



**COMMITTEE OF THE WHOLE
Town Hall – Council Chambers
Monday, April 4, 2016
7:00 pm**

AGENDA

1. Call to Order
2. Approval of the Agenda
3. Presentations
 - 3.1. MRHS Senior Girls Basketball Team
 - ~~3.2. Heart of the Valley Festival Committee~~
4. Approval of the Minutes
5. Action Items
 - 5.1 Approval of ½ of Operating Budget
 - 5.2 RFD 009-2016: Routine Access Policy
 - 5.3 Municipal Government Act Review
6. Information/Discussion Items
 - 6.1. Accounting Activities Report – March 2016
7. Anything by Members
8. Adjournment



REQUEST FOR DECISION
Routine Access Policy
#009-2016

Date: 31 March 2016	Subject: Routine Access Policy
Proposal Attached: Yes	Submitted by: Rachel Turner, Chief Administrative Officer

Proposal:	That Council approve the Routine Access Policy to provide clarity and consistency to the public who request information from the Town of Middleton. This will include the repeal of Policy 5.2 Search of Old Records Policy and the amendment of A.1.30 Fees Policy, as housekeeping actions resulting from the implementation of this new policy.
Background:	Under Part XX, Freedom of Information and Protection of Privacy, of the <i>Municipal Government Act</i> , the public has the right to request information from the Town of Middleton. In an effort to develop and maintain transparency and clarity for the public and staff, a Routine Access Policy outlines the general documents and information that are routinely and readily available for distribution to the public, either automatically through regular Town processes, or specifically through requests from the public.
Benefits:	<ol style="list-style-type: none"> 1. Provides clarity to staff and members of the public as to what information can readily be released or circulated to the public. 2. Streamlines processes for information requests, allowing the employee who has custody of the records to release them directly to the public upon request. 3. Provides consistent guidelines around what information is routinely accessible.
Disadvantages:	None foreseen.
Options:	
Required Resources:	
Source of Funding:	

Sustainability Implications: (Environmental, Social, Economic and Cultural)	
Staff Comments/ Recommendations:	
CAO's Review/ Comments:	

CAO Initials: RLT

Target Decision Date: 18 April 2016

TOWN OF MIDDLETON CODE A - GENERAL ADMINISTRATION	
Subject: Routine Access Policy	Number: 5.4
Coverage: Staff, Council, & Public	Approved by: Council
Effective Date : April 11, 2016	Revision Date:

Purpose

This Routine Access Policy is intended to clarify which records of the Municipality are available routinely upon request, and which requests for records require review by the Responsible Officer under Part XX, Freedom of Information and Protection of Privacy, of the *Municipal government Act* for conformity with the terms of the Act.

Objectives

This Routine Access Policy will improve public access to the records of the Municipality which are not released through active publication, without the requirement to submit a request under Part XX of the *Municipal Government Act*.

This Policy will provide greater certainty to staff and the public as to which records can be routinely accessed by the public, and which records can be accessed only by application to the Responsible Officer.

Policy

1. Applications for routine release of information may be made in writing to the staff person having custody of the record.
2. Any applications for records exceeding one copy of a single record must be made in writing to the Chief Administrative Officer and such applicants will be expected to pay for the staff time and costs required to process the application.
3. Staff having custody of the requested record may copy and release to the public within two business days any record listed in Appendix A to a maximum total of one copy of one record. Fees for copying in accordance with the Fees Policy will apply.
4. Staff having custody of the requested record which is not clearly listed in Appendix A shall not release the requested record except as directed by the Responsible Officer.

APPENDIX A

1. All Policies and Bylaws approved by Council.
2. Any document received by Council or any Committee of Council at any meeting which is not a “closed session” under Sections 22 or 203 of the Municipal Government Act.
3. All minutes of any meeting of Council or any Committee of Council which is not a “closed session”, after the minutes have been approved by the Council or Committee.
4. All agendas of any meeting of Council or any Committee of Council which is not a “closed session”.
5. Any permit or approval issued by any officer of the Municipality (including any document directly referenced by the permit or approval), except that the mailing address of the permit holder shall be excised. This specifically does not include the application for such permit or approval, nor any document which is not directly referenced by the permit or approval.
6. Any finished map created and published by the Municipality.
7. Printed copies of map images produced by Town-licensed programs such as LIU. This specifically does not include (a) raw data such as shape files or data tables required to produce the map and (b) printed copies of map images or other information pages produced by Property Online. There may be a charge incurred by the applicant associated with the reproduction of any maps.
8. Any newsletter, advertisement or other document publicly distributed by the Municipality.
9. Any document published by the Town on its website.
10. Owner name, civic address, Property Identification number, Assessment Account number and assessed value of any property within the Town. This specifically does not include the capped assessment figure or the owner’s mailing address.
11. The amount of taxes or other debts owed to the Town.
12. The job description and salary band of any employee or Council member of the Town.

Certification

I, Rachel L. Turner, Town Clerk of the Town of Middleton, do hereby certify that the policy, of which the foregoing is a true copy, was duly passed at a duly called meeting of the Town Council of the Town of Middleton held on the 18th day of April, 2016.

GIVEN under the hand of the Town Clerk and the corporate seal of the Town of Middleton this 19th day of April, 2016.

Rachel L. Turner
Town Clerk

**TOWN OF MIDDLETON
CODE A - GENERAL ADMINISTRATION**

Subject: Search of Old Records - Fees		Number: 5.2
Coverage: Staff, Council, & Public		Approved by: Council & CAO
Effective Date : February 7, 1994	Revision Date: March 4, 1996 July 5, 1999 May 6 2002 August 8, 2006	

Rationale

The following policy establishes fees for search of old records requests, to recoup some of the labour and material costs incurred.

Policy Statement

A charge shall be levied for locating, retrieving and producing records; preparing the record for disclosure; shipping and handling of the record; and providing a copy of the record as follows:

- 1) Labour shall be charged at fifteen (\$15) dollars per hour, prorated to actual time spent beyond first ½ hour. Requests that require less than one half-hour of time shall be exempt from labour charges.
- 2) Document reproduction and shipping shall be charged at cost and shall be in addition to labour costs laid out above.

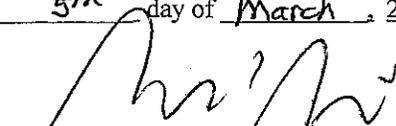
Previous Policies

The previous policy 1/20 "Search of Old Records - Fees" dated May 6, 2002 is hereby amended.

Certification

THIS IS TO CERTIFY that this policy was duly passed by a majority vote of the whole Council at a duly called Council meeting held on the 8th day of August, 2006.

GIVEN under the hand of the CAO and under the seal of the Town of Middleton this 5th day of March, 2007


Raymond C. Rice
Chief Administrative Officer

**TOWN OF MIDDLETON
CODE A – GENERAL ADMINISTRATION**

Subject: Fees

Number: 1.30

Approved by: Council

Effective Date : March 21, 2016

Revision Date: April 18, 2016

Rationale

The following policy establishes uniform fees for permits and services provided by the Town of Middleton, to enable some cost recovery for services provided.

Policy Statement

1. Permit and Service Applications

All permit and service applications shall be accompanied by the necessary fees payable to the Town of Middleton except in the case of requests under the Routine Access Policy or Freedom of Information/Protection of Privacy where the fees will be estimated and communicated to the applicant prior to completion of the service.

