, for the purposes of this Part, a reference in section 244 to a municipality shall be read as a reference to a commission.

RSA 2000 cM-26 s602.21;2020 c25 s11

Capital budget

602.25(1) Subject to subsection (2), sections 245 and 246 apply to a commission.

(2) Notwithstanding sections 245 and 246, for the purposes of this Part, a reference in section 245 to each council shall be read as a reference to each board.

RSA 2000 cM-26 s602.22;2020 c25 s11

Expenditure of money

602.26(1) A commission may make an expenditure only if it is

(a) included in the commission's operating budget or capital budget or otherwise authorized by its board,

(b) for an emergency, or

(c) legally required to be paid.

(2) Each board must establish procedures to authorize and verify expenditures that are not included in a budget.

(3) If the Minister establishes a budget for a commission by virtue of section 244(3), the commission may not make an expenditure that is not included in the budget unless the expenditure is

(a) authorized by the Minister,

(b) for an emergency, or

(c) legally required to be paid.

RSA 2000 cM-26 s602.24;2020 c25 s11

Annual budget

602.27(1) For the purpose of this section, "annual budget" means an annual budget as defined in section 241(a.02).

(2) A commission may adopt an annual budget in a format that is consistent with its financial statements.

(3) For the purpose of section 602.26, the adoption of an annual budget is equivalent to the adoption of an operating budget under section 602.23 or the adoption of a capital budget under section 602.25.

2020 c25 s11

Civil liability of directors re expenditure

602.28(1) Subject to subsection (2), a director of a board who

(a) makes an expenditure that is not authorized under section 602.26,

(b) votes to spend money that has been obtained under a borrowing on something that is not within the purpose for which the money was borrowed, or

(c) votes to spend money that has been obtained under a grant on something that is not within the purpose for which the grant was given

is liable to the commission for the expenditure or amount spent.

(2) A director is not liable under subsection (1)(b) if spending the money is allowed under section 602.3.

(3) If more than one director of the board is liable to the commission under this section in respect of a particular expenditure or amount spent, the directors are jointly and severally liable to the commission for the expenditure or amount spent.

(4) The liability under this section may be enforced by action by

(a) the commission,

(b) a member of the commission,

(c) a taxpayer of a member of the commission, or

(d) a person who holds a security under a borrowing made by the commission.

RSA 2000 cM-26 s602.3;2020 c25 s11

Authorized investments

602.29 A commission may invest its money only in the investments referred to in section 250(2)(a) to (d).

RSA 2000 cM-26 s602.26;2020 c25 s11

Use of borrowed money

602.3(1) Subject to subsection (2), section 253 applies to a commission.

(2) Notwithstanding section 253, for the purposes of this Part, a reference in section 253 to a municipality shall be read as a reference to a commission.

RSA 2000 cM-26 s602.27;2020 c25 s11

Borrowing

602.31 No commission may make a borrowing if the borrowing will cause the commission to exceed its debt limit, unless the borrowing is approved by the Minister.

RSA 2000 cM-26 s602.28;2020 c25 s11

Debt limit regulations

602.32(1) The Minister may make regulations

(a) respecting how a debt limit for a commission is determined;

(b) defining debt for the purposes of determining whether a commission has exceeded its debt limit, and the definition may include anything related to a commission's finances.

(2) The regulations made under this section may establish different methods of determining debt limits and different definitions of debt for different commissions.

RSA 2000 cM-26 s602.29;2020 c25 s11

Civil liability of directors re borrowing

602.33(1) When a commission makes a borrowing that causes the commission to exceed its debt limit, a director of the board who voted to authorize the borrowing is liable to the commission for the amount borrowed, unless the borrowing has been approved by the Minister.

(2) If subsection (1) applies to more than one director of the board, the directors are jointly and severally liable to the commission for the amount borrowed.

(3) The liability under this section may be enforced by action by

(a) the commission,

(b) a member of the commission,

(c) a taxpayer of a member of the commission, or

(d) a person who holds a security under a borrowing made by the commission.

RSA 2000 cM-26 s602.3;2020 c25 s11

Loans and guarantees

602.34 A commission may not lend money or guarantee the repayment of a loan.

RSA 2000 cM-26 s602.31;2020 c25 s11

Financial information return

602.35(1) Each commission must prepare a financial information return respecting the financial affairs of the commission for the immediately preceding calendar year.

(2) The Minister may establish requirements respecting the financial information return, including requirements respecting the accounting principles and standards to be used in preparing the return.

RSA 2000 cM-26 s602.32;2020 c25 s11

Audited financial statements

602.36 Each commission must prepare audited annual financial statements for the immediately preceding calendar year.

RSA 2000 cM-26 s602.33;2020 c25 s11

Distribution of returns and statements

602.37 Each commission must submit its financial information return and audited annual financial statements to the Minister and each member of the commission by May 1 of the year following the year for which the return and statements have been prepared.

RSA 2000 cM-26 s602.34;2020 c25 s11

Division 4
Minister's Powers

Inspection

602.38(1) The Minister may require any matter connected with the management, administration or operation of any commission to be inspected

(a) on the Minister's initiative, or

(b) on the request of a member of the commission.

(2) For the purposes of subsection (1), the management, administration or operation of a commission includes

(a) the affairs of the commission,

(b) the conduct of a director of the board or of an employee or agent of the commission, and

(c) the conduct of a person who has an agreement with the commission relating to the duties or obligations of the commission or the person under the agreement.

(3) The Minister may appoint one or more persons as inspectors for the purposes of carrying out inspections under this section.

(4) An inspector

(a) may require the attendance of any director of the board, any officer of the commission or any other person whose presence the inspector considers necessary during the course of an inspection, and

(b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.

(5) When required to do so by an inspector, a commission must produce for examination and inspection all the books and records of the commission.

(6) After the completion of an inspection, the inspector must make a report to the Minister and, if the inspection was made at the request of a member of the commission, to the member and the commission.

RSA 2000 cM-26 s602.35;2020 c25 s11

Directions and dismissal

602.39(1) If because of an inspection under section 602.38 or a report of an official administrator under section 602.41 the Minister considers that a commission is managed in an irregular, improper or improvident manner, the Minister may by order direct the board to take any action that the Minister considers proper in the circumstances.

(2) If an order of the Minister under this section is not carried out to the satisfaction of the Minister and the Minister considers that the commission continues to be managed in an irregular, improper or improvident manner, and all reasonable efforts to resolve the situation have been attempted and have been unsuccessful, the Minister may make one or more of the following orders:

(a) an order suspending the authority of the board to make bylaws in respect of any matter specified in the order;

(b) an order exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) an order removing a suspension of bylaw-making authority, with or without conditions;

(d) an order withholding money otherwise payable by the Government to the commission pending compliance with an order of the Minister;

(e) an order repealing, amending and making policies and procedures with respect to the commission;

(f) an order requiring or prohibiting any other action as necessary to ensure an order is complied with;

(g) an order dismissing the board or any director of the board.

(3) Before making an order under subsection (2), the Minister must give the commission notice of the intended order and at least 14 days in which to respond.

(4) If an order of the Minister under this section is not carried out to the satisfaction of the Minister, the Minister may dismiss the board or any director of the board.

(5) On the dismissal of the board or of any director of the board, the Minister may direct that a new board or director be appointed or may appoint a new board or director.

(6) The Minister may appoint an official administrator

(a) on the dismissal of a board, or

(b) on the dismissal of one or more directors of the board if the remaining directors do not constitute a quorum.

(7) An official administrator appointed under subsection (6) has all the powers and duties of the board.

RSA 2000 cM-26 s602.36;2017 c13 s1(52);2020 c25 s11

Official administrator as supervisor

602.4(1) The Minister may at any time appoint an official administrator to supervise a commission and the board.

(2) As long as the appointment of an official administrator under this section continues,

(a) no bylaw or resolution that authorizes the commission to incur a liability or to dispose of the money or property of the commission has any effect until the bylaw or resolution has been approved in writing by the official administrator, and

(b) the official administrator may at any time within 30 days after the passing of any bylaw or resolution disallow it, and the bylaw or resolution so disallowed becomes and is deemed to have always been void.

RSA 2000 cM-26 s602.37;2020 c25 s11

Reports of official administrators

602.41 An official administrator appointed under section 602.39(6) or 602.4 shall on request of the Minister, and may at any other time, report to the Minister on

(a) any matter respecting the commission, or the board or the administration of the commission,

(b) any matter respecting the provision of services by the commission, or

(c) any other matter that the Minister may consider necessary.

2017 c13 s1(53);2020 c25 s11

Enforcement when commission under supervision

602.42(1) If the Minister considers that a commission has, while under the supervision of an official administrator,

(a) incurred a liability or disposed of money or property without the written approval of the official administrator required by section 602.4(2)(a), or

(b) acted on a bylaw or resolution that has been disallowed by the official administrator under section 602.4(2)(b),

the Minister may take any necessary measures to address the situation, including, without limitation, making one or more orders referred to in section 602.39(2)(a) to (g).

(2) Before making an order under subsection (1), the Minister must give the commission notice of the intended order and at least 14 days in which to respond.

2017 c13 s1(53);2020 c25 s11

Remuneration for official administrator

602.43 When an official administrator is appointed for a commission by the Minister under this Part, the remuneration and expenses of the official administrator as set by the Minister must, if required by the Minister, be paid by the commission.

RSA 2000 cM-26 s602.38;2020 c25 s11

Providing Minister with copies and information

602.44(1) The Minister may direct a commission to provide

(a) a copy of any document in its possession, or

(b) any information or statistics respecting the commission

to the Minister within the time specified by the Minister.

(2) A commission must comply with a direction of the Minister under this section and provide any copy, information or statistics to the Minister without charge.

(3) This section does not apply to documents prepared or information acquired by a commission that is subject to any type of legal privilege, including solicitor-client privilege.

RSA 2000 cM-26 s602.381;2020 c25 s11

Ministerial orders

602.45(1) In addition to any other orders that the Minister may make under this Part, the Minister may

(a) by order take any action that a commission or a board may or must take under this Part, or

(b) make an order providing for any other matter that the Minister considers necessary for carrying out the purposes of this Part.

(2) If there is a conflict or inconsistency between an order made by the Minister under subsection (1) and an action taken by a commission or a board, the Minister's order prevails to the extent of the conflict or inconsistency.

(3) The *Regulations Act* does not apply to an order made by the Minister under this Part.

2020 c25 s11

Ministerial regulations

602.46(1) The Minister may make regulations

(a) authorizing and respecting the use of electronic, telephonic or other communication methods to conduct meetings of a regional services commission;

(b) to remedy any confusion or inconsistency in applying the provisions of this Part.

(2) Regulations under subsection (1)(a) may apply generally or specifically and may modify the requirements in this Part to any extent the Minister considers necessary or appropriate to give effect to the regulations.

2020 c25 s11;2022 c16 s9(76)

Division 5
Transitional Provisions and Ministerial Regulations

Transitional provisions

602.47(1) In this Division,

(a) "continued commissions" means the regional services commissions established and existing under the former provisions before this Part comes into force;

(b) "former provisions" means the provisions in Part 15.1 of this Act in force immediately before the coming into force of this Division.

(2) Continued commissions continue as regional services commissions as if the continued commissions are established under this Part.

(3) The bylaws and resolutions of the continued commissions continue until repealed, amended or replaced by the boards of the continued commissions.

(4) The members, the boards and the chairs of the continued commissions continue until changed according to the bylaws amended or replaced under subsection (3).

(5) On the coming into force of this Part, all liabilities, assets, rights, duties, functions and obligations of continued commissions

continue to have effect until expired or amended under this Part or any other enactment.

(6) A reference to commissions in any enactment, regulation, order, bylaw, certificate of title, agreement or any other instrument is continued.

(7) Within one year after the coming into force of this Part, all continued commissions must ensure that the bylaws of the continued commissions conform to the requirements in section 602.09.

(8) The Minister may issue an order listing all the continued commissions continued under this section.

2020 c25 s11

Ministerial regulations

602.48 The Minister may make regulations to deal with any difficulty or impossibility resulting from transitioning to this Part from the former provisions.

2020 c25 s11

Part 16
Miscellaneous

Lieutenant Governor in Council regulations

603(1) The Lieutenant Governor in Council may make regulations

(a) for any matter that the Minister considers is not provided for or is insufficiently provided for in this Act;

(b) restricting the power or duty of a council to pass bylaws.

(2) A regulation made under subsection (1) is repealed on the earliest of

(a) the coming into force of an amendment that adds the matter to this Act;

(b) the coming into force of a regulation that repeals the regulation made under subsection (1);

(c) two years after the regulation comes into force.

(3) The repeal of a regulation under subsection (2)(b) or (c) does not affect anything done, incurred or acquired under the authority of the regulation before the repeal of the regulation.

1994 cM-26.1 s603

Validation of regulations

603.1(1) Despite any decision of a court to the contrary made before or after the coming into force of this section,

(a) a regulation made under section 603(1) before the coming into force of this section, including a new regulation described in clause (c), is validated and declared for all purposes to have been validly made as of the date on which the regulation was made,

(b) everything done under a regulation referred to in clause (a) is validated and declared for all purposes to have been validly done, and

(c) where a regulation made under section 603(1) before the coming into force of this section (in this clause called the "former regulation") is repealed and another regulation made under section 603(1) (in this clause called the "new regulation") was substituted for it, the new regulation operates as a continuation of the former regulation except to the extent that the provisions of the new regulation are not in substance the same as those of the former regulation.

(2) For greater certainty and without limiting the generality of subsection (1)(b) and (c),

(a) the Minister's approval of the Capital Region Growth Plan under section 13(1) of the *Capital Region Board Regulation* (AR 49/2008)

(i) is validated and declared for all purposes to have been validly approved, and

(ii) continues to be valid as if it had been approved under section 13(1) of the *Capital Region Board Regulation* (AR 38/2012),

(b) the Minister's establishment of the Transitional Regional Evaluation Framework under section 20 of the *Capital Region Board Regulation* (AR 49/2008) is validated and declared for all purposes to have been validly established, and

(c) the Minister's establishment of the Regional Evaluation Framework under section 21 of the *Capital Region Board Regulation* (AR 17/2010)

(i) is validated and declared for all purposes to have been validly established, and

(ii) continues to be valid as if it had been established under section 21 of the *Capital Region Board Regulation* (AR 38/2012).

(3) Despite section 603(2), a regulation referred to in subsection (1) of this section that is in force on the coming into force of this section is repealed on the earliest of

(a) the coming into force of an amendment that adds the matter to this Act;

(b) the coming into force of a regulation that repeals the regulation;

(c) subject to subsection (3.1), June 30, 2017.

(3.1) For the purposes of the following regulations, subsection (3)(c) shall be read as June 30, 2018:

(a) *Alberta Central East Water Corporation Regulation* (AR 137/2013);

(b) *Aquatera Utilities Inc. Regulation* (AR 205/2013);

(c) *Aqueduct Utilities Corporation Regulation* (AR 92/2012);

(d) *Chestermere Utilities Incorporated Regulation* (AR 163/2013);

(e) *Extension of Linear Property Regulation* (AR 207/2012);

(f) *NEW water Ltd. Regulation* (AR 159/2012);

(g) *Newell Regional Services Corporation Regulation* (AR 153/2012);

(h) *Peace Regional Waste Management Company Regulation* (AR 41/2011).

(4) Subsection (3) does not apply to the following regulations:

(a) *Proceedings Before the Board Clarification Regulation* (AR 176/2011);

(b) *Equalized Assessment Variance Regulation, 2012* (AR 195/2011);

(c) *Capital Region Board Regulation* (AR 38/2012);

(d) *Municipal Emergency Exemption Regulation* (AR 142/2013).

2013 c17 s4;2017 c13 s1(54)

Ministerial regulations

604 The Minister may make regulations

(a) repealed 2022 c16 s9(77);

(b) respecting the determination of the population of a municipality or other geographic area and establishing requirements for a municipality to conduct a census and provide information concerning population to the Minister;

(c) respecting the administration, operation and management of specialized municipalities;

(d) prescribing forms for the purposes of this Act;

(e) respecting the content or form of anything required to be done by a municipality under this Act.

RSA 2000 cM-26 s604;2022 c16 s9(77)

Determining population

604.1(1) The Minister may determine and by order specify the population of a municipal authority or other geographic area for any purpose under this Act.

(2) Where the Minister considers it appropriate to do so, the Minister may adopt a determination of the population of a municipal authority or other geographic area made by another person or entity, and where the Minister does so the adoption of that determination is to be considered the Minister's determination of that population for the purposes of subsection (1).

2022 c16 s9(78)

Altering dates and time periods

605(1) When this Act, the regulations or a bylaw specifies a certain number of days or a day on or by which

(a) something is to be done, or

(b) certain proceedings are to be taken,

and the day that the thing is to be done or proceedings are to be taken is a holiday, the thing or proceedings must be done or taken on or by the next day that is not a holiday.

(2) When this Act or the regulations specify a certain number of days or a day on or by which

(a) something is to be done, or

(b) proceedings are to be taken,

the Minister may by order specify another number of days or another day for doing it or taking proceedings.

(3) An order under subsection (2) may be made at any time before or after the day that the thing is to be done or proceedings are to be taken and the time for doing any other thing that is determined in relation to that day is subject to a like delay.

(4) Anything done or proceedings taken within the number of days or by the day specified in an order under subsection (2) is as valid as if it had been done or taken within the number of days or by the day specified in this Act or the regulations.

1994 cM-26.1 s605

Requirements for advertising

606(1) The requirements of this section apply when this or another enactment requires a bylaw, resolution, meeting, public hearing or something else to be advertised by a municipality, unless this or another enactment specifies otherwise.

(2) Notice of the bylaw, resolution, meeting, public hearing or other thing must be

(a) published at least once a week for 2 consecutive weeks in at least one newspaper or other publication circulating in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held,

(b) mailed or delivered to every residence in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held, or

(c) given by a method provided for in a bylaw under section 606.1.

(3) A notice of a proposed bylaw must be advertised under subsection (2) before second reading.

(4) A notice of a proposed resolution must be advertised under subsection (2) before it is voted on by council.

(5) A notice of a meeting, public hearing or other thing must be advertised under subsection (2) at least 5 days before the meeting, public hearing or thing occurs.

(6) A notice must contain

(a) a statement of the general purpose of the proposed bylaw, resolution, meeting, public hearing or other thing,

(b) the address where a copy of the proposed bylaw, resolution or other thing, and any document relating to it or to the meeting or public hearing may be inspected,

(c) in the case of a bylaw or resolution, an outline of the procedure to be followed by anyone wishing to file a petition in respect of it, and

(d) in the case of a meeting or public hearing, the date, time and place where it will be held.

(7) A certificate of a designated officer certifying that something has been advertised in accordance with this section is proof, in the absence of evidence to the contrary, of the matters set out in the certificate.

(8) The certificate is admissible in evidence without proof of the appointment or signature of the person who signed the certificate.

RSA 2000 cM-26 s606;2015 c8 s56;2017 c13 s3

Advertisement bylaw

606.1(1) A council may by bylaw provide for one or more methods, which may include electronic means, for advertising proposed bylaws, resolutions, meetings, public hearings and other things referred to in section 606.

(2) Before making a bylaw under subsection (1), council must be satisfied that the method the bylaw would provide for is likely to bring proposed bylaws, resolutions, meetings, public hearings and other things advertised by that method to the attention of substantially all residents in the area to which the bylaw, resolution or other thing relates or in which the meeting or hearing is to be held.

(3) Council must conduct a public hearing before making a bylaw under subsection (1).

(4) A notice of a bylaw proposed to be made under subsection (1) must be advertised in a manner described in section 606(2)(a) or (b) or by a method provided for in a bylaw made under this section.

(5) A notice of a bylaw proposed to be made under subsection (1) must contain

(a) a statement of the general purpose of the proposed bylaw,

(b) the address or website where a copy of the proposed bylaw may be examined, and

(c) an outline of the procedure to be followed by anyone wishing to file a petition in respect of the proposed bylaw.

(6) A bylaw passed under this section must be made available for public inspection.

2015 c8 s57;2017 c13 s3

Service of documents

607 The service of a document on a municipality is sufficient if

(a) the document is served personally on the chief administrative officer or a person working for the municipality in the office of the chief administrative officer,

(b) the document is sent by certified or registered mail to the chief administrative officer at the municipality's office and the document is delivered to the municipality's office, or

(c) the document is sent to the municipality by electronic means in accordance with a bylaw made by the municipality.

RSA 2000 cM-26 s607;2015 c8 s58

Sending documents

608(1) Where this Act or a regulation or bylaw made under this Act requires a document to be sent to a person, the document may be sent by electronic means if

(a) the recipient has consented to receive documents from the sender by those electronic means and has provided an e-mail address, website or other electronic address to the sender for that purpose, and

(b) it is possible to make a copy of the document from the electronic transmission.

(2) In the absence of evidence to the contrary, a document sent by electronic means in accordance with subsection (1) is presumed to have been received 7 days after it was sent unless the regulations under subsection (4) provide otherwise.

(3) For greater certainty, a reference in this Act to a mailing address is to be interpreted as including an electronic address referred to in subsection (1)(a) if the requirements of subsection (1) are met.

(4) The Minister may make regulations respecting the circumstances in which the presumption in subsection (2) does not apply.

RSA 2000 cM-26 s608;2016 c24 s90

Bylaws for sending certain documents electronically

608.1(1) Despite section 608, a council may by bylaw establish a process for sending assessment notices, tax notices and other notices, documents and information under Part 9, 10 or 11 or the regulations under Part 9, 10 or 11 by electronic means.

(2) A council may by bylaw establish a process for sending forms of notice under section 149(2) or (3) of the *Education Act* by electronic means.

(3) Before making a bylaw under this section, the council must be satisfied that the proposed bylaw includes appropriate measures to ensure the security and confidentiality of the notices, documents and information being sent.

(4) Before making a bylaw under this section, the council must give notice of the proposed bylaw in a manner the council considers is likely to bring the proposed bylaw to the attention of substantially all persons that would be affected by it.

(5) A bylaw under subsection (1) or (2) must provide for a method by which persons may opt to receive the notice, document or information by electronic means.

(6) The sending by electronic means of any notice, document or information referred to in subsection (1) or (2) is valid only if the person to whom it is sent has opted under the bylaw to receive it by those means.

2019 c22 s10(17)

Adverse possession of land

609 No person can acquire an estate or interest in land owned by a municipality by adverse or unauthorized possession, occupation, enjoyment or use of the land.

1994 cM-26.1 s609

Lost or unclaimed property

610(1) Lost or unclaimed property coming into the possession of a municipality must be retained for at least 30 days from the date it comes into possession of the municipality unless it is unsafe, unsanitary or perishable, in which case it may be disposed of at any time.

(2) If property is not claimed within 30 days, it becomes the property of the municipality and the municipality may dispose of the property by public auction or as the council directs.

(3) The purchaser of lost or unclaimed property is the absolute owner of it.

(4) A prior owner of lost or unclaimed property is entitled to the proceeds of the sale less all expenses incurred by the municipality if the prior owner makes a claim to the municipality within 90 days after the date of the sale.

(5) If the sale proceeds are not claimed within 90 days from the date of sale, the rights of any prior owner to the sale proceeds are extinguished and the sale proceeds belong to the municipality.

1994 cM-26.1 s610

Unclaimed utility deposits

611(1) If money is deposited with a municipality as a deposit for the payment of an account for a service or product and remains unclaimed for one year after the depositor's account is discontinued, the amount of the deposit may be transferred to the general revenue of the municipality.

(2) The municipality is liable to repay the amount of the deposit to the person lawfully entitled to it for a period of 7 years following the discontinuance of the account.

1994 cM-26.1 s611

Certified copies

612(1) A copy of a bylaw, resolution or record of a municipality certified by a designated officer as a true copy of the original is proof, in the absence of evidence to the contrary, of the bylaw, resolution or record.

(2) The certificate of the designated officer is admissible in evidence without proof of the appointment or signature of the person who signed the certificate.

(3) When a copy of a bylaw or resolution certified in accordance with this section is filed with the clerk of a court, the court must take judicial notice of it when an action is brought in the court.

1994 cM-26.1 s612

Calgary Charter

613 The provisions of the Calgary Charter relating to the land, buildings, plants and equipment of the water supply and distribution system commonly known as the Glenmore Dam, and the provisions of the Calgary Charter relating in particular to the

assessment and taxation of it by the Municipal District of Springbank, continue to apply.

1994 cM-26.1 s613

614 Repealed 1994 cR-9.07 s25(24).

615 Repealed 2023 c9 s19(16).

Municipal emergency exemption

615.1(1) In this section,

(a) "disaster" means a disaster as defined in section 1(e) of the *Emergency Management Act*;

(b) "emergency" means an emergency as defined in section 1(f) of the *Emergency Management Act*.

(2) Where it appears to the Minister that a disaster or an emergency exists in a municipal authority, the Minister may by order, with respect to that municipal authority or an adjacent municipal authority,

(a) modify one or more provisions of this Act as they apply to the municipal authority,

(b) exempt the municipal authority from one or more provisions of this Act or bylaws made pursuant to this Act, or

(c) provide the municipal authority with specified authority in addition to that set out in this Act.

(3) The Minister may, in an order made under subsection (2),

(a) impose terms, conditions and timelines on the modification or exemption of a provision of this Act or a bylaw or the exercise of additional authority, and

(b) specify a date on which the order or any provision of it expires.

(4) The *Regulations Act* does not apply to an order made under subsection (2).

2013 c21 s2

Agreements under Aeronautics Act (Canada)

615.2(1) A municipality may, if authorized by regulation, enter into an agreement under section 5.81 of the *Aeronautics Act* (Canada).

(2) The Lieutenant Governor in Council may make regulations

(a) authorizing a municipality to enter into an agreement under section 5.81 of the *Aeronautics Act* (Canada);

(b) specifying the terms and conditions under which a municipality may enter into the agreement.

(3) The *Aeronautics Act Agreements (City of Medicine Hat and Cypress County) Regulation* (AR 33/2014) is deemed to have been made under this section.

2015 c8 s60

Part 17
Planning and Development

Definitions

616 In this Part,

(a) "adjacent land" means land that is contiguous to a parcel of land that is being subdivided or redesignated and includes

(i) land that would be contiguous if not for a highway, road, river or stream, and

(ii) any other land identified in a land use bylaw as adjacent land for the purpose of notification under sections 653, 679, 680 and 692;

(a.01) "agricultural operation" means an agricultural operation as defined in the *Agricultural Operation Practices Act*;

(a.1) "building" includes anything constructed or placed on, in, over or under land, but does not include a highway or road or a bridge that forms part of a highway or road;

(a.11) "community recreation facilities" means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities;

(a.2) "community services reserve" means the land designated as community services reserve under Division 9;

(a.3) "conservation reserve" means the land designated as conservation reserve under Division 8;

(b) "development" means

(i) an excavation or stockpile and the creation of either of them,

(ii) a building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land,

(iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or

(iv) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building;

(c) "development authority" means a development authority established pursuant to Division 3;

(d) "development permit" means a document that is issued under a land use bylaw and authorizes a development;

(e) "environmental reserve" means the land designated as environmental reserve under Division 8;

(f) "environmental reserve easement" means an easement created under Division 8;

(g) "former Act" means the *Planning Act*, RSA 1980 cP-9, *The Planning Act, 1977*, SA 1977 c89, *The Planning Act*, RSA 1970 c276 or *The Planning Act*, SA 1963 c43;

(h) "highway" means a provincial highway under the *Highways Development and Protection Act*;

(i) "instrument" means a plan of subdivision and an instrument as defined in the *Land Titles Act*;

(j) "intermunicipal service agency" means an intermunicipal service agency established under Division 3;

(j.1) "joint use and planning agreement" means an agreement under section 670.1;

(k) "land use bylaw" means a bylaw made under Division 5 and a bylaw made under section 27 of the *Historical Resources Act*;

(l) "land use policies" means the policies referred to in section 618.4;

(m) "lot" means

(i) a quarter section,

(ii) a river lot shown on an official plan, as defined in the *Surveys Act,* that is filed or lodged in a land titles office,

(iii) a settlement lot shown on an official plan, as defined in the *Surveys Act*, that is filed or lodged in a land titles office,

(iv) a part of a parcel of land described in a certificate of title if the boundaries of the part are described in the certificate of title other than by reference to a legal subdivision, or

(v) a part of a parcel of land described in a certificate of title if the boundaries of the part are described in a certificate of title by reference to a plan of subdivision;

(m.1) "mediation" means a process involving a neutral person as a mediator who assists the parties to a matter that may be appealed under this Part and any other person brought in with the agreement of the parties to reach their own mutually acceptable settlement of the matter by structuring negotiations, facilitating communication and identifying the issues and interests of the parties;

(n) "municipal planning commission" means a municipal planning commission established under Division 3;

(o) "municipal reserve" means the land designated as municipal reserve under Division 8;

(p) "municipal and school reserve" means the land designated as municipal and school reserve under Division 8;

(q) "non-conforming building" means a building

(i) that is lawfully constructed or lawfully under construction at the date a land use bylaw affecting the building or the land on which the building is situated becomes effective, and

(ii) that on the date the land use bylaw becomes effective does not, or when constructed will not, comply with the land use bylaw;

(r) "non-conforming use" means a lawful specific use

(i) being made of land or a building or intended to be made of a building lawfully under construction at the date a

land use bylaw affecting the land or building becomes effective, and

(ii) that on the date the land use bylaw becomes effective does not, or in the case of a building under construction will not, comply with the land use bylaw;

(r.1) "non-profit", in respect of a day care, senior citizens or special needs facility, means that the facility is owned or operated by a corporation or other entity established under a law of Canada or Alberta for a purpose other than to make a profit;

(r.2) "off-site levy" means a levy referred to in subsection 648(1.1)(a);

(s) "parcel of land" means the aggregate of the one or more areas of land described in a certificate of title or described in a certificate of title by reference to a plan filed or registered in a land titles office;

(t) "*Planning Act*" means the *Planning Act*, RSA 1980 cP-9;

(u) "plan of subdivision" means a plan of survey prepared in accordance with the *Land Titles Act* for the purpose of effecting a subdivision;

(v) "public utility" means a public utility as defined in section 1(1)(y), excluding residential and commercial street lighting, and includes telecommunications;

(w) "public utility lot" means land required to be given under Division 8 for public utilities;

(x) "redevelopment area" means an area of land that is the subject of an area redevelopment plan;

(y) "Registrar" means Registrar as defined in the *Land Titles Act*;

(z) "reserve land" means environmental reserve, conservation reserve, municipal reserve, community services reserve, school reserve or municipal and school reserve;

(aa) "road" means road as defined in section 1(1), but does not include highway as defined in this Part;

(bb) "school board" means the board of trustees of a school division;

(cc) "school reserve" means the land designated as school reserve under Division 8;

(dd) "statutory plan" means an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4;

(ee) "subdivision" means the division of a parcel of land by an instrument and "subdivide" has a corresponding meaning;

(ff) "subdivision authority" means a subdivision authority established under Division 3;

(gg) "subdivision and development appeal board" means a subdivision and development appeal board established under Division 3;

(hh) "subdivision and development regulations" mean regulations made under section 694(1).

RSA 2000 cM-26 s616;RSA 2000 c21(Supp) s3;2004 cH-8.5 s69; 2008 c37 s4;2012 cE-0.3 s279;2016 c24 s91;2019 c22 s10; 2020 c39 s10(3);2023 c9 s19(17)

Purpose of this Part

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

1995 c24 s95

Non-application of this Part

618(1) This Part and the regulations and bylaws under this Part do not apply when a development or a subdivision is effected only for the purpose of

(a) a highway or road,

(b) a well or battery within the meaning of the *Oil and Gas Conservation Act*, or

(c) a pipeline or an installation or structure incidental to the operation of a pipeline.

(2) This Part and the regulations and bylaws under this Part do not apply to

(a) the geographic area of a Metis settlement, or

(b) a designated area of Crown land in a municipal district or specialized municipality.

(2.1) This Part and the regulations and bylaws under this Part respecting development permits do not apply to a confined feeding operation or manure storage facility within the meaning of the *Agricultural Operation Practices Act* if the confined feeding operation or manure storage facility is the subject of an approval, registration or authorization under Part 2 of the *Agricultural Operation Practices Act*.

(3) The Minister responsible for the *Public Lands Act* may make regulations designating one or more areas of Crown land under that Minister's administration for the purposes of subsection (2)(b).

(4) The Lieutenant Governor in Council may, by regulation, exempt an action, person or thing from the application of all of or any provision of this Part or of the regulations or bylaws under this Part.

(5) The Lieutenant Governor in Council may include terms and conditions in a regulation under subsection (4).

RSA 2000 cM-26 s618;2020 c39 s10(4)

618.1 Repealed 2020 c39 s10(5).

Bylaws binding

618.2 No bylaw is binding in respect of a matter governed by this Part unless that bylaw is passed in accordance with this Part.

2016 c24 s92

ALSA regional plans

618.3(1) Anything done by any of the following under a provision in this Part or a regulation under this Part must be done in accordance with any applicable ALSA regional plan:

(a) a municipality;

(b) a council;

(c) a municipal planning commission;

(d) a subdivision authority;

(e) a development authority;

(f) a subdivision and development appeal board;

(g) the Land and Property Rights Tribunal;

(h) an entity to which authority is delegated under section 625(4).

(2) If there is a conflict or an inconsistency between anything that is done under a provision of this Part or a regulation under this Part and an applicable ALSA regional plan, the ALSA regional plan prevails to the extent of the conflict or the inconsistency.

2020 cL-2.3 s24(41);2020 c39 s10(6)

Land use policies

618.4(1) Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Land and Property Rights Tribunal must be consistent with the land use policies established under subsection (2).

(2) The Lieutenant Governor in Council, on the recommendation of the Minister, may by regulation establish land use policies.

2020 cL-2.3 s24(41);2020 c39 s10(6)

Division 1
Other Authorizations, Compensation

NRCB, ERCB, AER, AEUB or AUC authorizations

619(1) A licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC prevails, in accordance with this section, over any statutory plan, land use bylaw, subdivision decision or development decision by a subdivision authority, development authority, subdivision and development appeal board, or the Land and Property Rights Tribunal or any other authorization under this Part.

(2) When an application is received by a municipality for a statutory plan amendment, land use bylaw amendment, subdivision approval, development permit or other authorization under this Part and the application is consistent with a licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC, the municipality must approve the application to the extent

that it complies with the licence, permit, approval or other authorization granted under subsection (1).

(3) An approval of a statutory plan amendment or land use bylaw amendment under subsection (2)

(a) must be granted within 90 days after the application or a longer time agreed on by the applicant and the municipality, and

(b) is not subject to the requirements of section 692 unless, in the opinion of the municipality, the statutory plan amendment or land use bylaw amendment relates to matters not included in the licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC.

(4) If a municipality that is considering an application under subsection (2) holds a hearing, the hearing may not address matters already decided by the NRCB, ERCB, AER, AEUB or AUC except as necessary to determine whether an amendment to a statutory plan or land use bylaw is required.

(5) If a municipality does not approve an application under subsection (2) to amend a statutory plan or land use bylaw or the municipality does not comply with subsection (3), the applicant may appeal to the Land and Property Rights Tribunal by filing with the Tribunal

(a) a notice of appeal, and

(b) a statutory declaration stating why mediation was unsuccessful or why the applicant believes that the municipality was unwilling to attempt to use mediation.

(6) The Land and Property Rights Tribunal, on receiving a notice of appeal and statutory declaration under subsection (5),

(a) must commence a hearing within 60 days after receiving the notice of appeal and statutory declaration and give a written decision within 30 days after concluding the hearing, and

(b) is not required to notify or hear from any person other than the applicant and the municipality against whom the appeal is launched.

(7) The Land and Property Rights Tribunal, in hearing an appeal under subsection (6), may only hear matters relating to whether the proposed statutory plan or land use bylaw amendment is consistent

with the licence, permit, approval or other authorization granted under subsection (1).

(8) In an appeal under this section, the Land and Property Rights Tribunal may

(a) order the municipality to amend the statutory plan or land use bylaw in order to comply with a licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC, or

(b) dismiss the appeal.

(9) Section 692 does not apply when the statutory plan or land use bylaw is amended pursuant to a decision of the Land and Property Rights Tribunal under subsection (8)(a).

(10) A decision under subsection (8) is final but may be appealed by the applicant or the municipality in accordance with section 688.

(11) In this section, "NRCB, ERCB, AER, AEUB or AUC" means the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission.

(12) Repealed 2020 c39 s10(7).

RSA 2000 cM-26 s619;2007 cA-37.2 s82(14);2009 cA-26.8 s83; 2012 cR-17.3 s95;2020 cL-2.3 s24(29);2020 c39 s10(7)

Conditions prevail

620 A condition of a licence, permit, approval or other authorization granted pursuant to an enactment by the Lieutenant Governor in Council, a Minister, a Provincial agency or Crown-controlled organization as defined in the *Financial Administration Act* or a delegated person as defined in Schedule 10 to the *Government Organization Act* prevails over any condition of a development permit that conflicts with it.

1995 c24 s95

Compensation

621(1) Except as provided in this Part and in section 28 of the *Historical Resources Act*, nothing in this Part or the regulations or bylaws under this Part gives a person a right to compensation.

(2) Subsection (1) applies only to this Part and does not create, extinguish or affect rights created, extinguished or affected by the rest of this Act.

1995 c24 s95

622 Repealed 2020 c39 s10(8).

Division 3
Planning Authorities

Subdivision authority and development authority

623 A council must, by bylaw, provide for

(a) a subdivision authority to exercise subdivision powers and duties on behalf of the municipality, and

(b) subject to section 641, a development authority to exercise development powers and perform duties on behalf of the municipality.

RSA 2000 cM-26 s623;2020 c39 s10(9)

624 Repealed 2020 c39 s10(10).

Planning authorities

625(1) The council of a municipality may, by bylaw,

(a) establish a municipal planning commission, or

(b) authorize the municipality to enter into an agreement with one or more municipalities to establish

(i) an intermunicipal planning commission, or

(ii) an intermunicipal service agency.

