The Planning Act Handbook

A Guide for Municipalities
and Planning Districts

Manitoba

The Planning Act Handbook:
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1. Introduction

1.1 Overview

Manitoba has a long history of community planning legislation. The province's first Planning Act, was adopted in 1916. New Acts were adopted in 1964 and 1976.

This handbook deals with *The Planning Act* Chapter 30 of the Statutes of Manitoba, 2005. The Act was given Royal assent on June 16th, 2005 and came into force on January 1, 2006.

The Planning Act (the act) replaced the former act of 1976.

This Handbook is intended as a guide and a useful reference to the Act. While it is aimed primarily for elected and appointed officials of municipalities and planning districts, the Handbook will be of use to anyone with an interest in land use planning and community development in Manitoba.

1.2 Key Features of The Act

The Act was drafted to make a number of improvements over its predecessor. These improvements include:

- Modern structure and use of "plain language"
- Enable regional planning
- Land us planning is now a mandatory function of all local governments
- More flexibility and enabling authority provided to the local level
- Better balance between local and provincial interests
- More open, accountable decision-making
- Enacts the essential elements of Bill 40 (planning for livestock)
- Greater consistency in planning law (especially with the planning provisions of the City of Winnipeg Charter)

1.3 Organization of the Handbook

The Handbook is organized into thirteen parts that mirror the organization of the Act. Each of the parts of the Handbook will explain the provisions of the respective part of the Act. The Handbook also includes flowcharts illustrating the various procedures set out under the Act.

Procedural checklists to assist in administering the Act are included in the Appendices.

For more information on *The Planning Act* or on community planning in Manitoba contact your nearest Community Planning Services Branch regional office:

Community Planning Services Branch Regional Offices

Beausejour	125-20 First Street	Phone: (204) 268-6058
Brandon	2022 Currie Blvd.	Phone: (204) 726-6267
Dauphin	27-2nd Avenue S.W.	Phone: (204) 622-2115
Deloraine	101 Finlay Avenue E.	Phone: (204) 747-3331
Morden	323 North Railway	Phone: (204) 822-2840
Portage La Prairie	311-25 Tupper Street N.	Phone: (204) 239-3348
Selkirk (Interlake)	103-235 Eaton Avenue	Phone: (204) 785-5090
Steinbach	335-323 Main Street	Phone: (204) 346-6240
Thompson	100-23 Station Road	Phone: (204) 677-6700

2. Provincial and Regional Planning

Part 2 of the Act provides the framework for planning at the provincial and regional level.

2.1 Provincial Land Use Policies

The Act provides a framework for land use planning at the provincial, regional and local levels. Manitoba has had Provincial Land Use Policies adopted by Regulation since 1980. The existing Provincial Land Use Policies Regulation was adopted as Manitoba Regulation 184/94. It contains statements of the Province's interest in land and resource use in Manitoba. The Regulation sets out the Province's policies with respect to:

- General development
- Agriculture
- Renewable resources
- Water and shoreland
- Recreational resources
- Natural features and heritage resources
- Flooding and erosion
- Provincial highways
- Mineral resources

Purpose of the Provincial Land Use Policies

According to subsection 4(1) of the Act, the Provincial Land Use Policies are intended to "guide sustainable land use and development in the province". Municipal councils and planning district boards preparing development plans or amendments need to consider the Provincial Land Use Policies during the by-law preparation process to ensure that the development plan by-law will be consistent with provincial policy. Any provincial departments or agencies that may have a interest in the proposed by-law should be consulted early in the by-law process.

Policy Application

Provincial departments and agencies will use the Provincial Land Use Policies as a guide when reviewing new development plans or amendments to existing plans. Under subsection 62(1) of the Act, the Provincial Land Use Policies do not apply to a municipality or planning district that has adopted a development plan. Provincial departments and agencies will therefore be diligent in their review of development plan by-laws to ensure they adequately reflect provincial policies.

Provincial Land Use Policies will also be used where there is no development plan or zoning by-law in place. Sections 207 to 209 provide that if a planning district or municipality has no development plan or zoning by-law in place, an application for a development can only be approved if approval is generally consistent with provincial land use policies.

Provincial Land Use Policies now apply to all of Manitoba, including the City of Winnipeg.

2.2 Regional Strategies

The Act provides for the development of "regional strategies". The boards or councils of two or more planning districts or municipalities can prepare a regional strategy for the area under their jurisdiction. Although the Act does not usually apply to the City of Winnipeg, the City can participate in a regional strategy.

