

Presentation by the
**Association of
Manitoba
Municipalities**



to

The Standing Committee on Legislative

Affairs - Bill 33: The Planning Act

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The Planning Act is a crucial piece of legislation for municipalities since it defines powers at the municipal level and guides processes for land use planning. As a result, municipalities have raised several concerns related to Bill 33, such as the recognition of local authority and the separation between provincial and municipal responsibilities. This presentation will provide an overview of municipal concerns that have been addressed by Bill 33 as well as a discussion of outstanding municipal issues. Specific areas of concern pertain to development plans and the development process, livestock operations and the division of responsibility between municipalities and the Provincial Government.

Development Plans

First, regarding development plans, Bill 33 incorporates many of the key municipal concerns the AMM has raised regarding *The Planning Act*. Since the development plan is such a significant planning tool for municipalities, several issues have been raised regarding this process. Therefore, implementing a development plan in a timely manner is essential for municipalities. At present, municipalities view the approvals process as too lengthy and the AMM has been concerned that an increased demand for development plan approvals will further delay the approvals process and plan implementation. The AMM is pleased that the Provincial Government has changed the approval process and that the Minister is now authorized to approve development plans without additional approval from the Executive Council. However, there is no time limit for the Minister to respond and approve a plan, which can create delays. With the addition of timelines put on the Minister, this should effectively reduce the time delays associated with provincial approvals.

As well, the AMM is pleased that provisions have been made to link development agreements on conditional uses to caveats on land titles. It is crucial for municipalities to have the authority to regulate future landowners through development agreements in order for planning to remain effective over the long-term. The provisions under Bill 33, which allow a caveat with a copy of such an agreement to be filed at the appropriate land titles office, will therefore be a beneficial addition for municipalities. Under the existing *Planning Act*, caveats related to development agreements were only permitted if they pertain to zoning by-law amendments and subdivision approvals. This change will ensure that development agreements on conditional uses will continue to be effective into the future.

However, there are other improvements that could be made by this legislation. For instance, the Minister maintains the authority to reject development proposals without providing specific reasons to the local council. There have been instances where municipalities felt they were treated unfairly by the Province and that proper consideration was not given to the development proposal. Unexplained rejections tend to be perceived as biased decision-making and municipalities would appreciate a legislated requirement that the Province must explain any objections to particular developments in rural Manitoba. Furthermore, if the Province provides the rationale, municipalities will have the opportunity to consider how proposals could be approved for future submissions. The approvals process must be fair, therefore a transparent process

requiring the Province to clarify its objections would ensure equitable treatment for all municipalities.

Another critical issue regarding development plans is the process for referring development plan objections to the Municipal Board. At present, development plan objections can be taken to the Municipal Board when only one individual is opposed. This results in undue delays to the local planning process since the objections may not represent a significant opinion within the municipality. The AMM has suggested that the Municipal Board should only consider appeals when a critical mass of local citizens formally objects to a development plan by-law, such as ten per cent. This would ensure that development plan objections adequately represent a significant proportion of the municipal population. Therefore, the Province should take into account a high degree of local support for the development plan by-law when making the decision to approve the plan, even though this is not formalized in the legislation. The AMM is disappointed that the proposed legislation does not address this concern and requests that further consideration be given to this matter.

While development plans specifically guide local initiatives, there are many other aspects of development processes that require improvements. For instance, municipalities have been concerned with the mandatory physical posting requirements related to public hearings. We appreciate that some new alternatives have been created under the new *Planning Act* regarding notifications. The removal of the requirement to send notices by registered mail will reduce the cost of notifications. In addition, Bill 33 does not extend

the radius for notification and it is imperative that the radius remains at the current level due to the additional administrative and financial responsibilities that would be associated with further notifications. The AMM looks forward to future improvements to the notifications requirements in the next phase of *The Planning Act* review.

Livestock Operations

The development process is inextricably linked to livestock operations in many parts of Manitoba and this is the second major area of concern for AMM members.

Municipalities require the ability to maintain local control over land use planning, including the right to develop a livestock operations policy that responds to the desires of their ratepayers. Bill 33 enables this through the specific requirement that all development plans must include a livestock operation policy to guide zoning by-laws dealing with livestock operations. It is very appropriate for this issue to become an integral part of all municipal development plans.

Municipalities anticipated that the ability to establish siting and setback requirements would be included in the creation of a livestock operations policy. This demand is met by the specification that the livestock operations policy must set out general standards to be followed respecting the siting and setback of livestock operations. Furthermore, municipal zoning by-laws must establish siting and setback requirements for livestock operations that meet minimum standards established by regulation and are generally consistent with the livestock operation policy. Along with existing variation authorities,

these features satisfy municipalities' desire to control siting and setback for livestock operations.