(2) An intermunicipal planning commission is deemed to be a municipal planning commission for the purposes of this Part.

(3) The bylaw establishing a municipal planning commission and the agreement establishing an intermunicipal planning commission must

(a) provide for the applicable matters described in section 145(3),

(b) prescribe the functions and duties of the commission, including but not limited to subdivision and development powers and duties, and

(c) in the case of an intermunicipal planning commission, provide for its dissolution.

(4) The council of a municipality may make a bylaw authorizing a municipality to delegate, by agreement, any of its subdivision authority or development authority powers, duties or functions to

(a) a municipal planning commission,

(b) a regional services commission, or

(c) an intermunicipal service agency.

RSA 2000 cM-26 s625;2020 c39 s10(11);2023 c9 s19(19)

626 Repealed 2020 c39 s10(12).

Appeal board established

627(1) A council must by bylaw

(a) establish a subdivision and development appeal board, or

(b) authorize the municipality to enter into an agreement with one or more municipalities to establish an intermunicipal subdivision and development appeal board,

or both.

(2) An intermunicipal subdivision and development appeal board is a subdivision and development appeal board for the purposes of this Part.

(3) Unless an order of the Minister authorizes otherwise, a panel of a subdivision and development appeal board hearing an appeal must not have more than one councillor as a member.

(4) The following persons may not be appointed as members of a subdivision and development appeal board:

(a) an employee of the municipality;

(b) a person who carries out subdivision or development powers, duties and functions on behalf of the municipality;

(c) a member of a municipal planning commission.

(5) A member of a subdivision and development appeal board may not participate in a hearing of the subdivision and development appeal board unless the member is qualified to do so in accordance with the regulations made under section 627.3(b).

RSA 2000 cM-26 s627;2016 c24 s94;2020 c39 s10(13)

Clerks

627.1(1) A council that establishes or authorizes the establishment of a subdivision and development appeal board, including an intermunicipal subdivision and development appeal board, must

appoint or authorize the appointment of one or more clerks of the subdivision and development appeal board.

(2) A person appointed as a clerk of a subdivision and development appeal board may also hold an appointment under section 456 as a clerk of an assessment review board.

(3) No person is eligible for appointment as a clerk of a subdivision and development appeal board unless that person has successfully completed a training program in accordance with the regulations made under section 627.3(a).

(4) No subdivision authority or development authority is eligible for appointment under this section.

2015 c8 s61;2017 c13 s3;2019 c22 s10(19);2020 c39 s10(14)

627.2 Repealed 2020 c39 s10(15).

Regulations

627.3(1) The Minister may make regulations

(a) respecting training programs for the purposes of section 627.1(3);

(b) respecting qualifications for the purposes of section 627(5);

(c) authorizing and respecting the use of electronic, telephonic or other communication methods to conduct hearings of a subdivision and development appeal board.

(2) Regulations under subsection (1)(c) may apply generally or specifically and may modify the requirements in this Division to any extent the Minister considers necessary or appropriate to give effect to the regulations.

2015 c8 s61;2020 c39 s10(16);2022 c16 s9(79)

628 Repealed 2020 c39 s10(17).

Immunity

628.1(1) The members of a subdivision and development appeal board are not personally liable for anything done or omitted to be done in good faith in the exercise or purported exercise of a power, duty or function under this Part.

(2) No member of a subdivision and development appeal board is liable for costs by reason of or in respect of an application for permission to appeal or an appeal under this Part.

2016 c24 s96

Appeal board evidence

629 A subdivision and development appeal board

(a) may, while carrying out its powers, duties and responsibilities, accept any oral or written evidence that it considers proper, whether admissible in a court of law or not, and is not bound by the laws of evidence applicable to judicial proceedings, and

(b) must make and keep a record of its proceedings, which may be in the form of a summary of the evidence presented at a hearing.

1995 c24 s95

Signature evidence

630(1) An order, decision, approval, notice or other thing made or given by a subdivision authority, development authority or subdivision and development appeal board may be signed on its behalf by a designated officer.

(2) An order, decision, approval, notice or other thing purporting to be signed by a designated officer pursuant to subsection (1) may be admitted in evidence as proof

(a) of the order, decision, approval, notice or other thing, and

(b) that the designated officer signing it was authorized to do so,

without proof of the signature or of the designation.

1995 c24 s95

Fees

630.1 A council may establish and charge fees for matters under this Part.

1996 c30 s55

630.2 Repealed 2020 c39 s10(18).

Division 4
Statutory Plans

Intermunicipal Development Plans

Intermunicipal development plans

631(1) Subject to subsections (2) and (3), 2 or more councils of municipalities that have common boundaries and that are not members of a growth region as defined in section 708.01 must, by each passing a bylaw in accordance with this Part or in accordance

with sections 12 and 692, adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary.

(2) Subsection (1) does not require municipalities to adopt an intermunicipal development plan with each other if they agree that they do not require one, but any of the municipalities may revoke its agreement at any time by giving written notice to the other or others, and where that notice is given the municipalities must comply with subsection (1) within one year from the date of the notice unless an exemption is ordered under subsection (3).

(3) The Minister may, by order, exempt one or more councils from the requirement to adopt an intermunicipal development plan, and the order may contain any terms and conditions that the Minister considers necessary.

(4) Municipalities that are required under subsection (1) to adopt an intermunicipal development plan must have an intermunicipal development plan providing for all of the matters referred to in subsection (8) in place by April 1, 2020.

(5) If 2 or more councils that are required to adopt an intermunicipal development plan under subsection (1) do not have an intermunicipal development plan in place by April 1, 2020 because they have been unable to agree on a plan, they must immediately notify the Minister and the Minister must, by order, refer the matter to the Land and Property Rights Tribunal for its recommendations in accordance with Part 12.

(6) Where the Minister refers a matter to the Land and Property Rights Tribunal under this section, Part 12 applies as if the matter had been referred to the Tribunal under section 514(2).

(7) Two or more councils of municipalities that are not otherwise required to adopt an intermunicipal development plan under subsection (1) may, by each passing a bylaw in accordance with this Part or in accordance with sections 12 and 692, adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary.

(8) An intermunicipal development plan

(a) must address

(i) the future land use within the area,

(ii) the manner of and the proposals for future development in the area,

(iii) the provision of transportation systems for the area, either generally or specifically,

(iv) the co-ordination of intermunicipal programs relating to the physical, social and economic development of the area,

(v) environmental matters within the area, either generally or specifically, and

(vi) any other matter related to the physical, social or economic development of the area that the councils consider necessary,

and

(b) must include

(i) a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that have adopted the plan,

(ii) a procedure to be used, by one or more municipalities, to amend or repeal the plan, and

(iii) provisions relating to the administration of the plan.

(9) Despite subsection (8), to the extent that a matter is dealt with in a framework under Part 17.2, the matter does not need to be included in an intermunicipal development plan.

(10) In creating an intermunicipal development plan, municipalities must negotiate in good faith.

RSA 2000 cM-26 s631;2016 c24 s97;2019 c22 s10(20); 2020 cL-2.3 s24(30)

Order for intermunicipal development plan

631.1(1) The Minister may make regulations

(a) repealed 2019 c22 s10(21);

(b) respecting the matters to be included in an intermunicipal development plan.

(c) repealed 2019 c22 s10(21).

(1.1) After considering the recommendations of the Land and Property Rights Tribunal respecting a matter referred to the Tribunal under section 631(5), the Minister may, by order, require 2 or more municipal authorities to establish an intermunicipal development plan in accordance with the order by a date specified in the order.

(1.2) If the municipal authorities to whom an order under subsection (1.1) applies do not comply with the order, the Minister may make a further order establishing an intermunicipal development plan that is binding on the municipal authorities.

(2) Repealed 2019 c22 s10(21).

2009 cA-26.8 s83;2019 c22 s10(21);2020 cL-2.3 s24(31)

Municipal Development Plans

Municipal development plans

632(1) Every council of a municipality must by bylaw adopt a municipal development plan.

(2) Repealed 2016 c24 s98.

(2.1) Within 3 years after the coming into force of this subsection, a council of a municipality that does not have a municipal development plan must by bylaw adopt a municipal development plan.

(3) A municipal development plan

(a) must address

(i) the future land use within the municipality,

(ii) the manner of and the proposals for future development in the municipality,

(iii) the co-ordination of land use, future growth patterns and other infrastructure with adjacent municipalities if there is no intermunicipal development plan with respect to those matters in those municipalities,

(iv) the provision of the required transportation systems either generally or specifically within the municipality and in relation to adjacent municipalities, and

(v) the provision of municipal services and facilities either generally or specifically,

(b) may address

(i) proposals for the financing and programming of municipal infrastructure,

(ii) the co-ordination of municipal programs relating to the physical, social and economic development of the municipality,

(iii) environmental matters within the municipality,

(iv) the financial resources of the municipality,

(v) the economic development of the municipality, and

(vi) any other matter relating to the physical, social or economic development of the municipality,

(c) may contain statements regarding the municipality's development constraints, including the results of any development studies and impact analysis, and goals, objectives, targets, planning policies and corporate strategies,

(d) must contain policies compatible with the subdivision and development regulations to provide guidance on the type and location of land uses adjacent to sour gas facilities,

(e) must contain policies respecting the provision of municipal, school or municipal and school reserves, including but not limited to the need for, amount of and allocation of those reserves and the identification of school requirements in consultation with affected school boards,

(f) must contain policies respecting the protection of agricultural operations, and

(g) may contain policies respecting the provision of conservation reserve in accordance with section 664.2(1)(a) to (d).

(4) Repealed 2020 c39 s10(19).

RSA 2000 cM-26 s632;RSA 2000 c21(Supp) s4;2008 c37 s11; 2015 c8 s62;2016 c24 s98;2017 c13 s2(16);2020 c39 s10(19)

Area Structure Plans

Area structure plan

633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.

(2) An area structure plan

(a) must describe

(i) the sequence of development proposed for the area,

(ii) the land uses proposed for the area, either generally or with respect to specific parts of the area,

(iii) the density of population proposed for the area either generally or with respect to specific parts of the area, and

(iv) the general location of major transportation routes and public utilities,

and

(b) may contain any other matters, including matters relating to reserves, as the council considers necessary.

(3) Repealed 2020 c39 s10(20).

RSA 2000 cM-26 s633;2015 c8 s63;2017 c13 s1(56); 2020 c39 s10(20)

Area Redevelopment Plans

Area redevelopment plans

634(1) A council may

(a) designate an area of the municipality as a redevelopment area for the purpose of any or all of the following:

(i) preserving or improving land and buildings in the area;

(ii) rehabilitating buildings in the area;

(iii) removing buildings from the area;

(iv) constructing or replacing buildings in the area;

(v) establishing, improving or relocating roads, public utilities or other services in the area;

(vi) facilitating any other development in the area,

(b) adopt, by bylaw, an area redevelopment plan,

(c) in accordance with this section and Division 6, provide for the imposition and collection of a levy to be known as a "redevelopment levy", and

(d) authorize a designated officer, with or without conditions, to perform any function with respect to the imposition and collection of that redevelopment levy.

(2) Repealed 2020 c39 s10(21).

RSA 2000 cM-26 s634;2015 c8 s64;2020 c39 s10(21)

Plan contents

635 An area redevelopment plan

(a) must describe

(i) the objectives of the plan and how they are proposed to be achieved,

(ii) the proposed land uses for the redevelopment area,

(iii) if a redevelopment levy is to be imposed, the reasons for imposing it, and

(iv) any proposals for the acquisition of land for any municipal use, school facilities, parks and recreation facilities or any other purposes the council considers necessary,

and

(b) may contain any other proposals that the council considers necessary.

1995 c24 s95

General Provisions

Statutory plan preparation

636(1) While preparing a statutory plan, a municipality must notify the following and provide a means for suggestions and representations to be made:

(a) any members of the public who may be affected by the plan;

(b) the school boards with jurisdiction in the area to which the plan preparation applies;

(c) in the case of a municipal development plan,

(i) any adjacent municipalities,

(ii) the Indian band of any adjacent Indian reserve, and

(iii) any adjacent Metis settlement;

(d) in the case of an area structure plan,

(i) where the land that is the subject of the plan is adjacent to another municipality, that municipality,

(ii) where the land that is the subject of the plan is within 1.6 kilometres of a provincial highway, the Minister responsible for the *Highways Development and Protection Act*, and

(iii) where the land that is the subject of the plan is adjacent to an Indian reserve or Metis settlement, the Indian band or Metis settlement.

(2) Subsection (1) does not apply to amendments to statutory plans.

RSA 2000 cM-26 s636;2008 c37 s11;2017 c13 s1(57);2020 c39 s10(22)

Effect of plans

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

1995 c24 s95

Consistency of plans

638(1) A municipal development plan must be consistent with any intermunicipal development plan in respect of land that is identified in both the municipal development plan and the intermunicipal development plan.

(2) An area structure plan and an area redevelopment plan must be consistent with

(a) any intermunicipal development plan in respect of land that is identified in both the area structure plan or area redevelopment plan, as applicable, and the intermunicipal development plan, and

(b) any municipal development plan.

(3) An intermunicipal development plan prevails to the extent of any conflict or inconsistency between

(a) a municipal development plan, an area structure plan or an area redevelopment plan, and

(b) the intermunicipal development plan

in respect of the development of the land to which the conflicting or inconsistent plans apply.

(4) A municipal development plan prevails to the extent of any conflict or inconsistency between

(a) an area structure plan or an area redevelopment plan, and

(b) the municipal development plan.

RSA 2000 cM-26 s638;2015 c8 s65;2020 c39 s10(23)

638.1 Repealed 2020 c39 s10(24).

Listing and publishing of policies

638.2(1) Every municipality must compile and keep updated a list of any policies that may be considered in making decisions under this Part

(a) that have been approved by council by resolution or bylaw, or

(b) that have been made by a body or person to whom powers, duties or functions are delegated under section 203 or 209,

and that do not form part of a bylaw made under this Part.

(2) The municipality must publish the following on the municipality's website:

(a) the list of the policies referred to in subsection (1);

(b) the policies described in subsection (1);

(c) a summary of the policies described in subsection (1) and of how they relate to each other and how they relate to any statutory plans and bylaws passed in accordance with this Part;

(d) any documents incorporated by reference in any bylaws passed in accordance with this Part.

(3) A development authority, subdivision authority, subdivision and development appeal board, the Land and Property Rights Tribunal or a court shall not have regard to any policy approved by a council or by a person or body referred to in subsection (1)(b) unless the policy is set out in the list prepared and maintained under subsection (1) and published in accordance with subsection (2).

(4) Repealed 2020 c39 s10(25).

2016 c24 s99;2020 cL-2.3 s24(41);2020 c39 s10(25)

Division 5
Land Use

639 Repealed 2020 c39 s10(26).

639.1 Repealed 2020 c39 s10(27).

Land use bylaw

640(1) Every municipality must pass a land use bylaw.

(1.1) A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality, including, without limitation, by

(a) imposing design standards,

(b) determining population density,

(c) regulating the development of buildings,

(d) providing for the protection of agricultural land, and

(e) providing for any other matter council considers necessary to regulate land use within the municipality.

(2) A land use bylaw

(a) must divide the municipality into districts of the number and area the council considers appropriate;

(b) must, unless the district is designated as a direct control district pursuant to section 641, prescribe with respect to each district,

(i) the one or more uses of land or buildings that are permitted in the district, with or without conditions, or

(ii) the one or more uses of land or buildings that may be permitted in the district at the discretion of the development authority, with or without conditions,

or both;

(c) must establish a method of making decisions on applications for development permits and issuing development permits for any development, including provision for

(i) the types of development permit that may be issued,

(ii) applying for a development permit,

(iii) processing an application for, or issuing, cancelling, suspending or refusing to issue, a development permit,

(iv) the conditions that are to be attached, or that the development authority may attach, to a development permit, either generally or with respect to a specific type of permit,

(v) how long any type of development permit remains in effect,

(vi) the discretion that the development authority may exercise with respect to development permits, and

(vii) any other matters necessary to regulate and control the issue of development permits that to the council appear necessary;

(d) must provide for how and to whom notice of the issuance of a development permit is to be given;

(e) must establish the number of dwelling units permitted on a parcel of land.

(3) A land use bylaw may identify additional land as adjacent land for the purpose of notification under sections 653, 679, 680 and 692.

(4) Repealed 2020 c39 s10(28).

(5) A land use bylaw may provide that when an application for a development permit or change in land use designation is refused another application with respect to the same lot

(a) for a development permit for the same or a similar use, or

(b) for a change in land use designation

may not be made by the same or any other applicant until the time stated in the land use bylaw has expired.

(6) A land use bylaw may authorize a development authority to decide on an application for a development permit even though the proposed development does not comply with the land use bylaw or is a non-conforming building if, in the opinion of the development authority,

(a) the proposed development would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(b) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

(7) A land use bylaw must be consistent with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

(8) Despite this section or any other provision of this Act, the authority to pass a land use bylaw does not include the authority to pass a bylaw in respect of the use of a building or part of a building for residential purposes that has the effect of distinguishing between any individuals on the basis of whether they are related or unrelated to each other.

(9) The Minister may by order direct a municipality to amend its land use bylaw in respect of the use of a building or part of a building for residential purposes if the land use bylaw has the effect of distinguishing between senior citizens on the basis of whether they are related or unrelated to each other.

RSA 2000 cM-26 s640;2016 c24 s100;2017 c21 s28;
2020 c39 s10(28)

640.1 Repealed 2020 c39 s10(29).

Transitional — alternative time period in land use bylaw

640.2(1) In this section, "alternative time period" means an alternative time period authorized by section 640.1 of this Act as it read immediately before the coming into force of this section.

(2) Where, on the coming into force of this section, a land use bylaw providing for an alternative time period is in force, the provisions of the bylaw providing for the alternative time period continue to have effect for a period of 6 months beginning on the day this section comes into force.

2020 c39 s10(30)

Designation of direct control districts

641(1) The council of a municipality that has adopted a municipal development plan, if it wishes to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.

(2) If a direct control district is designated in a land use bylaw, the council may, subject to any applicable statutory plan, regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

(3) In respect of a direct control district, the council may decide on a development permit application or may delegate the decision to a development authority with directions that it considers appropriate.

(4) Repealed 2015 c8 s66.

RSA 2000 cM-26 s641;2015 c8 s66

Permitted and discretionary uses

642(1) When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(2) When a person applies for a development permit in respect of a development that may, in the discretion of a development authority, be permitted pursuant to section 640(2)(b)(ii), the development authority may, if the application is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(3) A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the written decision was given and containing any other information required by the regulations, must be given or sent to the applicant on the same day the written decision is given.

(4) If a development authority refuses an application for a development permit, the development authority must issue to the applicant a notice, in the form and manner provided for in the land use bylaw, that the application has been refused and provide the reasons for the refusal.

(5) Despite subsections (1) and (2), a development authority must not issue a development permit if the proposed development does not comply with the applicable requirements of regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

RSA 2000 cM-26 s642;2016 cs24 s102;2017 c13 s1(58) ; 2017 c21 s28;2018 c11 s13;2020 c39 s10(31)

Non-conforming use and non-conforming buildings

643(1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

(a) to make it a conforming building,

(b) for routine maintenance of the building, if the development authority considers it necessary, or

(c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

1995 c24 s95

Acquisition of land designated for public use

644(1) If land is designated under a land use bylaw for use or intended use as a municipal public building, school facility, park or recreation facility and the municipality does not own the land, the municipality must within 6 months from the date the land is designated do one of the following:

(a) acquire the land or require the land to be provided as reserve land;

(b) commence proceedings to acquire the land or to require the land to be provided as reserve land and then acquire that land within a reasonable time;

(c) amend the land use bylaw to designate the land for another use or intended use.

(2) Subsection (1) does not apply if the Crown in right of Canada, the Crown in right of Alberta, an irrigation district, a board of a drainage district or a local authority, within 6 months from the date the land is designated under that subsection,

(a) acquires that land, or

(b) commences proceedings to acquire that land or requires that land to be provided as reserve land and then acquires it within a reasonable time.

(3) Subsection (1) does not apply to land designated by the municipality as conservation reserve.

RSA 2000 cM-26 s644;2016 cs24 s103

Stop order

645(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

(a) this Part or a land use bylaw or regulations under this Part, or

(b) a development permit or subdivision approval,

the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land

or building or the person responsible for the contravention, or any or all of them, to

(a) stop the development or use of the land or building in whole or in part as directed by the notice,

(b) demolish, remove or replace the development, or

(c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,

within the time set out in the notice.

(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

(3) A person who receives a notice referred to in subsection (2) may appeal the order in the notice in accordance with section 685.

RSA 2000 cM-26 s645;2017 c13 s1(59);2022 c16 s9(80)

Enforcement of stop order

646(1) If a person fails or refuses to comply with an order directed to the person under section 645 or an order of a subdivision and development appeal board under section 687, the municipality may, in accordance with section 542, enter on the land or building and take any action necessary to carry out the order.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an order referred to in subsection (1) against the certificate of title for the land that is the subject of the order.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.

1995 c24 s95

Division 6
Development Levies and Conditions

Redevelopment levies

647(1) If a person applies for a development permit in respect of development in a redevelopment area and the area redevelopment plan contains proposals for residential, commercial or industrial development, a redevelopment levy may be imposed on the

applicant in accordance with the bylaw adopting the area redevelopment plan.

(2) A redevelopment levy imposed and collected must be used to provide, in respect of the redevelopment area,

(a) land for a park or land for school buildings designed for the instruction or accommodation of students, or

(b) land for new or expanded recreation facilities,

or both.

(3) On September 1, 1995 a redevelopment levy under the former Act continues as a redevelopment levy under this Part.

(4) A redevelopment levy imposed and collected under this Part or the former Act may be imposed and collected only once in respect of a development.

(5) A redevelopment levy imposed pursuant to this Part may vary between one class of development and another in a redevelopment area.

(6) If a redevelopment levy is collected, the municipality must pay that portion of the levy imposed to provide land for school buildings designed for the instruction or accommodation of students to the one or more school boards.

RSA 2000 cM-26 s647;2008 c37 s11

Off-site levy

648(1) In this section and sections 648.01 to 648.4,

(a) "facility" includes the facility, the associated infrastructure, the land necessary for the facility and related appurtenances referred to in subsection (2.1);

(b) "infrastructure" means the infrastructure, facilities and land required for the purposes referred to in subsection (2)(a) to (c.1);

(c) "stakeholder" means any person that will be required to pay an off-site levy when the bylaw is passed, or any other person the municipality considers is affected.

(1.1) For the purposes referred to in subsections (2) and (2.1), a council may by bylaw

(a) provide for the imposition and payment of a levy in respect of land that is to be developed or subdivided, and

(b) authorize an agreement to be entered into in respect of the payment of the levy.

(1.2) A bylaw may not impose an off-site levy on land owned by a school board that is to be developed for a school building project within the meaning of the *Education Act*.

(2) An off-site levy may be used only to pay for all or part of the capital cost of any or all of the following:

(a) new or expanded facilities for the storage, transmission, treatment or supplying of water;

(b) new or expanded facilities for the treatment, movement or disposal of sanitary sewage;

(c) new or expanded storm sewer drainage facilities;

(c.1) new or expanded roads required for or impacted by a subdivision or development;

(c.2) subject to the regulations, new or expanded transportation infrastructure required to connect, or to improve the connection of, municipal roads to provincial highways resulting from a subdivision or development;

(d) land required for or in connection with any facilities described in clauses (a) to (c.2).

(2.1) In addition to the capital cost of facilities described in subsection (2), an off-site levy may be used to pay for all or part of the capital cost for any of the following purposes, including the cost of any related appurtenances and any land required for or in connection with the purpose:

(a) new or expanded community recreation facilities;

(b) new or expanded fire hall facilities;

(c) new or expanded police station facilities;

(d) new or expanded libraries.

(2.2) Subject to an appeal under section 648.1, an off-site levy may be imposed and collected for a purpose referred to in subsection (2.1) only if no off-site levy has been previously imposed under subsection (1) for the same purpose with respect to the land on which the off-site levy is being imposed.

(3) On September 1, 1995 an off-site levy under the former Act continues as an off-site levy under this Part.

(4) An off-site levy imposed under this section or the former Act may be collected once for each purpose described in subsection (2) or (2.1), in respect of land that is the subject of a development or subdivision, if

(a) the purpose of the off-site levy is authorized in the bylaw referred to in subsection (1), and

(b) the collection of the off-site levy for the purpose authorized in the bylaw is specified in the agreement referred to in subsection (1).

(4.1) Nothing in subsection (4) prohibits the collection of an off-site levy by instalments or otherwise over time.

(5) An off-site levy collected under this section, and any interest earned from the investment of the levy,

(a) must be accounted for separately from other levies collected under this section, and

(b) must be used only for the specific purpose described in subsection (2)(a) to (c.2) or (2.1)(a) to (d) for which it is collected or for the land required for or in connection with that purpose.

(6) A bylaw under subsection (1) must be advertised in accordance with section 606 unless

(a) the bylaw is passed before January 1, 2004, or

(b) the bylaw is passed on or after January 1, 2004 but at least one reading was given to the proposed bylaw before that date.

(7) Where after March 1, 1978 and before January 1, 2004 a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for the purpose described in subsection (2)(c.1), that fee or charge is deemed

(a) to have been imposed pursuant to a bylaw under this section, and

(b) to have been validly imposed and collected

effective from the date the fee or charge was imposed.

(8) If, before the coming into force of this subsection, a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for one or more purposes described in subsection (2) or (2.1), that fee or charge is deemed

(a) to have been imposed pursuant to a bylaw under this section, and

(b) to have been validly imposed and collected effective from the date the fee or charge was imposed.

(9) If, before the coming into force of this subsection, a bylaw was made that purported to impose a fee or other charge on a developer for a purpose described in subsection (2) or (2.1),

(a) that bylaw is deemed to have been valid and enforceable to the extent that it imposed a fee or charge for a purpose described in subsection (2) or (2.1) before the coming into force of this subsection, and

(b) any fee or charge imposed pursuant to the bylaw before the coming into force of this subsection is deemed to have been validly imposed and collected effective from the date the fee or charge was imposed.

RSA 2000 cM-26 s648;2003 c43 s3;2012 cE-0.3 s279;
2015 c8 s67; 2016 c24 s104;2017 c13 ss1(60),2(17);
2020 c39 s10(32)

Intermunicipal off-site levy

648.01(1) For the purpose of section 648(1) and subject to the requirements of section 12, 2 or more municipalities may provide for an off-site levy to be imposed on an intermunicipal basis.

(2) Where 2 or more municipalities provide for an off-site levy to be imposed on an intermunicipal basis, the municipalities shall enter into such agreements as are necessary to attain the purposes described in section 648(2) or (2.1) that are to be funded by an off-site levy under section 648(1), by a framework made under Part 17.2 or by any other agreement.

(3) Repealed 2020 c39 s10(33).

(4) If a bylaw providing for an off-site levy to be imposed on an intermunicipal basis is appealed under section 648.1, the corresponding bylaws of the other participating municipalities are deemed to also be appealed.

2016 c24 s105;2020 c39 s10(33)

Appeal of off-site levy

648.1(1) Any person may, subject to and in accordance with the regulations, appeal any of the provisions of an off-site levy bylaw relating to an off-site levy for a purpose referred to in section 648(2) or (2.1) to the Land and Property Rights Tribunal on any of the following grounds:

(a) that the purpose for which the off-site levy is to be imposed is unlikely to benefit future occupants of the land who may be subject to the off-site levy to the extent required by the regulations;

(b) that the principles and criteria referred to in regulations made under section 694(4)(b) that must be applied by a municipality when passing the off-site levy bylaw have not been complied with;

(c) that the determination of the benefitting area was not determined in accordance with regulations made under section 694(4)(c);

(d) that the off-site levy or any portion of it is not for the payment of the capital costs of the purposes set out in section 648(2) or (2.1), as applicable;

(e) that the calculation of the off-site levy is inconsistent with regulations made under section 694(4) or is incorrect;

(f) that an off-site levy for the same purpose has already been imposed and collected with respect to the proposed development or subdivision.

(2) After hearing the appeal, the Land and Property Rights Tribunal may

(a) dismiss the appeal in whole or in part, or

(b) declare the off-site levy bylaw or a portion of the bylaw to be invalid and provide that the bylaw may be repassed or amended in a manner determined by the Tribunal.

(3) Where an off-site levy bylaw amends the amount of an off-site levy referred to in subsection (1), an appeal under this section may only be brought with respect to that amendment.

2016 c24 s105;2017 c13 s2(18);2020 cL-2.3 s24(32);2020 c39 s10(34)

Calculation of off-site levy

648.2(1) Subject to subsection (2), a municipality may determine the methodology on which to base the calculation of an off-site levy.

(2) Subject to subsection (7), the methodology on which a municipality bases its calculation of an off-site levy must

(a) take into account criteria such as area, density or intensity of use,

(b) recognize variation among infrastructure, facility and transportation infrastructure types,

(c) be consistent across the municipality for that type of infrastructure, facility or transportation infrastructure, and

(d) be clear and reasonable.

(3) Notwithstanding subsection (2)(c), the methodology used in determining the calculation of an off-site levy may be different for each specific type of infrastructure, facility or transportation infrastructure.

(4) The information that a municipality uses in the calculation of an off-site levy must be current.

(5) A bylaw imposing an off-site levy must include a requirement for a periodic review of the calculation of the off-site levy.

(6) A municipality that imposes an off-site levy must make the following publicly available:

(a) any information or data the municipality relied upon and any assumptions the municipality made in calculating the levy, including, without limitation, any information, data or assumptions the municipality used in models to complete calculations;

(b) the calculations that were performed in order to determine the amount of the levy;

(c) anything else that would be required in order to replicate the determination of the levy.

(7) Subsection (2) does not apply to the City of Calgary or the City of Edmonton.

2020 c39 s10(35)

Consultation with stakeholders

648.3(1) A municipality must consult, in good faith, with stakeholders

(a) before making a final determination on defining and addressing existing and future infrastructure, transportation infrastructure and facility requirements, and

(b) when determining the methodology on which to base an off-site levy.

(2) Before passing or amending a bylaw imposing an off-site levy, a municipality must consult, in good faith, on the calculation of the levy with stakeholders in the benefitting area where the off-site levy will apply.

(3) A consultation referred to in this section must begin at the earliest opportunity and must provide stakeholders with the ability to provide input on an ongoing basis.

(4) During a consultation referred to in this section, a municipality must make publicly available any calculations the municipality has made and any information the municipality has relied upon including, without limitation, any assumptions and data the municipality has used in models to complete calculations.

2020 c39 s10(35)

Annual report

648.4(1) A municipality must provide full and open disclosure of all off-site levy costs and payments.

(2) A municipality must, on an annual basis, make a report on an off-site levy publicly available and include in the report

(a) the details of all off-site levies received by each contributor for each type of facility and infrastructure within each benefitting area,

(b) the uses for each type of facility and infrastructure within each benefitting area for each capital project, and

(c) the balances retained for each type of facility and infrastructure within each benefitting area.

2020 c39 s10(35)

Levy bylaws

649 A bylaw that authorizes a redevelopment levy or an off-site levy must set out the purpose of each levy and indicate how the amount of the levy was determined.

RSA 2000 cM-26 s649;2015 c8 s68

Condition of issuing development permit

650(1) A council may in a land use bylaw require that, as a condition of a development permit's being issued, the applicant enter into an agreement with the municipality to do any or all of the following:

(a) to construct or pay for the construction of a road required to give access to the development;

(b) to construct or pay for the construction of

(i) a pedestrian walkway system to serve the development, or

(ii) pedestrian walkways to connect the pedestrian walkway system serving the development with a pedestrian walkway system that serves or is proposed to serve an adjacent development,

or both;

(c) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the development, whether or not the public utility is, or will be, located on the land that is the subject of the development;

(d) to construct or pay for the construction of

(i) off-street or other parking facilities, and

(ii) loading and unloading facilities;

(e) to pay an off-site levy or redevelopment levy imposed by bylaw;

(f) to give security to ensure that the terms of the agreement under this section are carried out.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an agreement under this section against the certificate of title for the land that is the subject of the development.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the agreement has been complied with.

(4) Where, prior to the coming into force of this subsection, an agreement referred to in subsection (1) required the applicant to install a public utility or pay an amount for a public utility referred

to in subsection (1)(c), that requirement is deemed to have been validly imposed, whether or not the public utility was located on the land that was the subject of the development.

RSA 2000 cM-26 s650;2015 c8 s69

Agreements re oversize improvements

651(1) An agreement referred to in section 648, 650 or 655 may require the applicant for a development permit or subdivision approval

(a) to pay for all or a portion of the cost of an improvement constructed or paid for in whole or in part by a municipality at any time prior to the date of approval of the development permit or subdivision approval application, or

(b) to construct or pay for all or a portion of an improvement with an excess capacity.

(2) An agreement referred to in subsection (1)(b) or (3) that obliges an applicant for a development permit or subdivision approval to construct or pay for an improvement with an excess capacity may also provide for the reimbursement of the cost incurred or payment made in respect of the excess capacity together with interest calculated at the rate fixed pursuant to subsection (4) on the amount of the cost until the land that benefits from the excess capacity is developed or subdivided.

(3) If a municipality has at any time, either before or after this section comes into force, or before or after section 77.1 of the *Planning Act* was deemed to come into force, entered into an agreement providing for reimbursement of payments made or costs incurred in respect of the excess capacity of an improvement by an applicant for a development permit or subdivision approval, the municipality must, when other land that benefits from the improvement is developed or subdivided, enter into an agreement with the applicant for a development permit or subdivision approval for the other land, and that agreement may require the applicant to pay an amount in respect of the improvement, as determined by the municipality, which may be in excess of the cost of the improvement required for the proposed development or subdivision.

(4) An agreement made in accordance with subsection (1)(a) or (3) may require that, in addition to paying for all or part of the cost of an improvement, an applicant for a development permit or subdivision approval must pay reasonable interest on the cost in an amount to be fixed by the municipality.

(5) In this section,

(a) "excess capacity" means any capacity in excess of that required for a proposed development or subdivision;

(b) "improvement" means

(i) a facility or land referred to in section 648(2), or

(ii) a road, pedestrian walkway, utility or facility referred to in section 650(1) or 655(1)(b),

whether or not located on the land to be developed or subdivided and whether or not constructed at the time of development or subdivision approval.

1995 c24 s95

Restrictive covenant

651.1(1) In this section, "restrictive covenant" means a condition or covenant under which land, or any specified portion of land, is not to be built on, or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land.

(2) Despite the *Land Titles Act* or any other enactment, a municipality may register a caveat under the *Land Titles Act* in respect of any restrictive covenant granted by the registered owner of a parcel of land to the municipality for the benefit of land that is under the direction, control and management of the municipality whether or not the municipality has been issued a certificate of title to that land.

(3) A caveat registered pursuant to subsection (2)

(a) shall be registered against the certificate of title to the parcel of land

(i) that is subject to the restrictive covenant, and

(ii) that was issued to the person who granted the restrictive covenant,

(b) has the same force and effect as if it had been a condition or covenant registered under section 48 of the *Land Titles Act*,

(c) may be discharged only by the municipality or an order of a court, and

(d) does not lapse pursuant to the provisions of the *Land Titles Act* governing the lapsing of caveats.

1999 c11 s43

Encroachment agreements

651.2(1) In this section, "encroachment agreement" means an agreement under which a municipality permits the encroachment onto a road that is under the direction, control and management of the municipality of improvements made on land that is adjoining that road.

(2) Despite the *Land Titles Act* or any other enactment, a municipality may register a caveat under the *Land Titles Act* in respect of any encroachment agreement entered into by the municipality with the registered owner of a parcel of land that adjoins a road that is under the direction, control and management of the municipality.

(3) A caveat registered pursuant to subsection (2)

(a) shall be registered against the certificate of title to the parcel of land

(i) that is adjoining the road, and

(ii) that was issued to the person who entered into the encroachment agreement with the municipality,

(b) has the same force and effect as if it had been an encroachment agreement registered under section 72 of the *Land Titles Act*,

(c) may be discharged only by the municipality or an order of a court, and

(d) does not lapse pursuant to the provisions of the *Land Titles Act* governing the lapsing of caveats.

1999 c11 s43

Division 7
Subdivision of Land

Subdivision approval required

652(1) A Registrar may not accept for registration an instrument that has the effect or may have the effect of subdividing a parcel of land unless the subdivision has been approved by a subdivision authority.

(2) Despite subsection (1) and subject to subsection (4), a Registrar may accept for registration without subdivision approval an instrument that has the effect or may have the effect of subdividing a parcel of land described in a certificate of title if registration of the instrument results in the issuing of one or more

certificates of title and the parcel of land described in each certificate of title so issued would consist only of any or all of the following:

(a) a quarter section;

(b) a river lot shown on an official plan, as defined in the *Surveys Act*, that is filed or lodged in a land titles office;

(c) a lake lot shown on an official plan, as defined in the *Surveys Act*, that is filed or lodged in a land titles office;

(d) a settlement lot shown on an official plan, as defined in the *Surveys Act*, that is filed or lodged in a land titles office;

(e) a part of the parcel of land described in the existing title if the boundaries of the part are shown and delineated on a plan of subdivision;

(f) a parcel of land created pursuant to a bylaw passed by a municipality under section 665.

(3) For the purpose of subsection (2), a parcel of land is deemed to be a quarter section, river lot, lake lot or settlement lot if the parcel of land would consist of a quarter section, river lot, lake lot or settlement lot except that land has been removed from the parcel of land by a subdivision effected only for a purpose referred to in section 618(1) or by a plan of subdivision or any other instrument that effected a subdivision.

(4) Unless the subdivision of the parcel of land has been approved by a subdivision authority, the Registrar may not accept for registration an instrument that has the effect or may have the effect of subdividing a parcel of land

(a) if the parcel of land is described in a plan of subdivision that was registered in a land titles office before July 1, 1950, and

(b) if the parcel of land contains 2 or more lots one or more of which is less than 8.0 hectares in area.