2. Permits and Services

The following schedule of fees shall be charged for permits and services provided by the Town of Middleton:

Permit or Service Type	Fee
Routine Access Policy	\$22.00/hr. after the first half hour.
Freedom of Information/Protection of Privacy Request	\$22.00/hr. after the first two hours
Document Reproduction (excluding oversized maps)	\$0.08/copy

References

The previous policy 5.2 “Search of Old Records - Fees” dated August 8, 2006 is hereby repealed.

Certification

I, Rachel L. Turner, Town Clerk of the Town of Middleton, do hereby certify that the policy of which the foregoing is a true copy was duly passed at a duly called meeting of the Town Council of the Town of Middleton held on the 18th day of April, 2016.

GIVEN under the hand of the Town Clerk and the corporate seal of the Town of Middleton this 19th day of April, 2016.

Rachel L. Turner
Town Clerk

Sharon McAuley

Subject: Municipal Government Act Review Update
Attachments: Issue 7 memo.pdf; Issue 8 memo.pdf; Issue 9 memo.pdf; Issue 10 memo.pdf; Issue 11 memo.pdf; Issue 14 memo.pdf; Issue 17.39 Memo.pdf; Issue 18 memo.pdf; Issue 19 memo.pdf; Issue 26 memo.pdf; Issue 31 memo.pdf; Issue 34 memo.pdf; Issue 35 memo.pdf; Issue 37 memo.pdf; Issue 38 memo.pdf; Issue 43 Memo.pdf; Issue 52 Memo.pdf; Issue 56 memo.pdf; Issues 1.22.44 memo.pdf; MGA Review Decision Making Guidelines.docx; MGA Review Working Groups.docx

Importance: High

Chief Administrative Officers and Village Clerk/Treasurers,

We would both like to express our gratitude to all those who have volunteered or who have supported staff in volunteering to help out with the review of the *Municipal Government Act*. The structure of the review is one of partnership with the Province, UNSM and the AMA. It is a structure that utilizes the vast knowledge and experience of those who work within the framework of the MGA. That knowledge and experience is an invaluable resource to a project of this magnitude and without those dedicated volunteers the review would not move forward. Over 40 municipal volunteers and almost 20 staff (UNSM, DMA and AMA) make up the groups working on the review.

We received over 500 suggestions for changes to the MGA during the initial consultation phase of the review. Using the guiding principles of the review, the MGA Review Committee filtered this listing down to approximately 130 issues which have been sent to the working groups for consideration and policy analysis. The tight time lines of the review were also considered in filtering the listing down to a more manageable number. Work plans from the working groups will be shared with all municipalities and villages when they become available.

In preparing draft recommendations, the working groups will, once again, follow the mission and guiding principles of the review, and will use standard templates in preparing reports and presentations to ensure a consistent approach.

Once the draft recommendations have been prepared the next stage will be consultation on those draft recommendations. The draft recommendations will be forwarded to Municipal Councils and Village Commissions for review at your regular meetings. We will try to balance keeping your agendas manageable with getting your input on the draft recommendations. Here is the process:

All draft recommendations will be sent to Municipal CAOs and Village Clerk/Treasurers for inclusion on your meeting agendas. CAOs and Clerk/Treasurers will be provided with policy reports and presentations. It will be up to the CAOs and Clerk/Treasurers to determine the most efficient way of informing councils and commissions. CAOs and Village Clerk/Treasurers will be provided with support from the MGA Review Committee as needed for preparation of reports and presentations to Councils and Village Commissions.

In addition, housekeeping amendments are also being sent out to you for consultation. The CAOs and Clerk/Treasurers will determine which Housekeeping amendments should be included on council/commission meeting agendas.

Councils and Village Commissions have until June 30, 2016 to provide their written positions on all draft recommendations. All draft recommendations and Council and Village Commission position papers will be made available to the public on the MGA Review website. There will also be an online form by which stakeholders and the public may submit their feedback to the MGA Review Committee.

Enclosed are 19 draft housekeeping recommendations for your review and comment. Please provide written Council / Village Commission comments / positions on these before June 30, 2016.

We will continue to update you on the work we are doing on the Review and if you have any questions, please contact either one of us or David Atchison at 902-225-2288 or datchison@amans.ca.

Yours truly,



Jeff Shute, CPA, CA
Project Coordinator, *Municipal Government Act* Review
Director, Policy and Finance, DMA

Department of Municipal Affairs
1505 Barrington Street, 14 North
Halifax, Nova Scotia, B3J 2M4
T: 902-424-6161
Jeff.Shute@novascotia.ca



Erin Beaudin
Chair, *Municipal Government Act* Review Committee
Chief Administrative Officer, Town of Wolfville

Town of Wolfville
359 Main St.
Wolfville, NS B4P 1A1
T: 902-542-4494
ebeaudin@wolfville.ca

Cc: Mayors, Wardens, Village Commissioners

Municipal Government Act Review, Decision-Making Guidelines

This document outlines Provincial Government priorities which should be used by the working groups as guidelines in preparing options and recommendations on various issues. Also copied are:

- Mission statement
- Guiding principles
- Policy paper template
- Presentation template

Please use these guidelines as support to arrive at consensus decisions within your working groups.

Provincial Direction Guidelines

- Establish priorities, including removing disincentives for municipal restructuring and strengthening the provincial-municipal relationship.
- Develop a provincial approach to align land use planning with economic growth.
- Reduce regulatory burden, ensure necessary regulations are predictable, transparent, protect health, safety and environment and eliminate barriers to private sector growth and productivity.
- Support principles of democracy.
- Make the legislation more enabling for municipalities.

Be generally supportive of:

People – Increase immigration, address declining demographics, improve health and wellness, enhance workforce participation.

Innovation – Create a better climate for private sector and social enterprise growth, progress towards the One NS economic goals.

Education – improved opportunities for skills development to increase workforce participation.

MGA Review Guiding Principles

- A new MGA will:
 - Balance MGA being more enabling for municipalities with the increased accountability that goes with this
 - Be relevant to current and future needs of municipalities and citizens
 - Provide municipalities with tools to support stable, predictable long-term funding
 - Support economic growth and development
 - Encourage regional approaches, collaboration
 - Enable, promote shared services
 - Use modern, clear language where possible for ease of understanding
 - Recognize differing needs and roles of urban and rural communities
 - Provide clarity for both provincial and municipal roles

- Recommendations for change will:
 - Be fair, evidence-based, realistic, based on solid policy research and rationale
 - Have input through appropriate, adequate consultations
 - Consider outstanding recommendations from other reviews:
 - Fiscal Review, Towns Task Force, UNSM / PVSC Tax Study, Partnership Agreement
 - Have reasonable implementation plans
 - Consider results of HRM Charter review

Also consider the provincial mandate for “red tape reduction”. Recommendations should not create unnecessary additional steps or costs for the public when interacting with Government. Consider streamlining processes where possible.

MGA Review Mission Statement.