Purpose

The purpose of a regional strategy is to allow boards and councils to jointly address issues that are regional or inter-jurisdictional in nature. A regional strategy will help guide the preparation of development plans by the boards and councils in the region. The strategy can also help to coordinate the delivery of services and infrastructure in the region.

Contents

The contents of a regional strategy are up to the boards and councils preparing the strategy. Subsection 5(3) of the Act lists some matters that a regional strategy could deal with. These are:

a) the identification and analysis of land use and development issues in the region;

(b) policies and goals respecting the following matters in the region:

(i) land supply,

(ii) transportation and infrastructure development,

(iii) residential development,

(iv) protection of agricultural land and agricultural operations,

(v) commercial, industrial and recreational development,

(vi) protection of the environment, especially water sources, sensitive lands, renewable resources and areas of natural or historic significance,

(vii) co-ordination of planning and development by planning districts and municipalities in the region,

(viii) economic and social development; and

(c) the identification of services and infrastructure development in the region in which co-operation between planning districts and municipalities could result in improved service or cost effectiveness.

Ministerial approval is not required for a strategy to come into effect; however, the minister must be consulted during the preparation of the strategy. A regional strategy must be generally consistent with provincial lands use policies.

Effect

A regional strategy comes into effect once the board or council of every planning district or municipality in the region has passed a resolution adopting the regional strategy. Once a planning district or municipality has adopted a regional strategy the board or council must ensure that any new development plan by-law or amendment to it conforms to the regional strategy.

2.3 Special Planning Areas

The Act continues to allow the Lieutenant Governor in Council to designate an area of the province as a "special planning area" [s. 11(1)]. To be designated as a special planning area, the area would need to have "special provincial or regional significance". Before designating a special planning area, the minister is required to consult with every planning district and municipality that would be affected by the proposed special planning area.

The special planning area is a tool that would allow the minister to control development in an area, should exceptional circumstances require it. No development could take place without the approval of the minister. To date, the Manitoba government has never declared an area to be a special planning area.

3 Planning Authorities

3.1 Municipalities

The Act provides for three types of local planning authorities: municipal councils, planning district boards and planning commissions.

Except where the municipality is a member of a planning district, the council of a municipality is responsible for the adoption, administration and enforcement of the development plan by-law, the zoning by-law and all other by-laws respecting land use and development in the municipality.

Transitional Provision – Existing By-laws or Resolutions

A by-law or resolution made by a board or council under the former Act continues with the same effect as if it had been made under authority of the Act [198].

3.2 Planning Districts

Two or more municipalities can join to form a planning district. Where a planning district is established, the planning district board is responsible for

- adoption, administration and enforcement of a development plan by-law for the planning district; and,
- administration and enforcement of the following by-laws of its member municipalities: zoning by-laws, building by-laws, by-laws respecting standards for the maintenance and occupancy of buildings and secondary plan by-laws.

A planning district board can also adopt a district-wide zoning by-law if the councils of every municipality in the planning district request it to do so.

Transitional Provision- Existing Planning Districts

A planning district established under the former Act is continued under the Act [195(1)]. Each member on the board of a planning district continues to hold office as if appointed to the board under the Act [195(2)].

Why Form a Planning District?

There are several reasons why a municipality might wish to join a planning district.

- Inter-municipal issues - A planning district provides a mechanism to deal with a range of community and land use planning issues that often cross municipal boundaries.
- Increased local authority - A planning district provides the opportunity to handle certain planning functions at the local level, such as subdivision approving authority, or the ability to deal with zoning appeals.
- Administrative support - A planning district also provides administrative and technical support related to planning and development, especially in the administration and enforcement of zoning and other by-laws.
- Cost effective services - Sharing planning and development services provided through a planning district can usually result in a higher level of services at lower cost.
- Provincial support - Manitoba Intergovernmental Affairs gives priority to planning districts when providing professional planning advisory services and other support.

Forming a Planning District

The process for forming a planning district is set out in section 16 of the Act. The councils of two or more municipalities apply to the minister to form a planning district.

The application must include a resolution from the council of each municipality supporting the establishment of the proposed planning district. Before applying to the minister, each council must give notice and hold a hearing to receive public representations on the proposed planning district. The requirements for public notice are set out in section 168. See Part 11 "Notices and Hearings" for a detailed discussion of the notice requirement. The minister can establish the planning district by regulation if he or she approves of the proposed planning district.