(5) A Registrar may not accept a caveat for registration that relates to an instrument that has the effect or may have the effect of subdividing a parcel of land unless

(a) subdivision approval is not required in respect of that subdivision pursuant to subsection (2), or

(b) subdivision approval has been granted in respect of that subdivision.

1995 c24 s95

Application for subdivision approval

653(1) An application to a subdivision authority for subdivision approval

(a) must be in accordance with the subdivision and development regulations, and

(b) must include a proposed plan of subdivision or other instrument that describes the subdivision.

(2) If a subdivision application includes the signed consent of the applicant to the municipality or its delegate carrying out an inspection, at a reasonable time, of the land that is the subject of the application, a notice of inspection is not required to be given under section 542(1).

(2.1) On receipt of an application, the subdivision authority must, in accordance with section 653.1, determine whether the application is complete.

(3) On receipt of an acknowledgment under section 653.1(5) or (7) that the application for subdivision approval is complete, or if the application is deemed to be complete under section 653.1(4), the subdivision authority must

(a) give a copy of the application to the Government departments, persons and local authorities required by the subdivision and development regulations, and

(b) give notice of the application to owners of adjacent land.

(4) Repealed 2016 c24 s107.

(4.1) Despite subsection (3)(b), a subdivision authority is not required to give notice to owners of adjacent lands if the land that is the subject of the application is contained within an area structure plan or a conceptual scheme and a public hearing has been held with respect to that plan or scheme.

(4.2) A notice under subsection (3)(b) must be given by at least one of the following methods:

(a) mailing the notice to each owner of adjacent land;

(b) posting the notice on the land that is the subject of the application;

(c) publishing a notice in a newspaper that has general circulation in the municipality that contains the land that is the subject of the application.

(4.3) A notice under subsection (3)(b) must include

(a) the municipal address, if any, and the legal address of the parcel of land, and

(b) a map showing the location of the parcel of land.

(4.4) Repealed 2020 c39 s10(36).

(5) A notice under subsection (3)(b) must describe the nature of the application, the method of obtaining further information about the application and the manner in which and time within which written submissions may be made for the consideration of the subdivision authority.

(6) When considering an application under this section, a subdivision authority is not required to hold a hearing.

(6.1) For the purposes of this section,

(a) "conceptual scheme" means a conceptual scheme adopted by the municipality that

(i) relates a subdivision application to the future subdivision and development of adjacent areas, and

(ii) has been referred to the persons to whom the subdivision authority must send a copy of the complete application for subdivision pursuant to the subdivision and development regulations;

(b) "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

(7) Repealed 1996 c30 s60.

RSA 2000 cM-26 s653;2016 c24 s107;2020 c39 s10(36)

Subdivision applications

653.1(1) A subdivision authority must, within 20 days after the receipt of an application for subdivision approval under section 653(1), determine whether the application is complete.

(2) An application is complete if, in the opinion of the subdivision authority, the application contains the documents and other information necessary to review the application.

(3) The time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the subdivision authority.

(4) If the subdivision authority does not make a determination referred to in subsection (1) within the time required under subsection (1) or (3), the application is deemed to be complete.

(5) If a subdivision authority determines that the application is complete, the subdivision authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(6) If the subdivision authority determines that the application is incomplete, the subdivision authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application is incomplete and that any outstanding documents and information referred to in the notice must be submitted by a date set out in the notice or a later date agreed on between the applicant and the subdivision authority in order for the application to be considered complete.

(7) If the subdivision authority determines that the information and documents submitted under subsection (6) are complete, the subdivision authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(8) If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.

(9) If an application is deemed to be refused under subsection (8), the subdivision authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reason for the refusal.

(10) Despite that the subdivision authority has issued an acknowledgment under subsection (5) or (7), in the course of reviewing the application, the subdivision authority may request additional information or documentation from the applicant that the subdivision authority considers necessary to review the application.

(11) Repealed 2020 c39 s10(37).

2016 c24 s108;2020 c39 s10(37)

Approval of application

654(1) A subdivision authority must not approve an application for subdivision approval unless

(a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,

(b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,

(c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and

(d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

(1.1) Repealed 2018 c11 s13.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

(a) the proposed subdivision would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

RSA 2000 cM-26 s654;2016 c24 s109;2018 c11 s13

Conditions of subdivision approval

655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

(a) any conditions to ensure that this Part, including section 618.3(1), and the statutory plans and land use bylaws and the regulations under this Part affecting the land proposed to be subdivided are complied with;

(b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:

(i) to construct or pay for the construction of a road required to give access to the subdivision;

(ii) to construct or pay for the construction of

(A) a pedestrian walkway system to serve the subdivision, or

(B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision,

or both;

(iii) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the subdivision, whether or not the public utility is, or will be, located on the land that is the subject of the subdivision approval;

(iv) to construct or pay for the construction of

(A) off-street or other parking facilities, and

(B) loading and unloading facilities;

(v) to pay an off-site levy or redevelopment levy imposed by bylaw;

(vi) to give security to ensure that the terms of the agreement under this section are carried out.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an agreement under subsection (1)(b) against the certificate of title for the parcel of land that is the subject of the subdivision.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the agreement has been complied with.

(4) Where a condition on a subdivision approval has, prior to the coming into force of this subsection, required the applicant to install a public utility or pay an amount for a public utility referred to in subsection (1)(b)(iii), that condition is deemed to have been validly imposed, whether or not the public utility was located on the land that was the subject of the subdivision approval.

RSA 2000 cM-26 s655;2009 cA-26.8 s83;2015 c8 s71; 2020 c39 s10(38)

Decision

656(1) A decision of a subdivision authority must be given in writing to the applicant and to the Government departments, persons and local authorities to which the subdivision authority is required by the subdivision and development regulations to give a copy of the application.

(2) A decision of a subdivision authority must state

(a) whether an appeal lies to a subdivision and development appeal board or to the Land and Property Rights Tribunal, and

(b) if an application for subdivision approval is refused, the reasons for the refusal.

(3) If an application for subdivision approval is refused, the subdivision authority may refuse to accept for consideration, with respect to the same land or part of the same land, a further application for subdivision approval submitted to it within the 6-month period after the date of the subdivision authority's decision to refuse the application.

(4) Subsection (3) does not apply in the case of an application that was deemed to be refused under section 653.1(8).

RSA 2000 cM-26 s656;2016 c24 s111;2018 c11 s13; 2020 cL-2.3 s24(41)

Subdivision registration

657(1) An applicant for subdivision approval must submit to the subdivision authority the plan of subdivision or other instrument that effects the subdivision within one year from the latest of the following dates:

(a) the date on which the subdivision approval is given to the application;

(b) if there is an appeal to the subdivision and development appeal board or the Land and Property Rights Tribunal, the date of the decision of the appeal board or the Tribunal, as the case may be, or the date on which the appeal is discontinued;

(c) if there is an appeal to the Court of Appeal under section 688, the date on which the judgment of the Court is entered or the date on which the appeal is discontinued.

(2) On being satisfied that a plan of subdivision or other instrument complies with a subdivision approval and that any conditions imposed have been met, the subdivision authority must endorse the plan or other instrument in accordance with the subdivision and development regulations.

(3) On being satisfied that a plan of subdivision or other instrument complies with a subdivision approval but conditions to which the approval is subject have not been met, a subdivision authority may endorse the plan or other instrument in accordance with the subdivision and development regulations if the subdivision authority is satisfied that the conditions will be met.

(4) If the plan of subdivision or other instrument is not submitted to the subdivision authority within the time prescribed by subsection (1) or any longer period authorized by the council, the subdivision approval is void.

(5) If the plan of subdivision or other instrument is not registered in a land titles office within one year after the date on which it is endorsed pursuant to this section or within the extended period prescribed under subsection (6), the subdivision approval of the plan or instrument and the endorsement are void and the plan or instrument may not be accepted by a Registrar for registration.

(6) The council may grant one or more extensions of

(a) the one-year period referred to in subsection (1), or

(b) the one-year period referred to in subsection (5),

whether or not the time period under those subsections has expired.

RSA 2000 cM-26 s657;2020 cL-2.3 s24(33);2020 c39 s10(39)

Cancellation of plan of subdivision

658(1) On the application of one or more owners of a parcel of land in a plan of subdivision, a council may by bylaw order the plan cancelled, in whole or in part.

(2) A council may pass a bylaw under subsection (1) only with the consent of

(a) the owners of the parcel of land in the plan of subdivision,

(b) every person shown on the certificate of title of the land in the plan of subdivision as having an estate or interest in it, and

(c) the Crown in right of Alberta, if the plan of subdivision shows a highway or road or other right of way vested in the Crown for which no certificate of title has been issued.

(3) A plan cancellation may not be effected only or primarily for the purpose of disposing of reserves.

(3.1) If all of a plan is cancelled, deferred reserve caveats and environmental reserve easements are also cancelled.

(4) If all reserve land has been cancelled from a plan of subdivision, the resulting parcel of land, if it is subsequently subdivided, is subject to Division 8.

(5) If a plan is cancelled in part, a deferred reserve caveat may be placed against the consolidated certificate of title reflecting any reserve land that was cancelled and that will be owing if the parcel is subsequently subdivided.

RSA 2000 cM-26 s658;2016 c24 s112

Collection of taxes

659 When a plan of subdivision or part of it has been cancelled, all taxes, assessments or rates in arrears or due on the separate lots or blocks within the area of which the plan has been cancelled become taxes, assessments or rates on or in respect of the area, and all the remedies for the enforcement and collection of taxes, assessments and rates formerly applicable for the recovery of the taxes, assessments or rates on the separate lots or blocks apply as if the taxes, assessments or rates had been levied against the whole area of the cancelled plan.

1995 c24 s95

Cancellation registered

660 On receipt of a copy of a bylaw under section 658 and on payment of the applicable fees, the Registrar must

(a) cancel the plan of subdivision in whole or in part in accordance with the bylaw,

(b) cancel the certificate of title issued according to the original plan and issue any new certificates of title required by the bylaw, and

(c) make any other cancellations and registrations and do all things necessary to give effect to the bylaw.

1995 c24 s95

Division 8
Reserve Land, Land for Roads and Utilities

Land dedication

661 The owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation,

(a) to the Crown in right of Alberta or a municipality, land for roads and public utilities,

(a.1) subject to section 663, to the Crown in right of Alberta or a municipality, land for environmental reserve, and

(b) subject to section 663, to the Crown in right of Alberta, a municipality, one or more school boards or a municipality and one or more school boards, land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money,

as required by the subdivision authority pursuant to this Division.

RSA 2000 cM-26 s661;2008 c37 s11;2016 c24 s113

Land for conservation reserve

661.1 The owner of a parcel of land that is the subject of a proposed subdivision must provide to a municipality land for conservation reserve as required by the subdivision authority pursuant to this Division.

2016 c24 s114

Roads, utilities, etc.

662(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both.

(2) The land to be provided under subsection (1) may not exceed 30% of the area of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement.

(3) If the owner has provided sufficient land for the purposes referred to in subsection (1) but the land is less than the maximum amount authorized by subsection (2), the subdivision authority may not require the owner to provide any more land for those purposes.

1995 c24 s95

Reserves not required

663 A subdivision authority may not require the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if

(a) one lot is to be created from a quarter section of land,

(b) land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,

(c) the land to be subdivided is 0.8 hectares or less, or

(d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.

1995 c24 s95;1996 c30 s62

Environmental reserve

664(1) Subject to section 663 and subsection (2), a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of

(a) a swamp, gully, ravine, coulee or natural drainage course,

(b) land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or

(c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any body of water.

(1.1) A subdivision authority may require land to be provided as environmental reserve only for one or more of the following purposes:

(a) to preserve the natural features of land referred to in subsection (1)(a), (b) or (c) where, in the opinion of the subdivision authority, those features should be preserved;

(b) to prevent pollution of the land or of the bed and shore of an adjacent body of water;

(c) to ensure public access to and beside the bed and shore of a body of water lying on or adjacent to the land;

(d) to prevent development of the land where, in the opinion of the subdivision authority, the natural features of the land would present a significant risk of personal injury or property damage occurring during development or use of the land.

(1.2) For the purposes of subsections (1)(c) and (1.1)(b) and (c), "bed and shore" means the natural bed and shore as determined under the *Surveys Act*.

(2) If the owner of a parcel of land that is the subject of a proposed subdivision and the municipality agree that any or all of the land that is to be taken as environmental reserve is instead to be the subject of an environmental reserve easement for the protection and enhancement of the environment, an easement may be registered against the land in favour of the municipality at a land titles office.

(3) The environmental reserve easement

(a) must identify which part of the parcel of land the easement applies to,

(b) must require that land that is subject to the easement remain in a natural state as if it were owned by the municipality, whether or not the municipality has an interest in land that would be benefitted by the easement,

(c) runs with the land on any disposition of the land,

(d) constitutes an interest in land in the municipality, and

(e) may be enforced by the municipality.

(4) An environmental reserve easement does not lapse by reason only of

(a) non-enforcement of it,

(b) the use of the land that is the subject of the easement for a purpose that is inconsistent with the purposes of the easement, or

(c) a change in the use of land that surrounds or is adjacent to the land that is the subject of the easement.

(5) When an easement is presented for registration under subsection (2), the Registrar must endorse a memorandum of the

environmental reserve easement on any certificate of title relating to the land.

(6) Despite section 48(4) of the *Land Titles Act*, an easement registered under subsection (2) may be removed only pursuant to section 658(3.1).

(7) An environmental reserve easement is deemed to be a condition or covenant for the purposes of section 48(4) and (6) of the *Land Titles Act*.

(8) Subject to subsection (7), this section applies despite section 48 of the *Land Titles Act*.

(9) A caveat registered under this section prior to April 30, 1998 is deemed to be an environmental reserve easement registered under this section.

RSA 2000 cM-26 s664;2016 c24 s115;2023 c9 s19(20)

Agreement respecting environmental reserve

664.1(1) In this section, "subdivision approval application" means an application under section 653 for approval to subdivide a parcel of land referred to in subsection (2).

(2) A municipality and an owner of a parcel of land may, before a subdivision approval application is made or after it is made but before it is decided, enter into a written agreement

(a) providing that the owner will not be required to provide any part of the parcel of land to the municipality as environmental reserve as a condition of subdivision approval, or

(b) providing that the owner will be required to provide part of the parcel of land to the municipality as environmental reserve as a condition of subdivision approval, and specifying the boundaries of that part.

(3) Where the agreement provides that the owner will not be required to provide any part of the parcel of land to the municipality as environmental reserve, the subdivision authority must not require the owner to provide any part of the parcel as environmental reserve as a condition of approving a subdivision approval application.

(4) Where the agreement specifies the boundaries of the part of the parcel of land that the owner will be required to provide to the municipality as environmental reserve, the subdivision authority must not require the owner to provide any other part of the parcel

as environmental reserve as a condition of approving a subdivision approval application.

(5) Subsections (3) and (4) do not apply on a subdivision approval application where either party to the agreement demonstrates that a material change affecting the parcel of land occurred after the agreement was made.

2016 c24 s116

Conservation reserve

664.2(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land to the municipality as conservation reserve if

(a) in the opinion of the subdivision authority, the land has environmentally significant features,

(b) the land is not land that could be required to be provided as environmental reserve,

(c) the purpose of taking the conservation reserve is to enable the municipality to protect and conserve the land, and

(d) the taking of the land as conservation reserve is consistent with the municipality's municipal development plan and area structure plan.

(2) Within 30 days after the Registrar issues a new certificate of title under section 665(2) for a conservation reserve, the municipality must pay compensation to the landowner in an amount equal to the market value of the land at the time the application for subdivision approval was received by the subdivision authority.

(3) If the municipality and the landowner disagree on the market value of the land, the matter must be determined by the Land and Property Rights Tribunal.

2016 c24 s116;2017 c13 s2(19);2020 cL-2.3 s24(40)

Designation of municipal land

665(1) A council may by bylaw require that a parcel of land or a part of a parcel of land that it owns or that it is in the process of acquiring be designated as municipal reserve, school reserve, municipal and school reserve, environmental reserve, conservation reserve or public utility lot.

(2) Subject to subsection (3), on receipt of a copy of a bylaw under this section and the applicable fees, the Registrar must do all things necessary to give effect to the order, including cancelling the

existing certificate of title and issuing a new certificate of title for each newly created parcel of land with the designation of

(a) municipal reserve, which must be identified by a number suffixed by the letters "MR",

(b) public utility lot, which must be identified by a number suffixed by the letters "PUL",

(c) environmental reserve, which must be identified by a number suffixed by the letters "ER",

(c.1) conservation reserve, which must be identified by a number suffixed by the letters "CR",

(d) school reserve, which must be identified by a number suffixed by the letters "SR",

(e) municipal and school reserve, which must be identified by a number suffixed by the letters "MSR", or

(f) a lot, which must be identified by a number.

(3) The certificate of title for a municipal reserve, school reserve, municipal and school reserve, environmental reserve, conservation reserve or public utility lot under this section must be free of all encumbrances, as defined in the *Land Titles Act*.

(4) For greater certainty, where a bylaw of the council requires that land be designated as environmental reserve, the designation becomes effective on the day the Registrar issues a new certificate of title for the land under subsection (2)(c).

RSA 2000 cM-26 s665;2016 c24 s117;2019 c22 s10(22)

Municipal and school reserves

666(1) Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision

(a) to provide part of that parcel of land as municipal reserve, school reserve or municipal and school reserve,

(b) to provide money in place of municipal reserve, school reserve or municipal and school reserve, or

(c) to provide any combination of land or money referred to in clauses (a) and (b).

(2) The aggregate amount of land that may be required under subsection (1) may not exceed the percentage set out in the

municipal development plan, which may not exceed 10% of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3) The total amount of money that may be required to be provided under subsection (1) may not exceed 10% of the appraised market value, determined in accordance with section 667, of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3.1) For greater certainty, for the purposes of calculating the 10% under subsection (2) or (3), the parcel of land includes any land required to be provided under section 662.

(4) When a combination of land and money is required to be provided, the sum of

(a) the percentage of land required under subsection (2), and

(b) the percentage of the appraised market value of the land required under subsection (3)

may not exceed 10% or a lesser percentage set out in the municipal development plan.

RSA 2000 cM-26 s666;2016 c24 s118

Money in place of municipal, school reserve

667(1) If money is required to be provided in place of municipal reserve, school reserve or municipal and school reserve, the applicant must provide

(a) a market value appraisal of the existing parcel of land as of a specified date occurring within the 35-day period following the date on which the application for subdivision approval is made

(i) as if the use proposed for the land that is the subject of the proposed subdivision conforms with any use prescribed in a statutory plan or land use bylaw for that land, and

(ii) on the basis of what might be expected to be realized if the land were in an unsubdivided state and sold in the open market by a willing seller to a willing buyer on the date on which the appraisal is made,

or

(b) if the applicant and the subdivision authority agree, a land value based on a method other than that described in clause (a).

(2) If money is required to be provided in place of municipal reserve, school reserve or municipal and school reserve, the subdivision authority must specify the amount of money required to be provided at the same time that subdivision approval is given.

1995 c24 s95

668 Repealed 2020 c39 s10(40).

Deferment of municipal and school reserves

669(1) Despite sections 661(b) and 666, instead of requiring municipal reserve, school reserve or municipal and school reserve or money in place of any of them, a subdivision authority may direct that the requirement to provide all or part of those reserves be deferred against

(a) the remainder of the parcel that is the subject of the proposed subdivision approval, or

(b) other land of the person applying for subdivision approval that is within the same municipality as that parcel of land,

or both.

(2) If a deferment is directed under subsection (1), the subdivision authority must file a caveat in a land titles office against the title of the land to which the direction relates.

(3) The direction for a deferment under subsection (1) must

(a) state the name of the applicant for subdivision approval,

(b) describe the land that is the subject of the application for subdivision approval,

(c) describe the land to which the deferment relates,

(d) state the area of the land referred to in clause (b), and

(e) state whether the deferment is in respect of municipal reserve, school reserve or municipal and school reserve.

(4) If an application for subdivision approval is made in respect of land against the title of which is filed a deferred reserve caveat under this section or a former Act, the subdivision authority may, in addition to requiring municipal reserve, school reserve or

municipal and school reserve to be provided in accordance with this Division or a former Act, require to be provided all or part of the reserve land in respect of which a deferment was directed or required under this section or a former Act.

(5) If deferred reserve is provided in accordance with subsection (4), the caveat must be discharged or amended accordingly.

(6) If a deferred reserve caveat was registered in a land titles office under a former Act in respect of land in respect of which under section 663 no reserve land could be required to be provided, the registered owner may apply to the Registrar to endorse the certificate of title with a memorandum cancelling the registration of the caveat.

(7) On being satisfied that subsection (6) applies to the deferred reserve caveat, the Registrar must endorse a memorandum on the certificate of title cancelling the registration of the caveat.

1995 c24 s95;1996 c30 s64

Allocation of municipal and school reserve

670(1) When reserve land is required to be provided, the subdivision authority must specify the amount, type and location of reserve land that is to be provided, regardless of whether money is also required to be provided, and allocate the municipal reserve, school reserve and municipal and school reserve between the municipality and each school board concerned as joint owners or as separate owners

(a) in accordance with an agreement made between the municipality and the school boards, or

(b) in the absence of an agreement, in accordance with the needs of each of them as those needs are determined by the subdivision authority.

(2) When money is required to be provided in place of municipal reserve, school reserve or municipal and school reserve, the subdivision authority must allocate the money between the municipality and each school board concerned either jointly or separately

(a) in accordance with an agreement made between the municipality and the school boards, or

(b) in the absence of an agreement, in accordance with the needs of each of them as determined by the subdivision authority.

(3) When a combination of land and money is required to be provided, the subdivision authority must

(a) specify the amount, type and location of reserve land that is to be provided, and

(b) allocate the municipal reserve, school reserve or municipal and school reserve or money in place of any or all of them between the municipality and each school board concerned

in accordance with an agreement made between the municipality and the school boards, or in the absence of an agreement, in accordance with the needs of the municipality and the school boards as determined by the subdivision authority.

(4) A decision concerning the allocation of municipal reserve, school reserve, municipal and school reserve or money in place of any or all of them must be made before an application for subdivision approval is granted.

RSA 2000 cM-26 s670;2008 c37 ss10,11

Joint use and planning agreements

670.1(1) Where on the coming into force of this section a school board is operating within the municipal boundaries of a municipality, the municipality must, within 3 years after this section comes into force, enter into an agreement under this section with the school board.

(2) Where after the coming into force of this section a school board commences operating within the municipal boundaries of a municipality, the municipality must, within 3 years after the school board commences operating in the municipality, enter into an agreement under this section with the school board.

(3) An agreement under this section must contain provisions

(a) establishing a process for discussing matters relating to

(i) the planning, development and use of school sites on municipal reserves, school reserves and municipal and school reserves in the municipality,

(ii) transfers under section 672 or 673 of municipal reserves, school reserves and municipal and school reserves in the municipality,

(iii) disposal of school sites,

(iv) the servicing of school sites on municipal reserves, school reserves and municipal and school reserves in the municipality, and

(v) the use of school facilities, municipal facilities and playing fields on municipal reserves, school reserves and municipal and school reserves in the municipality, including matters relating to the maintenance of the facilities and fields and the payment of fees and other liabilities associated with them,

(b) respecting how the municipality and the school board will work collaboratively,

(c) establishing a process for resolving disputes, and

(d) establishing a time frame for regular review of the agreement,

and may, subject to this Act, the regulations, the *Education Act* and the regulations under that Act, contain any other provisions the parties consider necessary or advisable.

(4) More than one municipality may be a party to a joint use and planning agreement.

(5) A joint use and planning agreement may be amended from time to time as the parties consider necessary or advisable.

2019 c22 s10

Division 9
Use and Disposal of Reserve Land

Use of reserve land, money

671(1) Subject to section 676(1), environmental reserve must be left in its natural state or be used as a public park.

(2) Municipal reserve, school reserve or municipal and school reserve may be used by a municipality or school board or by them jointly only for any or all of the following purposes:

(a) a public park;

(b) a public recreation area;

(c) school board purposes;

(d) to separate areas of land that are used for different purposes.

(2.1) Community services reserve may be used by a municipality for any or all of the following purposes:

(a) a public library;

(b) a police station, a fire station or an ambulance services facility, or a combination of them;

(c) a non-profit day care facility;

(d) a non-profit senior citizens facility;

(e) a non-profit special needs facility;

(f) a municipal facility providing service directly to the public;

(g) affordable housing.

(3) Despite that land is designated as municipal reserve, school reserve or municipal and school reserve, the municipality and one or more school boards may enter into any agreement they consider necessary with respect to a use referred to in subsection (2) or for any matter related to the use.

(4) Money provided in place of municipal reserve, school reserve or municipal and school reserve and the interest earned on that money

(a) must be accounted for separately, and

(b) may be used only for any or all of the purposes referred to in subsection (2).

(5) For the purposes of subsection (2)(c), "school board purposes" means those purposes as determined by the Minister of Education under subsection (6).

(6) The Minister of Education may, by order, determine school board purposes for the purposes of subsection (5).

(7) An order made under subsection (6) is exempt from the application of the *Regulations Act*.

(8) The Minister of Education must publish in The Alberta Gazette a notice of any order made under subsection (6) and information about where copies of the order may be obtained or are available to the public.

RSA 2000 cM-26 s671;2008 c37 ss5,10,11

Transfer of school and other reserves to municipality

672(1) If a school board holds an interest in a school reserve, municipal and school reserve or municipal reserve under this Part or the former Act and declares that the reserve is surplus to the school board's needs, the school board must transfer its interest in the land to the municipality where the reserve is located, for the consideration agreed on between them.

(2) On the registration in a land titles office of a transfer of land or an interest in land under subsection (1), the Registrar must designate the land as municipal reserve.

(3) Despite subsection (2), the council of a municipality may by bylaw require the school building footprint of the school reserve, municipal and school reserve or municipal reserve referred to in subsection (1) to be designated as community services reserve, in which case the Registrar, on receipt of a copy of the bylaw and a survey plan on which the school building footprint is outlined, must

(a) issue a new certificate of title for the school building footprint with the designation of community services reserve, which must be identified by a number suffixed by the letters "CSR", and

(b) issue a new certificate of title for the remaining land with the designation of municipal reserve, which must be identified in accordance with section 665(2)(a).

(4) The certificate of title for a community services reserve or a municipal reserve under this section must be free of all encumbrances as defined in the *Land Titles Act*.

(5) In subsection (3), "school building footprint" means

(a) the portion of the reserve on which a school building and accompanying parking lot is situated, or

(b) if no school building is situated on the reserve, the area of land on which a school and accompanying parking lot would be located if they had been built as determined by the municipality.

RSA 2000 cM-26 s672;2008 c37 s6;2016 c24 s119

Transfer to school authority

673(1) A municipality may transfer municipal reserve or its interest in municipal and school reserve to a school board.

(2) On the registration in a land titles office of a transfer of land or an interest in land under subsection (1), the Registrar must designate the land as school reserve.

(3) If a transfer of land or an interest in land is effected pursuant to this section, the requirements of sections 674 and 675 do not apply to the transfer.

RSA 2000 cM-26 s673;2008 c37 s10

Requirement for hearing

674(1) Before any of the following occurs, a public hearing must be held in accordance with section 216.4 and advertised in accordance with section 606:

(a) the sale, lease or other disposal of

(i) municipal reserve, community services reserve or municipal and school reserve by a council, or

(ii) municipal and school reserve by a council and a school board;

(b) the making of a bylaw requiring the school building footprint of a school reserve, municipal and school reserve or municipal reserve referred to in section 672(1) to be designated as community services reserve;

(c) the disposal of conservation reserve by a municipality as permitted by section 674.1.

(2) Section 70 does not apply to a sale, lease or other disposal referred to in subsection (1)(a).

(3) In addition to the advertising requirement in subsection (1), notices containing the information required under section 606 must be posted on or near the municipal reserve, school reserve, municipal and school reserve or community services reserve that is the subject of the hearing.

RSA 2000 cM-26 s674;2008 c37 ss7,10;2020 c39 s10(41); 2022 c16 s9(83)

Disposal of conservation reserve

674.1(1) Subject to this section, a municipality must not sell, lease or otherwise dispose of conservation reserve and must ensure that the land remains in its natural state.

(2) A municipality may dispose of conservation reserve if all of the features referred to in section 664.2(1)(a) are wholly or substantially destroyed by fire, flood or another event beyond the municipality's control with the result that, in the opinion of

council, there is no remaining purpose in protecting or conserving the land.

(3) Repealed 2020 c39 s10(42).

(4) Despite subsection (2),

(a) if a municipality receives a notice under section 103 of a proposed amalgamation, the municipality must not dispose of conservation reserve lying within the municipality until after the report under section 106 is submitted to the Minister and the amalgamation proceedings, if any, are complete, and

(b) if a municipality receives a notice under section 116 of a proposed annexation of land, the municipality must not dispose of conservation reserve lying within the proposed annexation area until after the report under section 118 is submitted to the Land and Property Rights Tribunal and the annexation proceedings, if any, are complete.

2016 c24 s120;2020 cL-2.3 24(41);2020 c39 s10(42)

674.2 Repealed 2020 c39 s10(43).

Removal of designation

675(1) After taking into consideration the representations made at a public hearing under section 674(1),

(a) a council may direct a designated officer to notify the Registrar that the provisions of this Division have been complied with and request the Registrar to remove a designation of

(i) municipal reserve,

(ii) community services reserve, or

(ii) conservation reserve,

and

(b) a council and a school board may direct a designated officer to notify the Registrar that the provisions of this Division have been complied with and request the Registrar to remove a designation of municipal and school reserve.

(2) If the Registrar is satisfied that this Part has been complied with, the Registrar must remove the designation in accordance with the request made under subsection (1).

(3) On removal of the designation, the municipality, or the municipality and the school board, may sell, lease or otherwise dispose of the land, but the proceeds from the sale, lease or other disposition may only be used

(a) in the case of a municipal reserve or a municipal and school reserve, for any or all of the purposes referred to in section 671(2) or for any matter connected to those purposes,

(b) in the case of a community services reserve, for any or all of the purposes referred to in section 671(2.1) or for any matter connected to those purposes, and

(c) in the case of a conservation reserve, for the purpose of enabling the municipality to protect and conserve land that, in the opinion of council, has environmentally significant features or for a matter connected to that purpose.

RSA 2000 cM-26 s675;2008 c37 ss8,10;2020 c39 s10(44)

Changes to environmental reserve's use or boundaries

676(1) A council may by bylaw, after giving notice in accordance with section 606 and holding a public hearing in accordance with section 216.4,

(a) use an environmental reserve for a purpose not specified in section 671(1),

(b) transfer an environmental reserve to the Crown or an agent of the Crown for consideration, as agreed,

(c) lease or dispose of an environmental reserve other than by a sale for a term of not more than 3 years, and

(d) change the boundaries of an environmental reserve or environmental reserve easement in order to correct an omission, error or other defect in the certificate of title, or to rectify an encroachment problem or other concern.

(2) A council may include terms and conditions in a bylaw under subsection (1).

(3) Any proceeds from a lease or other disposition under subsection (1) may be used only to provide land for any or all of the purposes referred to in section 671(2).

(4) On receipt of a bylaw under subsection (1)(b) or (d), the Registrar must cancel the existing certificates of title or amend an environmental reserve easement affected by the bylaw and issue any new certificates of title required by the bylaw.

RSA 2000 cM-26 s676;2022 c16 s9(83)

Road, etc., over reserve land

677 Despite section 671, a municipality or a municipality and a school board may authorize

(a) the construction, installation and maintenance, or any of them, of a roadway, public utility, pipeline as defined in the *Oil and Gas Conservation Act* or transmission line as defined in the *Hydro and Electric Energy Act* on, in, over or under reserve land, or

(b) the maintenance and protection of reserve land,

if the interests of the public will not be adversely affected.

RSA 2000 cM-26 s677;2008 c37 s10

Division 10
Subdivision and Development Appeals

Appeal board bylaw

677.1(1) A bylaw or agreement under section 627 establishing a subdivision and development appeal board must

(a) provide for the applicable matters described in section 145(3), and

(b) prescribe the functions and duties of the subdivision and development appeal board.

(2) A bylaw or agreement referred to in subsection (1) may provide

(a) for the members of the subdivision and development appeal board to meet in panels,

(b) for 2 or more panels to meet simultaneously,

(c) that the panels have any or all the powers, duties and responsibilities of the subdivision and development appeal board, and

(d) that a decision of a panel is a decision of the subdivision and development appeal board.

2020 c39 s10(45);2023 c9 s19(21)

Subdivision Appeals

Appeals

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

(a) by the applicant for the approval,

(b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,

(c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or

(d) by a school board with respect to

(i) the allocation of municipal reserve and school reserve or money in place of the reserve,

(ii) the location of school reserve allocated to it, or

(iii) the amount of school reserve or money in place of the reserve.

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

(a) with the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application

(A) is within the Green Area as classified by the Minister responsible for the *Public Lands Act*,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission, or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Protected Areas or the Minister of Forestry, Parks and Tourism,

or

(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),

or

(b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.

(4) A notice of appeal under this section must contain

(a) the legal description and municipal location, if applicable, of the land proposed to be subdivided, and

(b) the reasons for appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

(5) If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.

RSA 2000 cM-26 s678;2008 c37 s10;2016 c24 s121;
2020 cL-2.3 s24(41);2020 c39 s10(46);2022 c21 s57

Notice of hearing

679(1) The board hearing an appeal under section 678 must give at least 5 days' written notice of the hearing to

(a) the applicant for subdivision approval,

(b) the subdivision authority that made the decision,

(c) if land that is the subject of the application is adjacent to the boundaries of another municipality, that municipality,

(d) any school board to whom the application was referred, and

(e) repealed 1996 c30 s66,

(f) every Government department that was given a copy of the application pursuant to the subdivision and development regulations.

(2) The board hearing an appeal under section 678 must give at least 5 days' notice of the hearing in accordance with subsection (3) to owners of adjacent land.

(3) A notice under subsection (2) must be given in accordance with section 653(4.2).

(3.1) Subsections (1)(c), (d) and (f) and (2) do not apply to an appeal of the deemed refusal of an application under section 653.1(8).

(4) For the purposes of this section, "owner" has the same meaning as in section 653.

RSA 2000 cM-26 s679;2008 c37 s10;2016 c24 s122;
2020 c39 s10(47)

Hearing and decision

680(1) The board hearing an appeal under section 678 is not required to hear from any person or entity other than

(a) a person or entity that was notified pursuant to section 679(1), and

(b) each owner of adjacent land to the land that is the subject of the appeal,

or a person acting on any of those persons' behalf.

(1.1) For the purposes of subsection (1), "owner" has the same meaning as in section 653.

(2) In determining an appeal, the board hearing the appeal

(a) repealed 2020 c39 s10(48);

(a.1) must have regard to any statutory plan;

(b) must conform with the uses of land referred to in a land use bylaw;

(c) must be consistent with the land use policies;

(d) must have regard to but is not bound by the subdivision and development regulations;

(e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;

(f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

(2.1) In the case of an appeal of the deemed refusal of an application under section 653.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 653.1(2).

(2.2) Subsection (1)(b) does not apply to an appeal of the deemed refusal of an application under section 653.1(8).

(3) A subdivision and development appeal board hearing an appeal under section 678 must hold the hearing within 30 days after receiving a notice of appeal and give a written decision together with the reasons for the decision within 15 days after concluding the hearing.

(4) The Land and Property Rights Tribunal hearing an appeal under section 678 must hold the hearing within 60 days after receiving a notice of appeal and give a written decision together with the reasons for the decision within 15 days after concluding the hearing.

RSA 2000 cM-26 s680;2009 cA-26.8 s83;2016 c24 s123;
2020 cL-2.3 s24(41);2020 c39 s10(48)

Failure to make decision

681(1) If a subdivision authority fails or refuses to make a decision on an application for subdivision approval within the time prescribed by the subdivision and development regulations, the applicant may, within 14 days after the expiration of the time prescribed,

(a) treat the application as refused and appeal it in accordance with section 678, or

(b) enter into a written agreement with the subdivision authority to extend the time prescribed in the subdivision and development regulations.

(2) If an agreement to extend is entered into pursuant to subsection (1)(b) and the subdivision authority fails or refuses to make a decision within the time prescribed in the agreement, the applicant may, within 14 days after the expiration of the extended period,

treat the application as refused and appeal it in accordance with section 678.

(3) A subdivision authority may not deal with an application for subdivision approval after the expiration of the period of time prescribed in the subdivision and development regulations for making the decision unless an agreement is entered into pursuant to subsection (1)(b).

RSA 2000 cM-26 s681;2015 c8 s72

Endorsement of subdivision plan

682(1) When on an appeal the Land and Property Rights Tribunal or the subdivision and development appeal board approves an application for subdivision approval, the applicant must submit the plan of subdivision or other instrument to the subdivision authority from whom the appeal was made for endorsement by it.

(2) If a subdivision authority fails or refuses to endorse a plan of subdivision or other instrument submitted to it pursuant to subsection (1), the member of the subdivision and development appeal board or Land and Property Rights Tribunal, as the case may be, that heard the appeal who is authorized to endorse the instrument may do so.

RSA 2000 cM-26 s682;2020 cL-2.3 s24(34)

Development Permits

Permit

683 Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

1995 c24 s95

Development applications

683.1(1) A development authority must, within 20 days after the receipt of an application for a development permit, determine whether the application is complete.

(2) An application is complete if, in the opinion of the development authority, the application contains the documents and other information necessary to review the application.

(3) The time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(a).

(4) If the development authority does not make a determination referred to in subsection (1) within the time required under subsection (1) or (3), the application is deemed to be complete.

(5) If a development authority determines that the application is complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(6) If the development authority determines that the application is incomplete, the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application is incomplete and that any outstanding documents and information referred to in the notice must be submitted by a date set out in the notice or a later date agreed on between the applicant and the development authority in order for the application to be considered complete.

(7) If the development authority determines that the information and documents submitted under subsection (6) are complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(8) If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.

(9) If an application is deemed to be refused under subsection (8), the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reason for the refusal.

(10) Despite that the development authority has issued an acknowledgment under subsection (5) or (7), in the course of reviewing the application, the development authority may request additional information or documentation from the applicant that the development authority considers necessary to review the application.