A revised MGA will:

- Provide municipalities with the tools needed to:
 - Deliver local services in an efficient, cost effective manner that reflects the values of the community.
 - Build strong, viable, prosperous, sustainable communities
- Support municipal role in achieving Government's areas of focus:
 - Innovation
 - Create climate for private sector and social enterprise economic growth to support One NS economic goals
 - People
 - Increase net interprovincial and international immigration levels
 - Enhance health and wellness, communities and social well-being
- All in a fiscally sustainable manner

Policy Paper Template

- Introduction
 - Working Group members
 - Overview and list of MGA sections working group is responsible for
- Executive Summary
 - Summary list of recommendations for change being advanced to MGA Review Committee for consideration
 - List of policy issues considered but not advanced
- Policy Analysis (for each policy issue considered)
 - Issue description
 - Current legislation
 - Literature review (what experts in the field say)
 - Jurisdictional research
 - Stakeholder input
 - » Stakeholders consulted
 - » Methodology of consultation for each stakeholder
 - » Input received
 - » Conclusions (stakeholder positions, support?)
 - Options
 - » Pros, cons of each
 - Data modelling
 - » If necessary. Effects on municipal or provincial revenues, expenditures
 - Recommendations and rationale
 - » Implementation plan (phase in? Effective date?)
 - Ensure we have rationale for why some issues not advanced for change

Policy Recommendations Presentation Template

- Issue description
- Current legislation
- Literature review (what experts in the field say)
- Jurisdictional research
- Stakeholder input
 - » Stakeholders consulted
 - » Methodology of consultation for each stakeholder
 - » Input received
 - » Conclusions (stakeholder positions, support?)
- Options
 - » Pros, cons of each
- Data modelling
 - » If necessary. Effects on municipal or provincial revenues, expenditures
- Recommendations and rationale
 - » Implementation plan (phase in? Effective date? Cost?)
- Ensure we have rationale for why some issues not advanced for change

MGA Review Committee			
Erin Beaudin, Chair	Chief Administrative Officer	Town of Wolfville 599-2380	ebeaudin@wolfville.ca
Louis Coutinho	Chief Administrative Officer	Town of Windsor	lcoutinho@town.windsor.ns.ca
Mike Dolter	Chief Administrative Officer	Town of Truro	mdolter@truro.ca
Bruce Fisher	Manager, Fiscal and Tax Policy	Halifax Regional Municipality 490-4493	fisherb@halifax.ca
Glenn Horne	Municipal Clerk	Municipality of the County of Antigonish	glenn.horne@antigonishcounty.ns.ca
Michael Merritt	Chief Administrative Officer	CBRM 574-2406	mjmerritt@cbrm.ns.ca
Tammy Wilson	Chief Administrative Officer	Municipality of the District of Chester	twilson@chester.ca
Mike McCleave	Clerk/Treasurer	Village of Kingston	mmccleave@kingstonnovascotia.ca
Nick Barr	Senior Policy Analyst	Department of Municipal Affairs	nick.barr@novascotia.ca
Lyle Goldberg	Policy Analyst 423-8673	Union of Nova Scotia Municipalities	lgoldberg@unsm.ca
Governance Efficiencies Working Group			
Stephen Feist, Chair	Chief Administrative Officer	Town of Antigonish 867-5576	sfeist@townofantigonish.ca
Alex Dumaresq, Co-Chair	Deputy CAO/Strategic Initiatives Coordinator	Municipality of the District of Lunenburg	ADumaresq@modl.ca
Robert Christianson	Clerk and Treasurer	Village of Bible Hill	chris@biblehill.ca
John Ferguson	Chief Administrative Officer	Municipality of the County of Annapolis	jferguson@annapoliscounty.ns.ca
Jeff Gushue	Chief Administrative Officer	Town of Yarmouth	cao@townofyarmouth.ca
Sandy Hudson	Chief Administrative Officer	Municipality of the County of Victoria	sandy.hudson@countyvictoria.ns.ca
John MacKinnon	Director of Technology	Cape Breton Regional Municipality	jfmackinnon@cbrm.ns.ca
Chris McNeill	Municipal Advisor	Department of Municipal Affairs	Chris.mcneill@novascotia.ca
Emily Pond	Municipal Advisor	Department of Municipal Affairs	Emily.pond@novascotia.ca
Lynn Spencer	Accountant/Facility Manager	Village of New Minas	lynn.newminas@ns.aliantzinc.ca
Ron Dauphinee	Policy Analyst	Department of Municipal Affairs	Ronald.dauphinee@novascotia.ca
Shannon Bennett	Director, Governance and Advisory Services	Department of Municipal Affairs	shannon.bennett@novascotia.ca
Fiscal Responsibility Working Group			
Alain Muise, Chair	Chief Administrative Officer	Municipality of the District of Argyle	admuisse@munargyle.com
Doug Armstrong	Director of Finance	Town of Windsor	DArmstrong@town.windsor.ns.ca
Gerry Verran	Director of Finance	Town of Yarmouth	finance@townofyarmouth.ca
Mike MacLean	Director of Finance	Town of Wolfville	MMacLean@wolfville.ca
Greg Sewell	Manager, Municipal Operating Grants	Department of Municipal Affairs	gregory.sewell@novascotia.ca
Marie Walsh	Chief Financial Officer	Cape Breton Regional Municipality	mjwalsh@cbrm.ns.ca
Planning and Development Working Group			
John Bain, Chair	Director, Eastern Planning District Commission	Port Hawkesbury 625-5364	jdbain@edpc.ca
Tara Maguire	Director of Community Development	Municipality of the District of Chester	tmaguire@chester.ca
Chrystal Fuller	Director of Community Development	Town of Wolfville	cfuller@wolfville.ca
Jason Fox	Director of Planning	Town of Truro	jfox@truro.ca
Andrew Paton	Senior Planner	Department of Municipal Affairs	Andrew.Paton@novascotia.ca
Alan Howell	Planner	Department of Municipal Affairs	Alan.Howell@novascotia.ca
Rick McCready	Senior Planner/Heritage Officer	Cape Breton Regional Municipality	rgmccready@cbrm.ns.ca
Gordon Smith	Director of Planning	Department of Municipal Affairs	Gordon.Smith@novascotia.ca
Business and Economic Development Working Group			
Kim MacDonald, Co-Chair	Director of Economic and Business Development	Municipality of the District of East Hants	kjmacdonald@easthants.ca
Kim Ramsay, Co-Chair	Director of Finance	Municipality of the District of East Hants	kramsay@easthants.ca
Jessica McDonald	Director of Planning	Town of Bridgewater	jessicamcdonald@bridgewater.ca
Lisa MacDonald	Chief Administrative Officer	Town of New Glasgow	lisa.macdonald@newglasgow.ca
Graham Fisher	Senior Planner	Department of Municipal Affairs	Graham.Fisher@novascotia.ca
Mico Schwartzentruber	Policy Analyst	Department of Municipal Affairs	mico.schwartzentruber@novascotia.ca
Dave Waters	Economic Development Officer	Municipality of the District of Lunenburg	dwaters@modl.ca
Program and Service Delivery Working Group			
Andrew MacKinnon, Chair	Director of Public Works	Town of Truro 895-4243	amackinnon@truro.ca
David Ernst	Director of Operational Services/ Traffic Authority	Town of Yarmouth	engineer@townofyarmouth.ca
Marvin MacDonald	Chief Administrative Officer	Municipality of the District of St. Mary's	marvin.macdonald@saint-marys.ca
Wayne MacDonald	Director of Engineering and Public Works	Cape Breton Regional Municipality	whmacdonald@cbrm.ns.ca
Don Regan	Chief Administrative Officer	Town of Berwick	dregan@town.berwick.ns.ca
Aileen Waller-Hebb	Director, Grants and Programs	Department of Municipal Affairs	Aileen.Waller-Hebb@novascotia.ca
Hardy Stuckless	Manager, Corporate Services	Department of Municipal Affairs	hardy.stuckless@novascotia.ca