Structure and Administration of a Planning District

Each planning district has a board of directors which is responsible to manage its affairs. The board is made up of councillors appointed by the member municipalities. The composition of the board of directors will be set out in the organizational by-law of the planning district. The number of directors appointed by each member municipality will be determined by the members of the planning district; however, the Act requires that a board must have at least one director from each member municipality.

The board is responsible for establishing the administration of the planning district. The board must adopt by-laws dealing with the organization and procedures of the board, and the payment of remuneration to directors. The Board can adopt by-laws establishing the fees and charges for services provided by the planning district (such as licenses, permits or other approvals). The Board can also adopt other by-laws necessary to carry out its duties and powers under the Act.

> *Transitional Provision – Deadline for Adopting By-laws*
>
> *The board of a planning district continued under the Act has until June 1, 2006 to adopt an organizational and procedural by-law under subsection 21(1); and a compensation by-law under subsection 21(2) [195(3)].*

Changes to planning districts

Once a planning district has been established, the Act provides considerable flexibility for the minister to make changes:

- Change in name - a board can apply to the minister to change the name of the planning district
- Alteration or dissolution – a board or the council of a member municipality can apply to the minister to change the boundaries of a planning district (including the addition of new member municipality or removal of member municipality) or to dissolve the planning district
- Amalgamation – the boards of two or more planning districts can apply to the minister to amalgamate into a new planning district

There is a requirement for the applicant to provide notice and hold a public hearing on an application to add a municipality to a planning district, to dissolve a planning district or remove a municipality from a planning district, or to amalgamate planning districts. In the case of the dissolution of a planning district or the removal of a member municipality, the board or council applying for the change must provide the minister with a report setting out the reasons for the application and the results of the public hearing. The minister may also refer an application to alter, dissolve or amalgamate planning districts to the Municipal Board for a recommendation.

After considering the application, and any recommendations from the Municipal Board, the minister can make the requested change to a planning district and amend the regulation to reflect the change.

Transitional Provision – Annexations and Boundary Alterations

188 If land that was located in one municipality or planning district becomes part of another municipality or planning district because of an annexation or other alteration of municipal boundaries

(a) the development plan by-law, zoning by-law and any secondary plan by-law that applied to that land when it was part of the first municipality or planning district continues to apply to that land; and

(b) the municipality or planning district that now has jurisdiction over that land must administer the development plan by-law, zoning by-law and secondary plan by-law referred to in clause (a) until it amends its own development plan by-law and zoning by-law to cover that land.

3.3 Planning Commissions

The Act allows a council that has adopted a zoning by-law, or a planning district board that has adopted a district-wide zoning by-law, to establish a planning commission.

Purpose

The purpose of a planning commission is to assist the board or council in administering the zoning by-law. A planning commission can help handle some of the planning-related workload that would otherwise have to be dealt with by the board or council. Since a planning commission can have members that are not members of the board or council, it can be a way to involve people who are knowledgeable or interested in planning matters.

Duties of a planning commission

The board or council will determine the duties it wishes to assign to a planning commission. A planning commission can be authorized by by-law to hold hearings and make decisions on applications for:

- conditional uses;
- variances.

In these cases the decision of planning commission is subject to appeal to the board or council that established the planning commission. The requirements and procedures for appealing the decision of a planning commission are set out in section 34 and 35.

A planning commission can also be authorized by by-law to hold hearings and make recommendations regarding:

- the adoption of a zoning by-law or secondary plan by-law;
- subdivision applications;
- a by-law to close public reserve land;
- declaration of an obsolete plan of subdivision.

In these cases the planning commission submits its recommendation to the board or council for a decision.

Establishing a Planning Commission

A planning commission is established by a by-law of the municipality or planning district in accordance with subsection 32(1). The by-law establishing the planning commission must provide for:

- the designation of a chairperson and vice-chairperson;
- rules of practice and procedure;
- payment of remuneration and reimbursement of expenses; and
- other matters the board or council considers advisable.

A planning commission must have at least three members who may or may not be councillors. The members planning commission can be any combination of members of the board or council or other persons.

4 Development Plans

4.1 Purpose of a Development Plan

A development plan is essentially a statement of the board or council's policies respecting future development. The development plan is the basic tool for land use planning. It will guide land use controls in the zoning by-law and the development-related decisions of the board or council. The development plan also guides other development processes such as the subdivision approval process.