(11) Repealed 2020 c39 s10(49).

2016 c24 s125;2020 c39 s10(49)

Development Appeals

Permit deemed refused

684(1) The development authority must make a decision on the application for a development permit within 40 days after the receipt by the applicant of an acknowledgment under section

683.1(5) or (7) or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(b).

(2) A time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority.

(3) If the development authority does not make a decision referred to in subsection (1) within the time required under subsection (1) or (2), the application is, at the option of the applicant, deemed to be refused.

(4) Section 640(5) does not apply in the case of an application that was deemed to be refused under section 683.1(8).

RSA 2000 cM-26 s684;2016 c24 s126;2018 c11 s13

Grounds for appeal

685(1) If a development authority

(a) fails or refuses to issue a development permit to a person,

(b) issues a development permit subject to conditions, or

(c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal the decision in accordance with subsection (2.1).

(1.1) A decision of a development authority must state whether an appeal lies to a subdivision and development appeal board or to the Land and Property Rights Tribunal.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

(2.1) An appeal referred to in subsection (1) or (2) may be made

(a) to the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application

(A) is within the Green Area as classified by the Minister responsible for the *Public Lands Act*,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission, or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Protected Areas or the Minister of Forestry, Parks and Tourism,

or

(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),

or

(b) in all other cases, to the subdivision and development appeal board.

(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

(4) Despite subsections (1), (2), (2.1) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(b) is made by a development authority, the appeal may only be made to the subdivision and development appeal board and is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

RSA 2000 cM-26 s685;2015 c8 s73;2016 c24 s127;
2020 cL-2.3 s24(41);2020 c39 s10(50);
2022 c16 s9(81);2022 c21 s57

Appeals

686(1) A development appeal is commenced by filing a notice of the appeal, containing reasons, with the board hearing the appeal

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made,

or

(b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

(1.1) Where a person files a notice of appeal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board, if

(a) in the case of a person referred to in subsection (1), the person files the notice with the wrong board within 21 days after receipt of the written decision or the deemed refusal, or

(b) in the case of a person referred to in subsection (2), the person files the notice with the wrong board within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

(2) The board hearing an appeal referred to in subsection (1) must hold an appeal hearing within 30 days after receipt of a notice of appeal.

(3) The board hearing an appeal referred to in subsection (1) must give at least 5 days' notice in writing of the hearing

(a) to the appellant,

(b) to the development authority whose order, decision or development permit is the subject of the appeal, and

(c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.

(4) The board hearing an appeal referred to in subsection (1) must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including

(a) the application for the development permit, the decision and the notice of appeal, or

(b) the order under section 645.

(4.1) Subsections (1)(b) and (3)(c) do not apply to an appeal of a deemed refusal under section 683.1(8).

(5) In subsection (3), "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

RSA 2000 cM-26 s686;2016 c24 s128;2017 c13 s1(65);
2018 c11 s13;2020 c39 s10(51)

Hearing and decision

687(1) At a hearing under section 686, the board hearing the appeal must hear

(a) the appellant or any person acting on behalf of the appellant,

(b) the development authority from whose order, decision or development permit the appeal is made, or a person acting on behalf of the development authority,

(c) any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person, and

(d) any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.

(2) The board hearing the appeal referred to in subsection (1) must give its decision in writing together with reasons for the decision within 15 days after concluding the hearing.

(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

(a) repealed 2020 c39 s10(52);

(a.1) must comply with any applicable land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;

(a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

(b) must have regard to but is not bound by the subdivision and development regulations;

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

(4) In the case of an appeal of the deemed refusal of an application under section 683.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 683.1(2).

RSA 2000 cM-26 s687;2009 cA-26.8 s83;2015 c8 s74;2017 c21 s28;2018 c11 s13;2020 c39 s10(52)

Court of Appeal

Law, jurisdiction appeals

688(1) An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

(a) a decision of the subdivision and development appeal board, and

(b) a decision made by the Land and Property Rights Tribunal

(i) under section 619 respecting whether a proposed statutory plan or land use bylaw amendment is consistent with a licence, permit, approval or other authorization granted under that section,

(ii) under section 648.1 respecting the imposition of an off-site levy or the amount of the levy,

(iii) under section 678(2)(a) respecting a decision of a subdivision authority,

(iii.1) under section 685(2.1)(a) respecting a decision of a development authority, or

(iv) under section 690 respecting an intermunicipal dispute.

(2) An application for permission to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for permission to appeal must be given to

(a) the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, and

(b) any other persons that the judge directs.

(2.1) If an applicant makes a written request for materials to the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, for the purposes of the application for permission to appeal under subsection (2), the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, must provide the materials requested within 14 days from the date on which the written request is served.

(2.2) An applicant's written request under subsection (2.1) must not include a request for a transcript of the hearing, but if a transcript is available and the Court of Appeal is satisfied that the transcript is necessary for the purpose of determining the application, the Court may, on application or on its own motion, direct that the Land and Property Rights Tribunal or the subdivision and development appeal board provide the transcript within the time provided by the Court.

(3) On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant permission to appeal if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.

(4) If a judge grants permission to appeal, the judge may

(a) direct which persons or other bodies must be named as respondents to the appeal,

(b) specify the questions of law or the questions of jurisdiction to be appealed, and

(c) make any order as to the costs of the application that the judge considers appropriate.

(4.1) On permission to appeal being granted by a judge of the Court of Appeal, the appeal must proceed in accordance with the practice and procedure of the Court of Appeal.

(4.2) The notice of appeal must be given to the parties affected by the appeal and to the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be.

(4.3) Repealed 2020 c39 s10(53).

(4.4) Within 30 days from the date that permission is granted to appeal a decision of the Land and Property Rights Tribunal or the subdivision and development appeal board, the Land and Property Rights Tribunal or subdivision and development appeal board, as applicable, must forward to the Registrar of the Court of Appeal the transcript, if any, and record of the hearing, its findings and reasons for the decision.

(5) If an appeal is from a decision of a subdivision and development appeal board, the municipality must be given notice of the application for permission to appeal and the board and the municipality

(a) are respondents in the application and, if permission to appeal is granted, in the appeal, and

(b) are entitled to be represented by counsel at the application and, if permission to appeal is granted, at the appeal.

(6) The Land and Property Rights Tribunal

(a) is a respondent in any application for permission to appeal a decision of the Tribunal and, if permission to appeal is granted, in the appeal, and

(b) is entitled to be represented by counsel at any application for permission to appeal a decision of the Tribunal and, if permission to appeal is granted, at the appeal.

RSA 2000 cM-26 s688;2007 c3 s5;2014 c13 s35;2016 c24 s130; 2020 cL-2.3 s24(35);2020 c25 s11;2020 c39 s10(53)

Decision on appeal

689(1) On the hearing of the appeal,

(a) no evidence other than the evidence that was submitted to the Land and Property Rights Tribunal or the subdivision and development appeal board may be admitted, but the Court may draw any inferences

(i) that are not inconsistent with the facts expressly found by the Land and Property Rights Tribunal or the subdivision and development appeal board, and

(ii) that are necessary for determining the question of law or the question of jurisdiction,

and

(b) the Court may confirm, vary, reverse or cancel the decision.

(2) In the event that the Court cancels a decision, the Court must refer the matter back to the Land and Property Rights Tribunal or the subdivision and development appeal board, and the relevant board must rehear the matter and deal with it in accordance with the opinion of or any direction given by the Court on the question of law or the question of jurisdiction.

(3) No member of the Land and Property Rights Tribunal or a subdivision and development appeal board is liable to costs by reason or in respect of an application for permission to appeal or an appeal under this Act.

(4) If the Court finds that the only ground for appeal established is a defect in form or technical irregularity and that no substantial wrong or miscarriage of justice has occurred, the Court may deny the appeal, confirm the decision of the Land and Property Rights Tribunal or a subdivision and development appeal board despite the defect and order that the decision takes effect from the time and on the terms that the Court considers proper.

RSA 2000 cM-26 s689;2014 c13 s35;2020 cL-2.3 s24(36)

Division 11
Intermunicipal Disputes

Intermunicipal disputes

690(1) A municipality that

(a) is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it,

(b) has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, and

(c) has, as soon as practicable after second reading of the bylaw, attempted to use mediation to resolve the matter,

may appeal the matter to the Land and Property Rights Tribunal.

(1.1) An appeal under subsection (1) is to be brought by

(a) filing a notice of appeal and statutory declaration described in subsection (2) with the Land and Property Rights Tribunal, and

(b) giving a copy of the notice of appeal and statutory declaration to the adjacent municipality

within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw.

(2) When appealing a matter to the Land and Property Rights Tribunal, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating

(a) the reasons why mediation was not possible,

(b) that mediation was undertaken and the reasons why it was not successful, or

(c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1.1)(b), must, within 30 days, submit to the Land and Property Rights Tribunal and the municipality that filed the notice of appeal a statutory declaration stating

(a) the reasons why mediation was not possible,

(b) that mediation was undertaken and the reasons why it was not successful, or

(c) that mediation is ongoing and that if the mediation is not successful a further response will be provided within 30 days of its completion.

(4) When a notice of appeal and statutory declaration are filed under subsection (1.1)(a) with the Land and Property Rights Tribunal, the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the notice of appeal and statutory declaration are filed with the Tribunal under subsection (1.1)(a) until the date the Tribunal makes a decision under subsection (5).

(5) If the Land and Property Rights Tribunal receives a notice of appeal and statutory declaration under subsection (1.1)(a), it must, in accordance with subsection (5.1), decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

(a) dismiss the appeal if it decides that the provision is not detrimental, or

(b) order the adjacent municipality to amend or repeal the provision, if it is of the opinion that the provision is detrimental.

(5.1) In determining under subsection (5) whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal, the Land and Property Rights Tribunal must disregard section 638.

(6) A provision with respect to which the Land and Property Rights Tribunal has made a decision under subsection (5) is,

(a) if the Tribunal has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and

(b) if the Tribunal has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.

(6.1) Any decision made by the Land and Property Rights Tribunal under this section in respect of a statutory plan or amendment or a land use bylaw or amendment adopted by a municipality must be consistent with any growth plan under Part 17.1 pertaining to that municipality.

(7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Tribunal under this section.

(8) The Land and Property Rights Tribunal's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.

RSA 2000 cM-26 s690;2009 cA-26.8 s83;2013 c17 s5;
2015 c8 s75;2020 cL-2.3 s24(37);2020 c39 s10(54)

Tribunal hearing

691(1) The Land and Property Rights Tribunal, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must

(a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and

(b) give a written decision within 30 days after concluding the hearing.

(2) The Land and Property Rights Tribunal is not required to give notice to or hear from any person other than the municipality

making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

RSA 2000 cM-26 s691;2020 cL-2.3 s24(41)

Division 12
Bylaws, Regulations

Planning bylaws

692(1) Before giving second reading to

(a) a proposed bylaw to adopt an intermunicipal development plan,

(b) a proposed bylaw to adopt a municipal development plan,

(c) a proposed bylaw to adopt an area structure plan,

(d) a proposed bylaw to adopt an area redevelopment plan,

(e) a proposed land use bylaw, or

(f) a proposed bylaw amending a statutory plan or land use bylaw referred to in clauses (a) to (e),

a council must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

(2) Despite subsection (1), if a proposed development relates to more than one proposed bylaw referred to in subsection (1), the council may hold a single public hearing.

(3) Despite subsection (1), in the case of a public hearing for a proposed bylaw adopting or amending an intermunicipal development plan,

(a) councils may hold a joint public hearing to which section 184 does not apply, and

(b) municipalities may act jointly to satisfy the advertising requirements of section 606.

(4) In the case of an amendment to a land use bylaw to change the district designation of a parcel of land, the municipality must, in addition to the requirements of subsection (1),

(a) include in the notice described in section 606(2)

(i) the municipal address, if any, and the legal address of the parcel of land, and

(ii) a map showing the location of the parcel of land,

(b) give written notice containing the information described in clause (a) and in section 606(6) to the assessed owner of that parcel of land at the name and address shown on the assessment roll of the municipality, and

(c) give a written notice containing the information described in clause (a) and in section 606(6) to each owner of adjacent land at the name and address shown for each owner on the assessment roll of the municipality.

(5) If the land referred to in subsection (4)(c) is in another municipality, the written notice must be given to that municipality and to each owner of adjacent land at the name and address shown for each owner on the tax roll of that municipality.

(6) Despite subsection (1), a bylaw referred to in subsection (1) may be amended without giving notice or holding a public hearing if the amendment corrects clerical, technical, grammatical or typographical errors and does not materially affect the bylaw in principle or substance.

(6.1) Subsection (1)(f) does not apply in respect of a proposed bylaw amending a statutory plan or land use bylaw to specify the purposes of a community services reserve.

(7) In this section,

(a) "adjacent land" means land that is contiguous to the parcel of land that is being redesignated and includes

(i) land that would be contiguous if not for a highway, road, river or stream, and

(ii) any other land identified in the land use bylaw as adjacent land for the purpose of notifications under this section;

(b) "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

(8) If an ALSA regional plan requires a council to pass a bylaw referred to in this section, the council must

(a) consider whether, in view of the requirement in the ALSA regional plan, consultation is necessary, desirable or beneficial, and

(b) decide whether or not to proceed with consultation.

(9) If a council decides under subsection (8) that consultation is neither necessary nor desirable or would not be beneficial, subsections (1) to (7) do not apply to the council in respect of the bylaw concerned.

RSA 2000 cM-26 s692;2008 c37 s9;2009 cA-26.8 s83; 2022 c16 s9(83)

Airport vicinity regulations

693(1) The Minister may make regulations

(a) establishing airport vicinity protection areas surrounding airports;

(b) controlling, regulating or prohibiting any use and development of land within an airport vicinity protection area.

(2) Unless the contrary is expressed in regulations made under subsection (1), those regulations

(a) operate despite any statutory plan, land use bylaw or other regulations under this Part, and

(b) are binding on any subdivision authority, development authority and subdivision and development appeal board and the Land and Property Rights Tribunal.

(3) If a municipality is affected by a regulation under subsection (1), the municipality must amend the statutory plan relating to that area and its land use bylaw to conform with the regulation.

(4) Section 692 does not apply to an amendment pursuant to subsection (3).

(5) A regulation under subsection (1) may apply generally or specifically in Alberta.

RSA 2000 cM-26 s693;2020 cL-2.3 s24(41);2020 c39 s10(55)

Development in floodways

693.1(1) The Lieutenant Governor in Council may make regulations

(a) controlling, regulating or prohibiting any use or development of land that is located in a floodway within a municipal authority, including, without limitation, regulations specifying the types of developments that are authorized in a floodway;

(b) exempting a municipal authority or class of municipal authorities from the application of all or part of this section or the regulations made under this subsection, or both;

(c) modifying or suspending the application or operation of any provision of this Act for the purposes of giving effect to this section;

(d) defining, or respecting the meaning of, "floodway" for the purposes of this section and the regulations made under this subsection.

(2) Unless the contrary is expressed in regulations made under subsection (1), those regulations

(a) operate despite any statutory plan, land use bylaw or other regulations under this Part, and

(b) are binding on any subdivision authority, development authority and subdivision and development appeal board and the Land and Property Rights Tribunal.

(3) If a municipal authority is affected by a regulation made under subsection (1), the municipal authority must amend any relevant statutory plan and its land use bylaw to conform with the regulation.

(4) Section 692 does not apply to an amendment pursuant to subsection (3).

2013 c21 s2;2020 cL-2.3 s24(41)

Regulations

694(1) The Minister may make regulations

(a) respecting applications for the subdivision and development of land;

(a.1) providing for an alternative period of time for the subdivision authority or the development authority to review the completeness of an application or make a decision on an application under this Part or under the regulations;

(b) respecting subdivision and development standards and requirements;

(b.1) repealed 2019 c22 s10(24);

(c) respecting the information to be contained in a subdivision authority's and a development authority's notice of a decision;

(c.1) repealed 2020 c39 s10(56);

(d) respecting the additional municipal reserve, school reserve or municipal and school reserve that a subdivision authority may require to be provided under this Part;

(e) respecting the records to be kept by a subdivision authority and a development authority;

(f) prescribing the conditions that a subdivision authority and a development authority are permitted to impose when granting subdivision or development approval in addition to those conditions permitted to be imposed under this Part;

(g) conferring or imposing, with or without conditions, any power or duty under the regulations on the Land and Property Rights Tribunal, a subdivision authority or a development authority;

(h) prescribing distances for the purpose of sections 678(2)(a)(i)(B) and 685(2.1)(a)(i)(B);

(h.1) defining "historical site" for the purpose of sections 678(2)(a)(i)(B) and 685(2.1)(a)(i)(B);

(h.2) for the purpose of sections 678(2)(a) and 685(2.1)(a),

(i) removing or modifying the circumstances listed in section 678(2)(a)(i) or 685(2.1)(a)(i) where a notice of appeal may be filed with the Land and Property Rights Tribunal, and

(ii) setting out additional circumstances where a notice of appeal may be filed with the Land and Property Rights Tribunal for the purpose of section 678(2)(a)(ii) or 685(2.1)(a)(ii);

(i) providing, either generally or specifically, that all or part of the regulations under this subsection do not apply to all or part of Alberta.

(2) A regulation under subsection (1)

(a) repealed 2020 c39 s10(56),

(b) may apply generally or specifically in Alberta, and

(c) operates despite any other regulation or bylaw pursuant to this Part.

(3) The *Regulations Act* does not apply to orders under subsection (1)(i).

(4) The Lieutenant Governor in Council may make regulations

(a) respecting additional requirements for the calculation of an off-site levy in a bylaw for a purpose referred to in section 648(2.1) and the maximum amount that a municipality may establish or impose and collect as a redevelopment levy or an off-site levy, either generally or specifically;

(b) respecting additional principles and criteria that must be applied by a municipality when passing an off-site levy bylaw;

(c) respecting the determination of the benefitting area for a purpose under section 648(2) or 648(2.1) and the extent of the anticipated benefit to the future occupants of the land on which the off-site levy is being imposed;

(d) respecting appeals to the Land and Property Rights Tribunal under section 648.1, including, without limitation,

(i) the filing of a notice of an appeal,

(ii) the time within which an appeal may be brought, and

(iii) the process and procedures of an appeal;

(e) respecting transportation infrastructure to connect, or to improve the connection of, municipal roads to provincial highways resulting from a subdivision or development;

(f) respecting intermunicipal off-site levies.

(5) The Lieutenant Governor in Council may make regulations directing a municipality, with or without conditions, to amend its statutory plans and land use bylaw.

(5.1) If the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator or Alberta Utilities Commission grants a licence, permit, approval or other authorization that refers to environmental or physical limitations with respect to the development of land, and regulations are made under section 618(4) with respect to the development of that land, the Lieutenant Governor in Council may make regulations

(a) requiring the developer to apply to the Registrar to register a caveat against the land subject to the limitation referred to in the licence, permit, approval or other authorization, and

(b) respecting the contents of the caveat.

(5.2) When a caveat is presented for registration under subsection (5.1), the Registrar must endorse a memorandum referring to the licence, permit, approval or other authorization on any certificate of title for land to which the limitations described in subsection (5.1) apply.

(5.3) A caveat that is registered pursuant to a regulation under subsection (5.1)(a) runs with the land.

(5.4) Sections 137 and 138 of the *Land Titles Act* do not apply to a caveat referred to in subsections (5.1), (5.2), (5.3) and (5.5).

(5.5) Repealed 2020 c39 s10(56).

(5.6) The Lieutenant Governor in Council may make regulations respecting the exemption of The Town of Canmore, its councillors, officers and employees and volunteers performing duties under the direction of The Town of Canmore or performing duties for organizations established by The Town of Canmore from liability with respect to the development of designated land, as defined in the *Canmore Undermining Review Regulation* (AR 114/97), by persons other than The Town of Canmore, its councillors, officers and employees and volunteers performing duties under the direction of The Town of Canmore or performing duties for organizations established by The Town of Canmore.

(5.7) The *Canmore Undermining Exemption from Liability Regulation* (AR 113/97) is validated, is not repealed in accordance with section 603(2) and is deemed to have been made under this section.

(6), (7) Repealed 2020 c39 s10(56).

RSA 2000 cM-26 s694;2003 c43 s4;2007 cA-37.2 s82(17);
2012 cR-17.3 s95;2016 c24 s131;2017 c13 ss1(66),2(21);
2019 c22 s10(24);2020 cL-2.3 s24(41);2020 c39 s10(56)

Division 13
Transitional

695 and **696** Repealed by Revision.

Zoning caveat

697(1) On September 1, 1995 a zoning caveat prepared and signed by the Director of Town and Rural Planning or the Provincial Planning Director and registered in a land titles office under a former Act ceases to have effect.

(2) On and after September 1, 1995, the owner of a parcel of land that is affected by a caveat referred to in subsection (1) may apply to the Registrar to endorse the certificate of title with a memorandum cancelling the registration of the zoning caveat.

(3) On receipt of an application under subsection (2) and on being satisfied that the caveat is a zoning caveat, the Registrar must cancel the registration of the caveat.

AR 49/2002 s6;2002 c30 s23

698 to **708** Repealed by Revision.

Part 17.1
Growth Management Boards

Interpretation

708.01(1) In this Part and Part 17.2,

(a) "growth management board" means a growth management board established by regulation under section 708.02;

(b) "growth plan" means a plan, if any, required by a regulation under section 708.02;

(c) "growth region" means all or part of the land lying within the boundaries of the participating municipalities of a growth management board that is designated by regulation under section 708.02 as the growth region for that growth management board;

(d) "municipal agreement" means an agreement entered into by a participating municipality;

(e) "participating municipality" means a municipality that is designated by regulation under section 708.02 as a member of the growth management board;

(f) "representative" means a person appointed by a participating municipality under section 708.04 to represent the participating municipality on a growth management board;

(g) "statutory plan" means

(i) a statutory plan as defined in section 616(dd), or

(ii) an amendment to a statutory plan referred to in subclause (i).

(2) A reference in any other Part of this Act to a resolution or bylaw does not include a resolution passed or bylaw made by a growth management board.

2013 c17 s6;2019 c22 s10(25);2020 c39 s10(57)

Purpose

708.011 The purpose of this Part is to provide for integrated and strategic planning for future growth in municipalities.

2013 c17 s6;2016 c24 s132;2020 c39 s10(58)

Division 1
Establishment and Operation of Growth Management Boards

Establishing a growth management board

708.02(1) The Lieutenant Governor in Council may, by regulation

(a) on the recommendation of the Minister on the request of 2 or more municipalities, establish a growth management board in respect of those municipalities, or

(b) on the Lieutenant Governor in Council's own initiative, establish a growth management board and determine the membership of that board.

(1.1) Repealed 2020 c39 s10(59).

(1.2) For the purposes of subsection (1.1), the growth management board established under the *Capital Region Board Regulation* (AR 38/2012) is deemed to be a growth management board for the Edmonton region.

(2) The Lieutenant Governor in Council may make regulations

(a) respecting the mandate of a growth management board;

(b) respecting the membership of a growth management board and the voting rights of the participating municipalities;

(c) respecting the land lying within the boundaries of the participating municipalities that is included in the growth region for the growth management board;

(d) respecting the operations, management and administration of the growth management board;

(e) respecting the appointment of

(i) persons to represent the participating municipalities on the growth management board, and

(ii) a chair of the growth management board and, if necessary, the appointment of an interim chair;

(f) respecting the powers, duties and functions of

(i) the growth management board, and

(ii) the representatives on the growth management board;

(g) respecting the consistency of statutory plans and bylaws with a growth plan including, without limitation, respecting any requirements for the council of a participating municipality to amend statutory plans or bylaws to conform with a growth plan;

(h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Part.

2013 c17 s6;2016 c24 s133;2020 c39 s10(59)

Corporation

708.03(1) A growth management board is a corporation consisting of

(a) the participating municipalities, as represented by the representatives, and

(b) the persons appointed by the Lieutenant Governor in Council under subsection (2).

(2) The Lieutenant Governor in Council may appoint one or more persons to a growth management board to represent the Government of Alberta, but those persons do not have voting rights.

2013 c17 s6

Appointment of representative

708.04 Each participating municipality must, in accordance with the regulation establishing the growth management board of which the participating municipality is a member, appoint a person to represent the participating municipality on the growth management board.

2013 c17 s6

Meetings of growth management board

708.041(1) Subject to subsection (2), sections 197 and 199 apply to the meetings of a growth management board.

(2) Notwithstanding sections 197 and 199, for the purposes of this Part, a reference in sections 197 and 199 to a council, councils and council committees shall be read as a reference to a growth management board, growth management boards and growth management board committees, respectively.

(3) The Minister may make regulations authorizing and respecting the use of electronic, telephonic or other communication methods to conduct meetings of a growth management board.

(4) Regulations under subsection (3) may apply generally or specifically and may modify the requirements in this Part to any extent the Minister considers necessary or appropriate to give effect to the regulations.

2015 c8 s76;2019 c22 s10(26);2020 c39 s10(60);
2022 c16 s9(82)

Powers and duties of growth management board

708.05(1) Except as provided for in the regulations under subsection (3), Divisions 3 and 4 of Part 15.1 and any regulations made under those Divisions apply with any necessary modifications in respect of a growth management board as if it were a regional services commission.

(2) Except as provided for in the regulations under subsection (3), Divisions 3 and 4 of Part 15.1 and any regulations made under those Divisions apply with any necessary modifications in respect of the representatives on a growth management board as if those representatives were directors of a regional services commission.

(3) The Lieutenant Governor in Council may make regulations modifying any provision of Division 3 or 4 of Part 15.1 for the purpose of applying the provision to a growth management board or to the representatives on a growth management board.

2013 c17 s6;2015 c8 s77

Consistency with ALSA regional plans

708.06(1) In carrying out its functions and in exercising its jurisdiction under this Part and other enactments, a growth management board must act in accordance with any applicable ALSA regional plans.

(2) In the event of a conflict or inconsistency between a growth plan prepared by a growth management board and an ALSA

regional plan, the ALSA regional plan prevails to the extent of the conflict or inconsistency.

2013 c17 s6;2020 c39 s10(61)

Conformity with growth plan

708.061(1) Despite any other enactment, but subject to this section, a growth plan prevails in the event of a conflict or inconsistency between the growth plan and a statutory plan, bylaw, resolution or municipal agreement of a participating municipality.

(2) The council of a participating municipality must amend every statutory plan and bylaw as necessary to conform with a growth plan no later than the date specified by the growth management board.

(3) If the council of a participating municipality fails to amend a statutory plan or bylaw in accordance with subsection (2), the statutory plan or bylaw is deemed to be invalid to the extent that it conflicts or is inconsistent with a growth plan.

(4) The Minister may, in respect of a municipal agreement entered into by a participating municipality that conflicts or is inconsistent with a growth plan, require the council of the participating municipality, to the extent possible under the terms of the municipal agreement,

(a) to amend the municipal agreement so that it conforms to the growth plan, or

(b) to terminate the municipal agreement.

(5) If the council of a participating municipality fails to amend or terminate a municipal agreement when required to do so by the Minister under subsection (4), the municipal agreement is deemed to be invalid to the extent that it conflicts or is inconsistent with the growth plan.

(6) Except as otherwise provided in the regulation establishing the growth management board of which the participating municipality is a member, this section applies to statutory plans adopted, bylaws made, resolutions passed and municipal agreements entered into before or after the coming into force of that regulation.

2013 c17 s6;2020 c39 s10(61)

Delegation

708.07(1) Subject to subsection (2), a growth management board may delegate any of its powers, duties or functions under this Part or any other enactment to a committee, official or employee of the growth management board.

(2) A growth management board may not delegate

(a) the power to make bylaws;

(b) the power to borrow money;

(c) the power to adopt budgets;

(d) the power to approve financial statements;

(e) the power to appoint an auditor;

(f) the power to recommend the approval of a growth plan.

2013 c17 s6

Bylaws

708.08(1) A growth management board must, at its inception, establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board.

(1.1) A growth management board may make bylaws respecting its conduct and affairs, including, without limitation, rules and procedures for dealing with matters before the growth management board.

(2) Unless the Minister directs otherwise, a bylaw made under this section does not come into force until it has been approved by the Minister.

(3) The *Regulations Act* does not apply to a bylaw made under this section.

2013 c17 s6;2020 c39 s10(62)

708.09 Repealed 2020 c39 s10(63).

Division 2
Approval and Effective Date of Growth Plan

708.1 to **708.16** Repealed 2020 c39 s10(64).

Information must be provided

708.17(1) A participating municipality must, when required in writing by the growth management board to do so, provide the growth management board with information about the participating municipality that the growth management board requires.

(2) A participating municipality that contravenes subsection (1) is guilty of an offence and liable to a fine of not more than $10 000.

(3) This section does not apply to information acquired by a participating municipality that is subject to any type of legal privilege, including solicitor-client privilege.

2013 c17 s6

Matters before the Land and Property Rights Tribunal

708.18(1) If

(a) a matter relating to land within a growth region is appealed to the Land and Property Rights Tribunal, or

(b) the Land and Property Rights Tribunal is considering an application for an annexation of land involving 2 or more participating municipalities,

the Minister may by order direct the Land and Property Rights Tribunal to defer its consideration of the matter or application.

(2) When the Minister makes an order under subsection (1), all steps in the appeal or application, as the case may be, are stayed as of the date of the order until the Minister gives notice to the Land and Property Rights Tribunal that the appeal or application may be continued.

(3) This section applies to an appeal or application commenced after the coming into force of the regulation establishing the growth management board

(a) in respect of which the land referred to in subsection (1)(a) is part of the growth region, or

(b) of which the participating municipalities referred to in subsection (1)(b) are members.

2013 c17 s6;2020 cL-2.3 s24(38)

Limitation of actions

708.19 No cause of action arises as a result of

(a) the enactment of this Part,

(b) the making of a regulation, bylaw or order under this Part, or

(c) anything done or omitted to be done in accordance with this Part or a regulation, bylaw or order made under this Part.

2013 c17 s6

No remedy

708.2 No costs, compensation or damages are owing or payable to any person, and no remedy, including in contract, restitution or trust, is available to any person in connection with anything referred to in section 708.19.

2013 c17 s6

Proceedings barred

708.21 No proceedings, including any proceedings in contract, restitution or trust, that are based on anything referred to in section 708.19, may be brought or maintained against any person.

2013 c17 s6

No expropriation or injurious affection

708.22 Nothing done or omitted to be done in accordance with this Part or a regulation, bylaw or order made under this Part constitutes an expropriation or injurious affection for the purposes of the *Expropriation Act* or otherwise.

2013 c17 s6

708.23 Repealed 2020 c39 s10(65).

Ministerial orders

708.24(1) In addition to any other orders that the Minister may make under this Part, the Minister may make any one or more of the following orders:

(a) an order providing for transitional matters related to the coming into force of this Part;

(b) an order respecting the requisition of operating and capital costs of a growth management board;

(c) subject to the regulations, an order respecting the management, duties and functions of a growth management board;

(d) an order respecting the records to be kept by a growth management board and the manner in which they are to be kept and respecting which reports are to be submitted to the Minister;

(e) an order providing for any other matter that the Minister considers necessary for carrying out the purposes of this Part.

(2) In addition to the orders the Minister may make under subsection (1), the Minister may by order take any action that a

growth management board may or must take under this Part or a regulation under this Part.

(3) If there is a conflict or inconsistency between an order made by the Minister under subsection (2) and an action taken by a growth management board, the Minister's order prevails to the extent of the conflict or inconsistency.

(4) The *Regulations Act* does not apply to an order made under subsection (1)(c) or (d) or (2).

2013 c17 s6

708.25 Repealed 2020 c39 s10(66).

Part 17.2
Intermunicipal Collaboration

Definitions

708.26(1) In this Part,

(a) "arbitrator" means a person who is chosen as an arbitrator under section 708.35;

(b) "framework" means an intermunicipal collaboration framework entered into between 2 or more municipalities in accordance with this Part, and includes any amendments to a framework.

(c) repealed 2020 c39 s10(67).

(2) A reference in this Part to a municipality includes an improvement district.

2016 c24 s134;2019 c22 s10(27);2020 c39 s10(67)

Purpose

708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities

(a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,

(b) to steward scarce resources efficiently in providing local services, and

(c) to ensure municipalities contribute funding to services that benefit their residents.

2016 c24 s134;2019 c22 s10(28)

Division 1
Intermunicipal Collaboration Framework

Requirements for framework

708.28(1) Municipalities that have common boundaries must create a framework with each other by April 1, 2020 unless they are members of the same growth management board.

(2) Municipalities that are members of the same growth management board may create a framework with other members of the same growth management board in respect of matters that are not addressed in a growth plan.

(3) Municipalities that do not have common boundaries may be parties to a framework.

(4) A municipality may be a party to more than one framework.

(5) Despite subsection (1), the Minister may by order exempt, on any terms and conditions the Minister considers necessary, one or more municipalities from the requirement to create a framework.

(6) For greater certainty, a municipality that is a member of a growth management board must create a framework with a municipality that is not a member of the same growth management board if they have common boundaries.

2016 c24 s134;2018 c11 s13;2019 c22 s10(29);
2020 c39 s10(68)

Contents of framework

708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.

(2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

(3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.

(3.1) Every framework must contain provisions establishing a process for resolving disputes that occur while the framework is in effect, other than during a review under section 708.32, with respect to

(a) the interpretation, implementation or application of the framework, and

(b) any contravention or alleged contravention of the framework.

(4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.

(5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

2016 c24 s134;2019 c22 s10(30)

Court order to comply

708.291 If a municipality that is a party to an intermunicipal collaboration framework fails to participate in the dispute resolution process set out in the framework or fails to comply with an agreement reached by the parties as a result of that process, any other party to the framework may apply to the Court of King's Bench for an order directing the municipality to comply with the process or agreement.

2019 c22 s10(31);AR 217/2022

708.3 Repealed 2019 c22 s10(32).

Conflict or inconsistency

708.31 If there is a conflict or inconsistency between a framework and an existing agreement between 2 or more municipalities that are parties to that framework, the framework must address the conflict or inconsistency and, if necessary, alter or rescind the agreement.

2016 c24 s134

Term and review

708.32(1) The municipalities that are parties to a framework must review the framework at least every 5 years after the framework is created, or within a shorter period of time as provided for in the framework.

(1.1) Unless a framework provides otherwise, it may be reviewed at any time by agreement of all the municipalities that are parties to it.

(2) Where, during a review, the municipalities do not agree that the framework continues to serve the interests of the municipalities, the municipalities must create a replacement framework in accordance with this Part.

(3) Subsection (2) applies only to municipalities that are required under section 708.28(1) to create a framework.

2016 c24 s134;2019 c22 s10(33)

Participation by Indian bands and Metis settlements

708.321 Municipalities that are parties to a framework may invite an Indian band or Metis settlement to participate in the delivery and funding of services to be provided under the framework.

2016 c24 s134;2017 c13 s2(22)

Method of creating framework

708.33(1) In order to create a framework, the municipalities that are to be parties to the framework must each adopt a bylaw or resolution that contains the framework.

(2) Repealed 2019 c22 s10(35).

(3) In creating or reviewing a framework, the municipalities must negotiate in good faith.

(4) Once the municipalities have created a framework, the municipalities must notify the Minister of the framework within 90 days of its creation.

2016 c24 s134;2019 c22 s10(35)

Division 2
Arbitration

Application

708.34 This Division applies to municipalities that are required under section 708.28(1) to create a framework where

(a) the municipalities are not able to create the framework within the time required under section 708.28,

(b) when reviewing a framework under section 708.32, the municipalities do not agree that the framework continues to serve the interests of the municipalities and one of the municipalities provides written notice to the other municipalities and the Minister stating that the municipalities are not able to agree on the creation of a replacement framework, or

(c) the municipalities

(i) have an intermunicipal framework,

(ii) have attempted to resolve a dispute referred to in section 708.29(3.1) using the dispute resolution process under the framework, and

(iii) have been unsuccessful in resolving the dispute within one year after starting the dispute resolution process.

2016 c24 s134;2019 c22 s10(37)

Arbitration

708.35(1) Where section 708.34(a), (b) or (c) applies, the municipalities must refer the matter to an arbitrator.

(2) The arbitrator must be chosen by the municipalities or, if they cannot agree, by the Minister.

(3) Any mediator who has assisted the municipalities in attempting to create a framework is eligible to be an arbitrator under this Division.

(4) In a case referred to in section 708.34(a) or (b), the arbitration process ends where the municipalities create a framework by agreement or the Minister terminates the arbitration and makes an order under section 708.412.

(5) In a case referred to in section 708.34(c), the arbitration process ends where the municipalities resolve their dispute by agreement, the arbitrator makes an award under section 708.36 or the Minister terminates the arbitration and makes an order under section 708.412.

(6) The *Arbitration Act* applies to an arbitration under this Division except to the extent of any conflict or inconsistency with this Division, in which case this Division prevails.

(7) No municipality may, by means of an intermunicipal collaboration framework or any other means, vary or exclude any provision of the *Arbitration Act* and, for greater certainty, section 3 of the *Arbitration Act* does not apply in respect of an arbitration under this Division.

(8) An arbitrator chosen by the Minister is not subject to challenge or removal under the *Arbitration Act* by the parties or any court, but any party may request the Minister to remove and replace the arbitrator and the Minister may do so if the Minister considers it appropriate after considering the reasons for the request and any response by the other parties and the arbitrator.

(9) Section 42(2)(b) of the *Arbitration Act* does not apply in respect of an arbitration under this Division but the Minister may, at the Minister's discretion or at the request of any party or the arbitrator, terminate the arbitration and make an order under section 708.412.

(10) For greater certainty, nothing in this Division applies to an arbitration that occurs under the dispute resolution terms of a framework before the expiry of the year referred to in section 708.34(c)(iii).

2016 c24 s134;2019 c22 s10(38)

Role of arbitrator

708.36(1) Where a dispute is referred to an arbitrator under section 708.35, the arbitrator must make an award that resolves the issues in dispute among the municipalities

(a) in the case of a framework that is required under section 708.28(1) to be created by April 1, 2020, within one year after that date, or

(b) in the case of a replacement framework, within one year from the date the arbitrator is chosen.