Ahmad Shahwan	Senior Engineer	Department of Municipal Affairs	Ahmad.Shahwan@novascotia.ca
Public Safety Working Group			
Bernie MacKinnon, chair	Chief/Director of Fire Services and Emergency Services	CBRM 563-5130	BGMacKinnon@cbrm.ns.ca
Greg Jones	Fire Chief/Safety Compliance	Town of Amherst	gjones@amherst.ca
Mike McCleave	Clerk/Treasurer	Village of Kingston	mmccleave@kingstonnovascotia.ca
Harold Pothier	Fire Marshall	Office of the Fire Marshall	Harold.Pothier@novascotia.ca
John Verrall	Fire Chief	Town of Yarmouth	firechief@townofyarmouth.ca
Connie Saulnier	Director of Finance	Municipality of the District of Clare	finance@municipality.clare.ns.ca

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 2, 2016

RE: MGA Review – Housekeeping amendments
Issue 1, 2, and 44



Issue information from Steering Committee

Tracking #: 1, 22, and 44

Working Group: Issue 1: Business and Economic Growth/Planning and Development
Issues 22 and 24: Fiscal Responsibility

Issue commented on:

Issues 1 and 22: Remove all references to Business Occupancy Tax

Issue 44: 71B allows council to exempt, by by-law, any day care licensed under the Day Care Act from taxes payable in respect of business occupancy assessment.

Amendments proposed by commenter:

Issues 1 and 22: Business Occupancy Tax references should be removed

Issue 44: This section should be repealed

Comments from SC:

Section(s) affected: 3(h), 56(2), 56(3), 71B, 72(6), 75(2), 75(3), 75(7), 80(1), 80(4), 85(4), 85(5), 128(2), 128(4), 128(5), 128(6), 131(1), 131(4), 132(1), 133(8), 161, 162, 359(c), 384(2)(c), 395(c) 439(3), 543(3), 543(4)

Recommendation from Burchell MacDougall: Amend as set out below

Discussion and rationale for recommendation

- The business occupancy tax was phased out several years ago. The MGA can and should be amended as set out below to remove all references to business occupancy or business occupancy tax.
- Amend section 56(3) as set out below, deleting 56(3)(a).
- Sections 75(2), 75(3), 85(4), 359(c), 384(2)(c) and 395(c) all refer to occupancy assessments. These references to occupancy assessments should be deleted.
- Repeal Section 128. Business occupancy tax did not form a lien on real property pursuant to section 3(bz) of the MGA and section 11(8) of the *Assessment Act*. The purpose of section 128 was to have a recovery mechanism for business occupancy tax from the seizure of personal property, so this entire section can be repealed. As section 128(1) defines “security interest” for both section 128 and section 129, “security interest” will have to be defined in section 129.
- Amend section 131(1) as set out below, deleting 131(a).

Amendments

Amend the following sections

56(2) The municipality may levy an area rate applicable only to the commercial property ~~and the business-occupancy assessments~~ in the area benefited by the expenditures in order to recover them.

56(3) In setting such an area rate, the council may set
(a) ~~different rates for business-occupancy assessments and commercial property assessments; and~~
a minimum and maximum amount to be paid by a person assessed,
or may provide that payments be made on another basis established by the council.

72(6) The council shall authorize the levying and collecting of a
(a) commercial tax rate of so much on the dollar on the assessed value of taxable commercial property-
~~and business-occupancy assessment~~; and

75(2) The council may recover annually from the area the amount required or as much of that sum as the council considers advisable to collect in any one fiscal year by an area rate of so much on the dollar on the assessed value of the taxable property ~~or occupancy assessments~~ in the area.

75(3) The council may provide:
(a) a subsidy for an area rate from the general rate in the amount or proportion approved by the council;
(b) in the resolution setting the area rate, that the area rate applies only to the assessed value of one or more of the taxable commercial, residential or resource property ~~and occupancy~~ assessments in the area.

- 75(7) The area rate referred to in this Section may be different on commercial property ~~and business occupancy assessments~~ than on residential and resource property.
- 80(1) The council may levy a rate on the value of all assessable property ~~and business occupancy assessment~~ in the area served by a water system in the municipality, as defined by the council by policy, in order to recover that part of the cost of the water system that is attributable to fire protection.
- 80(4) The rate referred to in subsection (1) may be different for commercial property ~~and business occupancy assessments~~ than for residential and resource property.
- 85(4) Where a village or service commission defaults in either principal or interest, the municipality shall recover the amounts in default by an area rate levied on the assessed value of the taxable property ~~and occupancy assessment~~ in the area of the village or service commission and shall immediately notify the Minister of the default.
- 85(5) The area rate referred to in subsection (4) may be different for commercial property ~~and business occupancy assessments~~ than for residential and resource property.
- 131(1) Where a person, including a person paying on behalf of another person, pays only a portion of the taxes due, the treasurer shall apply and credit the amount
- ~~(a)~~ ~~— firstly, to the payment of the taxes rated upon the person in respect of business occupancy assessment~~
 - ~~(b)~~~~(a)~~ ~~secondly~~ ~~firstly~~ to the payment of any ~~other~~ taxes that are not a lien on any property; and
 - ~~(c)~~~~(b)~~ ~~thirdly~~ ~~secondly~~, to the payment of accumulated interest and then the taxes longest in arrears with respect to any real property designated by the person.
- 131(4) Where taxes are paid on behalf of a purchaser of real property, the taxes shall be applied to taxes due with respect to the property designated by the person paying the taxes, ~~including any business occupancy tax owed by the vendor with respect to the vendor's occupancy of that property.~~
- 132(1) A municipality shall issue a tax certificate, on request, stating
- (a) the current taxes on the property;
 - (b) the total taxes due by the owner to the municipality with respect to the property;
 - (c) any sums due from an owner of property for work done on the property by the municipality, the engineer, the administrator or any other authorized person, the cost of which forms a lien on the property;
 - ~~(d)~~ ~~— whether a change-in-use tax will be incurred if the use of the land is changed; and~~
 - ~~(e)~~ ~~— any sums due from the person assessed for business occupancy taxes that are required to be paid prior to payment of the real property taxes with respect to the property.~~
- 359(2)(c) ... the total assessed value of taxable property ~~and occupancy assessments~~ in the area proposed to be amalgamated or annexed;
- 384(2)(c) ... the total assessed value of taxable property ~~and occupancy assessments~~ in the town proposed to be incorporated;

395(2)(c)the total assessed value of taxable property ~~and occupancy assessments~~ in the town;

439(3) Subject to subsection (3A), the village commission shall authorize the levying and collecting of

(a) a commercial tax rate of so much on the dollar of the assessed value of taxable commercial property ~~and business occupancy assessments~~; and

(b) a residential tax rate of so much on the dollar of the assessed value of taxable residential property and resource property.

543(3) A rate levied pursuant to subsection (2) applies to the assessed value of all taxable property ~~and business occupancy assessments~~ in the area.