A development plan helps to ensure compatibility of neighbouring land uses, effective management of natural resources, preservation of natural and heritage resources, the appropriate mix of development, cost-effective and timely delivery of infrastructure services, protection of surface and ground water, and sustainable economic and community growth.

The board of a planning district, or the council of a municipality that is not a member of a planning district, is responsible for preparing a development plan for the planning district or municipality.

Transitional Provisions – Existing Development Plans

An existing development plan by-law adopted under the former Act continues with the same effect as if it had been adopted under the Act [s.196]. A basic planning statement adopted under the former Act is deemed to be a development plan.

A planning district or a municipality that is not part of a planning district has until January 1, 2008 to adopt a development plan by-law that meets the requirements of Part 4, including a livestock operation policy; or amend its existing development plan by-law to include a livestock operation policy [s. 201]. The minister may extend this deadline if he or she is satisfied the board or council has used its best efforts to comply with the Act [s. 203].

4.2 Requirements

The Act does not prescribe in detail the form a development plan should take or the matters that it must address. Subject to a couple of provisos in the Act, the contents and form of a development plan are generally determined by the board or council preparing the development plan. The first proviso is a development plan must be generally consistent with provincial land use policies [s. 41].

Second, the Act sets out certain general **requirements for a development plan** in subsection 42(1). A development plan must

(a) set out the plans and policies of the planning district or municipality respecting its purposes and its physical, social, environmental and economic objectives;

(b) through maps and statements of objectives, direct sustainable land use and development in the planning district or municipality;

(c) set out measures for implementing the plan; and

(d) include such other matters as the minister or the board or council considers advisable.

The development plan must also include a **livestock operation policy** that guides zoning by-laws dealing with livestock operations by

(a) dividing the planning district or municipality into one or more areas designated as follows:

(i) areas where the expansion or development of livestock operations of any size may be allowed,

(ii) areas where the expansion or development of livestock operations involving a specified maximum number of animal units may be allowed,

(iii) areas where the expansion or development of livestock operations will not be allowed; and

(b) setting out the general standards to be followed in the planning district or municipality respecting the siting and setback of livestock operations.

4.3 Adoption Process

A board or council must adopt a development plan by by-law. The process for adopting a development plan by-law is set out in sections 46 to 55 of the Act. The adoption process is illustrated in Figure 4.0. A "Procedures Checklist" for adopting a development plan by-law is found in Appendix 1.

4.4 Amendments and Review

4.4.1 Amendments

A development plan is not a static or unchanging document. A development plan may need to be revised or amended from time to time to reflect changing circumstances in the planning area or to respond to specific development proposals.

Subsection 56(1) of the Act allows an amendment to a development plan by-law to be initiated

(a) by the board or council; or

(b) by the owner of the affected property, or a person authorized in writing by the owner, through an application made to the board or council.

The process for adopting a development plan set out in sections 46 to 55 also applies to amendments.

There is an exception for a "minor" amendment to the development plan by-law (one that does not change the intent of the development plan), or an amendment to correct an error or omission. A board or council may apply to the minister to make such amendments without complying with section 57. The application must include a copy of the proposed amendment.

4.4.2 Periodic Review

A development plan also needs to undergo a comprehensive review to ensure it is meeting the needs of the planning area.

Subsection 59(1) deals with the periodic review of a development plan. A board or council must complete a detailed review of its development plan by the deadline set out in the development plan. If there is no deadline set out in the development plan, the review must be completed within five years after the by-law is adopted. In exceptional circumstances, the minister may order a board or council to complete a detailed review by an earlier date.

Following completion of the detailed review, the board or council must re-enact the development plan by-law or repeal and replace in accordance with the process set out in sections 46 to 55.