(2) Despite subsection (1), an arbitrator may, as part of the arbitration process,

(a) attempt mediation with the municipalities in an effort to resolve the issues in dispute, and

(b) if the mediation is successful, require the municipalities to complete the framework to reflect their resolution of the dispute within a specified time.

(3) An arbitrator's award may include provisions respecting the responsibility for parties to pay or to share in paying costs, fees and disbursements incurred in the arbitration process.

(4) An arbitrator may require a municipality to provide or to make available for the arbitrator's examination and inspection any books, records or other materials of the municipality, but nothing in this subsection requires the arbitrator to examine or inspect any books, records or other materials before making an award.

(5) Unless the arbitrator rules otherwise, hearings in the arbitration are open to the public.

(6) An arbitrator may solicit written submissions from the public and, if the arbitrator does so, the arbitrator must take into account any written submissions received.

(7) An arbitrator must not make an award

(a) that has the effect of granting, varying or otherwise affecting any licence, permit or approval that is subject to this Act or any other enactment,

(b) on any matter that is subject to the exclusive jurisdiction of the Land and Property Rights Tribunal,

(c) that is contrary to the *Alberta Land Stewardship Act* or an ALSA regional plan,

(d) that is contrary to an intermunicipal development plan under Part 17 or a growth plan,

(e) that directs a municipality to raise revenue by imposing a specific tax rate, off-site levy or other rate, fee or charge, or

(f) that directs a municipality to transfer revenue to another municipality, unless

(i) the revenue transfer is directly related to services provided by a municipality that the revenue-transferring municipality derives benefit from, and

(ii) the arbitrator considers it equitable to do so.

2016 c24 s134;2019 c22 s10(39);2020 cL-2.3 s24(41); 2020 c39 s10(69);

708.37 Repealed 2019 c22 s10(40).

Matters to be considered by arbitrator

708.38(1) In resolving a dispute, an arbitrator may have regard to

(a) the services and infrastructure provided for in other frameworks to which the municipalities are also parties,

(b) consistency of services provided to residents in the municipalities,

(c) equitable sharing of costs among municipalities,

(d) environmental concerns within the municipalities,

(e) the public interest, and

(f) any other matters that the arbitrator considers relevant.

(2) Repealed 2019 c22 s10(41).

2016 c24 s134;2019 c22 s10(41)

708.39 Repealed 2019 c22 s10(42).

Municipalities must adopt framework and amend bylaws

708.4(1) Where an arbitrator makes an award respecting a framework, the municipalities are bound by the award and must,

within 60 days after the date of the award, adopt a framework in accordance with the award.

(1.1) A municipality must amend its bylaws, other than its land use bylaw, as necessary to reflect the framework within 2 years after adopting the framework.

(1.2) If there is a conflict or inconsistency between a bylaw and the framework, the framework prevails to the extent of the conflict or inconsistency.

(2) A municipality must not amend, repeal or revise its land use bylaw in a manner that is inconsistent with an intermunicipal development plan under section 631 to which the municipality is a party.

(3) A municipality must not amend, repeal or revise its bylaws to be inconsistent with a framework to which it is a party or an award of an arbitrator applicable to it.

2016 c24 s134;2019 c22 s10(43)

Costs of arbitrator

708.41(1) Subject to an award of the arbitrator or an agreement by the parties, the costs of an arbitrator under this Part must be paid on a proportional basis by the municipalities that are to be parties to the framework as set out in subsection (2).

(2) Each municipality's proportion of the costs must be determined by dividing the amount of that municipality's equalized assessment by the sum of the equalized assessments of all of the municipalities as set out in the most recent equalized assessment.

2016 c24 s134;2017 c13 s2(22);2019 c22 s10(44)

Remuneration of experts

708.411 Where an arbitrator appoints an expert, the expert must be paid on a proportional basis by the municipalities that are or will be parties to the framework, with each municipality's proportion of the costs to be determined in the same manner as is required under section 708.41(2) for an arbitrator.

2019 c22 s10(45)

Minister may make orders

708.412(1) Despite this Division or any arbitration occurring under this Division, the Minister may at any time make any order the Minister considers appropriate to further the development of a framework among 2 or more municipalities to carry out the purpose of this Part, including, without limitation, an order establishing a framework that is binding on the municipalities.

(2) If there is a conflict or inconsistency between an order made by the Minister under this section and an action taken by a municipality or a growth management board, the Minister's order prevails to the extent of the conflict or inconsistency.

2019 c22 s10(45)

708.42 Repealed 2019 c22 s10(46).

Measures to ensure compliance with award

708.43(1) If a municipality fails to comply with section 708.4(1), any other municipality that is or will be a party to the framework may apply to the Court of King's Bench for an order requiring that municipality to comply with section 708.4(1).

(2) If the Minister considers that a municipality has not complied with a framework, the Minister may take any necessary measures to ensure that the municipality complies with the framework.

(3) In subsection (2), all necessary measures includes, without limitation, an order by the Minister

(a) suspending the authority of a council to make bylaws in respect of any matter specified in the order;

(b) exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) removing a suspension of bylaw-making authority, with or without conditions;

(d) withholding money otherwise payable by the Government to the municipality pending compliance with an order of the Minister;

(e) repealing, amending and making policies and procedures with respect to the municipality;

(f) suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order;

(g) requiring or prohibiting any other action as necessary to ensure that the municipality complies with the framework.

2016 c24 s134;2019 c22 s10(47);AR 217/2022

708.44 to **708.46** Repealed 2019 c22 s10(48).

Division 3
General

Regulations Act does not apply

708.47 The *Regulations Act* does not apply to a framework or order made under this Part.

2016 c24 s134

Obligations continue during dispute

708.471 During a dispute in respect of a framework, the parties must continue to perform their obligations under the framework.

2019 c22 s10(50)

Jurisdiction of arbitrator

708.48(1) Repealed 2019 c22 s10(51).

(2) An arbitrator acting under this Part may make a determination

(a) on a matter of process,

(b) on the arbitrator's jurisdiction,

(c) on a matter of law, and

(d) on any other matter ancillary to a matter referred to the arbitrator.

(3) The arbitrator must make the findings and determinations the arbitrator determines to be necessary to decide the matters referred to the arbitrator.

(4) Except as provided in this Part, every award of an arbitrator is final and binding on all parties to the award and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

(5) An award of an arbitrator may be reviewed by the Court of King's Bench on a question of jurisdiction only and the application for judicial review must be made within 60 days after the award is made.

(6) For the purposes of a judicial review, the arbitrator is considered to be an expert in relation to all matters over which the arbitrator has jurisdiction.

(7) A person making an application to the Court of King's Bench under this section must give the arbitrator notice of the application.

2016 c24 s134;2019 c22 s10(51);AR 217/2022

Limitation period

708.49 A person who wishes to have an order of the Minister under this Part declared invalid on any basis must make an application for judicial review within 60 days after the order is made.

2016 c24 s134;2019 c22 s10(52)

708.5 Repealed 2019 c22 s10(53).

Paramountcy of Part 17.2

708.51 In the event of a conflict or inconsistency between this Part and Parts 1, 2, 3, 5, 6, 7, 8 or 17, this Part prevails.

2016 c24 s134

Regulations

708.52 The Lieutenant Governor in Council may make regulations

(a) respecting a subsequent action before a court following a decision of an arbitrator;

(b) defining any term or expression that is used in this Part but not defined in this Act;

(c) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Part.

2016 c24 s134;2019 c22 s10(54)

Part 18
Transitional Provisions

709 Repealed by Revision.

Transitional regulations

710(1) The Minister may make regulations

(a) respecting the conversion to this Act of anything from the former Acts or from any other Act repealed by this Act;

(b) to deal with any difficulty or impossibility resulting from this Act or the transition to this Act from the former Acts or from any other Act repealed by this Act.

(2) In this section, "former Acts" means

(a) the *Assessment Appeal Board Act*, RSA 1980 cA-46;

(b) the *County Act*, RSA 1980 cC-27;

(c) the *Improvement Districts Act*, RSA 1980 cI-1;

(d) the *Municipal Government Act*, RSA 1980 cM-26;

(e) the *Municipal Taxation Act*, RSA 1980 cM-31;

(f) the *Municipalities Assessment and Equalization Act*, RSA 1980 cM-32.

1994 cM-26.1 s617;1995 c24 ss94,96

711 to **740** OBNR – RSA.

TAB 2

Province of Alberta

MUNICIPAL GOVERNMENT ACT

COMMUNITY ORGANIZATION PROPERTY TAX EXEMPTION REGULATION

Alberta Regulation 281/1998

With amendments up to and including Alberta Regulation 152/2023

Current as of January 1, 2024

Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 152/2023)

ALBERTA REGULATION 281/98

Municipal Government Act

COMMUNITY ORGANIZATION PROPERTY TAX EXEMPTION REGULATION

Table of Contents

Part 5
Repeal and Review

Interpretation

1(1) In this Regulation,

(a) "Act" means the *Municipal Government Act*;

(b) "charitable or benevolent purpose" means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;

(c) "general public" means pertaining to the general community, rather than a group with limited membership or a group of business associates;

(d) "professional sports franchise" means a professional sports franchise operating in the National Hockey League, the Canadian Football League, the National Professional Soccer League or the Pacific Coast League;

(d.1) "subsidized accommodation" means

(i) rental accommodation where the Government of Alberta sets the rent at a maximum amount, sets the rent at a percentage of household income or provides the facility with ongoing operating funds, and

(ii) rent to own units where the Government of Alberta sets the rent at a percentage of income or sets the rent at a maximum amount,

(iii) repealed AR 152/2023 s2;

(e) "taxation" means taxation under Division 2 of Part 10 of the Act.

(2) For the purposes of the Act and this Regulation, "community association" means an organization where membership is voluntary, but restricted to residents of a specific area, and that is formed for the purpose of

(a) enhancing the quality of life for residents of the area or enhancing the programs, public facilities or services provided to the residents of the area, or

(b) providing non-profit sporting, educational, social, recreational or other activities to the residents of the area.

(3) The definitions in sections 1 and 284 of the Act apply to this Regulation.

AR 281/98 s1;182/2008;152/2023

Part 1
General Rules

Application

2 This Regulation applies to taxation in 1999 and later years.

Part of a property

3 An exemption under section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation applies only to the part of a property that qualifies for the exemption.

Primary use of property

4(1) Property is not exempt from taxation under section 362(1)(n)(iii), (iv) or (v) of the Act or Part 3 of this Regulation unless the property is primarily used for the purpose or use described in those provisions.

(2) For the purposes of this Regulation, a property is primarily used for a purpose or use if the property is used for the specified purpose or use at least 60% of the time that the property is in use.

Holding property

5 When section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation requires property to be held by a non-profit organization, a society as defined in the *Agricultural Societies Act* or a community association for the property to be exempt from taxation, the property is not exempt unless

(a) the organization, society or association is the owner of the property and the property is not subject to a lease, licence or permit, or

(b) the organization, society or association holds the property under a lease, licence or permit.

Non-profit organization

6 When section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation requires property to be held by a non-profit organization, community association or residents association as

defined in section 13 for the property to be exempt from taxation, the property is not exempt unless

(a) the organization or association is a society incorporated under the *Societies Act*, or

(b) the organization or association is

(i) a corporation incorporated in any jurisdiction, or

(ii) any other entity established under a federal law or law of Alberta

that is prohibited, by the laws of the jurisdiction governing its formation or establishment, from distributing income or property to its shareholders or members during its existence.

AR 281/98 s6;204/2011

Meaning of restricted

7(1) In this Regulation, a reference to the use of property being restricted means, subject to subsections (2) and (3), that individuals are restricted from using the property on any basis, including a restriction based on

(a) race, culture, ethnic origin or religious belief,

(b) the ownership of property,

(c) the requirement to pay fees of any kind, other than minor entrance or service fees, or

(d) the requirement to become a member of an organization.

(2) The requirement to become a member of an organization does not make the use of the property restricted so long as

(a) membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and

(b) membership occurs within a short period of time after any application or minor fee requirement is satisfied.

(3) Not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted.

Gaming and liquor licences

8(1) For the purposes of section 365(2) of the Act, property described in section 362(1)(n) of the Act and Part 3 of this Regulation in respect of which a bingo licence, casino licence, pull ticket licence, Class C liquor licence or a special event licence is issued under the *Gaming, Liquor and Cannabis Regulation* (AR 143/96) is exempt from taxation if the requirements of section 362(1)(n) and this Regulation in respect of the property are met.

(2) Despite subsection (1), property in respect of which a casino facility licence is issued is not exempt from taxation.

AR 281/1998 s8;56/2019;295/2020

Part 2
Qualifications for Exemptions Under Section 362(1)(n)(ii) to (v)

Exemption under section 362(1)(n)(ii) of the Act

9(1) The following property is not exempt from taxation under section 362(1)(n)(ii) of the Act:

(a) property to the extent that it is used in the operation of a professional sports franchise;

(b) property that is used solely for community games, sports, athletics or recreation if, for more than 40% of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older.

(2) Property is not exempt from taxation under section 362(1)(n)(ii) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7 as modified by subsection (3).

(3) For the purposes of subsection (2), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.

Exemption under section 362(1)(n)(iii) of the Act

10(1) Property referred to in section 362(1)(n)(iii) of the Act is not exempt from taxation unless

(a) the charitable or benevolent purpose for which the property is primarily used is a purpose that benefits the general public in the municipality in which the property is located, and

(b) the resources of the non-profit organization that holds the property are devoted chiefly to the charitable or benevolent purpose for which the property is used.

(2) Property is not exempt from taxation under section 362(1)(n)(iii) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

AR 281/98 s10;182/2008

Exemption under section 362(1)(n)(iv) of the Act

11 Property referred to in section 362(1)(n)(iv) of the Act is not exempt from taxation unless the accommodation provided to senior citizens is subsidized accommodation.

AR 281/98 s11;182/2008

Exemption under section 362(1)(n)(v) of the Act

12(1) The following property is not exempt from taxation under section 362(1)(n)(v) of the Act:

(a) property to the extent that it is used in the operation of a professional sports franchise;

(b) property if, for more than 40% of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older;

(c) property in Calgary or Edmonton that is held by and used in connection with a community association if the association is not a member of the Federation of Calgary Communities or the Edmonton Federation of Community Leagues.

(1.1) Notwithstanding subsection (1)(c), property held by a community association referred to in that provision is exempt from taxation under section 362(1)(n)(v) of the Act where that community association was a member of the Federation of Calgary Communities or the Edmonton Federation of Community Leagues on January 1, 1999 but cancelled its membership after that date.

(1.2) Subsection (1.1) applies with respect to 2004 and subsequent years.

(2) Property is not exempt from taxation under section 362(1)(n)(v) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7 as modified by subsection (3).

(3) For the purposes of subsection (2), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.

AR 281/98 s12;283/2003

Part 3
Other Property Exempt Under Section 362(1)(n)

Definitions

13 In this Part,

(a) "arts" means theatre, literature, music, painting, sculpture or graphic arts and includes any other similar creative or interpretive activity;

(b) "chamber of commerce" means a chamber of commerce that is a non-profit organization and is a member of the Alberta Chamber of Commerce;

(c) "ethno-cultural association" means an organization formed for the purpose of serving the interests of a community defined in terms of the racial, cultural, ethnic, national or linguistic origins or interests of its members;

(d) "linguistic organization" means an organization formed for the purpose of promoting the use of English or French in Alberta;

(e) "museum" means a facility that is established for the purpose of conserving, studying, interpreting, assembling and exhibiting, for the instruction and enjoyment of the general public, art, objects or specimens of educational and cultural value or historical, technological, anthropological, scientific or philosophical inventions, instruments, models or designs;

(e.1) "residents association" means a non-profit organization that requires membership for residential property owners in a specific development area, that secures its membership fees by a caveat or encumbrance on each residential property title and that is established for the purpose of

(i) managing and maintaining the common property, facilities and amenities of the development area for the benefit of the residents of the development area,

(ii) enhancing the quality of life for residents of the development area or enhancing the programs, public

facilities or services provided to the residents of the development area, or

(iii) providing non-profit sporting, educational, social, recreational or other activities to the residents of the development area;

(f) "retail commercial area" means property used to sell food, beverages, merchandise or services;

(g) "sheltered workshop" means a facility designed to provide an occupation for and to promote the adjustment and rehabilitation of persons who would otherwise have difficulty obtaining employment because of physical, mental or developmental disabilities;

(h) "thrift shop" means a retail outlet operated for a charitable or benevolent purpose that sells donated clothing, appliances, furniture, household items and other items of value at a nominal cost to people in need.

AR 281/98 s13;283/2003;204/2011

Exemption for other property

14 This Part describes property that is exempt from taxation under section 362(1)(n) of the Act that is not exempt under section 362(1)(n)(i) to (v) of the Act.

Property of residents association

14.1(1) Property that is owned and held by and used in connection with a residents association is exempt from taxation.

(2) Despite subsection (1), the following property owned and held by and used in connection with a residents association is not exempt from taxation under section 362(1)(n) of the Act:

(a) property to the extent that it is used in the operation of a professional sports franchise;

(b) property if, for more than 40% of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older;

(c) property if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7 as modified by subsection (3).

(3) For the purposes of subsection (2)(c), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.

AR 204/2011 s4

Day cares, museums and other facilities

15 A non-profit organization that holds property on which any of the following facilities are operated may apply to the municipality within whose area the property is located for an exemption from taxation:

(a) a facility used for sports or recreation to the extent that the facility is not used in the operation of a professional sports franchise;

(b) a facility used for fairs or exhibitions, including agricultural exhibitions;

(c) a facility used for the arts or a museum;

(d) a program premises as defined in the *Child Care Licensing Regulation* (AR 143/2008);

(e) a facility used by a linguistic organization if

(i) the use of the property by the general public is actively encouraged, and

(ii) a sign is prominently posted in the facility, or information is available online, indicating the hours that the whole or part of the facility is accessible to the public;

(f) a facility used by an ethno-cultural association for sports, recreation or education or for charitable or other benevolent purposes if

(i) the use of the property by the general public is actively encouraged, and

(ii) a sign is prominently posted in the facility, or information is available online, indicating the hours that the whole or part of the facility is accessible to the public;

(g) a facility in a municipality operated and used by an organization for a charitable or benevolent purpose where the majority of the organization's beneficiaries do not reside in the municipality;

(h) a facility used as a thrift shop;

(i) a facility used as a sheltered workshop;

(j) a facility operated and used by a chamber of commerce;

(k) a facility used for a charitable or benevolent purpose that is for the benefit of the general public if

(i) the charitable or benevolent purpose for which the facility is primarily used is a purpose that benefits the general public in the municipality in which the facility is located, and

(ii) the resources of the non-profit organization that holds the facility are devoted chiefly to the charitable or benevolent purpose for which the facility is used.

AR 281/98 s15;283/2003;182/2008;77/2010;152/2023

Conditions for exemption

16(1) A municipality must grant a non-profit organization an exemption from taxation in a taxation year in respect of a property referred to in section 15 that is held by the organization if

(a) the non-profit organization, subject to subsection (1.1),

(i) makes an application for an exemption to the municipality by September 30 of the year preceding the taxation year, and

(ii) supplies the municipality with the following by November 30 of the year preceding the taxation year:

(A) any information the municipality requires to determine if the organization meets the conditions for the exemption;

(B) a description of any retail commercial areas in the facility on the property,

(b) the facility on the property is one of the facilities described in section 15 and the non-profit organization operates the facility on a non-profit basis,

(c) the funds of the non-profit organization are chiefly used for the purposes of the organization and not for the benefit of the organization's directors and employees,

(d) the property is not disqualified by virtue of subsection (2) or (3), and

(e) the requirements of subsections (4) and (5), if applicable, are met.

(1.1) For the purpose of subsection (1)(a), the municipality

(a) may specify other dates for a non-profit organization to make an application and supply the information and description referred to in subsection (1)(a), and

(b) must advertise the dates referred to in clause (a) in accordance with section 606 of the Act.

(2) Property referred to in section 15(a), (b), (c), (e), (f), (j) or (k) is not exempt from taxation if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

(3) Property referred to in section 15(d) or (g) to (i) is not exempt from taxation if an individual is not permitted to use the property because of the individual's race, culture, ethnic origin or religious belief.

(4) Before granting an exemption under this section in respect of a property that is held by a non-profit organization, the municipality may require that an agreement between the organization and the municipality be in force that sets out that

(a) the organization will provide the municipality with a report by a time and in a manner specified in the agreement that sets out the information the municipality requires to determine if the organization met the conditions for the exemption during the taxation year, and

(b) if the organization does not comply with the provisions referred to in clause (a), the organization will pay the municipality an amount equivalent to the property taxes that would be payable in respect of the property for the taxation year if the property was not exempt.

(5) Before granting an exemption under this section in respect of a property that is owned by a non-profit organization, the municipality may require that an agreement between the organization and the municipality be in force that sets out that

(a) no disposition of the property may be made without the approval of the municipality, and

(b) if the organization is being wound-up and dissolved, the organization must, if required by the municipality, transfer the property to the municipality.

(6) If a municipality grants an exemption to a non-profit organization and later determines that the organization did not meet the conditions that applied to the organization for the exemption for

all or part of the taxation year, the municipality may in the taxation year cancel the exemption for all or part of the taxation year, as the case may be, and require the organization to pay property tax in respect of the property for the period that the exemption is cancelled.

AR 281/98 s16;4/2010;77/2010;152/2023

Waiver of application requirement

17(1) If a municipality has granted a non-profit organization an exemption from taxation under section 16 in respect of a property, the municipality may grant the non-profit organization an exemption from taxation in the following taxation year under section 16 in respect of the property without requiring the organization to apply for the exemption.

(2) A municipality that has waived an application requirement under subsection (1) in respect of a property for a taxation year may

(a) require the non-profit organization that holds the property to provide any information that the organization may be required to provide if it was applying for an exemption, and

(b) if the non-profit organization does not provide the information, cancel in that taxation year the exemption for all or part of that taxation year and require the organization to pay property tax in respect of the property for the period that the exemption is cancelled.

(3) A municipality may not waive the application requirement under subsection (1) in respect of a property for more than 3 consecutive taxation years.

Retail commercial areas

18(1) In this section, "exempt facility" means a facility or part of a facility

(a) that is held by a non-profit organization, a society as defined in the *Agricultural Societies Act* or a community association and that is exempt from taxation under section 362(1)(n)(i) to (v) of the Act or section 16 of this Regulation, or

(b) that is owned and held by a residents association and that is exempt from taxation under section 362(1)(n) of the Act.

(2) A retail commercial area that is located within an exempt facility is exempt from taxation if

(a) the non-profit organization, society as defined in the *Agricultural Societies Act,* community association or residents association that holds the exempt facility also holds and operates the retail commercial area, and

(b) the net income from the retail commercial area is used

(i) to pay all or part of the operational or capital costs of the exempt facility, or

(ii) to pay all or part of the operational or capital costs of any other facility that is held by the non-profit organization, society, community association or residents association and that is exempt from taxation under section 362(1)(n) of the Act or section 16 of this Regulation.

AR 281/98 s18;204/2011

Part 4 Repealed AR 283/2003 s5.

Part 5
Repeal and Review

Repeal

22(1) The *Community Organization 1998 Property Tax Exemption Regulation* (AR 289/97) is repealed.

(2) Repealed AR 182/2008 s6.

AR 281/98 s22;182/2008

Expiry

23 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on December 31, 2025.

AR 281/98 s23;283/2003;182/2008;4/2010;9/2015;257/2017;220/2018;152/2023

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TAB 3

Alberta Court of Queen's Bench
Ukrainian Youth Unity of General Roman Schuchewych-Chuprynka v. Edmonton (City)
Date: 1997-09-25

Ihor Broda, for the Applicant.

Marilyn McAvoy, for the Respondent.

(Edmonton 9703-08030)

September 25, 1997.

1997 CanLII 14853 (AB KB)

Decision

[1] BIELBY J.: — The right to an exemption from the payment of municipal property taxes under the *Municipal Government Act,* S.A. 1994, c. M-26.1 ("the Act") includes the right to a partial exemption where a property is used for exempt purposes part of the time. Also, the exemption is not lost because the activities for which the property is used primarily benefit persons of a certain ethnic heritage.

Facts

[2] This is an application for judicial review of a decision of the Municipal Government Board ("the Board") from a decision in which it refused to exempt the Applicant non-profit corporation from the payment of property tax to the Respondent, the City of Edmonton ("the City").

[3] There is little factual dispute between the parties; the issues arise over the proper legal interpretations to be based on property tax exemptions granted by the Act, a two-year old piece of legislation.

[4] The Applicant is registered under the *Societies Act,* is a non-profit organization and is a charity registered with Revenue Canada. It owns and operates a recreation and social centre in Edmonton. Most of the people using the Centre, with the exception of rentals, have some ethnic link to the Ukrainian community. Membership is open to all applicants subject to approval by the Board of Directors.

[5] The Assessment Appeal Board, established under the provisions of Part 11 of the Act, granted a 93% exemption from property tax on the Centre. A portion of the building is, from time to time, rented out for revenue-generation; the Applicant admitted that 7% of the building use is for catering and banquets, and that at best it is entitled to a 93% exemption from the payment of property tax. That was calculated by determining that

50% of the building was used for commercial purposes for one day a week, or 14% of each week. Multiplication of 14% by 50% yielded the 7% figure.

[6] The City successfully appealed the decision of the Assessment Appeal Board to this Board which denied the property tax exemption in its entirety. From that decision the Applicant has brought this application for judicial review.

Jurisdiction

[7] This is not an appeal. There is no appeal from any decision of the Board, see the Act, s. 506.

[8] It is not the Court's function on judicial review to substitute its opinion for the opinion of the Board. Any order the Court may issue is limited to correcting an excess of jurisdiction or an error of law apparent on the face of the record which has led to an unreasonable or patently unreasonable result. See *British Pacific Building Ltd. v. Alberta (Assessment Appeal Board),* [1973] 5 W.W.R. 344 (Alta. C.A.); *T. Eaton Co. v. Alberta (Assessment Appeal Board)* (1995), 33 Alta. L.R. (3d) 349 (Alta. C.A.).

[9] The Applicant urged me to conclude that the standard against which I am to assess the Board's decision is one of correctness. It submits that the errors made were errors of statutory interpretation. The Board has no particular expertise in the area of statutory interpretation such as to justify deference to its decisions; in fact, the Court has more expertise than the Board in that area.

[10] The City argued that the Board has to meet a lower standard of performance than that of being correct. It argued that even if the Board made an error of law, judicial review should not issue as the result was not unreasonable.

[11] At the end of the day it does not matter which standard is applied, as the errors of law I have found the Board to have made violate the lesser standard as well as the higher.

Issues

[12] Does the Act allow an exemption for a part of an assessment, where a property is partially used for a non-exempt purpose? Does this change where the partial exemption is based on temporal, rather than physical use, i.e. where all parts of the building may be used for non-exempt purposes, but for only part of the time?

1997 CanLII 14853 (AB KB)

[13] Is an exemption based on uses “for the benefit of the general public” not made out where the users are most likely to be members of an identifiable ethnic group?

Analysis

[14] The Applicant argues that the Board exceeded its jurisdiction or made an error of law in failing to uphold the 93% exemption originally allowed by the Assessment Appeal Board. It maintains that pursuant to s. 362(n)(ii), (iii) or s. 363(1)(c) of the Act it qualified for an exemption. Alternatively, it argues that the Board acted in a discriminatory manner, contrary to the *Charter of Rights and Freedoms* and thus lost jurisdiction to make this decision.

[15] The decision of the Board is in writing which is broken down into different headings. The portion under the heading “Reasons” is sparse indeed, giving little inkling into the conclusions which the Board must have made for the decision. However, I have examined the balance of the decision for assistance, as I did in *Alberta Special Waste Management System v. Improvement District No. 125* (February 11, 1997), Doc. Edmonton 9603-15898 (Alta. Q.B.); counsel conceded that this was the proper approach.

[16] In particular I turned to the “Summary of the Appellant’s Position” contained in its written decision. The Board, in the result, must have agreed with this position and I therefore treat it as comprising part of the Board’s reasons for its decision.

The Section 362(n)(ii) Exemption

[17] Section 362 of the Act reads:

> The following are exempt from taxation…
>
> (n) property that is…
>
> (ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,
>
> (iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned…
>
> (B) by a non-profit organization…
>
> and that meets the qualifications in the regulations and any other property that is described in the regulations.

[18] The Board gave two reasons for refusing to apply s. 362(n)(ii); first, that part of the property was periodically used for income-earning purposes and was thus not “solely” used for “community games, sports, athletics or recreation” and secondly, that it was

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primarily used by people who are ethnically linked to the Ukrainian community and thus it was not used "for the benefit of the general public".

[19] I find that the Board made an error of law in denying the entire exemption because some of the building was used for income-earning purposes some of the time. Both the Act and regulations contemplate apportionment.

[20] Section 367 of the Act states "a property may contain *one or more parts* that are exempt from taxation under this division". Section 368 refers to "an *exempt property or part of an exempt property*" and "a taxable property or *part of a taxable property*".

[21] Regulation 125/95 was promulgated under the Act; it pertains to nonprofit organization tax exemptions. Section 2 of this Regulation states that "an exemption … may apply to a) whole of a property or, b) *part of a property* that is chiefly used for the purposes that qualify for the exemption". Section 3 of the Regulation refers to "property or *part of a property".* Section 6(2) contains the same reference (emphasis added throughout).

[22] Counsel for the City urged the Court to interpret the phrase "part of a property" as meaning only a physical part. Therefore, an exemption for part of a property would apply only if that physical part was never used for nonexempt purposes, no matter how briefly.

[23] Nothing in the Act, Regulation or logic mandates a mere physical interpretation of the phrase "part of a property". Time of usage may also fall within the phrase, so that the exemption may apply to a property which is entirely used for non-exempt purposes part of the time; see *Royal Canadian Legion Norwood (Alberta) Branch 178 v. Edmonton (City),* [1992] 6 W.W.R. 265 (Alta. Q.B.). While Justice Gallant considered predecessor and therefore different legislation in that case than we do in this, his approach to the word "chiefly" is equally applicable to the current phrase "part of a property". He stated at 271:

> The word "chiefly" means "for the most part". It is slightly ambiguous because it could define the time element or the space element. In the end result, I do not think it matters which of the two elements it defines.

[24] The Applicant noted that the Board had allowed such an interpretation in at least one other case decided contemporaneously with this; see *The Victoria Soccer Club v. The City of Edmonton,* MGB 170/96, where the exemption was allowed although part of the soccer clubs premises were, at certain times, rented out to generate revenue. This inconsistent interpretation by the Board, while not strictly relevant to this decision, evidences the uncertainty which the Board itself had over its interpretation.

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[25] The use of the word “solely” in the subsection must be interpreted to mean that if part of the building, part of the time is solely used for community games, sports, athletics and recreation, the exemption is made out. There is no other interpretation which gives meaning to the above statutory exemptions of “part of a property”.

[26] However, this error of law by the Board does not yield an exemption if it was correct in the second part of its decision, to the effect that the property was not used for the benefit of the general public. Counsel conceded that the Board was correct in concluding that the Centre was used primarily by people who are ethnically linked to the Ukrainian community.

[27] Was the Board correct in its finding that the ethnic usage of the Centre meant it was not used for the benefit of the general public? Aside from the ethnicity issue, the uncontroverted evidence before the Board supports the conclusion that activities conducted in the Centre were charitable in nature (excluding the 7% commercial component).

[28] The City did not offer a definition of the phrase “for the benefit of the general public” other than urging that it did not include “for the benefit of groups primarily composed of persons of the same ethnic background”. It offered no authority for its definition other than to argue that the interpretation had to be accepted out of deference to the decision of an administrative tribunal.

[29] Is that interpretation unreasonable? The plain wording of the phrase does not compel an interpretation which means that every member of the public must be as likely to benefit as any other for the exemption to apply; indeed the City did not try to defend such a definition.

[30] Nor does the plain wording of the section exclude activities designed to benefit only one segment of the public. In fact, the City has extended the exemption to groups which, by definition or location, are designed and likely to benefit only certain segments of the public, i.e. the Youth Emergency Shelter, Girl Guides of Canada, Boyle-McCauley Health Centre, Kiwanis Club of Edmonton. Why then is it reasonable to separate out and deny the exemption because the portion of the public likely to be benefited shares a common ethnic heritage? No answer was offered to this question.

[31] Turning to other aids to interpretation, the Applicant argued that the entire community benefits when Canadians of Ukrainian descent have access to games, sports,

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athletics and recreation. It referred generally to governmental policies and legislation designed to enhance and preserve the multicultural heritage of Canadians. It referred to authority which equates charities with activities designed to benefit certain segments of the public only, and urged a similar interpretation of the phrase “for the benefit of the general public”.

[32] In particular, Revenue Canada grants charitable status to groups with an ethnic focus, see *Interpretation Bulletin* IT-496, as indeed it has to the Applicant. Activities focused at benefiting women medical students (*Towle Estate v. Minister of National Revenue* (1966), [1967] S.C.R. 133 (S.C.C.)), Anglican girls of low income (*St. Catherine’s House, Re* (1977), 2 A.R. 337 (Alta. C.A.)), charitable purposes in Israel (*Levy Estate, Re* (1989), 33 O.A.C. 99 (Ont. C.A.) Ont. C.A.), and native communications (*Native Communications Society of British Columbia v. Minister of National Revenue* (1986), 67 N.R. 146 (Fed. C.A.)) have all been found to be charitable notwithstanding their limited focus.

[33] On the other hand, not every activity which may benefit the public has been found to be charitable. Political objectives have been found to negate an organization’s claim to benefit the community in a way the law regards as charitable, see *Notre Dame de Grâce Neighbourhood Assn. v. Minister of National Revenue* (1988), 88 D.T.C. 6279 (Fed. C.A.). Where the essence or substance of the group’s work primarily benefited its subscribers, any incidental public benefit was insufficient to characterize it as a charity, see *Aerie Inc. v. Ontario Regional Assessment Commissioner, Region No. 3* (1988), 39 M.P.L.R. 135 (Ont. Div. Ct.).

[34] The facts must therefore be examined carefully in each case to determine whether the gist of the group’s activities operate for the public benefit. The Courts have not interpreted that to mean, however, that the general public does not benefit solely because a group’s activities are aimed primarily at a certain racial or ethnic component, see *Native Communications Society of British Columbia v. Minister of National Revenue, supra.*

[35] One can imagine scenarios where ethnic groups operate for purposes other than to benefit the public. Merely because a group is ethnically-based does not automatically create a right to a property tax exemption. Indeed, Regulation 125/95 appears to be designed to impose limitations which ensure that only true charities qualify.

[36] Absent authority to support the City’s interpretation, which is not supported by either the clear wording of the Act nor general authority on charities, and which would

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inconsistently grant some groups a property tax exemption while denying it to others equally worthy, I conclude that the Board, in accepting that interpretation, made an error of law on the face of the record which has lead to an unreasonable result.

[37] This error alone is not determinative of the issue because Regulation 125/95 imposes a third set of qualifications for entitlement to the exemption offered by s. 362(n)(ii). That regulation is incorporated by reference into s. 362(n).

[38] Section 5(1) of Regulation 125/95 provides:

> Property referred to in section 362(n)(ii) of the Act is exempt from taxation only if
>
> (a) the general public is evidently and actively encouraged by the non-profit organization that holds the property to use the property for the purposes set out in that section…

[39] The Board accepted that there was little evidence of the Society soliciting the general public patronage of the Centre. While counsel urged me to find that the informational signing placed on the building and some community newsletter advertising of unknown content amount to active solicitation of the general public, he was able to point to nothing which made it clear that the general public was welcome or encouraged to use the facility. I reject his suggestion that the absence of active prohibition amounts to active solicitation. The Board's findings of fact was supported by the evidence on this point.

[40] The Board therefore properly concluded that the public was not "evidently and actively encouraged" to use the property; the failure to meet this requirement of the Regulation therefore operates to defeat the Applicant's claim for exemption under s. 362(n)(ii).

[41] The City also attempted to rely on s. 5(2)(a) of the Regulation which denies the exemption if "the property is used to satisfy the interests of an individual or group of individuals that has a specific interest or objective". However, I find it does not apply because the interests of the Applicant are general and do not fall within the ambit of this qualification which appears to be aimed at ferreting out business-type activities, as indicated by s. 5(2)(b).

[42] Similarly, s. 3 of the Regulation denies the exemption for that part of the property that is used for business usages which compete with any business subject to taxation. The same analysis applies to this exclusion as to the above argument that the use of any portion of the building for non-exempt purposes defeats the entire claim; i.e. it fails here for the same reasons.

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The Section 362(n)(iii) Exemption

[43] Section 362(n)(iii) of the Act creates a separate right to an exemption for activities of a charitable or benevolent nature which are for the benefit of the general public. Section 5 of Regulation 125/95 does not apply to this exemption.

[44] The Board did give express reasons for its refusal to grant the exemption under this section, as follows:

> With regard to Section 362(n)(iii), the Board finds the property is not used for charitable or benevolent purposes. Evidence was that the property was used for activities for the Ukrainian community.
>
> In addition, the activities carried on the premises cannot be regarded for the general public as they relate to a specific cultural group.

[45] For the reasons stated above I have concluded that the Board made an error of law on the face of the record in concluding that activities carried on which relate to a specific cultural group cannot be regarded as being for the general benefit of the public. Further, based on the authorities cited above the definition of charity clearly includes groups which are aimed at benefiting certain groups, including those defined by common ethnic heritage.

[46] Nothing in Regulation 125/95 adds additional qualifications for this exemption which the Applicant has failed to meet.

[47] The City argued that this exemption must relate to different activities than those exempted by s. 362(n) (ii), for which the Applicant has failed to qualify. I agree. The activities therein defined, being community games, sports, athletics or recreation do not fall under the umbrella of the charitable or benevolent purpose exemption. The Legislature must be taken to have meant different things by creating each of the separate categories in s. 362(n).