543(4) In the first fiscal year of a regional municipality, the council may levy and collect taxes at the same rates as were levied by the municipal governments, applied to the assessed value of all taxable property ~~and business occupancy assessments~~ on the same basis as the rates levied by municipal governments, provided the total sum so levied will be sufficient to meet the estimated requirements of the regional municipality for that year.

Repeal the following sections

Section 3(h): “business occupancy assessment” has the same meaning as in the *Assessment Act*;

Section 71B: The council may, by by-law, exempt any day care licensed under the *Day Care Act* from taxes payable in respect of business occupancy assessment.

Section 128:

Section 128(1): In this Section and Section 129, “security interest” has the same meaning as in the Personal Property Security Act.

Section 128(2): Where personal property, other than a mobile home, is taken or repossessed pursuant to a security interest and sold, or is sold under execution, other legal process or court order, the proceeds of the sale are first liable for any taxes that have been levied by the municipality in which the personal property was situate when taken with respect to the business occupancy assessment of the owner or person who was in possession of the personal property.

Section 128(3): A municipality shall issue a tax certificate binding on the municipality, on request, stating the taxes referred to in subsection (2).

Section 128(4): The holder of a security interest, sheriff or other person selling the personal property may pay the business occupancy taxes before or after the sale and add them to the amount claimed.

Section 128(5): The holder of a security interest, sheriff or other person selling the personal property shall pay the taxes out of the proceeds of the sale and is personally liable to the municipality for the business occupancy taxes to the extent of the total proceeds of the sale less the costs of conducting the sale.

Section 128(6): Where personal property, other than a mobile home, is taken or repossessed pursuant to a security interest and is not sold within six months of the taking or repossession, the holder of the security interest is personally liable to the municipality in which the property was situate when taken for the taxes levied with respect to the business occupancy assessment of the owner or the person who was in possession of the personal property.

Section 133(8): Taxes in respect of business occupancy assessments are not a lien upon property.

Section 161:

(1): Where property ceased to be occupied or used in the preceding fiscal year, the person who was assessed for business occupancy assessment in respect of it is entitled to a rebate of the taxes on the assessment.

(2) Where property ceases to be occupied or used in a fiscal year, the person who was assessed for business occupancy assessment in respect of it is entitled to a rebate of the taxes on the assessment for the portion of the fiscal year in which it is not used or occupied.

(3) The owner shall notify the Director of Assessment that the property has ceased to be used or occupied within thirty days after the cessation and if the owner fails to do so, the rebate shall be calculated from the earlier of the date

(a) of the notice; or

(b) another person is taxed with respect to occupancy of the same property.

(4) The Director of Assessment shall forthwith provide the treasurer with a copy of the notice.

(5) Upon receipt of the notice, the treasurer shall forthwith notify the person assessed of the amount of tax to be rebated.

(6) The notice from the treasurer may be appealed pursuant to the Assessment Act as if it were a notice of assessment.

(7) Upon expiration of the period of appeal or upon the appeal having been disposed of, where the person entitled to the rebate pays the taxes, the treasurer shall pay the rebate to the person and where the person is indebted to the municipality, the treasurer shall apply the rebate to reduce the indebtedness.

Section 162:

(1) Where a person commences a business, opens a business at a new or additional location or engages again in a business during a fiscal year and is assessed for business occupancy assessment as a result, the Director of Assessment shall forthwith notify the treasurer.

(2) Upon receipt of the notice, the treasurer shall forthwith notify the person assessed of the amount of the tax due.

(3) The tax payable pursuant to this Section is that proportion of the taxes for the full fiscal year, that the number of days from the day on which the person commenced the business, opened it at

the new or additional location or engaged again in the business, as the case may be, until the last day of the fiscal year, bears to the total number of days in the fiscal year.

Add the following section

Section 129: In this Section, “security interest” has the same meaning as in the *Personal Property Security Act*.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: January 27, 2016

RE: MGA Review – Housekeeping amendments
Issue 7



Issue information from Steering Committee

Tracking #: 7

Working Group: Business and Economic Growth/Planning and Development

Issue commented on: “278(2) and 280(1)”

Amendments proposed by commenter: “Need updating of Department title. Department of Transportation and Infrastructure Renewal”

Comments from SC: Nil

Section(s) affected: 278(2) and 280(1)

Recommendation from Burchell MacDougall: Amend s. 280(1) as set out below, do not amend s. 278(2).

Discussion and rationale for recommendation

Minor change to update names of applicable government departments. Section 278(2) does not need to be amended – it correctly refers to the Minister of the Environment. Section 280(1) does need to be changed. Since the names of departments change from time to time, instead of referring to the “Minister of Transportation and Infrastructure Renewal”, the amendment could refer to the Minister responsible for provincial highways. We suggest using the term “highways” instead or “roads” to be consistent with the language in the *Public Highways Act*.

Amendments

280(1)(b) the plan shows a proposed intersection with a street owned by the Province, unless the intersection has been approved by the Minister ~~responsible for provincial highways of Transportation and Public Works~~, or a person designated by that Minister; or

(c) the Minister ~~responsible for provincial highways of Transportation and Public Works~~, or a person designated by that Minister, or the engineer advises that the probable volume of traffic from the development will create unsafe conditions for which no remedial arrangements have been made.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 10, 2016

RE: MGA Review – Housekeeping amendments
Issue 8



Issue information from Steering Committee

Tracking #: 8

Working Group: Business and Economic Growth/Planning and Development

Issue commented on: All streets in a Municipality are vested absolutely in the Municipality. Provincial public roads also pass through Municipalities, so this section should be cleaned up to avoid any confusion.

Amendments proposed by commenter: None provided

Comments from SC: None provided.

Section(s) affected: 308

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

The commenter on this issue referenced s. 308 of the MGA. Section 308(1) reads:

308(1) All streets in a municipality are vested absolutely in the municipality.

While s. 308 does not exclude provincial roads, section 307 defines “street” and provides the necessary clarification for provincial roads which pass through municipalities.

307 In this Part, “street” means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith, **but does not include streets vested in Her Majesty in right of the Province.** 1998, c. 18, s. 307; 2000, c. 9, s. 49; 2008, c. 39, s. 388.

Amendments

None required.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 10, 2016

RE: MGA Review – Housekeeping amendments
Issue 9



Issue information from Steering Committee

Tracking #: 9

Working Group: Business and Economic Growth/Planning and Development

Issue commented on: References to clauses in the Public Highways Act regarding restrictions for work near controlled access highways should be added to the MGA.

Amendments proposed by commenter: None provided

Comments from SC: None provided.

Section(s) affected: None provided

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

The MGA already has provisions for municipalities to designate a street as a “controlled access street”, with restrictions similar to the restrictions that apply to controlled access highways under the *Public Highways Act*, so we do not believe any amendment to the MGA is necessary.

Public Highways Act- provisions regarding controlled access highways

Section 21 of the *Public Highways Act* permits the provincial government to designate a provincial highway as a controlled access highway. Section 22 of that *Act* prohibits anyone from doing the following, unless they have a permit from the Minister:

- (a) construct, use or allow the use of, any private road, entrance-way or gate which or part of which is connected with or opens upon the controlled access highway;
- (b) sell, or offer or expose for sale, any vegetables, fruit, meat, fish or other produce, or any goods, wares or merchandise upon or within forty-five metres of the limit of the controlled access highway; or

- (c) erect, construct or place or cause to be erected, constructed or placed, any building or other structure, or part thereof, or extension or addition thereto upon or within sixty metres of the limit of the controlled access highway.