4.5 Secondary Plans

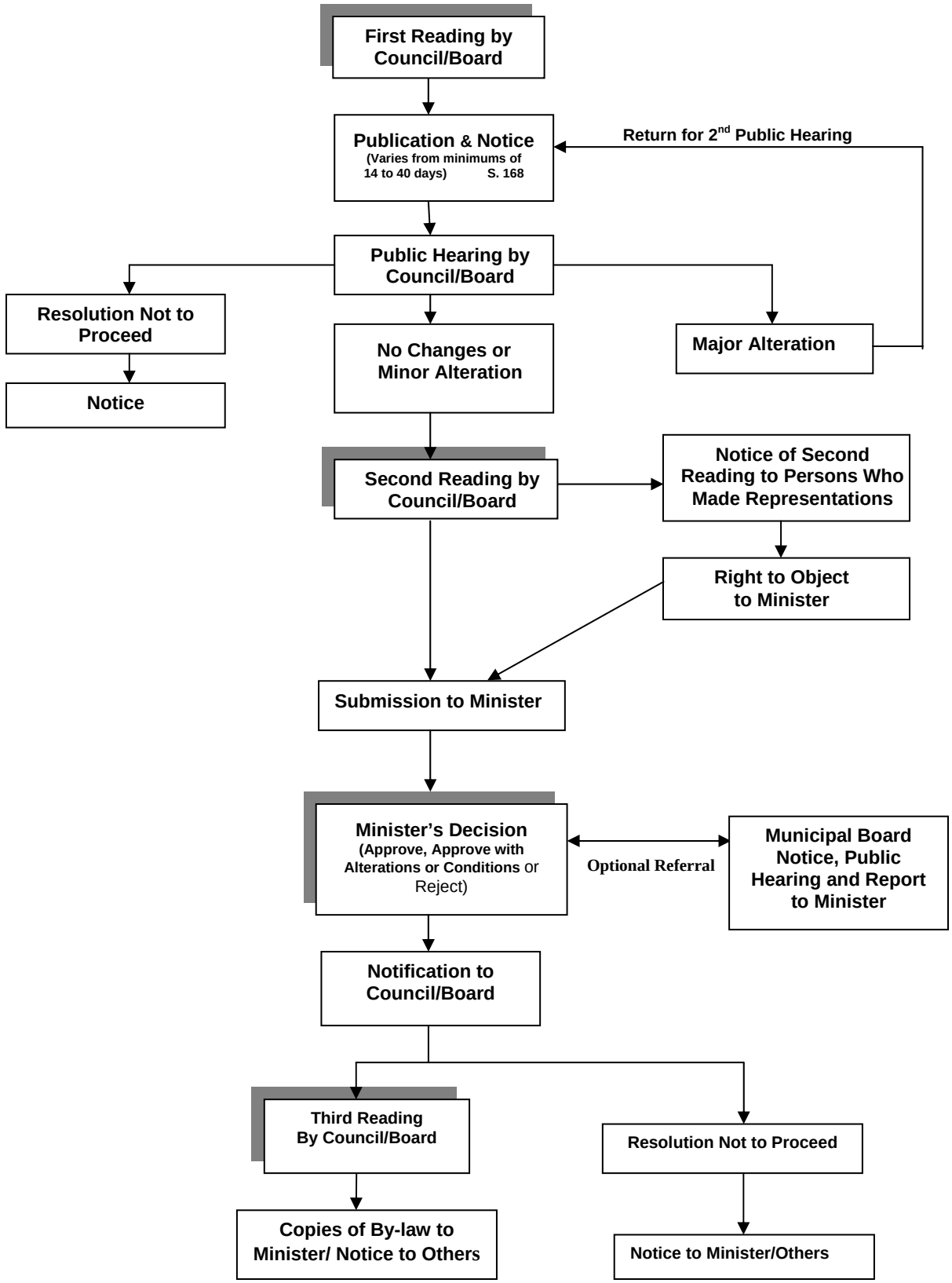
The Act allows a board or council to adopt, by by-law, a secondary plan to deal with objectives and issues in a part of the planning district or municipality. The issues a secondary plan might address include:

(a) any matter dealt with in the development plan by-law;

(b) subdivision, design, road patterns, building standards or other land use and development matters; or

(c) economic development or the enhancement or special protection of heritage resources or sensitive lands.

Figure 4.0: Development Plan Adoption Process



A secondary plan might be useful in setting out the overall pattern of future development in an area, or to set out more detailed policies respecting development issues in a specific part of the municipality or planning district. A secondary plan by-law must be consistent with the development plan by-law.

Adopting a Secondary Plan

A secondary plan by-law is subject to the same hearing and approval process required to adopt a zoning by-law under Part 5.

4.6 Effect of Plans

Section 65 states "The adoption of a development plan by-law or a secondary plan by-law does not require the board or council, any person, or any department or agency of the government to undertake a proposal contained in the by-law. However, undertakings and development in the planning district or municipality must be generally consistent with the development plan by-law and any applicable secondary plan by-law."