[48] However, the evidence before the Board was that there were many charitable types of activities occurring at the Centre which were different than games, sports, athletics and recreation. Those other activities, and the space and time used by them, would be exempt from taxation.

[49] Therefore, the Board made an error of law on the face of the record, yielding an unreasonable result in denying the exemption from taxation for the entire facility, rather than exempting the 7% used for commercial purposes and exempting a further portion

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based on the time and space used for non-commercial activities that did not constitute games, sports, athletics or recreation.

[50] There is no evidence from which the Court could determine the amount of such further exemption that should have been granted and so the matter is remitted back to the Board for determination.

The Section 363 Exemption

[51] In its oral argument the Applicant abandoned its claim for a further exemption based on s. 363 of the Act which creates a tax exemption for property held by and used in connection with an organization of former members of any allied forces. The evidence was admittedly deficient to found such a claim.

The Constitutional Argument

[52] Finally, the Applicant urged me to "read-down" s. 362(n) of the Act to delete any limitations on exemptions based on ethnic heritage. It laid a poor foundation in fact and law for such an argument. However, I need not consider it at all because, in the end result, no such limitations exist. The problem arose from the Board's erroneous interpretation of the Act, rather than from the wording of the Act itself.

[53] The failure of the Applicant to satisfy the s. 362(n)(ii) exemption so that the full range of its non-commercial activities were exempt arises not from its ethnic focus but from its failure to engage in evident and active encouragement to the general public to use the facility. That failure has nothing to do with ethnicity and could be addressed by changes in the conduct of the Applicant in future years should it choose to do so.

Remedy

[54] The City's appeal from the decision of the Assessment Appeal Board is ordered to be reheard *de novo* by the Municipal Government Board which, in coming to its decision, shall apply the property tax exemptions created under the *Municipal Government Act* in accordance with the above directions. In particular, an exemption shall not be entirely denied simply because the property is used for a non-exempt purpose part of the time. Further, the exemption shall not be denied because the primary users of the property are persons of Ukrainian heritage.

Costs

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[55] The Applicant shall have its costs to be taxed, as it was primarily successful in this application.

Application granted.

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TAB 4

Alberta Court of Queen's Bench
Carmelite Nuns of Western Canada v. Alberta (Assessment Appeal Board)
Date: 1994–07–29

R.B. Bruyer, for applicant.

W.J. Nugent, for respondent.

S.C. McNaughtan, for intervenor.

(Doc. Edmonton 9403–03194)

July 29, 1994.

[1] BERGER J.:– The issue here is whether a monastery and a 13.05–acre parcel of land on which it sits in the County of Parkland are assessable or exempt from assessment under the terms of the *Municipal Taxation Act.*

[2] The relevant provisions of the *Municipal Taxation Act* are as follows:

> 24(1) The following property is exempt from assessment by a municipality:
>
> (*c*) one or more parcels of land to the extent in each case of
>
> (i) 1 acre in the aggregate when situated in a city, town, new town, village or summer village,
>
> (ii) 4 acres in the aggregate when situated in any other municipality, or
>
> (iii) any area greater than the area referred to in subclause (i) or (ii) that may be exempted by by–law
>
> if the parcels are held by or for the use of any religious body and are
>
> (iv) the site of a building chiefly used for divine service, public worship or religious education, or
>
> (v) used exclusively as a parking area and solely in connection with the specified uses of the building described in subclause (iv);
>
> (*c*. 1) a building or any part of it
>
> (i) situated on land held by or for the use of any religious body, and
>
> (ii) which is chiefly used for divine service, public worship or religious education, but exclusive of any part of the building which is chiefly used for other purposes.

[3] The Alberta Assessment Appeal Board on December 20, 1993, having heard an appeal from a decision of the Court of Revision of the County of Parkland No. 31, held that the monastery is partly used, but not chiefly used, for the purposes set out in the exempting provisions of the Act. The Board agreed with the Court of Revision that 14% of the monastery is exempt from assessment but varied the earlier disposition to "provide [an exemption] for common areas necessary for the support of the exempted areas". The Board also held that "for any portion of the land to be exempt it must contain a building which is chiefly used for divine service, public worship or religious education". The Board

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interpreted the term "chiefly" to mean at least 50%. Accordingly, the Board ruled that no portion of the land is exempt.

[4] The Applicant seeks an Order in the nature of certiorari and asks that the decision of the Alberta Assessment Appeal Board be set aside pursuant to R. 753.04 of the *Alberta Rules of Court.*

[5] The Applicant sets forth the following grounds:

1. The Respondent Board erred in law on the face of the record in holding that the land and improvements of the Applicant are not exempt from assessment pursuant to s. 24(1)(*c*) and (*c*.1) of the *Municipal Taxation Act*, R.S.A. 1980, c. M–31;

2. The Respondent Board erred in law or in jurisdiction or misdirected itself in failing to take into account the monastic lifestyle and use which the Applicant makes of the property;

3. The Respondent Board's decision is patently unreasonable in that the Board failed to look at the monastic lifestyle and use which the Applicant makes of the property in determining that the land and improvements of the Applicants were not exempt from assessment pursuant to s. 24(1)(*c*) and (*c*.1) of the *Municipal Taxation Act.*

[6] The facts are not in dispute. The property is a cloister or monastery for the Order of Carmelite Nuns. The development consists of two main buildings. The monastery is a two–storey structure totalling 22,112 square feet and the secondary building is a caretaker's residence of 1,300 square feet. The monastery was designed as a permanent home for nine to sixteen nuns and contains sleeping rooms (cells), kitchen and dining facilities, an "infirmary", a "recreation room", work space, a "crafts room", sacristy, chapel, library, offices, refectory, prayer rooms, choir and ante–choir areas and two 1 –bedroom self–contained suites.

[7] It is common ground that the Carmelite Nuns lead a monastic life of silence and prayer. This religious Order follows a continuous agenda of prayer and religious teaching as set out in the daily timetable which I have marked as Sched. "A" to this judgment [post, p. 387].

[8] The County of Parkland No. 31, while not disputing the foregoing, persuaded the Board that the areas designed and used for purposes such as eating and sleeping or to accommodate visitors to the monastery are assessable. The Board held that the caretaker's residence "would seem to be clearly outside the requirements [of the statute], as would the guest suites in the monastery. As well, the kitchen, dining and sleeping accommodation for the resident nuns do not fit within the exempting provisions of the Act".

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The Board held that only the chapel, sacristy area, choir area, ante–choir area, and choir balcony qualified for exemption. With the exception of common areas necessary for the support of the exempted areas, the Board held that the evidence was not sufficient to persuade the Board that the remaining areas of the building qualify for exemption.

[9] In the result, the Board declined to grant an exemption in respect of the remaining areas of the monastery.

[10] An application for judicial review is not an appeal. This Court is limited to reviewing errors of law or jurisdiction. It is not my function to substitute my opinion for that of the Board. Even an erroneous appraisal of the evidence by the Board cannot ground a successful challenge in certiorari.

[11] In my opinion, however, the decision of the Board is patently unreasonable and reveals palpable misapprehension and misdirection amounting to error in law and jurisdiction on the face of the record.

[12] Exemptions are not lost simply because part of a building that would otherwise be exempt has an ancillary or incidental purpose in addition to the chief purpose of divine service, public worship or religious education.

[13] In its reasons, the Board considered, inter alia, *The Shorter Oxford English Dictionary*, 3rd ed., definition of "education". "Education" contemplates "systematic instruction, schooling or training … in preparation for the work of life". The evidence before the Board was clear and unequivocal. It showed that the Carmelite Nuns have adopted a life of silence and prayer marked by immersion in religious pursuit, including divine service and religious instruction, schooling and training, in preparation for that which they see as their life work. The lifestyle adopted to achieve those goals is that of a cloistered existence in a monastery.

[14] The cells, which the Board held were not exempt, serve as "private chapels" or places of prayer and spiritual reading as laid down by the Carmelite Rule. Four of the cells belong to the novitiate Sisters who are in formation for the religious life. Two are prayer rooms and lecture rooms for the religious formation of new applicants.

[15] The fact that these cells also serve as places of respite does not, in my judgment, operate so as to deprive the cells of the exempt status that the statute would confer upon them. The cells exist only to permit the Nuns to pursue religious objectives in a cloistered context. The same may be said of the kitchen and dining facilities. To hold otherwise, in my respectful opinion, is patently unreasonable.

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[16] The same holds true for that part of the monastery set aside for the older Sisters of the Order. The "infirmary" allows those in greater need of care and comfort to continue their religious pursuits and observances without abandoning the monastery. The chapel and choir area are connected by microphone to the "infirmary" so as to enable the older Sisters to join in the religious services. It is, in my view, patently unreasonable to conclude that the infirmary area is chiefly used for a non–religious purpose.

[17] One of the suites is available for the periodic use of a priest who gives spiritual direction and conducts conferences as part of the religious education of the nuns. The other suite is used by the Sisters to meet visitors who come for spiritual help and direction. The work rooms are for Sisters who make text cards and other religious items as part of the spiritual apostolate of the community. The "crafts room" is, in fact, the Novitiate Room used by those beginning their studies and religious formation. The "recreation room" is a meeting place for informal daily meetings of the nuns to discuss practical points of daily religious life. It is not used in a recreational sense. The Sister who receives visitors to the convent uses the external Sister's room (workroom) to receive them. The big and small parlours are for spiritual direction for those who come for this purpose to learn about the life of prayer. The library holds the books for religious education of the Sisters and those who come to the monastery for religious instruction. The two rooms labelled "offices" are for the Religious Superior who has to organize the daily religious activities of the Sisters, and who are there received for individual spiritual direction. The basement rooms are places where religious objects are made. These are provided as a form of spiritual help for those coming to share the life of the Order. It is, in my view, patently unreasonable to conclude, as the Board did, that any of these areas is chiefly used for a non–religious purpose.

[18] No one suggests that any part of the daily activities of the members of the Order is occupied with commercial or secular enterprise. The lives of the Carmelite Nuns, the record shows, are devoted exclusively to religious pursuits. They have no life outside the walls of the monastery. Within the monastery, every waking hour is devoted to religious endeavour including divine service and religious education. No part of the main two–storey structure is used chiefly for any other purpose whatsoever.

[19] For these reasons, and in order to avoid having the matter referred back to the Alberta Assessment Appeal Board, I conclude that the Applicant is entitled to a declaration that the monastery totalling 22,112 square feet is exempt from taxation. I find, however, that no reviewable error was made by the Board in respect of the caretaker's residence of

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1,300 square feet. It is not exempt. Mindful of the provisions of the statute, I declare the land consisting of 13.05 acres to be exempt from taxation.

[20] Counsel may speak to costs.

Application allowed in part.

SCHEDULE"A"

CARMELITE NUNS OF WESTERN CANADA

DAILY TIME–TABLE

HORARIUM (Latin = hour)

Time–table

5:20 a.m.	Rise –	breakfast
5:50 a.m.	Go to Choir	(i.e. our part of the Church)
6:00 a.m.	Angelus	(ancient prayer of the Church for the beginning, middle and end of the day –said at 6:00 a.m., midday and 6:00 p.m.).
		This is followed by what is called the Prayer of the Church or the Divine Office which is said by all priests, monks and nuns at 7 different times of the day. It is said aloud, together and consists of hymns, prayers and readings from Scripture with the intention of offering the whole day to God for all the needs of the whole world.
6:05 a.m.	MORNING PRAYER	of the Prayer of the Church
6:40 a.m.	Mental Prayer	one hour of private prayer together
8:00 a.m.	Mass followed by TERCE –	1/4 hour of prayer in thanksgiving
		Second part of the Prayer of the Church. The name comes from it being said formerly at the third hour of the day (terce = third)
9:00 a.m.	WORK –	This includes all the domestic chores as we do not have outside help; cleaning, sweeping, washing, cooking, making clothes, mending, household needs, gardening, correspondence, care of the Church, care of the sick, etc. Each Sister will also have personal work which she can do according to the time available for her. Some have more household work than others.
11:30 a.m.	SEXT–	the third part of the Prayer of the Church (Latin sext = six, i.e. sixth hour of daylight)
12:00 a.m.	ANGELUS–	midday prayer Dinner
		Washing the dishes, preparing the vegetables for the next meal, etc.
1:00 p.m.		Short meeting together to discuss relevant aspects of our religious life.

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1:30 p.m.	NONE –	the fourth part of the Prayer to the Church (Latin nonum = nine, i.e. the ninth hour of daylight)
		Prayers for special needs
2:00 p.m.	Spiritual Reading –	the writings of the saints of our Carmelite Order
3:00 p.m.	WORK –	as in the morning. Sometimes the whole community will work together on some community job, or some service we are doing for others, those in needs, some charity, poor families, etc.
4:30 p.m.	EVENING PRAYER –	the fifth part of the Prayer of the Church (this used to be called Vespers from the Latin word vespera = evening) followed by
5:00 p.m.	Mental Prayer for one hour	
6:00 p.m.	ANGELUS	Supper
		Washing the dishes, preparing vegetables for next day, etc.
7:00 p.m.	Recreation together.	Discussions on our Carmelite life.
7:45 p.m.	Rosary –	traditional prayer of the Church
8:00 p.m.	NIGHT PRAYER –	the sixth part of the Prayer of the Church (this used to be called compline from the Latin word Completum = the end, because it is the end of the day)
8:30 p.m.	Free Time –	the Sisters usually take this time for personal letters or reading, prayer, etc.
9:30 p.m.	READINGS –	the seventh part of the Prayer of the Church
		It has this name because it consists of 2 long readings from Scripture and several Psalms and a Prayer. This is equivalent to a night Office or prayer, instead of getting up at night.
	Short Prayers	
10:30 p.m.	Retire	

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TAB 5

In the Court of Appeal of Alberta

Citation: T. Eaton Company Ltd. v. Alberta (Assessment Appeal Board), 1995 ABCA 361

Date: 19950925
Docket: CA-14648
Registry: Calgary

1995 ABCA 361 (CanLII)

Between:

T. Eaton Company Ltd.

(Applicant)
Appellant

- and -

The Alberta Assessment Appeal Board
and The City of Calgary

Respondents
(Respondents)

The Court:

The Honourable Madam Justice Hetherington
The Honourable Mr. Justice O'Leary
The Honourable Madam Justice Picard

Reasons for Judgment The Honourable Mr. Justice O'Leary
Concurred in by The Honourable Madam Justice Hetherington
Concurred in by The Honourable Madam Justice Picard

APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE VIRTUE OF THE COURT OF QUEEN'S OF ALBERTA DATED SEPTEMBER 8, 1993

COUNSEL:

P.A. Smith, Q.C. for the Appellant

W.J. Nugent for the Respondent, The Alberta Assessment Appeal Board

P. Tolley for the Respondent, The City of Calgary

REASONS FOR JUDGMENT
OF THE HONOURABLE MR. JUSTICE O'LEARY

INTRODUCTION

[1] This is an appeal by The T. Eaton Company Limited ("Eatons") from the dismissal in Queen's Bench of an application for judicial review of a decision of the Alberta Assessment Appeal Board ("the Board"). The Board confirmed the City of Calgary's 1988 municipal tax assessment of the land occupied by Eatons downtown department store.

[2] The City Assessor based his assessment on the price paid for the land in 1985 when it was acquired in contemplation of the development of a large retail shopping project which included the store. As part of the development, Eatons accepted the imposition of height and density restrictions not present when the land was bought. The Assessor and the Board found that the development restrictions did not lower the value of the land for assessment purposes.

[3] The reviewing Judge held that there was "no error of law on the face of the record which significantly affects the Board's decision or renders it unreasonable". He noted that the issues involved were complex and within the Board's area of expertise and therefore the decision "should not lightly be interfered with by a Court".

[4] I have concluded that the appeal must be allowed. The question before the Board was whether the market value of the land was adversely affected by the development limitations attached following its acquisition. Although the Board professed to answer that question, it in fact looked only at the impact of the restrictions on the special value of the property to Eatons. That was an error of law which is, in my view, sufficient to justify interfering with the decision.

LEGISLATION

[5] Section 9 of the ***Municipal Taxation Act,*** R.S.A. 1980, c. M-31 (repealed and superseded by the ***Municipal Government Act,*** S.A. 1994, c. M- 26.1, eff. Jan. 1/95) ("the Act") requires land to be assessed on the basis of its "fair actual value exclusive of any improvements on it". Section 3(1) of ***Alberta Regulation 397/85*** defines "fair actual value" as a percentage of market value:

> …. the fair actual value of land, other than farm land, in an urban municipality is an amount equal to 65% of the market value of the land in the base year of the general assessment.

[6] The relevant "base year" of the Calgary general assessment was 1985. The City Assessor was therefore required to commence his assessment by determining the market value of the land in the base year of 1985, which was, coincidentally, the year in which it was acquired and prior to the imposition of the development restrictions.

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[7] Section 9(3) of the Act lists criteria which the assessor must consider in arriving at market value. Those relevant here are as follows:

> (3) In determining the value of land an assessor shall have regard to
>
> (a) any advantages or disadvantages of location,
>
> …
>
> (c) any profitable use that may reasonably be made of the land,
>
> …
>
> (e) any other considerations that the Assessment Commissioner from time to time specifies.

[8] Section 34(1) of the Act compels the assessor to reassess property where its market value has been decreased subsequent to the base year by a cause other than fair wear and tear:

> 34(1) …. the assessor shall reassess not later than December 31 in each year,
>
> …
>
> (b) all other assessable property the value of which is decreased by the destruction of some improvement on it or by some cause other than fair wear and tear.

[9] The second step in making the assessment was therefore to establish the decrease in market value, if any, between the base year of 1985 and December 31, 1987, the date for fixing the value for the 1988 assessment.

[10] Eatons does not question the conclusions of the Assessor and the Board that the acquisition price reflected market value in 1985. Its position is that both erred in their approach to the determination of the effect of the development limitations on market value.

STANDARD OF REVIEW

[11] In ***Pezim v. British Columbia (Sup't of Brokers),*** [1994] 7 W.W.R. 1, 114 D.L.R. (4th) 385 (S.C.C.), the Supreme Court of Canada reviewed the principles governing judicial review of the decisions of administrative agencies and tribunals. Iacobucci, J., speaking for a unanimous seven-member Court, gave the following outline commencing at p. (WWR) 22:

> There exist various standards of review with respect to the myriad of administrative agencies that exist in our country. The central question in ascertaining the standard of review is to determine the legislative intent in conferring jurisdiction on the administrative tribunal. In answering this question, the courts have looked at various factors. Included in the analysis is an examination of the tribunal's role or function. Also crucial is whether or not the agency's decisions are protected by a privative

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clause. Finally, of fundamental importance, is whether or not the question goes to the jurisdiction of the tribunal involved.

Having regard to the large number of factors relevant in determining the applicable standard of review, the courts have developed a spectrum that ranges from the standard of reasonableness to that of correctness. Courts have also enunciated a principle of deference that applies not just to the facts as found by the tribunal, but also to the legal questions before the tribunal in the light of its role and expertise. At the reasonableness end of the spectrum, where deference is at its highest, are those cases where a tribunal protected by a true privative clause, is deciding a matter within its jurisdiction and where there is no statutory right of appeal … .

At the correctness end of the spectrum, where deference in terms of legal questions is at its lowest, are those cases where the issues concern the interpretation of a provision limiting the tribunal's jurisdiction (jurisdictional error) or where there is a statutory right of appeal which allows the reviewing court to substitute its opinion for that of the tribunal and where the tribunal has no greater expertise than the court on the issue in question … .

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[12] The ***Municipal Taxation Act*** and the ***Assessment Appeal Board Act,*** R.S.A. 1980, c. A-46 (repealed and superseded by the ***Municipal Government Act,*** S.A. 1994, c. M-26.1, eff. Jan. 1/95), give the Board wide powers to supervise the assessment of real property for municipal taxation purposes with the objective of ensuring that all property in the Province subject to municipal taxation is fairly and equitably assessed. It is a specialized tribunal by any definition. Its members are appointed because they have expertise in land valuation acquired through training and experience. Neither statute confers a right of appeal or contains a privative clause limiting the scope of review.

[13] Here, the Board decided an issue within its jurisdiction. Its decision may be set aside only if there is error of law apparent on the face of the record. Even in the presence of such error the ruling is entitled to deference. The level of deference is, in my view, closer to the "reasonableness" end of the spectrum than it is to the "correctness" end. It will be set aside only if an unreasonable result flows from the error of law.

[14] This is an appeal from a refusal to quash the decision. The task of this Court is to determine if the reviewing Judge properly applied the appropriate standard of review. If we conclude that he erred, we may grant the remedy which he should have given.

FACTS

[15] The store is located on two adjacent parcels legally described as Lot 38, Block 49, Plan 8410964, and Portions of Lot 19 and Lots 20-26, Block 49, Plan A-1, respectively. The land was purchased in 1985 by a developer on behalf of Eatons for $32,000,000.00 in contemplation of a major retail-commercial development which included the new Eatons store. The land was subsequently transferred to Eatons and the new store was built as

part of a comprehensive re-development project negotiated between Eatons, the City of Calgary and the developer. In addition to the new store, the development involved the construction of a high-rise office tower and a shopping mall complex on separately-owned properties immediately to the east ("Parcel B") connected to the store by a multi-level pedestrian bridge over a City street. The development is the western end of the retail-commercial centre of downtown Calgary, with the Hudson's Bay store three blocks away forming the eastern terminus.

[16] When the land was purchased in 1985 it was not subject to any unusual height, density or other development restrictions. Lot 38 was under Direct Control subject to a By-law which permitted high density office tower development. Lot 19 and Lots 20-26 were zoned for high-density commercial development. As part of the negotiated re-development scheme the land became subject to certain height, density and use restrictions which were incorporated in a development agreement between Eatons, the City and the developer and in a Direct Control By-law. The use of the land is now limited to a department store not exceeding six stories in height, and the permitted density has been substantially reduced. To accommodate the project, the City agreed to the transfer of a portion of the density allowance to Parcel B. Eatons was aware when the land was acquired that it would be subjected to these restrictions.

[17] The Assessor determined the base year market value by referring to three sales in 1985. These comprised the two parcels making up the land and a third parcel also located in downtown Calgary. None was subject in 1985 to development restrictions similar to those now attached to the land as a result of the redevelopment. The Assessor made no reduction in the 1988 market value for the use and density restrictions applied to the land subsequent to its purchase.

[18] Eatons appealed and in a decision made in December, 1990 the Board confirmed the assessment. An application to Queen's Bench for judicial review was successful. Prowse, J. quashed the decision, saying:

> The Board erred in law on the face of the record in refusing to take into account in determining the value of the subject lands development restrictions imposed by the City of Calgary upon the subject lands.

[19] After a re-hearing the Board again declined to make an adjustment to the 1988 market value because of the use and density restrictions. This appeal follows an unsuccessful application to Queen's Bench for judicial review of that decision.

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[20] An expert in property appraisal called by Eatons testified that the 1985 market value was substantially reduced by the presence of the use and density restrictions attached later.

[21] The City argued that the price paid for the land was a reflection of market value in 1985 and the use and density restrictions had not had a negative effect. When Eatons acquired the land it intended to transfer a portion of the permitted density to Parcel B and to have the other restrictions attached. The land was notionally subject to the restrictions when Eatons acquired it through the developer. The price it paid was presumably calculated on that basis and therefore continued to be a fair measure of market value after the restrictions were placed.

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SUMMARY OF BOARD'S DECISION

[22] The Board agreed with the City's position. It found that the price paid represented the market value of the land at the time of acquisition in 1985. That price contemplated the development restrictions and controls later attached. In the result, the Board considered the impact of the restrictions on market value but concluded that their presence did not decrease the market value measured by the acquisition cost. The price paid for the land was held to be a true reflection of market value in both 1985 and 1988. Subject to a small reduction to recognize the fact that the land is situated at the extreme western end of the retail-commercial core of downtown Calgary, the assessment was upheld.

ANALYSIS

[23] The presence of development and use limitations contained in a By-law or in an agreement with the municipal authority may affect the market value of land relative to comparable land not so restricted. In ***Canadian National Railway Co. et al. v. Vancouver (City),*** [1950] 2 W.W.R. 337 (B.C.C.A.), land held by Canadian National was, by agreement with the City, restricted to use as a railway terminal. Canadian National led evidence before the Vancouver Board of Assessment Appeals that the restrictions had the effect of decreasing the value of the land in relation to comparably situated property. The Board rejected this evidence and valued the land on the same basis as comparable property in the district the use of which was not restricted. The British Columbia Court of Appeal allowed an appeal. O'Halloran, J.A. (Bird, J.A. concurring) said at p. 343:

> Economically speaking, land solely as land has little value; it derives its value from its attributes. For example, farming land, speaking generally, derives its value from fertility, suitability for certain crops and proximity to marketing facilities; urban land, speaking generally, derives its value from its location in a city (varying of course with

> the commercial importance of the city), its suitability and size for varying commercial uses, and if not vacant, the type of building upon it. But the lands here, compulsorily restricted to railway terminal purposes, cannot owe their value to competitive exchange or sale conditions. Their restrictive opportunities for use deny it. The evidence later examined establishes that, because of their restricted opportunity for use, their assessment value is necessarily less than that of adjacent industrial sites.

And later, at p. 344:

> If land by statute, agreement with the city (as here), or otherwise, is restricted to the special use to which it is put, then the assessment rationally must be related to its value in that use, even though the land would be properly assessable at a much higher figure if it could be put to some other use. Hence it is reasoned that the lands here must be regarded as assessable in the light of their use for railway terminal purposes, and are not assessable as industrial sites, a use that is prohibited to them.

[24] The same principle was accepted by the Saskatchewan Court of Appeal in ***Managerial Services Ltd. v. Regina,*** [1981] 2 W.W.R. 501 where Bayda, J.A. (as he then was) said at p. 510:

> The key words in this respect are “fair value”. Among the many factors that ought to be considered in determining the value of bare land is the use to which the land is *capable* of being put, capable not only from the physical standpoint (location, size, topographical features and the like) but from the legal standpoint as well (zoning, building restrictions and the like). Plain sense and ordinary experience tell us that zoning controls are a factor in determining fair value. For example, land which by reason of municipal zoning provisions is capable of commercial development is likely to be worth more than would be the case if the zoning provisions restricted the land to residential development.

[25] An apparent exception to this principle was recognized by the Manitoba Court of Appeal in ***Consolidated Shelter Corp. Ltd. v. Rural Municipality of Fort Garry*** (1965), 49 D.L.R. (2d) 565. There, the owner had entered into an agreement with the Province to construct “low-income” housing on the subject land. The agreement prohibited resale of the land, restricted the amount of rent that could be charged for the housing units, and restricted the dividends payable to the shareholders of the owner-corporation. The Court conceded that the agreement had the effect of lowering the market value of the lands, but held that the ***Canadian National Railway*** principle did not apply since the municipality was not a party to the agreement imposing the restrictions. The Court held that it would be unfair to allow a landowner to unilaterally devalue his property and thereby shift his share of the tax burden to other properties.

[26] A review of the Board’s decision shows that it was aware of the possible negative effect on value of development and use limitations. It is evident from the Board’s reasons that it did consider the impact of the specific restrictions in place here on the market value of the land.

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[27] Nevertheless, I find that the Board made a fundamental and significant error of law in its approach to the determination of value. It purported to apply a market value standard, as required by the Act, however it directed its inquiry to the question of whether the restrictions affected the subjective or special value of the land to Eatons, rather than to their effect on market value.

[28] Generally, the special value of land to a particular person is irrelevant in the determination of market value. In ***Great Central Ry. v. Banbury Union,*** [1909] A.C. 78 (H.L.), Lord Dunedin considered the assessment of a short strip of railway that connected two major railway systems. He said at p. 94-5:

> The assessing authority cannot, I think, be heard to say, "All your Great Western through traffic is dependant on this piece of line; therefore it has an enhanced value because you could not do without it." The same might be said as regards each and every isolated mile of line over which through traffic goes. It is really what Lord Halsbury in one of these cases calls the blackmailing argument. You may spoil the ship for want of a penny-worth of tar. A prudent ship owner would pay a great deal not to spoil a ship. Yet to the hypothetical buyer the price of tar still remains a penny.

[29] Subjective elements of value associated with the concept of special value to a particular person and speculative factors such as possible changes in permitted use are to be excluded in arriving at the value of land for assessment purposes: ***Re Bramalea Ltd. and Assessor for Area 9 (Vancouver); T. Eaton Co., Intervenor*** (1990), 76 D.L.R. (4th) 53 (B.C.C.A.).

[30] The special value to the owner is not always irrelevant. In ***Montreal v. Sun Life Assur. Co. of Canada,*** [1952] 2 D.L.R. 81, the Privy Council held that in determining the market value of a building for municipal tax purposes the assessor may take into account the present owner as a possible purchaser of the property and consider what it would be willing to pay for the property if it were entering the market for property to meet its specific requirements, or the amount it would be willing to spend to replace the subject land. In his judgment, Lord Porter made it clear that this did not entitle the assessor to equate market value to the subjective value of the property to the present owner. He said at p. 90:

> But the owner must be regarded like any other purchaser and the price he would give calculated not upon any subjective value to him but upon ordinary principles, i.e., what he would be prepared to pay, if he was entering the market, for a building to meet his requirements, or would be willing to expend in erecting a building in place of that which is being assessed.

In that case there was no market for the building being assessed. In order to find a "market value" it was necessary to consider factors which have little or no significance where, as here, a market does exist.

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[31] The erroneous approach of the Board is manifest in its reasons. For example, it observed that no owner in Eatons' position would voluntarily have assumed restrictions on development and use if to do so would decrease the value of the property. It said (A.B. p. 644):

> The Board cannot think of any circumstance where a property owner would intentionally devalue his property or deliberately attempt to limit its potential unless by so doing he could add to his overall value.
>
> …
>
> It seems very unreasonable that Eaton's would pay what they did pay and then intentionally ask the City to downzone the land to create a less intensive development and a corresponding decreased value.

[32] This passage illustrates the Board's preoccupation with the value of the property to Eatons rather than its value in the market. The land may have had the same market value and special value to Eatons when it was acquired, both properly measured by the purchase price. The subsequent development agreement and confirming By-law attaching restrictions to the use of the land may not have had an adverse effect on the subjective special value to Eatons. They may, indeed, have enhanced that special value. It is irrelevant whether Eatons or any other owner would deliberately seek restrictions on development and a possible decrease in value. The question facing the Board was whether the restrictions reduced the market value, not whether a prudent owner would voluntarily accept limitations which may have that effect.

[33] The Board demonstrated the same error by emphasizing Eatons' motivation for acquiring the land and assuming the development restrictions. It said (A.B. p. 645):

> Value is not directly proportional to density. … Many other factors contribute to value. The owners' entire motivation for acquisition of the subject lands was to construct a new retail department store to expand the western anchor of the downtown retail-commercial spine, and also to free up the adjacent parcel to the east to allow office tower development together with a retail mall. The motivation for the acquisition no doubt included the prospects of transferring density so as to preclude the possibility of any requirements by the City of additional bonusing.

[34] At the same time the Board appears to confuse actual or possible development of the land within the limits permitted by development controls with legal restrictions on use (A.B. p. 645):

> Even though some of the $32,000,000.00 purchase can be shown to represent some other things other than land, the Board is not persuaded that for any proposed use that the value would be different. If a purchaser wishes to construct an office tower on the site or a department store or even a livery stable, the market value would be the same. Value in land is inherent. If there is a loss in value due to Eatons request

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> and permission to construct a department store and not an office tower, the loss would be attributable to the building and not the land.

[35] The statement that the "Value of land is inherent" is clearly wrong: ***Canadian National Railway Co. et al. v. Vancouver (City),*** supra. The Board was quite correct, however, in saying that the election of an owner to under-use his land does not detract from its market value as land. Had the development restrictions not been attached, Eatons' election to under-develop the site would not be a basis for finding a decrease in market value: ***Grampian Realties Co. v. Montreal East,*** [1932] 1 D.L.R. 705 (S.C.C.). This is consistent with s. 9 (1) of the Act which requires that land be valued "exclusive of any improvements on it".

[36] The following passage is a further illustration of the Board's mistaken emphasis on the value of the land to Eatons rather than its value in the market. The Board said (A.B. p. 644):

> The City holds that to do what Eaton's did enhanced their presence downtown by expanding the mall one block further west, which allowed for plus 15, 30 and 45 connections which would likely not be possible at another location as well as allowing the old store to operate until the new store was completed thereby preventing any business interruption.
>
> … The subject lots were perhaps most ideally suited to Eatons as opposed to anyone else in the market place. This of course is the nature of real estate as no other land had this location.

[37] The foregoing extracts from the Board's reasons demonstrate clearly that the Board, while purporting to assess the market value of the land, in fact based its assessment on its special and subjective value to Eatons. This was, in my view, a significant error of law. The Board considered the effect of the restrictions on the value of the land to Eatons; it did not assess their impact on market value as it was required to do. This error is sufficient to justify allowing the appeal and quashing the Board's decision.

[38] The Board made a further error when it assumed that the restrictions were not an important factor in determining market value since they could be removed or varied without difficulty. It said (A.B. p. 645) :

> It was not difficult for Eatons to get zoning through decreased F.A.R. [density allowance] for a department store it would also be possible to get 20 or more F.A.R. if that is what the developer wanted.

[39] Counsel for the City referred us to ***T. Eaton Co. v. British Columbia (Assessor of Area No. 09 - Vancouver)*** [1991] B.C.J. #2593 (B.C.S.C.), as authority for the proposition that because the land could always be re-zoned, the restrictions are not

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"permanent" and hence do not affect the amount that a prudent purchaser would pay for the land. In dismissing the appeal (at (1993) 83 B.C.L.R. (2d) 236), Taylor, J.A., for the Court, recognized that where restrictions are made by way of agreement and that agreement may be altered in the future by further agreement, the restrictions are not "permanent" and do not affect the value of land for assessment purposes under the British Columbia legislation. However, he was careful to distinguish between restrictions which are contained in a By-law and those which are not. In the former case, because a change in a By-law requires a formal resolution, the restrictions are regarded as permanent. In the latter situation, since the restrictions can be changed by negotiation, they are not. This case is, therefore, of no assistance to the City. If it is relevant at all, it is only to the extent that it affirms the principle set out in the ***Canadian National*** and ***Managerial Services*** cases that development limitations are a factor to be taken into account in determining the market value of land. Speculation that such restrictions may be relaxed in the future is irrelevant: ***Re Intervenor,*** *supra,* unless there is evidence of a reasonable expectation amounting to a probability, that is, something higher than a 50% possibility that a change in the development status of the land will take place: ***Farlinger Developments Ltd. v. Borough of East York*** (1915), 8 L.C.R. 112 (Ont. C.A.), ***T. Eaton Co. v. British Columbia (Assessor of Area No. 09 - Vancouver),*** [1991] B.C.J. No. 2593 (B.C.S.C.).

CONCLUSION

[40] In my view, the error of the Board led to an unreasonable result. The Board did not direct its mind to the effect of the development and use restrictions on market value. It considered only their effect on the value of the land to Eatons. It is impossible to know what decision the Board would have reached had it not erred in its approach to the valuation of the land. It cannot be concluded that the decision under review was reasonable despite the error: ***Von Meer et al. v. Assessment Appeal Board (Alta.) and Edmonton (City)*** (1991), 117 A.R. 186 (C.A.).

[41] The appeal is allowed, the decision of the Board is quashed and the matter is remitted to the Board.

JUDGMENT DATED at Calgary,
Alberta, this 25th day of
September, 1995.

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TAB 6

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Pacific Newspaper Group Inc. v. Assessor of Area #14 - Surrey/White Rock,*** 2008 BCCA 284

Date: 20080627
Docket: CA034277

Between:

Pacific Newspaper Group Inc.

Respondent
(Appellant)

And

Assessor of Area #14 – Surrey/White Rock

Appellant
(Respondent)

Before: The Honourable Mr. Justice Smith
The Honourable Mr. Justice Chiasson
The Honourable Mr. Justice Frankel

J.H. Shevchuk	Counsel for the Appellant
B.T. Gibson, Q.C.	Counsel for the Respondent
Place and Date of Hearing:	Vancouver, British Columbia 11 September 2007
Place and Date of Judgment:	Vancouver, British Columbia 27 June 2008

Written Reasons by:
The Honourable Mr. Justice Chiasson

Concurred in by:
The Honourable Mr. Justice Frankel

Dissenting Reasons by:
The Honourable Mr. Justice Smith (p. 23, para. 59)

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Reasons for Judgment of the Honourable Mr. Justice Chiasson:

Background

[1] The respondent, Pacific Newspaper, owns the Vancouver Sun and Province newspapers. They are printed in a facility in Surrey, British Columbia. The appellant Assessor's valuation of the facility for municipal taxation for the years 2000 and 2001 caused litigation: Pacific Newspaper and its predecessor, Southam Inc., appealed the decision of the Property Assessment Appeal Board of British Columbia by way of stated case pursuant to s. 65 of the ***Assessment Act***, R.S.B.C. 1996, c. 20; on the stated case, Madam Justice Gray held the Property Assessment Appeal Board erred in law by assessing the property by reference to the value to its owner rather than by reference to its fair market value; the effect of Madam Justice Gray's decision was to reduce the respondent's assessments for 2000 and 2001; this Court affirmed her decision. (***Southam Inc. (Pacific Newspaper Group Inc.) v. British Columbia (Assessor of Area No. 14 – Surrey/White Rock)***, 2004 BCCA 245, 28 B.C.L.R. (4th) 317, 238 D.L.R. (4th) 640 aff'g 2003 BCSC 676, 39 M.P.L.R. (3d) 85, leave to appeal to S.C.C. refused, [2004] 3 S.C.R. v).

[2] In ***Southam***, Levine J.A. had this to say:

> [12] The Board's analysis proceeded from a finding that the highest and best use of the building was its current use as a printing plant for the respondent's two newspapers. The chambers judge rejected that finding on the ground that there is no market for the current use.
>
> […]
>
> [15] The Board's finding that the highest and best use was the current use where there was no evidence of a market for that use is

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> contradictory and wrong in law. Highest and best use is the use that produces the highest estimate of market value and cannot be determined without reference to a competitive market.
>
> [...]
>
> [22] It seems to me that if the owner is to be considered a potential purchaser, there must be at least one other potential purchaser for the current use. Otherwise, there can be no competitive bidding and no market. That is this case: there is no market, other than the current owner, for the current use. Therefore, determining the market value of the property based on its current use inevitably leads to determining the value of the current use to the owner, and not market value.