MGA – provisions regarding controlled access streets

Section 309 of the MGA currently allows municipalities to designate municipal streets as controlled access streets, and sets out restrictions that apply to such streets. The relevant portions of s. 309 are:

309 (4) The council may, by by-law

.....

(d) designate any street as a controlled access street;

(e) regulate or prohibit access to a controlled access street.

(5) No person may

(a) construct or use a road or gate connected with, or opening upon, the controlled access street;
or

(b) offer for sale goods within the limit of the controlled access street.

In our view, the only substantive differences between the restrictions that apply to controlled access highways under the *Public Highways Act* and controlled access streets under the MGA are:

- it is prohibited to sell goods within 45 metres of the limit of a controlled access highway, but only prohibited to sell goods within the limit of a controlled access street;
- it is prohibited to construction a building within 60 metres of a controlled access highway, and there is no similar restriction on controlled access streets.

We do not believe the distance and construction restrictions in place for controlled access highways would necessarily be appropriate for streets that are designated as controlled access. Presumably most controlled access streets would be located in urban or suburban areas, so restrictions on constructing buildings and on selling goods within 45 or 60 m would not be desirable or realistic. We are certainly prepared to draft amendments to add these restrictions to the MGA if requested to do so.

Amendments

None required.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: January 18, 2016

RE: MGA Review – Housekeeping amendments
Issue 10



Issue information from Steering Committee

Tracking #: 10

Working Group: Business and Economic Growth/Planning and Development

Issue commented on: “Details # of plans for registry needed”

Amendments proposed by commenter: “This changes over the years, we currently send 4 plans, a simple wording change to clean it up so that a specific # is not set would be good”

Comments from SC: nil

Section(s) affected: 285(2)

Recommendation from Burchell MacDougall: Amend as set out below.

Discussion and rationale for recommendation

Minor change to make MGA consistent with reality – as stated by the commenter on this issue, the number of copies of a plan of subdivision required by the Registry changes from time to time. There is no need to specify the number in the MGA.

Amendments

285 (2) A development officer, or a person acting for a development officer, shall, within seven days of the approval of a final plan of subdivision, forward ~~two original copies of the approved plan~~ to the registry the number of copies of the approved plan required by the registry, one copy of which is to be filed in the registry.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 1, 2016

RE: MGA Review – Housekeeping amendments
Issue 11



Issue information from Steering Committee

Tracking #: 11

Working Group: Business and Economic Growth/Planning and Development

Issue commented on: “Dept. of Environment”

Amendments proposed by commenter: “This is currently not the title of the prov dept., maybe a definition could clean this up to be more universal.”

Comments from SC: nil

Section(s) affected: 76A, 278(2)(c) and 479A(a)

Recommendation from Burchell MacDougall: Amend 479A(a) as set out below. Do not amend 76A or 278(2)(c)

Discussion and rationale for recommendation

The correct name of the applicable Department is currently the “Department of Environment”. Sections 76A and 278(1)(c) correctly name the Department. Section 479A(a) refers to the “Department of Environment and Labour”, and should be corrected.

Amendments

Refusal to disclose information

479A The responsible officer may refuse to disclose

(a) any information of any kind obtained by a conciliation board, conciliation officer or mediator appointed pursuant to the municipality’s collective agreement or appointed pursuant to the *Civil Service Collective Bargaining Act*, the *Corrections Act*, the *Highway Workers Collective Bargaining Act*, the *Teachers’ Collective Bargaining Act* or the *Trade Union Act* or by an employee of the Department of Environment ~~and Labour~~ or an employee, appointee or member of the Civil Service Employee Relations Board, the Correctional Facilities Employee Relations Board, the Highway Workers Employee Relations Board or the Labour Relations Board for the

purpose of any of those Acts or ~~or~~ the municipality's collective agreement [or] in the course of carrying out duties under any of those Acts or the municipality's collective agreement;

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 1, 2016

RE: MGA Review – Housekeeping amendments
Issue 14



Issue information from Steering Committee

Tracking #: 14

Working Group: Business and Economic Growth/Planning and Development

Issue commented on: Private Road definition

Amendments proposed by commenter: May want to add clarity to include a wording “network of private roads” as many places multiple private roads lead onto each other from the initial one that was connected to the public road.

Comments from SC: None.

Section(s) affected: 2(f)

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

The phrase “private road” is not defined in the MGA, however it appears thirteen times, and the majority of these appearances are in the plural (i.e. “private roads”). We were unable to find any ambiguity or confusion in these sections of the MGA which would require wording similar to that of the proposed “network of private roads”. Conversely, the addition of “network of private roads” could provide more confusion.

The commenter referenced section 2(f) of the MGA; this section does not exist.

Amendments

None required.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 8, 2016

RE: MGA Review – Housekeeping amendments
Issues 17 and 39



Issue information from Steering Committee

Tracking #: 17 and 39

Working Group: Business and Economic Growth/Planning and Development/ Fiscal Responsibility

Issue commented on: Clarify definitions. Should be broader. Seeking clarity on this section - why are solar panels the only item mentioned...heat pumps? Other...

Amendments proposed by commenter: Provide financing mechanisms to enable municipalities to incorporate climate change mitigation options through energy efficiency, renewable energy generation, efficient building siting, and transportation (ex. Solar city in HRM)

Comments from SC: What is MGA intending in terms of power on this section.

Section(s) affected: 81A

Recommendation from Burchell MacDougall: Amend as set out below

Discussion and rationale for recommendation

In our view, referring to solar panels in section 81A probably intended to be an example of the type of energy efficiency equipment the section could apply to. The reference was not intended to restrict the section to apply only to solar panels. However, it would be clearer to not specify any particular technology, especially since energy efficient technology is constantly changing with new products becoming available.

Amendments

81A The council may make by-laws imposing, fixing and providing methods of enforcing payment of charges for the installation of energy-efficiency equipment on private property with the consent of the property owner, ~~including, without restricting the generality of the foregoing, solar panels.~~

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 1, 2016

RE: MGA Review – Housekeeping amendments
Issue 18



Issue information from Steering Committee

Tracking #: 18

Working Group: Business and Economic Growth/Planning and Development

Issue commented on: The term “Watercourse” is defined on page 114 – 191(r) and states that "watercourse" means a lake, river, stream, ocean or other body of water.

Amendments proposed by commenter: "Reference the definition as stated in the Environment Act for consistency with other provincial legislation. The Environment Act states that "'watercourse'" means (i) the bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the Province, whether it contains water or not, and (ii) all groundwater"

Comments from SC: None.

Section(s) affected: 191 (r)

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

We do not believe this to be a housekeeping item.

The MGA and the *Environment Act* define ‘watercourse’ differently. For example, oceans are not referenced in the *Environment Act* definition, however, they are in the MGA definition. Conversely, groundwater is not referenced in the MGA definition, but is in the *Environment Act* definition.

‘Watercourse’ appears to have a specific purpose within the MGA and changing its definition would affect that purpose. By way of example, MGA s. 220(5) states that “Where a municipal planning strategy so provides, a land-use by-law may... (o) regulate or prohibit development within a specified distance of a watercourse...”