As legislation that outlines municipal authority, it is important that *The Planning Act* clearly delineate municipal and Provincial Government responsibilities. For instance, municipalities are appreciative that Bill 33 maintains the conditional use process for all development, including livestock operations. This process effectively ensures that municipal councils have final approval on all development within their boundaries. In general, municipalities want final say in all land use planning decisions with no appeal process to another jurisdiction that supersedes municipal land use decisions. This is very important to AMM members since councils are elected officials with firsthand knowledge of suitable land uses within their jurisdiction. Bill 33 also maintains an appropriate balance between municipal authorities and Provincial Government authorities regarding other approvals and appeals processes. Local councils retain authorities related to development plan by-laws, zoning by-laws, variances, conditional uses and subdivision approvals, therefore empowering local decision-making.

A key part of decision-making for livestock operations is the approval process that municipal councils undertake. Although much of this occurs in the development plan through the livestock operations policy, there is still a requirement for further council approval on all livestock operations over 300 animal units, as per the proposed legislation. Municipalities are able to set threshold amounts for council approvals lower than 300 animal units, but cannot adjust the approvals process for larger operations. This

creates a disconnect from the development plan's livestock operations policy. That is, if a municipality creates a livestock operations policy in the development plan and designates areas where large livestock operations can be situated, there should be no need for a subsequent process regarding individual operations. Requiring a second process potentially increases conflict at the community level, since the decision becomes more personal when it applies only to a specific operation. The function of a development plan is to provide long-term planning and the public has the opportunity to raise concerns at a public hearing on this by-law. Therefore, an additional approval process should be optional to council as long as a livestock operation is consistent with the development plan and zoning by-law, regardless of the number of animal units.

The need to establish local guidelines extends to other aspects of livestock operations, including odour control mechanisms. The AMM recognizes that the Provincial Government is in the best position to establish environmental regulations, yet municipalities seeking to impose additional restrictions are still acting in conjunction with Provincial objectives. For instance, if municipalities were authorized to require manure injection this would provide a better mechanism for municipalities to control odour. However, Bill 33 restricts municipalities to two odour-reducing measures: requiring covers on manure storage facilities and requiring shelter belts be established. While these are both valuable tools, municipalities aiming to have better odour controls should have the authority to do so.

There has also been some concern with the definition of animal units. The Province currently defines animal units based on species type, however municipalities have identified the additional consideration of confinement periods as relevant to this calculation. One of the primary functions of the animal unit calculation is to determine the amount of land required for spreading manure. Therefore, this calculation should also account for the differences between operations with year-round confinement and operations with some pasturing. The key differences between these two types of operations occur since the length of time animals spend in the pasture will reduce the need for spreading the manure in other fields. Therefore, these distinctions should be reflected in an animal unit calculation that accounts for both species type and confinement period.

Division of Responsibility

In the areas of Provincial authority, local input must still be considered in the decision-making process. However, the process would also benefit from the inclusion of local input. The ongoing use of local consultation in other areas of *The Planning Act* contributes important information to the development processes and this should be no exception. Community consultations are critically important to land use planning and the inclusion of consultation feedback will strengthen support for TRC reporting. To gain a complete perspective on the local circumstances, the TRC should be required to conduct on-site inspections and consult with knowledgeable individuals at the local level.

Another concern with the TRC process is that under the new legislation, fewer livestock operations will be subjected to review. At present, municipalities are able to request a TRC assessment for any livestock operation. Bill 33 focuses extensively on the difference between livestock operations based on whether they are more or less than 300 animal units, including as it relates to the TRC process. In particular, livestock operations with more than 300 animal units will be required to have a TRC assessment and municipalities are not opposed to this requirement. The difficulty arises with smaller livestock operations since municipalities can now request a TRC review for any size operation, yet the smaller operations become a lower priority under the new procedures. Instead, municipalities should retain the ability to request a TRC review for operations having less than 300 animal units and the Province should ensure that these requests are given appropriate consideration.

There is a need for a greater interaction between the public and levels of government, especially regarding public hearings. The present system expects municipalities to defend provincial policy. This situation must be rectified in order to ensure that the public has access to accurate information. Currently only municipal councils attend the public hearings, leaving them responsible to explain the terms of environmental regulations. Yet, when technical questions arise, it is more appropriate for Department of Conservation staff to respond since it is an explanation of Provincial environmental regulations that is required. Since Department of Conservation staff is not required to attend public hearings, this creates a perception that municipal councils are accountable for Provincial decisions. If the public has no ability to be reassured that the

environmental concerns have been addressed, they will continue to pressure councils to deny livestock applications. Rather, the Provincial Government must be accountable for its environmental regulations and ensure the transparency of the process by attending public hearings, just as municipal councils are present to defend their decisions. Without these fundamental changes to the public hearing process, the livestock portion of this legislation will be totally ineffective.

With the exception of the public hearing process on livestock operations just outlined and the other key issues identified above, overall the AMM is generally supportive of Bill 33 and looks forward to many of the improvements to long-term planning that will be achieved by this legislation. Land use planning is a partnership between municipalities and the Province, and by incorporating the concerns outlined today, the Province will do much to strengthen this relationship.