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[3] In assessing the property for the years 2002, 2003, 2004 and 2005, the Assessor did not follow this Court's decision in ***Southam***. Pacific Newspaper appealed the assessments to the Board. The Assessor took the position it was not bound by ***Southam*** because there were new facts that distinguished the later assessments: there was no agreement on what the value of the property would be for an alternative use as there had been in the previous case; there was evidence of a market – the sale of the printing facility as part of the sale of the business as a going concern. The Assessor also took the position that the decision in ***Southam*** was contrary to certain decisions of higher courts (***Montreal v. Sun Life Assurance Co. of Canada***, [1952] 2 D.L.R. 81 (J.C.P.C.), and ***Assessment Commnr. of York v. Office Specialty Ltd.***, [1975] 1 S.C.R. 677).

[4] In para. 26 of its reasons (2005 PAABBC 20050284), the Board stated it was "not satisfied that, just because there is no agreement on the value of the Property for an alternate use, that this is sufficient to distinguish the previous courts' decisions", but concluded in paras. 34 and 35:

> […] [T]here is a market for the Property as part of the going concern of the newspapers, though the market may be limited […] there are other potential purchasers, though a limited number, both nationally and internationally, for the Property in its current use as part of the purchase of that going concern.
>
> As such, the previous courts' decisions in *Southam* […] can be distinguished on this finding and the Board does not consider them binding.

The Board confirmed the assessments.

[5] Pacific Newspaper again appealed by way of stated case. The specific question on the stated case was:

> Did the Property Assessment Appeal Board err in law by assessing the Appellant's property by reference to the value of the property to its owner, or by reference to its value in use, rather than by reference to its fair market value?

[6] In para. 3 of his reasons (indexed as 2006 BCSC 953) Mr. Justice N. Smith noted, "the matter was argued primarily as a question of *stare decisis* - whether the board erred in concluding that it was not bound by the previous decisions of this court and the Court of Appeal". In para. 16, the judge concluded that the Board had no basis on which it could distinguish ***Southam*** and that he and the Board were bound by that decision. He answered the question on the stated case, "yes".

[7] Granting leave to appeal to this Court, Mr. Justice Lowry stated at para. 6 of his reasons (indexed as 2006 BCCA 386):

> […] The Assessor further contends that *Southam* was wrongly decided. On this application, counsel has curtailed his criticism of the decision somewhat, given that he maintains undermining it is not

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> necessary to the success of the proposed appeal, but he says that, if permitted, he will seek to establish, on the filing of the Assessor's factum, that the Court should convene a five-member panel to reconsider *Southam*. [...]

[8] The Court refused the request for a five-judge division and stated that the appeal would proceed before three judges in the usual way.

The Chambers judgment

[9] The judge stated in para. 4, "[t]here is […] no market for the property as it is currently used, except as part of a larger sale of the entire newspaper business". In para. 12 he observed that a court or tribunal can probably take notice of the fact that businesses of all kinds are bought and sold as going concerns. He continued in para. 12:

> [A] review of the board's previous decision makes it clear that there was nothing new about this evidence or the argument based on it. The board decision of April 11, 2002 [the ***Southam*** decision], specifically referred to the same evidence at ¶18:
>
> > A number of corporate share transactions took place in the 1990's. In 2000, a share transaction, described by Mr. Ross as the largest (of its nature) in Canada in 50 years, involved a number of assets in a number of provinces, including this property.

[10] The judge then referred in paras. 13 – 15 to the treatment by the Board and the courts in ***Southam*** of the evidence of the sale of the newspaper business, including references to the application of s-s.19(4) of the ***Assessment Act***:

> [13] At ¶ 56 of the same decision [***Southam***], the board rejected the concept of valuing the property as part of a going concern:

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> The Board was also asked to consider section 19(4) of the *Assessment Act* which provides that if an industrial or commercial undertaking or a business is carried on on the property, the property must be valued as the property of a going concern. If the Assessor was saying this section means the property must be valued as a going concern of a newspaper business of the magnitude of the Appellant, the Board disagrees…. The Board finds that this subsection simply requires that in determining the actual value of property, the undertaking or enterprise carried on from the property is to be assumed to be financially viable such that it is a going concern, and not insolvent or otherwise in financial straits. This only means that the financial or business viability of the occupant, separate and apart from the property, is to be assumed, so that if a business is struggling financially for reasons unrelated to the property's characteristics, the determination of value is not to be affected.

[14] Although she referred to it in a somewhat different context in *Southam*, Gray J. was clearly aware of evidence previously before the board that the newspapers, and with them the subject property, could be and had been sold:

> The Board gave only "the slightest, most marginal, limited weight to the declared value of the property in the transfer documents filed as part of the share transaction." The Board accepted that the transfer documents were part of a much larger transaction and, as such, the determination of the value of this particular property would not have attracted a considered valuation, despite the amount of property taxes payable (¶ 23).

[15] The argument that there is a market for the property as part of a going concern and the evidence in support of that argument was also put before the Court of Appeal, although not dealt with in the court's judgment. The assessor's factum [in ***Southam***] included the following:

> There is a market for the property in its highest and best use. But the subject property does not sell by itself. It sells as part of the going concern or, as in *Crown Forest, supra*, as part of a share purchase transaction. The evidence in this case is that the subject property was part of Canwest's purchase of Hollinger. The market value of the subject property in that transfer was stated by the vendor and the purchaser to be $43,093.116. The

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> subject property was used as a printing press before and after the sale.

[11] Smith J. alternatively considered s. 19 of the ***Assessment Act*** in paras. 17 and 18:

> Even if I were not bound by the decisions in *Southam*, I would hold that the board's approach was wrong in law. As said above, s.19 of the *Assessment Act* requires valuation of "land and improvements", based on "the market value of the fee simple interest in land and improvements." Nothing in the *Assessment Act* permits valuation to be based on the valuation of a business. The value of land and buildings in and of themselves is not the same thing as their value as an asset of a larger business. Depending on the circumstances, there may or may not be a relationship between those two values.
>
> In this case, a purchaser buying the two daily newspapers would need to acquire the printing plant as part of the transaction. The business would probably be worthless without it. But the market value of the land and improvements would play little, if any role, in determining the purchase price for the business. That price would presumably be based on the revenue stream of the entire business and/or the value of a dominant position in the Vancouver newspaper market.

[12] The judge's comments are *obiter dicta*. I agree with his observations in para. 17, but I find his comments in para. 18 confusing and not entirely consistent. A purchaser buying the newspapers would not necessarily need to acquire the printing plant. It could buy the business and print the newspapers elsewhere. Without the plant the business would not be worthless. The observation that the market value of the facility would play little role in determining the purchase price for the business does not appear to be consistent with the statement that the business would be worthless without the printing plant. It is clear that the price likely would reflect the

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income stream of the business, but again this does not appear to be consistent with the notion that the business would be worthless without the facility.

Positions of the parties

[13] In its factum, the Assessor identified a number of issues, including whether ***Southam*** was wrongly decided, but at the hearing of the appeal, the Assessor agreed that we must proceed on the basis that ***Southam*** was decided correctly. In this context the question is whether this case is distinguishable from ***Southam***.

[14] The Assessor summarized its position with two propositions: first, even if the evidence were identical, *res judicata* does not apply to decisions of the Board, which is entitled to make a different decision; second, there was ample evidence to support the Board's finding of fact that there was a market for the subject property. The Assessor contends that this finding is the basis on which the Board properly distinguished ***Southam***.

[15] The Assessor relies on s-s. 19(4) of the ***Assessment Act*** to support the valuation of the property in the context of a sale of the newspaper business as a going concern. In operative part, the subsection requires the printing facility to "be valued as the property of a going concern".

[16] The respondent Pacific Newspaper contends *res judicata* is not in issue and the applicable principle is *stare decisis*.

[17] Pacific Newspaper asserts it always has been common ground that there is a market for the newspaper business, but this does not convert into a market for the

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printing facility. It says the Board valued the property in use and not in exchange, contrary to the principle of law stated in ***Southam***.

[18] Pacific Newspaper says the application of s-s. 19(4) was before the Board and the courts in ***Southam*** and that the section has never been used in assessment matters to establish a value greater than exchange value.

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Discussion

[19] As noted, the Assessor takes the position that the issue is not one of *stare decisis*, but respect for the findings of fact of the Board, anchored by the proposition that the principle of *res judicata* does not apply to the Board.

[20] The Assessor says in this case the Board made a finding of fact that there was a market for the property as part of the sale of a going concern, whereas in ***Southam*** the Board held that there was no market for the current use, a newspaper printing facility. The Assessor asserts the Board was entitled to reach this conclusion even if there were no differences in the evidence in the two cases and the court must defer to the Board's finding of fact.

[21] In my view, the doctrine of *res judicata* is not engaged. The judge's decision is not based on a review of the Board's findings of fact. His focus was on the legal conclusion reached by the Board. In para. 16, he stated:

> The board has made a decision with the same result, and based on the same evidence, as the decision that was previously found by both this court and the Court of Appeal to be wrong in law. The board had no basis on which it could properly distinguish the decisions of this

> court and the Court of Appeal in *Southam*. The board was bound by those decisions, as I am.

[22] It is clear that the Board in this case recognized that there was no stand-alone market for the property and as a printing facility it could be sold only as part of the sale of a going concern. The "evidence" to which the judge was referring was discussed by him in paras. 12 – 15. It involved the previous sales of the respondent's business. In para. 12 he said, "[t]he fact that businesses of all kinds are bought and sold as going concerns is probably something any court or tribunal can take notice of without evidence". I agree with this observation and note, as did the judge, that throughout these proceeding it has been well known that this newspaper business has been sold as a going concern.

[23] The Assessor relies on additional evidence that newspaper businesses are sold as going concerns and s-s. 19(4) of the ***Assessment Act*** to support the conclusion of the Board that a market for the business as a going concern is a market for the printing facility as the property of a going concern. While I recognize that s-s. 19(4) was not raised as directly in ***Southam*** as it is in this case, that evidence did not lead the Board or the courts to conclude that there was a market for the facility in ***Southam***. In my view, it is not a basis on which ***Southam*** can be distinguished.

[24] In my view, the Board erred in law in concluding the ability to sell the printing facility as part of the sale of the business as a going concern means there is a

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market for the printing facility and the present use of the property is its highest and best use.

[25] Subsections 19(1)-(4) of the ***Assessment Act*** state:

> **Valuation for purposes of assessment**
>
> **19** (1) In this section:
>
> **"actual value"** means the market value of the fee simple interest in land and improvements;
>
> […]
>
> (2) The assessor must determine the actual value of land and improvements and must enter the actual value of the land and improvements in the assessment roll.
>
> (3) In determining actual value, the assessor may, except where this Act has a different requirement, give consideration to the following:
>
> (a) present use;
>
> (b) location;
>
> (c) original cost;
>
> (d) replacement cost;
>
> (e) revenue or rental value;
>
> (f) selling price of the land and improvements and comparable land and improvements;
>
> (g) economic and functional obsolescence;
>
> (h) any other circumstances affecting the value of the land and improvements.
>
> (4) Without limiting the application of subsections (1) to (3), if an industrial or commercial undertaking, a business or a public utility enterprise is carried on, the land and improvements used by it must be valued as the property of a going concern.

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[26] Actual value means market value. It is the overriding requirement for valuation in the section. Subsection (3) permits the Assessor to consider present use, but that does not mean that market value can be value in use rather than value in exchange. In my view, consideration of present use can be relevant to determining market value for at least two reasons: first, to answer the question, "is there a market for that use?" (that is the question in this case); if so, to assess whether the present use is the highest and best use. (As stated in para. 15 of this Court's decision in ***Southam***, "[h]ighest and best use is the use that produces the highest estimate of market value […]".)

[27] As noted by the chambers judge in para. 13, the Board in ***Southam*** addressed s-s. 19(4) in para. 56 of its decision. The Board referred to ***Re Alkali Lake Ranch Ltd.*** (1964), 45 D.L.R. (2d) 83, 48 W.W.R. 120 (B.C.C.A.) (cited to D.L.R.), but concluded it was not helpful.

[28] This Court in ***Alkali Lake Ranch*** was considering s. 37 of the ***Assessment Equalization Act***, R.S.B.C. 1960, c. 18, which stated:

> 37 (1) The Assessor shall determine the actual value of land and improvements. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and without limiting the application of the foregoing considerations, where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.

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[29] After noting the "significant words" in s-s. 37(1) - "*and without limiting the application of the foregoing considerations*" (emphasis in original) - the Court addressed the words "property of a going concern" at p. 86:

> I interpret the words "as the property of a going concern" to mean that the main undertaking of which the land under assessment is a part is to be treated as still being operated and the land is not to be valued separately as bare land. See Black's Law Dictionary, 4th ed., p. 821 which defines "going concern" as follows:
>
> > An enterprise which is being carried on as a whole, and with some particular object in view. The term refers to an existing solvent business, which is being conducted in the usual and ordinary way for which it was organized. When applied to a corporation, it means that it continues to transact its ordinary business. . . . A firm or corporation which, though embarrassed or even insolvent, continues to transact its ordinary business.

[30] Pursuant to s-s. 19(2), the Assessor's obligation was to determine actual value – "the market value of the fee simple interest in land and improvements". Subsection 19(4) does not modify or supplant that obligation. It expressly does not limit the application of s-ss. (1) – (3). The Assessor is required to value the printing facility "as the property of a going concern", that is, for example, not as the property of a non-operating or bankrupt concern, which in some circumstances may not reflect the highest and best use and could distort the market value. The proper inquiry mandated by s. 19 of the ***Assessment Act*** is to determine the fee simple market value of the property being assessed. Subsection 19(4) merely states that if the property is used by an enterprise that is a going concern, it is to be valued recognizing that fact.

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[31] The section speaks to use, not to market - for example, consider grazing land as opposed to bare land for a consideration of highest and best use (***Alkali Lake Ranch***) - but the inquiry remains, as it was in ***Southam***, whether there is a stand-alone market for the use. Subsection 19(4) does not shift the determination of assessed value from the actual value - "the market value of the fee simple interest" - to the value of property as if it were being sold as part of the sale of a going concern. The latter is a value in use, which ***Southam*** held is not the value required to be determined by the Assessor.

[32] It is clear from both the decisions of this Court (at para. 21) and Gray J. (at para. 37) in ***Southam*** that "the ultimate aim is to find the market (or 'exchange') value" (both decisions referred to ***Montreal v. Sun Life Assurance Co. of Canada***, *supra*).

[33] The distinction between value in use and value in exchange is illustrated in the evidence of the appraiser called by the Assessor before the Board. In explaining his conclusion that "there is a market for this facility", he stated at one point that the "market is for the sale of the facility as the property of a going concern". Shortly thereafter he said, "[i]t would only sell as part of the overall going concern". It is clear on the evidence that Pacific Newspaper could not sell the printing facility *qua* printing facility. The printing facility would only sell as part of the sale of Pacific Newspaper itself. In my view, that is a value in use. It is not the exchange value of the lands and improvements in question. ***Southam*** mandates it is the latter that must be determined by the Assessor.

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[34] The Assessor relies on ***Re Canadian Pacific Railway Company and City of Vancouver*** (1964), 47 D.L.R. (2d) 157, 50 W.W.R. 302 (B.C.S.C.) (cited to D.L.R.); ***Re Alkali Lake Ranch***, *supra*; and ***118603 Canada Ltd. v. Vancouver Assessor Area No. 9*** (1988), 43 M.P.L.R. 169 (B.C.S.C.) (in Chambers), aff'd [1990] B.C.J. No. 390 (C.A.). It is contended these cases support assessing the value of the printing facility by considering its value in the context of the newspaper business as a going concern.

[35] These cases concern legislation which did not equate actual value with market value. Market value was merely one factor to be taken into account. For example, in ***118603 Canada***, s-s. 26(3) of the ***Assessment Act***, R.S.B.C. 1979, c. 21, provided, "[i]n determining actual value [of land and improvements…] the assessor may […] give consideration to […] market value of the land and improvements". Referring to ***Sun Life***, Cowan J. in ***118603 Canada Ltd.*** stated at p. 172, "[i]t is clear from the authorities that 'actual value' *can be equated* to market value" (emphasis added). It is equally clear from s. 19 of the present ***Assessment Act*** that for the purposes of this case, actual value is market value.

[36] Mr. Justice Cowan, who was upheld by this Court on appeal, relied on McFarlane J. in ***Canadian Pacific Railway***, which involved legislation to similar effect. Both cases considered the implications of the requirement to value land and improvements "as the property of a going concern". Mr. Justice McFarlane referred to this Court's decision in ***Alkali Lake Ranch,*** in which Norris J.A. stated at p. 87:

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> […] [T]he assessor obeyed the mandatory language of s. 37(1) and did value the land and improvements as the property of a going concern, and arrived at their actual value *as farm lands* by applying such further permissible considerations as he deemed necessary in the circumstances.
>
> [Emphasis added.]

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Explaining the decision in ***Alkali Lake Ranch,*** McFarlane J. said at pp. 161-162, "[i]t was held that although the assessor must value such lands as the property of a going concern, he need not necessarily determine that such value is actual value".

[37] The use of the lands and improvements, their characterization as farm lands, was determined by the fact they were part of a going concern. The objective was to decide their actual value. A number of factors were considered. There was no issue whether there was a market for farm lands. In the present case, the objective was to decide the market value. ***Southam*** says that crucial to that is the existence of a market for the land and improvements. Without it there is no market value. This was not a requirement in the legislation under review in the cases relied on by the Assessor. They are of no assistance to the assessing authority in this case.

[38] The Assessor relies on ***Bishop of Victoria v. City of Victoria***, [1933] 4 D.L.R. 524 (B.C.C.A.), and the statement of M.A. Macdonald J.A. therein at pp. 539-540:

> The building must be treated as an academy as long as it remains as such in making assessments. It is improper, for assessment purposes to mentally convert it, so to speak, into a revenue-producing commercial structure (*e.g.*, an apartment house) and value it accordingly. That would be placing a value not on this special "improvement" but on something else not in existence. To

> follow this method one would be taking into account potential values whereas the meaning of "actual" is "as opposed to potential." It must be valued *qua* school and although the task is difficult it cannot be shirked by adopting an easier or unsound method.

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[39] Pacific Newspaper says while Macdonald J.A. concurred in the result, no other member of the Court made a similar comment and the statement has not been relied on subsequently. It may be the proposition has not been referred to subsequently, but the judgment of Macdonald J.A. was adopted expressly by Martin and McPhillips JJ.A. More important is a consideration of the legislation there under review.

[40] The applicable legislation was the ***Municipal Act***, R.S.B.C. 1924, c. 179. It provided that land and improvements should be assessed separately. Land was to be assessed at its actual value and improvements for the amount of the difference between the actual value of the whole property and the actual value of the land. "Actual value" was not defined specifically. The trial judge valued the improvement, a residential school, at the selling price on a forced sale. Macdonald C.J.B.C reviewed the history of the legislation and said at pp. 527-529:

> […] Some cases in the Supreme Court of Canada were cited to us by counsel for the respondent, in which opinions were expressed to the effect that the actual value of land was what it would bring in the market. In those cases the Court was dealing with wild land which had no other ascertainable value. In this case, however, there are other criterions which ought to have been considered, namely, what the property cost those who own it, and who intended to use it and continue to use it for the very purpose for which it was built. […]
>
> One cannot doubt that the assessor, considering the actual value of the property might very well say: -- "Respondent has built this property for a special purpose; it is a permanent purpose. He has considered the

> cost before building it and has agreed to pay $58,425 for it. There are no circumstances local or otherwise which would make that property less valuable to the owner than the price paid for it and while no outsider would be willing to pay that cost having no use for the building, except as an apartment house, the actual value, to the owner who has use for it and who has built it and paid for it the price above mentioned and will continue to use it for an indefinite time, may be exactly what it has cost, less any depreciation since its construction."
>
> This, I think, would be something that ought to appeal to the valuator taken in connection with any other circumstances which might affect the value including its market value. He ought not to accept the selling value at a forced sale or the selling value at an open sale as the basis of assessment to the exclusion of all other relevant facts any more than he should accept the cost of construction as the actual value to the exclusion of all other circumstances. [...]
>
> […]
>
> In my opinion the result would be the same in the appeal if the Judge had confined his opinion to a sale in the ordinary way, not a forced sale and if it became necessary to discard the words "upon a forced sale" my opinion of the case would not be altered.
>
> […] What the Court ought to do is to decide whether actual value means the market value or the market value at a forced sale. […]

The Chief Justice Macdonald's thinking appears to accord with the approach of Macdonald J.A., and both reflect the legislation there under review.

[41] That approach to valuation is consonant with neither s. 19 of the ***Assessment Act*** nor this Court's decision in ***Southam***.

[42] What is consonant is the observation of Macdonald J.A. at p. 538:

> There are two kinds of value known to economists, *viz.*, value in *use* and value in *exchange*. An article may have great value *in use* because of special properties or characteristics not susceptible to

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> measurement by commercial standards and have comparatively little value in exchange. It is the latter measure of valuation, properly understood however, that should be applied.
>
> [Emphasis in original.]

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[43] In my view, ***Bishop of Victoria*** cannot be applied to the circumstances of this case because the legislation there under consideration differs markedly from the legislation that controls the valuation in this case. Actual value did not equate with market value. In this case, by definition, "actual value" is "market value". Contrary to the approach taken by Macdonald J.A. in ***Bishop of Victoria***, on the basis of the legislation applicable in this case, this Court in ***Southam*** in para. 25 held that Gray J. correctly found that "[t]he question under the *Assessment Act* is the actual value of the property, not the value of the use".

[44] Relying on ***Bishop of Victoria***, the Assessor says in its factum, "even though it is difficult to determine the market value of a special purpose, limited market property which is being used for the purposes for which it was constructed, it is not acceptable to hypothesize an alternate use and value on that basis".

[45] The Assessor asserts appraisers commonly value property in the context of a going concern, points to hotels as an example and relies on the Board's decision in ***British Columbia (Assessor of Area # 01 – Capital) v. Fairmont Hotels & Resorts***, 2003 PAABC 20039104, upheld 2005 BCSC 468, 7 M.P.L.R. (4th) 70. A simple answer to this contention is that, in the case of a hotel, the building is the business. In the present case, the printing facility is an adjunct of the business.

[46] In ***Fairmont Hotels***, the Board noted the unique challenge of valuing the land and property of a hotel: "[t]he valuation of hotels for assessment purposes poses a particularly difficult appraisal problem" (para. 1). The issue before the Board and the court was the methodology of the appraisal. There was no issue concerning market.

[47] The Assessor also contends that certain special use properties are assessed based on value to the owner. It points to ***Crown Forest Indust. Ltd. v. Courtenay Assessor Area 06*** (1987), 10 B.C.L.R. (2d) 145 (C.A.). Again, the legislation involved in that case did not specify that actual value is market value.

[48] In my view, the chambers judge did not hypothesize an alternative use. Madam Justice Gray and this Court in ***Southam*** concluded the Board erred finding the highest and best use was the current use of the property and, based on evidence, including a past sale of premises that had housed printing facilities, concluded there was a correct highest and best use.

[49] The Assessor says that the chambers judge exceeded his jurisdiction because assessments are annual and discrete and the Board is required to make findings of fact in each case. It is contended that the judge erred by holding that the Board was bound by findings of fact made in previous assessment proceedings. It is asserted the Board's factual conclusion that there was a market for the property in its current use cannot be disturbed by the court.

[50] Pacific Newspaper does not quarrel with the proposition that each year's assessment is discrete, but asserts this is not an issue in this case.

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[51] It is correct that the chambers judge referred to the evidence previously available to the Board concerning the sale of the business as a going concern. As noted, he concluded in para. 16:

> The board has made a decision with the same result, and based on the same evidence, as the decision that was previously found by both this court and the Court of Appeal *to be wrong in law*. The board had no basis on which it could properly distinguish the decisions of this court and the Court of Appeal in *Southam*. The board was bound by those decisions, as I am.
>
> [Emphasis added.]

[52] I agree with the judge. As noted previously, this case concerns *stare decisis*, not *res judicata*.

[53] In this case, the Board was given additional evidence concerning the previous sales of the appellant's business and of the market generally for such businesses, but it does not change the basic conclusion of Gray J. and this Court in ***Southam***.

[54] In para. 11 of its reasons the Board found as undisputed or uncontradicted the facts "there is no other buyer in the market for the Property with the presses that are in place as there is no one else with the specific requirements of the facility" and "the Property, without the presses, is worthless to anyone else in the market except for an alternate use, such as [a] warehouse". That is, there is no market for the printing facility on a stand-alone basis. As a printing facility, it could only be sold as part of the newspaper business.

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[55] Selling the facility as part of a going concern is selling its use for the business. Valuing the facility in that context is valuing its use for the business, its value to the owner. ***Southam*** clearly rejects that approach to valuation as a matter of law.

[56] In my view, the Board was bound by ***Southam*** and it erred as a matter of law in concluding that a sale of the business as a going concern constituted a market for the printing facility. In the absence of buying the business, no one would buy the printing facility, which is not to say that everyone who might buy the business necessarily would buy the printing facility. The Board committed the same error in this case as it did in ***Southam***: it used the current use as the highest and best use where there was no evidence of a market for that use.

[57] In my view, the judge correctly concluded that the Board was obliged to follow and apply this Court's decision in ***Southam*** and erred in law by assessing the Appellant's property by reference to the value of the property to its owner, present or future, that is, by reference to its value in use, rather than by reference to its value in exchange, its fair market value.

[58] I would dismiss this appeal.

"The Honourable Mr. Justice Chiasson"

I agree:

"The Honourable Mr. Justice Frankel"

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Reasons for Judgment of the Honourable Mr. Justice Smith:

[59] I have had the advantage of reading in draft form the reasons for judgment of my colleague Mr. Justice Chiasson with which, with respect, I am unable to agree. For the following reasons, I would allow the appeal.

[60] The appeal is brought with leave pursuant to s. 65(9) of the ***Assessment Act***, R.S.B.C. 1996, c. 20, on a question of law from a decision of the Supreme Court on a case stated by the Property Assessment Appeal Board pursuant to s. 65(1) of the ***Act***:

> **65** (1) […] a person affected by a decision of the board on appeal, including a local government, the government or the assessment authority, may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.

[61] The question stated was:

> Did the Property Assessment Appeal Board err in law by assessing the Appellant's property by reference to the value of the property to its owner, or by reference to its value in use, rather than by reference to its fair market value?

The chambers judge answered the question "yes" and remitted the matter to the Board to determine the "assessed" values, by which I understand he meant the "actual" values, of the subject property in the years in question. His reasons for judgment are indexed as 2006 BCSC 953.

[62] Although the chambers judge answered the question on the stated case in the affirmative, he did not directly address either the question or the stated case in

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his reasons for judgment. Rather, he considered whether the Board was bound as a matter of law to apply this Court's decision in ***Southam Inc. v. Surrey-White Rock Assessor, Area No. 14***, 2004 BCCA 245, 28 B.C.L.R. (4th) 317, 238 D.L.R. (4th) 640, which affirmed the decision of Madam Justice Gray of the Supreme Court of British Columbia (2003 BCSC 676, 39 M.P.L.R. (3d) 85), who answered "yes" to the following question in respect of the 2000 and 2001 assessments of the subject property:

> Did the Property Assessment Appeal Board err in law by assessing [the Appellant's] property by reference to the value of the property to its owner rather than by reference to its fair market value?

[63] It is generally accepted, and it is not an issue in this appeal, that the *res judicata* doctrine does not apply to successive assessments of the same property; rather, each assessment is limited to the year in which it is made and each subsequent assessment is a new assessment. However, decisions on questions of law arising out of an assessment rest on a different footing. Since the question on which the parties joined issue before the chambers judge in this case was whether the Board was bound as a matter of law to apply this Court's decision in ***Southam***, I will begin by identifying the *ratio decidendi* of that decision, bearing in mind that a case is only authority for what it actually decides[1]: see ***Quinn v. Leatham***, [1901] A.C. 495 (H.L.) *per* Lord Halsbury at 506:

> […] there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that

[1] It should be noted that this principle no longer applies in its full vigour to decisions of the Supreme Court of Canada: ***R. v. Henry***, 2005 SCC 76, [2005] 3 S.C.R. 609, ¶ 53-57.

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> every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.

See also ***Lupton v. F.A. & A.B. Ltd.***, [1972] A.C. 634 (H.L.), *per* Lord Simon of Glaisdale at 658:

> […] what constitutes binding precedent is the *ratio decidendi* of a case, and this is almost always to be ascertained by an analysis of the material facts of the case – that is, generally those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material.

[64] In her reasons for judgment in ***Southam***, Madam Justice Gray began her analysis by observing that s. 19(1) of the ***Act*** defines "actual value" as "the market value of the fee simple interest" in the subject property. She took the following as the generally accepted definition of "market value":

> The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Next, she acknowledged the undisputed principle that an assessment should begin with a determination of the highest and best use of the property. Continuing, she referred to the Board's finding that "the property's current use is so specialized there is no demonstrable market for it except for the owners of the two major daily newspapers" (at para. 21). Then, she noted the Board had found "that the current use is the highest and best use […] even though it concluded there is no other

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potential purchaser for this building for its current use" (at para. 23). She concluded the Board's finding of highest and best use was an error, stating,

> [51] The task for the Board was to determine the market value of the plant property. The Board fell into error by following the process of accepting a highest and best use for which there was no market, and then valuing that use of the property using the cost approach. […]
>
> [52] The cost approach may be appropriate for most special use limited market properties. In most such cases, either another purchaser may be interested in the special use, or there is no evidence about the selling price in the open market. The property at issue might be better termed a "special use" property which, rather than having a "limited market", does not have any market for its present use, but has a market for an alternate use.
>
> [53] The question under the *Assessment Act* is the actual value of the property, not the value of the use. The effect of the Board's decision was to value the property on the basis of its value to the owner, rather than on the basis of the market for the property.
>
> [My emphasis.]

[65] On appeal, this Court elaborated on the concept of "highest and best use":

> [14] Highest and best use is a market-driven concept, as explained in *Ford Motor Co. v. Edison*, 127 N.J. 290; 1992 N.J. LEXIS 32 (New Jersey Sup.Ct). Quoting the Oregon Tax Court in *Meyer v. Department of Revenue*, Or. Tax, No. 3049, 1991 WL 244494 (Nov. 20, 1991), the New Jersey Supreme Court said (at p. 6 (LEXIS)):
>
> > The Tax Court emphasized that the concept of highest and best use is based on market forces. "When the purpose of an appraisal is to estimate market value, highest and best use analysis identifies the most profitable, competitive use to which property can be put. Therefore, highest and best use is a market-driven concept."
> >
> > [Emphasis in original.]

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The Court determined that the Board's finding of fact that there was no market for the property in its current use precluded a finding that the current use was the highest and best use, stating,

> [15] The Board's finding that the highest and best use was the current use where there was no evidence of a market for that use is contradictory and wrong in law. Highest and best use is the use that produces the highest estimate of market value and cannot be determined without reference to a competitive market.
>
> [16] The determination of highest and best use as the current use also drove the Board's approach to the assessment on the basis of replacement cost, as there was no evidence of a market in which the current use could be valued.
>
> [My emphasis.]

The Court concluded,

> [25] Gray J. correctly found (at para. 50) that: "The plant should not be assessed for more than anyone other than the owner would pay for the property." I agree entirely with her conclusions (at paras. 51 and 53) […]

[66] Thus, the pivotal material fact in ***Southam*** was the finding that there was no market for the property in its current use and the *ratio decidendi* is that, in an assessment of property under the ***Act***, it is an error of law to treat the current use of the property as the highest and best use when there is no market for the property in that use.

[67] Turning to this appeal, the proper approach to a stated case is set out in ***Saanich/Capital Assessor, Area No. 1 v. Hardt*** (1992), 88 D.L.R. (4th) 183 at 188, 10 B.C.A.C. 31:

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> The general principles for the court to follow on hearing a stated case have been set out in *District of Tumbler Ridge v. Assessor of Area #27 - Peace River* (2 December, 1985), Vancouver Registry A851790 (B.C.S.C.), at p. 3, [[1985] B.C.J. No. 810 (QL)(S.C.) at para. 4] where Finch J. said:
>
> > The law seems clear enough, although its application has caused problems in particular cases. I summarize what I apprehend to be the applicable principles. The questions should be questions of law only. The questions should be framed by, and are the sole responsibility of, the appellant. Statements of fact are within the exclusive province of the board. On appeal, the Court must accept the findings of fact made by the Board, and not substitute its own. The Board should not express opinions, or put forward arguments. The Court may not look beyond the stated case to make inferences of fact, nor find new facts, nor weigh and consider the sufficiency of the evidence. The Court may refer to the Board's reasons. The Court may also refer to the transcript of evidence, but only for the purposes of interpreting or explaining the stated case.
>
> and in *Re Caldwell and Stuart* (1984), 15 D.L.R. (4th) 1 at pp. 9-10, [1984] 2 S.C.R. 603 [at 613-614], 85 C.L.L.C. ¶17,002, where McIntyre J. said:
>
> > From the many cases decided upon this issue, it seems clear that the appellate court may not look beyond the stated case in order to make inferences of fact, or to find new facts not in the case, nor to weigh and consider the sufficiency of evidence:
> >
> > . . . . .
> >
> > As for the reasons for decision, it seems clear that the law of Canada as well as that of England has always permitted reference to the reasons for decision.

[68] The Board will be found to have erred in law if its findings of fact are not supported by any evidence or if they are based on a view of the facts that could not reasonably be entertained: ***Gemex Developments Corp. v. British Columbia***

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(Assessor of Area #12 – Coquitlam) (1998), 62 B.C.L.R. (3d) 354 at para. 9, 112 B.C.A.C. 176. There is no suggestion that the Board made any such error here. Accordingly, the remarks of Davey J.A. (later C.J.B.C.) in ***Provincial Assessors of Comox, Cowichan and Nanimo v. Crown Zellerbach Canada Ltd.*** (1963), 42 W.W.R. 449 at 458, 39 D.L.R. (2d) 381 (B.C.C.A.), aff'd 42 D.L.R. (2d) 319 (S.C.C.), are apt for present purposes:

> […] neither this court nor the court below has any right to make findings of fact on the evidence before the board; that was the function of the board, and its findings of facts are set out in the stated case as the foundation for the questions of law that are asked, and we must accept those findings as the case does not raise any question of absence of evidence to support them.

[69] The facts and the question of law to be answered on the basis of those facts are set out in the stated case, which I have annexed to these reasons as an appendix.

[70] The Assessor submits that the chambers judge "erred in law when he determined that the Board had no basis upon which it could properly distinguish" ***Southam*** and that he "erred in law by substituting his view that there was no difference in the evidence before the Board which would allow the Board to distinguish this Appeal from [***Southam***] for the Board's opinion that there was evidence upon which to distinguish those decisions".

[71] These contentions arise because the chambers judge began his analysis by identifying the issue as it had been framed for him by counsel:

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> [3] […] the matter was argued primarily as a question of *stare decisis* – whether the board erred in concluding that it was not bound by the previous decisions of this court and the Court of Appeal.

[72] The Board's conclusion that it was not bound to apply ***Southam*** is not found in the stated case but in the Board's reasons for decision. It was reflected in these facts stated by the Board:

> 10. The Property, if sold for its current use, would sell as part of the operation or going concern of the publishing of The Vancouver Sun and The Province.
>
> […]
>
> 20. The Board found that there is a market for the Property as part of the going concern of the newspapers, though the market may be limited, and that there are other potential purchasers, though a limited number, both nationally and internationally, for the Property in its current use as part of the purchase of that going concern.
>
> 21. The Board found the highest and best use of the Property is a continuation of the existing use.

[73] In its reasons, the Board addressed and rejected Pacific Newspaper's argument that ***Southam*** was dispositive of the Assessor's appeal. The Board noted that it had found in that case that "there [was] no demonstrable market for [the property] except for the owners of the two major daily newspapers". It observed correctly that the courts in ***Southam*** had concluded that it was an error of law to find that the current use of the property was its highest and best use when there was no evidence of a market for the property in that use. By way of contrast, it found in this case that there was a market for the property in its current use as part of the going concern of the newspapers and that the current use is the highest and best use of

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the property. Accordingly, it concluded ***Southam*** was distinguishable on this material fact and the principle of law for which ***Southam*** stands was therefore inapplicable.

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[74] The chambers judge was entitled to look at the Board's reasons to determine why it had not followed ***Southam*** and he did so. However, rather than accepting the stated facts, as explained by the Board's reasons for decision, as the foundation for the question in the stated case, he looked beyond the stated case and the Board's reasons and embarked on an investigation of the factual basis for the decisions in ***Southam*** in order to determine whether the Board had correctly distinguished that case.

[75] First, he examined the reasons given by the Board and noted references to evidence of past purchases of the newspaper businesses of which the subject property was a part (these transactions are set out in the stated case) and noted, as well, the Board's comment that there was similar evidence before it in ***Southam***.

[76] Then, looking further beyond the stated case, he examined the Board's reasons for decision in ***Southam*** in order to determine what similar evidence was before the Board at that time. He said,

> [12] The fact that businesses of all kinds are bought and sold as going concerns is probably something any court or tribunal can take notice of without evidence. However, a review of the board's previous decision makes it clear that there was nothing new about this evidence or the argument based on it. The board decision of April 11, 2002, specifically referred to the same evidence at ¶18:
>
> > A number of corporate share transactions took place in the 1990's. In 2000, a share transaction, described by

> Mr. Ross as the largest (of its nature) in Canada in 50 years, involved a number of assets in a number of provinces, including this property.

[77] Next, he examined Madam Justice Gray's reasons for judgment in ***Southam*** and inferred that she "was clearly aware of evidence previously before the board that the newspapers, and with them the subject property, could be and had been sold" (at para. 14).