Introducing the *Environment Act* definition of watercourse would prohibit development within a specified distance of groundwater and could have unintended consequences.

A change to the definition of watercourse would be a policy change and require further analysis.

Amendments

None required.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 10, 2016

RE: MGA Review – Housekeeping amendments
Issue 19



Issue information from Steering Committee

Tracking #: 19

Working Group: Business and Economic Growth/Planning and Development

Issue commented on: Minimum lots sizes in areas without Municipal sewer services are being restricted based on old technology.

Amendments proposed by commenter: Deals with increased ability of soil to absorb effluent with new technology. The subcommittee thought that consideration should be given to permitting smaller lot sizes based on current technologies. This would require a review of the *On-site Sewage Disposal Systems Regulations*.

Comments from SC: MGAC: If NSDOE approval/review is no longer required under the Subdivision Reg's then the Provincial Reg's would require amendments. (housekeeping in nature).

Section(s) affected: 270

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

The minimum permitted lot size for areas that do not have municipal sewer services is not set out in the MGA, so no amendment to the MGA is appropriate or necessary to allow for smaller lot sizes.

Any issues dealing with permitting 'smaller lot sizes based on new technologies' should be dealt with under the *On-site Sewage Disposal Systems Regulations* made under Sections 66 and 110 of the *Environment Act*. These regulations tie into the subdivision approval process under the *Provincial Subdivision Regulations*, which require that plans of subdivision be sent to the Department of Environment to determine compliance with the *On-site Sewage Disposal Regs*. Municipal subdivision by-laws must, of course, be consistent with the *Provincial Subdivision Regs*.

If the DOE concludes that a proposed lot proposed sewage disposal system for that lot does not meet the requirements of the *On-Site Sewage Disposal Regs*, the municipality cannot approve the plan of subdivision.

The *On-site Sewage Disposal Regs*, at section 5, state that they apply to all lots on a plan of subdivision that are proposed to be serviced by an on-site sewage disposal system, except for lots that are greater than 9000 m² in area and more than 75 m wide, and are not intended for development purposes.

Section 7 of the *On-site Sewage Disposal Regs* sets out the minimum lot size requirements for various depths of permeable soil. The table of minimum lots sizes in s. 7 is set out below:

Minimum Lot Size Requirements		
Depth of Permeable Soil (mm)	Lot Area (m²)	Lot Width (m)
0 - 149	9000	76
150 - 299	6800	60
300 - 600	4500	53
601 - 899	3150	37
900 and deeper	2700	37

Section 13 of the *Regulations* contains a list of clearance distances, requiring set-back requirements for sewage disposal systems from property boundary lines (3 m); wells (15.2 m from a drilled well, 30.5 m from a dug well); surface water courses and wetlands (30.5 m) etc.

In light of the above, any changes to the minimum lot sizes would first have to be made in the *On-site Sewage Disposal Regs* made under the Environment Act. If there is a change to lot sizes in those *Regulations*, the *Provincial Subdivision Regs* can then be amended accordingly, as can individual municipal subdivision by-laws, if necessary.

Municipal Affairs and municipalities may wish to raise this issue with the DOE, and ask the DOE to consider whether the current minimum lot size requirements and set-backs for on-site sewage disposal systems are appropriate. However, we do not see where any changes to section 270 of the MGA (which prescribe provincial subdivision regulations) are required.

Amendments

None required.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 1, 2016

RE: MGA Review – Housekeeping amendments
Issue 26



Issue information from Steering Committee

Tracking #: 26

Working Group: Fiscal Responsibility

Issue commented on: Requiring municipal seal on debenture package

Amendments proposed by commenter: MFC is considering the use of electronic documents for debenture. This is not currently possible as Section 94(b) of the MGA requires the debenture package to be sealed with the municipal seal.

Comments from SC: MFC would like an amendment that would facilitate the use of electronic documents for debenture

Section(s) affected: 94(1)(b)

Recommendation from Burchell MacDougall: Amend as set out below

Discussion and rationale for recommendation

The section can be amended to remove the requirement of the municipal seal.

Amendments

94(1) A debenture shall be

- (a) in the form approved by the council; and
- (b) signed by the mayor or warden and clerk or the persons designated by the council, by policy, ~~and sealed with the municipal seal.~~

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 1, 2016

RE: MGA Review – Housekeeping amendments
Issue 31



Issue information from Steering Committee

Tracking #: 31

Working Group: Fiscal Responsibility

Issue commented on: Power of the landlord

Amendments proposed by commenter: Appropriate in the MGA vs tenancies act

Comments from SC: Clarify requirement for this section/ MGAC: Needs a legal opinion

Section(s) affected: 130

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

This section should remain in the MGA. It would not be a simple matter to move this section into the *Residential Tenancies Act* and the *Tenancies and Distress for Rent Act*. Without the residency and business occupancy taxes, it is less likely that this section would be used, however it should remain in the event that a landlord does pay a municipal expense (for example, a water or sewer charge) due from the tenant.

Amendments

None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 1, 2016

RE: MGA Review – Housekeeping amendments
Issue 34



Issue information from Steering Committee

Tracking #: 34

Working Group: Fiscal Responsibility

Issue commented on: Sections 107 and 108 Outdated - currently cannot leave registry of deeds without payment.

Amendments proposed by commenter: Delete, or modify to reflect reality.

Comments from SC: Cannot register deed if deed transfer not paid. If not paid, interest is applied.

Section(s) affected: 107 and 108

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

We recommend that sections 107 and 108 remain unchanged. It is possible for deed transfer tax (“DTT”) to not be paid when it is due, which makes s. 107 and 108 relevant.

While it is true that a deed cannot be registered without the DTT being paid, the DTT can become due before the deed is registered. The key point here is that title to a property can “transfer” pursuant to a deed before the deed is submitted to the Registry for registration. The MGA at s.104 states that the “deed transfer tax shall be paid by the grantee named in the deed within ten days of the transfer”.

Although “transfer” is not defined in the MGA, the date of ‘transfer’ is generally considered to be the date the purchaser of a property is entitled to ownership (the day the seller delivers a deed and the purchaser takes possession of the property) – see, for example, *Director of Assessment (N.S.) v. Keddy* (1991), 108 NSR (2d) 275. The date the deed is delivered is date is the disclosed on the DTT affidavit of value as the “date of sale”.

As stated, it is therefore possible for a transfer to occur without a deed being registered and DTT being paid. For example, a lawyer may inadvertently neglect to submit a deed in a timely fashion. In this instance, DTT would be due on the date the purchaser received the deed and took possession of the property (as further disclosed in the affidavit of value). However, if more than 10 days passed before the deed was submitted for registration (thereby delaying the payment of the DTT), the affected municipality would be entitled to interest on the DTT amount owing.

Removing sections 107 and 108 of the MGA would result in municipalities being unable to collect interest on late DTT payments. We are aware that HRM relies on these provisions in collecting interest on late payments – other municipalities may do so as well.

Amendments

None recommended

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 1, 2016

RE: MGA Review – Housekeeping amendments
Issue 35



Issue information from Steering Committee

Tracking #: 35

Working Group: Fiscal Responsibility

Issue commented on: Does not allow digital signature

Amendments proposed by commenter: Allow digital signatures

Comments from SC: Modernize Act / Currently speaks to digital copy of original

Section(s) affected: Section 101

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

The deed transfer tax affidavit is an affidavit and must be executed in accordance with the *Evidence Act*. Accordingly, the person swearing the affidavit must appear in person before a lawyer, commissioner of oaths, or other party authorized by statute, to have their signature on the affidavit properly witnessed.