A development plan sets out the plans and policies of the planning district or municipality. It is a statement of the intent of the board or council. A board or council is not obliged to undertake any project or work contained in the development plan. However, by establishing objectives for the future development of the planning area the development plan will and help guide the decisions of the board or council and others to ensure that the objectives in the development plan will be achieved.

A secondary plan will provide more detailed guidance for the development decisions of the board or council. Once a secondary plan is adopted, decisions on other planning-related matters, such as zoning by-laws, variances, conditional uses and subdivisions, must be generally consistent with the secondary plan.

5 Zoning By-laws

5.1 Purpose of a Zoning By-law

The zoning by-law enables a board or council to adopt specific regulations for the use and development of land. Where the development plan is a statement of the board or council's intent respecting future development, the zoning by-law provides an essential mechanism for implementing the policies set out in the development plan.

The Act requires that every municipal council must adopt a zoning by-law unless the municipality is part of a planning district that has a district-wide zoning by-law [s.68].

Transitional Provisions – Deadline for Adopting a Zoning by-law

A municipality must adopt a zoning by-law that meets the requirements of Part 5, within one year after adopting a development plan by-law. If it has an existing zoning by-law it must amend its existing zoning by-law to ensure that it meets the requirements of Part 5 by January 1, 2008. [202(1)] .

The minister may extend these deadlines if the minister is satisfied that a board or council has used its best efforts to comply. [203]

A municipality that is part of a planning district that has adopted a district wide zoning by-law under section 69 is not required to adopt a zoning by-law [202(2)].

Transitional Provisions – Existing Zoning By-laws

A zoning by-law adopted under the former Act continues with the same effect as if it had been adopted under the Act [197(2)]. A planning scheme adopted under a previous Act is deemed to be a zoning by-law, however, a planning scheme is in effect only until the council adopts a zoning by-law under the Act [197(3)].

5.2 Requirements of a Zoning by-law

The Act sets out some basic requirements of a zoning by-law. Section 68 requires that a zoning by-law must be generally consistent with the development plan and any secondary plan. This ensures that the regulations that apply to the use and development of land will direct development in a manner that supports the goals and objectives set out in the development plan. A zoning by-law or amendment that is not generally consistent with the guiding plans could be subject to legal challenge.

Section 71 of the Act sets out in general terms the required form and minimum contents of a zoning by-law. A zoning by-law must:

- divide the municipality or planning district into zones,
- prescribe the permitted and conditional uses of land and buildings in each zone,
- prescribe the general development standards that will be applicable in each zone, and
- establish a system of development permits and the procedures for the local approval of development.

5.3 Zoning By-law Contents

Establishing Zones

In dividing the municipality or planning district into zones, the board or council will be guided by the development plan by-law and any secondary plan by-law. In particular, a board or council needs to consider whether the development plan or secondary plan identifies or designates areas for specific

land uses or types of land uses. The zones in the zoning by-law should reflect the future pattern of land uses set out in the plans.

In establishing zones the board or council also needs to consider existing land uses. The existing pattern of land use may or may not be consistent with the desired pattern of land use envisaged by the plan. Existing land uses may need to be recognized in the zoning by-law.

The zoning by-law will divide the planning district or municipality into zones through one or more zoning maps which will form part of the zoning by-law.

Permitted and Conditional Uses

An essential feature of each "zone" is the list of permitted uses and the conditional uses, if any, in the zone. A "**permitted use**" is a use of land or buildings that will be allowed provided the proposed development meets the requirements set out in the zoning by-law.

A "**conditional use**" is a use of land or buildings that may be allowed under a zoning by-law. The decision whether or not to allow the use is at the discretion of the board or council. In addition to the requirements set out in the zoning by-law, a board or council can impose additional conditions on the approval of a conditional use and can require the owner to enter into a development agreement.

Development Standards

A zoning by-law [71(2)] must prescribe general development standards or requirements that will be applicable in each zone.

In prescribing development standards the board or council needs to consider the permitted or conditional uses in the zone. In prescribing those requirements, the board or council must consider

(a) the development plan by-law and any secondary plan by-law;

(b) the character of the zone;

(c) the nature of the existing or proposed uses of land and buildings in the zone; and

(d) the suitability of the zone for particular uses.