[78] Straying even further afield, the chambers judge examined the factums that were filed with this Court in the ***Southam*** case. He said,

> [15] The argument that there is a market for the property as part of a going concern and the evidence in support of that argument was also put before the Court of Appeal, although not dealt with in the court's judgment. The assessor's factum included the following:
>
> > There is a market for the property in its highest and best use. But the subject property does not sell by itself. It sells as part of the going concern or, as in [*Crown Forest Industries Limited v. Courtenay Assessor Area 06* (1987), 10 B.C.L.R. (2d) 145 (C.A.)], as part of a share purchase transaction. The evidence in this case is that the subject property was part of Canwest's purchase of Hollinger. The market value of the subject property in that transfer was stated by the vendor and purchaser to be $43,093.116. The subject property was used as a printing press before and after the sale.

[79] To summarize, the chambers judge examined the Board's reasons for decision in this case, the Board's reasons for decision in the previous case, the chambers judge's reasons for judgment in the previous case, and the factums filed with this Court in the previous case, all without referring to the stated case, and, by inference drawn from those sources, decided that there was evidence before the

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Board in the previous case that there was a market for the property in its current use. Relying on that finding, he concluded,

> [16] The board has made a decision with the same result, and based on the same evidence, as the decision that was previously found by both this court and the Court of Appeal to be wrong in law. The board had no basis on which it could properly distinguish the decisions of this court and the Court of Appeal in *Southam*. The board was bound by those decisions, as I am.

[80] The chambers judge erred in two respects in reaching this conclusion.

[81] First, he looked far beyond the stated case and transgressed the principle reflected in the remarks of Davey J.A. in ***Provincial Assessors of Comox, Cowichan and Nanaimo v. Crown Zellerbach Canada Ltd.***, *supra*, that the court is bound to accept the Board's findings of facts as set out in the stated case as the foundation for the question of law. The facts he was required to accept were the Board's finding in the stated case, as explained in its reasons, that there was a market for the property in its current use and that in ***Southam*** it had found there was no market for the property in its current use. His failure to accept these facts reflected an erroneous approach to the stated case and led him into error.

[82] Second, in holding that there was no basis upon which the Board could properly distinguish ***Southam*** since the evidence on which the Board relied was also before the Board in ***Southam***, the chambers judge concluded, in effect, that the question whether there was a market for the property in its existing use as part of a going concern had been decided in ***Southam*** and that the Board was precluded in

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the case at bar from treating ***Southam*** as if the question had not been decided. In other words, he found there was an issue estoppel on this question of fact.

[83] Issue estoppel is a doctrine developed by the law to prevent relitigation of issues of fact once decided. In ***Danyluk v. Ainsworth Technologies Inc.***, 2001 SCC 44, [2001] 2 S.C.R. 460, Binnie J., writing for the court, explained:

> [20] The law has developed a number of techniques to prevent abuse of the decision-making process. One of the oldest is the doctrine *estoppel per rem judicatem* with its roots in Roman law, the idea that a dispute once judged with finality is not subject to relitigation: *Farwell v. The Queen* (1894), 22 S.C.R. 553, at p. 558; *Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248, at pp. 267-68. The bar extends both to the cause of action thus adjudicated (variously referred to as claim or cause of action or action estoppel), as well as precluding relitigation of the constituent issues or material facts necessarily embraced therein (usually called issue estoppel): G. S. Holmested and G. D. Watson, *Ontario Civil Procedure* (loose-leaf), vol. 3 Supp., at 21 s. 17 et seq. […]

As Binnie J. noted (at paras. 21-22), the operation of the doctrine has been extended from prior court proceedings to include prior judicial and quasi-judicial decisions of administrative officers and tribunals. (The Assessor and the Board are such administrative agencies, in my view.) The preconditions to the operation of issue estoppel are (1) that the same question has been decided, (2) that the judicial decision which is said to create the estoppel was final, and (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies (at para. 25). Further, the question out of which the estoppel is said to arise must have been "fundamental to

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the decision arrived at"; an estoppel does not apply if the question is "one that must be inferred by argument from the judgment" (at para. 24).

[84] Here, although there was some evidence before the Board in ***Southam*** that the subject property had been sold as part of a going concern, the Board did not find in that case that there was a market for the property in its existing use. Indeed, it found to the contrary. Thus, the first precondition to the operation of issue estoppel is not met.

[85] As well, although the findings made in ***Southam*** were final, they were final only in respect of the years that were the subject of the assessment. Each year's assessment raises a new question to be decided on fresh evidence and new factual findings. The condition of the property may change over time. Market conditions can also change. For example, although there may be no evidence of a market for a particular property in one assessment year there may be such evidence in another assessment year. Thus, the second precondition to the operation of issue estoppel is not met.

[86] In addition, the proceeding before the Board was not litigation *inter partes* and the third precondition for issue estoppel is not applicable. The findings of fact in ***Southam*** were final only as to the assessment, not as a judgment between parties. There was no *lis* between the Assessor and Pacific Newspaper. The Assessor has no interest in the assessment other than to perform his statutory duties and the decision of the Board does not enure to the Assessor's benefit.

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[87] Further, the Assessor and the Board are statutory bodies charged with exercising statutory powers for a public purpose. The individual Assessor and Board members may change from year to year, and to hold that these office holders are bound by the findings of fact and opinions of their predecessors would be to fetter improperly their exercise of their statutory powers: see ***Turnbull Real Estate Co. v. Sewell***, [1937] 2 D.L.R. 218 at 220 (N.B.S.C., App. Div.).

[88] The words of Romer L.J., in ***Commissioner of Inland Revenue v. Sneath***, [1932] 2 K.B. 362 at 391 (C.A.), although spoken in a different context, provide an apt analogy:

> […] the only thing that the Commissioners have jurisdiction to decide directly and as a substantive matter is the amount of the taxpayer's income for the year in question. This being so, their decision upon any incidental question of fact or law, however necessary it may be for the purpose of ascertaining the income for the year of assessment, cannot, as it seems to me, be conclusive in reference to the taxpayer's income for any subsequent year of assessment with which the Commissioners have nothing to do, and in respect of which a fresh estimate will have to be made when the time comes, and possibly by other Special Commissioners.

[89] It is manifest from the reasons of the Board and of both courts in ***Southam*** that the critical material fact in that case was the finding of the Board that there was no market for the property in its current use. The Board did not err in distinguishing ***Southam*** on that basis and the chambers judge was wrong to conclude that the Board was bound in the case at bar by this Court's decision in ***Southam*** and that the Board had erred in holding otherwise.

[90] I turn now to consider the question asked on the stated case.

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[91] The statutory basis and methods of assessment are set out in s. 19(1)-(4) of the ***Act***, which my colleague has reproduced at paragraph 25 of his reasons, above.

[92] The Assessor's statutory duty under s. 19(2) is to determine the "actual value" of the subject property, which is defined in s. 19(1), as the "market value". The ***Act*** does not define "market value". However, in s. 19(3) it sets out in the broadest of terms the methods and the indicia to which the Assessor may have regard in arriving at the actual or market value: present use, location, original cost, replacement cost, revenue or rental value, selling price of the land and improvements and comparable land and improvements, economic and functional obsolescence, and "any other circumstances affecting the value of the land and improvements". Further, it stipulates, in s. 19(4), that if the subject property is part of a business, it "must be valued as the property of a going concern", that is, at its real value to the business of which it is an integral part, not its stand-alone value separated from the business: see ***Great Central Railway Company v. Banbury Union*** (1908), [1909] A.C. 78 at 85, 88 (H.L.); ***Re Alkali Lake Ranch Ltd.*** (1964), 45 D.L.R. (2d) 83, 48 W.W.R. 120 (B.C.C.A.).

[93] Thus, the Assessor is authorized to choose from several different methods of valuation and to consider many different factors in determining the actual value. The use of any method of valuation mentioned in s. 19 or the exclusion or inclusion of any enumerated factor does not raise a question of law appealable on a stated case so long as there is evidence to support the reasoning. These are questions of fact dependent on the expert judgment of the Assessor and ultimately of the Board. As

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Davey J.A. said, in ***Provincial Assessors of Comox, Cowichan and Nanaimo v. Crown Zellerbach Canada Limited***, *supra*, at 455-56,

> The statutory duty of the assessor is to find the "actual value" of the taxable property, but sec. 37 [now s.19 of the *Act*] permits him to use several different methods and to consider many different elements in finding actual value. I do not think that the use of any specifically mentioned method of finding actual value, or the inclusion or exclusion of any enumerated element, provided there is evidence to support the reasoning, can be said to raise a question of law appealable to the courts on a stated case, for those matters lie in the judgment of the assessor and the assessment equalization board: *Reg. v. Penticton Sawmills Ltd.* (1954) 11 WWR (NS) 351, at 353, 356 [B.C.C.A.].

See also, ***Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)***, *supra*, where this Court, citing that case and ***Re Caldwell and Stuart***, [1984] 2 S.C.R. 603, said, *per* Newbury J.A.,

> [9] […] questions as to the sufficiency of evidence or as to which expert opinion should be preferred by the Board in deciding the highest and best use of a given property [are] questions of fact within the Board's exclusive jurisdiction […]

[94] Here, the Board accepted the evidence of the Assessor's expert appraiser that replacement cost (the "cost approach") was the best measure of actual or market value of the subject property. It set this out in paragraphs 22 and 23 of the stated case:

> 22. The Board found that what appraisal methodology is used to determine market value largely depends on the highest and best use concluded, and the quantity and quality of evidence available. Whether a property is termed "special purpose" or "limited market" property is not determinative, but, rather, the circumstances of each case, including the property's highest and best use and availability of reliable market evidence. In the event there is little or no reliable

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> market evidence to support a valuation by the income or direct sales comparison approach, then the cost approach, properly applied and adjusted for, may be the most appropriate. The Board found there was insufficient evidence of any lease or rental information on comparable properties that would make the income approach to value the Property reliable. The Board found newspaper printing and publishing plants do not trade or lease in the market for their revenue generating potential. As for the direct sales comparison approach, the Board found the scarcity of similar properties in the market made this approach unreliable. The Board found that the cost approach was the most suitable method to determine the actual value of the Property.
>
> 23. The Board accepted the appraisal evidence provided by the witness for the Assessor and his conclusion of value.

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[95] As I have stated, there is no suggestion that the Board's findings of fact were not supported by evidence or that they were based on an unreasonable view of the facts. Rather, Pacific Newspapers contends that the Board's adoption of the cost approach was contrary to law.

[96] In ***Crown Forest Industries***, *supra*, this Court considered the use of the cost approach to the assessment of the actual value of a complex made up of a pulp and paper mill, a sawmill, and a planer mill. After quoting the phrase "[t]he cost approach is nothing more than a theory without any evidentiary foundation" from the reasons of the chambers judge, the Court, *per* Mr. Justice Esson, said, at 152,

> That is not merely a finding that the board erred in law in having regard to replacement cost to the exclusion of other methods of valuation. It goes far beyond that to hold that it was not open to the board to have regard to replacement cost in this case. That conclusion, in my respectful view, runs counter not only to valuation theory but to generations of decisions binding on us. The basis for accepting replacement cost as a measure of actual or market value is not one which rests upon a different evidentiary foundation in each case. It is, rather, a logical assumption based on general experience.

Mr. Johnstone, director of appraisal services to the British Columbia Assessment Authority put it this way:

> That approach is based on the premise that cost equals value and if it is found at the end of the exercise that that is not so a correction can be made within the cost approach.
>
> The reference to correction within the approach is to such matters as functional obsolescence, as to which I will have more to say later. What is significant at this point is that the basic premise that cost equals value has long been accepted as conferring validity upon the replacement cost approach as a means of arriving at actual value.
>
> [My emphasis.]

[97] Mr. Justice Esson referred to a number of cases in support of these remarks.

[98] First, he referred to ***Golden Eagles Canada Ltd. v. City of St. Romuald D'Etchemin***, [1977] 2 S.C.R. 1090, as an illustration of the basic premise that cost equals value, which underlies and validates the cost approach, stating at 152-153,

> […] That case involved five partially completed tanks at an oil refinery. The assessment of some $2 million was based upon the replacement cost of the tanks, reduced by 20 per cent to allow for their incomplete state. The owner contended that, because the tanks were incomplete, the assessor should have allowed "internal functional depreciation" of 100 per cent. The assessor's basis for refusing to give effect to that contention is quoted at p. 245:
>
> > "... I could not see how Golden Eagle could construct buildings which did not meet the needs for which it had built them."
>
> De Grandpré J. for the court outlined Golden Eagle's arguments that that response constituted error in law and, at p. 248, said this:
>
> > Appellant itself committed the error in law when it forgot that in all cases of construction for special purposes the assessor must necessarily calculate the replacement value in order to determine the real value, and in determining the theoretical market value must consider

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> the owner as a possible purchaser. The Privy Council confirmed and reconfirmed this view in *Montreal v. Sun Life Assurance Co.* [[1952] 2 D.L.R. 81].

[99] Next, after noting at 153 that "it is generally the absence of reliable market evidence which compels resort to replacement cost as a means of arriving at market value", he mentioned ***MacMillan Bloedel Limited v. Assessor of Area No. 7 – Sunshine Coast***, [1985] B.C.W.L.D. 2897 (B.C.S.C.), B.C. Stated Case No. 206, p. 1151, a case concerning the assessment of a pulp and paper mill at Powell River, and quoted from the reasons of McKay J. at p. 1152 as follows:

> The determination of actual value is anything but an exact science and the methods used will vary according to the circumstances of any given appraisal. It is usual, in the case of mills of the type under consideration, to use a depreciated replacement cost analysis (the "cost approach") because of the scarcity of comparable sales.

[100] Mr. Justice Esson endorsed that statement at 154 as "an entirely correct statement of the position" and "fully in accord with the earlier authorities". He then referred to the leading case of ***Sun Life v. City of Montreal***, [1950] S.C.R. 220, aff'd [1952] 2 D.L.R. 81 (P.C.), which concerned an assessment of a unique office building constructed by Sun Life as its head office. He said, at 154,

> […] The Privy Council was the fourth court to consider the matter after the Board of Revision. In delivering the judgment of the Privy Council, Lord Porter expressed agreement with the view of the trial judge and the Supreme Court of Canada that actual value in this context is to be equated with market value. At pp. 89-90 he said:
>
> > The Judge of the Superior Court states five ways by which the true figure can be reached:

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> (a) A recent free sale of the property itself where neither the conditions of the property nor the market have since changed;
>
> (b) recent free sales of identical properties in the same neighbourhood and market;
>
> (c) recent free sales of comparable properties;
>
> (d) the price which the revenue producing possibilities of the property will command;
>
> (e) the depreciated replacement cost.
>
> None of the Judges in Canada so far as their Lordships can ascertain seem to quarrel with this statement and all say that the first three methods are inapplicable to the present case and therefore the last two are the factors from which the true result is to be derived.

[101] Mr. Justice Esson continued, at 154-155,

> The absence of market evidence in that case was attributable to the exceptional nature of the building. In this case, there has been no free sale of this or any identical or comparable property. The result is to require reliance on the fourth and fifth methods. As Lord Porter put it at p. 94:
>
> > As they have said, the Board accepts the view that the true test is what a willing buyer would give and a willing seller take.
> >
> > In many, perhaps in most cases, this figure is not difficult to discover - the first three methods mentioned by the Judge of the Superior Court point out the way. But in a limited number of cases none of these sources of information is available and what such a buyer would give or a seller would take can only be ascertained by indirect means. As has been said those means are to be found by relying upon the replacement value however that term may be interpreted or upon the revenue value, or by a mixture of the two.

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And at p. 102 he said:

> It is the objective not the subjective value which has to be determined though, as has been said, the owner is to be regarded as one of a possible number of buyers, and subject to careful criticism and a sufficient qualification of price, the cost which he chose to incur is a relevant factor.

[102] By way of contrast, in the case at bar the Board rejected the fourth approach, the income approach, on the basis that there was insufficient evidence before it to make that approach reliable. That was a finding of fact exclusively within the Board's jurisdiction.

[103] Mr. Justice Esson referred to other authorities that approve the replacement cost approach to the assessment of market value, including ***Assessment Commissioner of the York Assessment Office v. Office Specialty Ltd.***, [1975] 1 S.C.R. 677. It is not necessary to descend further into detailed discussion of these cases. It is enough to say that Mr. Justice Esson's statement, that the proposition that it is an error of law to use the replacement cost approach to determine market value is contrary to generations of binding decisions, is fully supported by his analysis. Further, his statement that the proposition is contrary to valuation theory is fully supported by the expert evidence that was before the Board in this case.

[104] The question on the stated case is in two parts. The first asks whether the Board erred in law in assessing the property by reference to "the value of the property to its owner".

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[105] "Value to the owner" is a judge-made concept developed in expropriation law, where the object is to compensate the owner for land taken from him and for his disturbance costs. This is explained in ***The Law Reform Commission of British Columbia Report on Expropriation (Project No. 5), 1971*** (Victoria, Queen's Printer, 1972) at 123-24:

> The basic principle on which compensation is now paid in British Columbia is "value to the owner." It is a judge-made concept, developed in an attempt to do justice to expropriated owners. On being faced with construing legislation similar to our *Lands Clauses Act* [R.S.B.C. 1960, c. 209], the Courts were able to include to some extent in the compensation awarded disturbance costs to the owner. All the older statutes authorizing payment of compensation make no mention of disturbance damages, but refer only to compensation for value and injurious affection.
>
> There are many reported cases on the meaning of "value to the owner." On several occasions the Supreme Court of Canada has dealt with the principle. In *Diggon-Hibben Ltd. v. The King* [[1949] S.C.R. 712 at 715], Rand J. stated the principle as follows:
>
> > … the owner at the moment of expropriation is to be deemed as without title, but all else remaining the same, and the question is what would he, as a prudent man, at that moment, pay for the property rather than be ejected from it.
> >
> > [My emphasis.]

[106] The emphasized phrase highlights the distinction between "value to the owner" and "replacement cost", which was described by Mr. Justice Esson in ***Crown Forest Industries***, *supra*, at 156, as follows:

> […] The principle applied in *Office Specialty*, derived from *Sun Life*, is that the replacement cost, although higher than the amount the building would fetch if offered to others on the prevailing market, may represent the actual value where the circumstances establish that the

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> present owner, if entering the market, would be prepared to pay that amount for this building.
>
> [My emphasis.]

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The latter value does not contain any element of compensation for ejection from the property. It is an objective value; it is the value a hypothetical potential purchaser drawn from the market for the property, which would include the current owner, would pay to acquire the property for its highest and best use. Of course, such a purchaser would not pay more to acquire the property than it would cost him to construct an equivalent facility.

[107] In ***Southam***, the courts found that the effect of the Board's assessment was to arrive at value to the owner. In that regard, this Court said,

> [22] It seems to me that if the owner is to be considered a potential purchaser, there must be at least one other potential purchaser for the current use. Otherwise, there can be no competitive bidding and no market. That is this case: there is no market, other than the current owner, for the current use. Therefore, determining the market value of the property based on its current use inevitably leads to determining the value of the current use to the owner, and not market value.

Here, the stated case stipulates that there were other potential purchasers for the property in its current use. Accordingly, this reasoning does not apply and the Board did not fall into the error of assessing the value to the owner in this case.

[108] The second part of the question asks whether the Board erred in law in assessing the property by reference to "its value in use".

[109] This question derives from Madam Justice Gray's conclusion in ***Southam***, affirmed in this Court, that the Board in that case had valued the use of the property, rather than the property itself (at para. 51). However, it must be remembered that the critical fact in that case was that there was no market for the property in the use in which the Board valued it. Thus, on Madam Justice Gray's reasoning, the Board was required to value it in an alternate use for which there was a market.

[110] Here, the Board assessed the property at its "value in use", that is, at its value in its highest and best use, one for which there was a market. In so doing, it did not err. Rather, it did what it was required to do by the ***Act***.

[111] In ***Southam***, the courts distinguished the authorities that endorse the cost approach to the assessment of actual or market value on the basis that they do not apply when there is no market for the subject property in its current use and there is evidence of the price at which the property would sell in the open market for another use. This Court said,

> [18] The Board found support for the appraiser's "judgment" to use replacement cost as the measure of market value in authorities that approved the use of the replacement cost approach to valuation: *Montreal v. Sun Life Assurance Co. of Canada*, [1952] 2 D.L.R. 81 (J.C.P.C.); *Ontario (Assessment Commissioner York) v. Office Specialty Ltd.*, [1975] 1 S.C.R. 677; *Crown Forest Industries Limited v. Courtenay Assessor, Area 06* (1987), 10 B.C.L.R. (2d) 145 (C.A.).
>
> [19] The chambers judge distinguished these cases, stating (at para. 34) that they "did not address the situation of a special use for which there is no market, in circumstances where there is an agreed value for the property apart from that use."
>
> [….]

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> [23] As Gray J. found, this case is distinguishable from the cases relied on by the Board by the fact that there was evidence of the price at which the property would sell in the open market for a less restricted use than the current use. There was also evidence of the market for similar properties for another use – the sale of the Flexo plant.

[112] These comments must be read in light of the facts of that case. The distinction noted there is not applicable here, where the stated case stipulates that there was a market for the property in its existing use and that the current use of the property was its highest and best use. In this case, the principles laid down in the long line of authorities to which Mr. Justice Esson referred in ***Crown Forest Industries*** are applicable.

[113] For those reasons, I have concluded that the chambers judge erred in answering the question on the stated case in the affirmative. I would allow the appeal, set aside the order of the chambers judge, and answer the question on the stated case as follows:

> Question
>
> Did the Property Assessment Appeal Board err in law by assessing the Appellant's property by reference to the value of the property to its owner, or by reference to its value in use, rather than by reference to its fair market value?
>
> Answer
>
> No.

"The Honourable Mr. Justice Smith"

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APPENDIX

STATED CASE

THIS CASE STATED by the Board, pursuant to Section 65 of the *Assessment Act*, at the requirement of the Appellant, Pacific Newspaper Group Inc., seeks the opinion of the Supreme Court on the questions of law set out below in respect of which the following are the material facts:

1. The appeals before the Board were from the decisions of the Property Assessment Review Panel with respect to the 2002 through 2005 assessment of property owned by the Appellant, Pacific Newspaper Group Inc. (Pacific Newspaper) and used as a printing and distribution facility for the Lower Mainland's two dominant daily newspapers, the Vancouver Sun and The Province.

2. The Vancouver Sun and The Province have a daily circulation of over 200,000 newspapers each. They are the only large daily newspapers in the Lower Mainland market.

3. The printing and distribution of such a large quantity of newspapers requires a unique arid state of the art printing facility. This facility is located on a 13.81 acre site at Kennedy Heights in Surrey, British Columbia (the "Property"). The Property was purchased by Southam Inc. in September, 1995 and the plant was designed and constructed by Southam to meet its very specific requirements involved in printing two large daily newspapers. Through a series of share and property transactions, the fee simple interest in the Property was transferred to Pacific Newspaper.

4. Large metropolitan centres, such as the Lower Mainland, typically have one daily newspaper. Pacific Newspaper owns two daily newspapers, and there is no room in the market for another large daily newspaper. Therefore, there is no one other than Pacific Newspaper that requires the capacity and specifications that the printing facility was designed for.

5. The issue before the Board was the determination of the Property's actual value for the 2002 through 2005 assessment rolls.

6. The Property was purchased by Pacific Press, a division of Southam Inc. in September, 1995 for $5,100,000. In 1996 and 1997, Pacific Press constructed a 208,051 square foot newspaper printing and distribution and printing facility. The cost for construction of the plant was approximately $40-50 million.

7. Pacific Newspaper would not sell the Property, even for the assessed value, as the Property is essential to the revenue stream for the company.

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8. There is no other buyer in the market for the Property with the presses that are in place as there is no one else with the specific requirements of the facility.

9. The Property, without the presses is worthless to anyone else in the market except for an alternate use, such as a warehouse.

10. The Property, if sold for its current use, would sell as part of the operation or going concern of the publishing of The Vancouver Sun and The Province.

11. Prior to purchase of the Property, the two newspapers were printed at a facility near King George Highway in Surrey called the “Flexo” plant, starting in 1990. The Flexo plant was commissioned due to the change in format of The Province newspaper.

12. In the 1990’s, Hollinger Inc. began to acquire the shares of Southam Inc., so by the end of the 1990’s, Hollinger had acquired all of Southam Inc. the owner of the two newspapers and the Property.

13. From 1997 to 2000, Southam Inc. printed its newspapers at the Property.

14. In 2000, Canwest Global purchased some of the newspapers owned by Southam Inc., including Pacific Press, a division of Southam Inc., which owned the Property and The Vancouver Sun and The Province. The assets of Pacific Press was transferred to Pacific Newspaper (a company affiliated with Canwest Global), the current owner.

15. Southam Inc. had initially purchased The Province in 1923 and the Vancouver Sun was owned by FP Publications. In the 1960s, both companies decided to pool their resources to build a printing facility where both papers could be printed. This facility was at 2250 Granville Street, which printed both papers until 1990. A company owned by both Southam and FP Publications was incorporated, Pacific Press, and ownership of the newspapers and the printing facility and the property was transferred to that company.

16. In 1980 or 1981, FP Publications sold its 1/2 interest in Pacific Press so that Southam Inc. became the sole owner and operator of Pacific Press, and its assets, including the property at 2250 Granville Street.

17. The property at 2250 Granville Street was eventually sold by Pacific Press after the commencement of the printing facility at the Flexo plant. The facility at Granville Street was torn down and has been redeveloped for residential development. Mr. Ross advised that there was no attempt to sell the Granville Street property with the presses as there would have been no buyers with these requirements and as the technology was outdated. As well, the property was rezoned residential.

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18. The Flexo plant was sold in 1998 for $5.5 million to Sandy's Furniture for a furniture retail and warehouse use. Mr. Ross stated that there would not have been anyone interested in buying the Flexo plant with the presses, because the presses were designed to print 200,000 papers or more, and there is no other newspaper that would require this capacity or size.

19. The Flexo plant was then resold by Sandy's Furniture to Navigation Canada in 2001 for $9 million for use as an air traffic control centre.

20. The Board found that there is a market for the Property as part of the going concern of the newspapers, though the market may be limited, and that there are other potential purchasers, though a limited number, both nationally and internationally, for the Property in its current use as part of the purchase of that going concern.

21. The Board found the highest and best use of the Property is a continuation of the existing use.

22. The Board found that what appraisal methodology is used to determine market value largely depends on the highest and best use concluded, and the quantity and quality of evidence available. Whether a property is termed "special purpose" or "limited market" property is not determinative, but, rather, the circumstances of each case, including the property's highest and best use and availability of reliable market evidence. In the event there is little or no reliable market evidence to support a valuation by the income or direct sales comparison approach, then the cost approach, properly applied and adjusted for, may be the most appropriate. The Board found there was insufficient evidence of any lease or rental information on comparable properties that would make the income approach to value the Property reliable. The Board found newspaper printing and publishing plants do not trade or lease in the market for their revenue generating potential. As for the direct sales comparison approach, the Board found the scarcity of similar properties in the market made this approach unreliable. The Board found that the cost approach was the most suitable method to determine the actual value of the Property.

23. The Board accepted the appraisal evidence provided by the witness for the Assessor and his conclusion of value.

24. The Board confirmed the decisions of the 2002, 2003, 2004, and 2005 Property Assessment Review Panels as follows:

2002:

Land:	Class 5 - Light Industry	$ 3,949,000
Improvements:	Class 5 - Light industry	$ 35,741,000

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Total Assessed Value:		$ 39,690,000
2003:		
Land:	Class 5 - Light Industry	$ 4,212,000
Improvements:	Class 5 - Light Industry	$ 35,731,000
Total Assessed Value:		$ 39,943,000
2004:		
Land:	Class 5 - Light industry	$ 4,212,000
Improvements:	Class S - Light industry	$ 34,818,000
Total Assessed Value:		$ 39,030,000
2005:		
Land:	Class 5 - Light Industry	$ 5,002,000
Improvements:	Class 5-Light Industry	$ 34,818,000
Total Assessed Value:		$ 39,820,000

25. Attached to this Stated Case as Schedule “A” is a copy of the Board’s decision dated October 4, 2005. Attached as Schedule “B” is a copy of the Board’s Hearing Results Form/Exhibit Sheet. Filed with this Stated Case are Exhibits 1 through 11 filed with the Board, and the transcript of the Board's hearing.

THE QUESTION which the Board is required to ask for the opinion of the Supreme Court is:

1. Did the Property Assessment Appeal Board err in law by assessing the Appellant's property by reference to the value of the property to its owner, or by reference to its value in use, rather than by reference to its fair market value?

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TAB 8

In the Court of Appeal of Alberta

Citation: Calgary (City of) v. Municipal Government Board , 2004 ABCA 10

Date: 20040109
Docket: 0201-0318-AC
Registry: Calgary

2004 ABCA 10 (CanLII)

Between:

The City of Calgary

Applicant (Respondent)

- and -

The Municipal Government Board

Respondent

Carma Developers Limited

Respondent (Appellant)

Corrected judgment: A corrigendum was filed on March 25, 2004; the corrections have been made to the text and the corrigendum is appended to this judgment.

The Court:

The Honourable Madam Justice Conrad
The Honourable Madam Justice Russell
The Honourable Mr. Justice Wittmann

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Mr. Justice Brian E. Mahoney
Dated the 23rd day of September, 2002
(2002 ABQB 843, Docket: 0101-03835)

2004 ABCA 10 (CanLII)

Memorandum of Judgment

The Court:

[1] At the conclusion of this hearing, the appeal was dismissed and the decision of the Municipal Government Board reinstated, with reasons to follow.

I. INTRODUCTION

[2] This appeal relates to a 1999 tax assessment of development property in the City of Calgary (the City).

II. BACKGROUND

[3] The appellant, Carma Developers Limited (Carma), is a land developer. In 1999, Carma owned a 43.2 acre parcel of undeveloped land in Calgary in what is fast becoming the suburb of Tuscany. The land, which had not been sub-divided at the time of the tax assessment, consisted of two parts: a 14.13 acre parcel which Carma was entitled to subdivide and develop (the Tuscany lands), and a 29.07 acre parcel of environmentally sensitive land that consisted of a ravine (the ravine lands). In 1996, Carma entered into an "Environmental Reserve Dedication Agreement" with the City, obliging Carma to transfer the ravine lands to the City at no cost when it sub-divided the 43.2 acres. The City's interest in the ravine lands was protected by a caveat.

[4] In 1999, the Legislature instituted a new market value system of civic property tax assessment. The principle for guiding assessments was set out in an amended *Municipal Government Act*, (now R.S.A. 2000 c. M-26) and *Regulations*. Section 1(l)(n) of the *Act* defines market value as "the amount that a property, as defined in section 284(1)(r), might be expected to realize if it sold on the open market by a willing seller to a willing buyer." Section 284(1)(r) of the *Act* defines property as " (i) a parcel of land, (ii) an improvement, or (iii) a parcel of land and the improvements to it." Finally, s. 11(c) of the *Standards of Assessment Regulation* (the applicable regulation in 1999) says market value assessment "must reflect typical market conditions **for properties similar to that property**." These definitions reflect the common law interpretation of "market value" which contemplates the existence of a market.

[5] In the case before us, the City compared the value of Carma's land to the recent sale price of five other parcels of land in the Tuscany area, which, though undeveloped were also similarly capable of sub-division. Using this technique, the City assessed the land at $50,000 per acre for a total assessment of $2,160,000. Carma appealed that assessment to the Assessment Review Board. Carma accepted that $50,000 per acre was appropriate for the Tuscany lands (the 14.13 acres of sub-dividable lands). It took the position, however, that the ravine lands had no market value as they would transfer to the City upon sub-division at no cost to the City.

[6] At this point, the City assessors acknowledged there was a distinction to be drawn between

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the Tuscany lands, which could be developed, and the ravine lands that could not. Before the Assessment Review Board, the City then took the position that while the Tuscany lands should be assessed at $50,000 per acre, consistent with their capacity for development, the ravine lands should be assessed at 50 per cent less than the value of surrounding lands. The City submitted this differential was consistent with its policy towards the assessment of city owned lands such as parks. On this basis, the City argued that the market value of the ravine should be $25,000 per acre which, when combined with the Tuscany lands, resulted in an assessment of $1,430,000. The Assessment Review Board, without giving reasons, agreed with the City.

[7] Carma appealed that decision to the Municipal Government Board (the Board) arguing, once again, that the ravine lands had no market value because there was no market for them. Carma submitted that the market value of the entire parcel was really the value of the 14.13 acres that could be sub-divided because no one would be willing to pay for an acreage that would automatically pass to the City upon sub-division. For its part, the City maintained the position taken before the Assessment Review Board. It compared the ravine lands to the undevelopable land found in Fish Creek Park and Nose Hill Park which, although exempt from taxation, had nonetheless been assessed at $20,000 per acre.

[8] Thus, the Board was faced with an agreement that the 14.13 acres of Tuscany land had a market value of $50,000 per acre. The issue then became the market value of the ravine lands to enable the Board to arrive at a total assessment of the entire acreage based on market value. The Board concluded that there would be no purchaser for the ravine lands and, as a result, the ravine lands had no independent market value. The market value of the parcel was the market value of the 14.13 acres - which was agreed upon. It assessed the property at $706,500 for the whole parcel.

[9] The City applied to the Court of Queen's Bench for judicial review of the Board's decision. The reviewing judge accepted that the standard of review was one of patent unreasonableness. He went on to conclude, however, that the Board had come to a patently unreasonable decision by assuming the land would be sub-divided when it made its assessment, and by effectively exempting the ravine lands from taxation when they did not yet fit into one of the exceptions set out in s. 361 of the *Municipal Government Act*. As a consequence, the reviewing judge quashed the Board's decision and remitted it for re-assessment. Carma appealed.

III. STANDARD OF REVIEW

[10] The parties agree that the chambers judge was correct in finding that the tribunal's decision could be interfered with only if it was patently unreasonable. The parties agree, as well, that in applying this standard of review, the chambers judge was obliged to be correct.

IV. ISSUE

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[11] The issue before the Board was the market value of a particular piece of property zoned for sub-division. The issue before us is whether the Board's decision was clearly irrational and could not be sustained by reason.

V. DECISION

[12] Under the statute, and its regulations, property assessments are made on the basis of market value. Market value is determined by referring to recent market conditions concerning similarly situated parcels of land. Here, for purposes of comparison, the City chose to rely on property which drew its value from its capacity for future sub-division. It concluded the 14.13 acres of developable property was worth $50,000 per acre.

[13] The properties used by the City for comparison were properties that could be sub-divided and developed. This accounts for the high market value of the Tuscany lands. Having assessed acres at an enhanced value because of the ability to sub-divide, however, the City had to be prepared for the logical aftermath. If the high market value of the 14.13 acres was derived from the assumption that the land would be sub-divided, the remaining land had to be assessed in accordance with the negative aspects of that assumption, namely, that the reserve lands would pass to the City once the property was sub-divided at no cost to the City. Thus, the ravine lands had no market. What willing buyer would pay anything for land designated to be transferred to the City of Calgary at $0.00?

[14] In this case, the parties agree that the market value of the Tuscany lands was $50,000 per acre. The Board was entitled to accept that assessment based, as it was, on market sales of comparable property. The Board was also alive to the fact that it was dealing with the assessment of one, single titled parcel of land. It was not irrational, therefore, for the Board to conclude that if $50,000 per acre was the appropriate market value of the Tuscany lands because they could be developed, the ravine lands had a market value of $0.00 per acre because they would no longer be owned by the parcel owner. The Board's decision was not patently unreasonable.

[15] At the hearing of the appeal, the City argued that the ravine had value because it enhanced the value of the surrounding lands. We accept that a ravine (whoever owns it) could enhance the value of the surrounding acreage. A purchaser might be willing to pay more for an acre of developed property beside, or backing onto, a ravine than for an acre of land backing onto another developed property. But this fact does not give market value to the ravine. It merely increases the market value of the surrounding land - in the present case, the Tuscany lands.

[16] This argument, therefore, does not help the City because it had already established a market value of $50,000 per acre for the Tuscany lands, based upon what it chose to argue were market sales of comparable property. Having agreed that the Tuscany acres were worth $50,000 per acre, the City could not attempt to argue they were actually worth more through the guise of assigning a market value to the ravine lands. It may be that the City could have argued that the Tuscany lands were worth a considerable amount due to their surroundings. But the City did not take this position

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before the Board, and it did not produce evidence, which the Board could have relied upon, showing the market conditions for similarly enhanced property.

[17] Thus, in our view, the chambers judge erred in concluding that the decision of the Board was patently unreasonable. The chambers judge appeared to base his decision on the fact that the ravine property would only revert to the City if the property was sub-divided, and that an owner may choose not to sub-divide. That is not the issue. The comparables which the City relied upon here were properties which drew their value from their capacity for sub-division. There was no evidence before the Board to allow it to assess the market value of Carma's land on the alternative basis that it would not be sub-divided.

[18] The City also argued that the assessment here was patently unreasonable because it effectively exempted the ravine lands from taxation. We respectfully disagree. It is clear that all the parties recognized the Board would assign a single market value to the whole property once the market value of the two different kinds of land within the parcel had been ascertained. In the end, the Board considered the property as a whole and assessed its market value at $706,500. Assessing a value per acre was merely a convenient way of assessing the final market value of a single parcel of land where there were restrictions on its use. The chambers judge erred, therefore, in finding that the reserve lands had been effectively declared exempt from taxation.

[19] As indicated at the hearing, the appeal is allowed and the decision of the Municipal Appeal Board is restored.

[20] Costs are awarded to the appellant for both the chambers application and the present appeal.

Appeal heard on November 14, 2003

Memorandum filed at Calgary, Alberta
this 9th day of January, 2004

Conrad J.A.

Russell J.A.

Wittmann J.A.

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Appearances:

B.R. Inlow, Q.C.
For the Applicant

M.D. Talaga
for the Respondent

T.W. Kathol
for the Respondent (Appellant)

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Corrigendum of the Memorandum of Judgment

In paragraph [15], before the word “argued” the word “appellant” has been corrected to read “City”.

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