Digital signatures are not permitted for affidavits and this section of the MGA should not be amended as proposed above.

Where the MGA speaks to digital copies, it refers to the fact that for registration purposes, a scanned version of an original affidavit is acceptable to the Land Registration Office in the process of an e-submission.

Amendments

None proposed

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 10, 2016

RE: MGA Review – Housekeeping amendments
Issue 37



Issue information from Steering Committee

Tracking #: 37

Working Group: Fiscal Responsibility

Issue commented on: Change of use.

Amendments proposed by commenter: "Change of use tax will be owing, if applicable"

Comments from SC: Puts the onus on the seller/purchaser to determine if the Change of Use tax is applicable. PVSC determines this at the time of sale, not done by units. MGAC: Need a legal opinion.

Section(s) affected: 132(1)(d)

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

The tax certificate section of the MGA, s. 132 reads in part as follows:

132(1) A municipality shall issue a tax certificate, on request, stating:

.....

(d) whether a change-in-use tax will be incurred if the use of the land is changed; and

This section requires a municipality to state on tax certificates whether a change of use tax will apply if the use of the land is changed. This change in use could occur at any time, independent of whether and when the land is sold or transferred.

Property Valuation Services Corporation notes:

A change in use is defined as ceasing the exempt use of designated lands as follows:

- conservation – section 76A of the MGA
- farm – section 77 of the MGA
- forest – section 78 of the MGA
- non-profit (recreational) – section 76 of the MGA

and the change in use tax is applied when the exempt use of a parcel of land ceases.

As noted by the SC in its comments, PVSC, not municipalities, is responsible for deciding:

- whether and when land ceases to be used for one of the above designated purposes;
- the value of the land and the amount of the change in use tax to be paid;
- the identity of the person who was responsible for the change in use, and is therefore liable for the change in use tax

Accordingly, the role of municipalities in the change of use tax regime is quite limited, which in our view is appropriate. Most municipalities do not have the expertise and the resources to take a more active role in determining whether the use of land has changed, the value of the land and the amount of the tax, and who is responsible for paying the tax – those decisions should remain with PVSC.

In light of the above, municipalities are not in a position to state anything more on a tax certificate about change of use tax than what s. 132(1)(d) requires at present – simply notifying the recipient of the tax certificate whether a change of use tax will be incurred if the use of the land changes.

We agree that it would be helpful, especially for buyers and sellers of a parcel of property, for PVSC to provide more information and for there to be more explicit guidelines about how PVSC determines whether and when the use of property has changed, about how it decides on the value of the land and therefore the amount of the change in use tax, and how it decides who is responsible for the change in use (ie. the buyer or seller of the land). However, these issues cannot be dealt with in the context of this housekeeping amendment, and probably do not require any amendments to the MGA.

Amendments

None required.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: January 18, 2016

RE: MGA Review – Housekeeping amendments
Issue 38



Issue information from Steering Committee

Tracking #: 38

Working Group: Fiscal Responsibility

Issue commented on: “81(1)(da)(ii)”

Amendments proposed by commenter: “Should “person” be defined in the Act”

Comments from SC: Nil

Section(s) affected: 81(1)(da)(ii)

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

“Person” is defined already in s. 7(1)(s) of the *Interpretation Act* as follows:

(s) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;

This definition applies in all Nova Scotia legislation. It is unnecessary and possibly confusing to define “person” in the MGA.

Amendments

None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 8, 2016

RE: MGA Review – Housekeeping amendments
Issue 43



Issue information from Steering Committee

Tracking #: 43

Working Group: Fiscal Responsibility

Issue commented on: 73 (2) allows HRM to set separate commercial and residential tax rates for areas determined by the council to be a rural area receiving a rural level of services; a suburban area receiving a suburban level of services; and an urban area receiving an urban level of services.

Amendments proposed by commenter: Is this section necessary or should this section be removed? Section 73 (1) contains identical wording but covers all municipal units.

Comments from SC:

Section(s) affected: 73

Recommendation from Burchell MacDougall: Amend as set out below

Discussion and rationale for recommendation

Although section 73(1) does apply to all municipal councils, the difference between section 73(1) and 73(2) is the use of “may” and “shall”. As 73(2) refers only to HRM, it can be deleted, since it is now part of the HRM Charter (s. 94 of the Charter).

Amendments

73 ~~(1)~~ ~~Subject to subsection (2),~~ Aa council may set separate commercial and residential tax rates for the area of the municipality determined by the council to be

- (a) a rural area receiving a rural level of services;
- (b) a suburban area receiving a suburban level of services; and

(c) an urban area receiving an urban level of services.

~~(2) The council of Halifax Regional Municipality shall set separate commercial and residential tax rates for the area of the Halifax Regional Municipality determined by the council to be~~

~~(a) a rural area receiving a rural level of services;~~

~~(b) a suburban area receiving a suburban level of services; and~~

~~——(c) an urban area receiving an urban level of services.~~

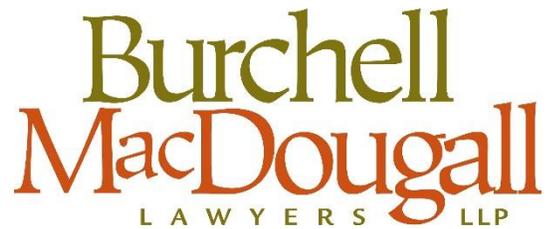
MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 8, 2016

RE: MGA Review – Housekeeping amendments
Issue 52



Issue information from Steering Committee

Tracking #: 52

Working Group: Governance Efficiencies

Issue commented on: 403 defines an elector as a person resident within the village entitled to vote at a municipal election, and who will have resided in the village for at least six months immediately prior to the village election.

Amendments proposed by commenter: The MEA residency requirement changed from six months to three months in 1994. Village elections, however, are not run under the MEA, but under the MGA, so this amendment does not apply to villages. Amend the residency requirements to three months to correspond to the Municipal Elections Act.

Comments from SC:

Section(s) affected: 403

Recommendation from Burchell MacDougall: Amend as set out below

Discussion and rationale for recommendation

We agree with this comment – the residency requirement for voting in village elections should be consistent with the three-month requirement under the *Municipal Elections Act* that applies to municipal elections.

Amendments

403 In this Part, “elector” means a person resident within the village entitled to vote at a municipal election, and who will have resided in the village for at least three ~~six~~ months immediately prior to the village election.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: February 1, 2016

RE: MGA Review – Housekeeping amendments
Issue 56



Issue information from Steering Committee

Tracking #: 56

Working Group: Governance Efficiencies

Issue commented on: Does this make them a Commissioner of Oaths, needs to be clarified.

Amendments proposed by commenter:

Comments from SC:

Section(s) affected: 14

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

Section 14 of the MGA does not make council members Commissioners of Oaths, as council members are not designated Commissioners of Oaths pursuant to the *Notaries and Commissioners Act*. However, council members can perform several of the same functions of a Commissioner of Oaths, including taking affidavits, declarations, and affirmations.

Amendments

None recommended