Regulations in a Zoning By-law

The Act gives a board or council considerable latitude to regulate the use and development of land. Subsection 71(3) the Act lists the matters that can be regulated under a zoning by-law. These are:

(a) the use of land;

(b) the construction or use of buildings;

(c) the dimensions and area of lots, parcels or other units of land;

(d) the number, lot coverage, floor area, yard size, dimension and location of buildings on parcels of land;

(e) the design details of buildings and building sites and the establishment of committees to approve design details;

(f) the open space around and between buildings, minimum separation distances between buildings on a site and minimum separation distances between buildings and other buildings or uses;

(g) the cutting and removal of trees or vegetation;

(h) the location, height, type, and maintenance of fences and walls;

(i) landscaping and buffers between buildings and parcels of land, and between different uses of land;

(j) the placement of pedestrian walkways;

(k) the removal, excavation, deposit or movement of sand, gravel, soil or other material from land;

(l) the location, size and number of access points to a parcel of land from adjoining public roads;

(m) the establishment and maintenance of parking and loading facilities;

(n) the form, type, size, contents, and manner of display of outdoor signs or displays, including interior signs that are visible from the outdoors;

(o) the grading and elevation of land;

(p) the outdoor storage of goods, machinery, vehicles, building materials, waste materials and other items;

(q) the number, dimensions and density of dwelling units on a parcel of land;

(r) the outdoor lighting of any building or land;

(s) waste storage and collection areas, and facilities and enclosures for storing water and other liquids;

(t) the manner in which any use of land or a building is undertaken, including the hours of operation and the regulation of noxious or offensive emissions such as noise or odours;

(u) the sequence of development, including commencement and completion;

(v) the protection of scenic areas, heritage resources and sensitive land;

(w) the construction, location or placement of a building on sensitive land;

(x) the construction of a building within a specified distance of a water body or groundwater source.

Incentive zoning

The Act [s.73] also allows for incentive zoning. A zoning by-law can allow for the development requirements to be modified if the development provides public benefits specified in the zoning by-law. The nature of the incentives contained in the zoning by-law will be up to the board or council.

An example of incentive zoning might be a zoning by-law allowing an increased density of use (increased number of units or maximum floor area of a building) where a development provides a specified amount of public open space or additional parking.

5.4 Livestock Operations

The Act includes some specific provisions regarding the regulation of livestock operations under a zoning by-law.

A zoning by-law respecting livestock operations must be consistent with the livestock operation policy in the development plan [72(1)]. If the livestock operation policy designates an area as a place where livestock operations may be allowed the zoning by-law must designate livestock operations involving 300 or more animal units as a conditional use in that area [72(2)]. Livestock operations involving fewer than 300 animal units may be a permitted or a conditional use in that area.

Transitional Provision –Existing Zoning by-laws

If a zoning by-law adopted under the former Act that provides that livestock operations involving 300 or more animal units are a permitted use, the zoning by-law is deemed to be amended to provide that such operations are a conditional use.

Siting and Setback Requirements

The zoning by-law must also establish siting and setback requirements for livestock operations [72(3)]. These requirements must meet the minimum requirements established in the Provincial Land Use Policies regulation and be generally consistent with the livestock operation policy.

It is through the development plan by-law and the zoning by-law that a board or council can regulate the location and size of livestock operations. Except as provided in the development plan by-law or in provisions of the zoning by-law respecting the siting and setback of livestock operations, a board or council may not impose any restrictions or conditions on

(a) the location of a livestock operation; or

(b) the number of animal units involved in a livestock operation. [187(1)]

The Act gives a board or council specific authority to regulate livestock operations as outlined above. The Province also regulates the storage, application and use of manure. As result, notwithstanding Part 7 of *The Municipal Act* (By-laws: General Jurisdiction), a municipal by-law or zoning by-law respecting nuisance odours or prohibiting or regulating the storage, application or use of manure does not apply to a livestock operation if the owner or operator of the operation is complying with

(a) all other Acts and regulations regarding the storage, application or use of manure; and

(b) the terms and conditions of any permit or licence required to be held by the owner or operator under an Act or regulation. [187(2)]

5.5 Adopting a Zoning by-law

A zoning by-law is adopted by by-law of the municipality, or the planning district in the case of a district-wide zoning by-law. The Act has special requirements for the adoption of a zoning by-law. The generalized process for adopting a zoning by-law is shown in Figure 5.0. A "Procedures Checklist" for adopting a zoning by-law is also found in Appendix 2.

Public hearing

Since a zoning by-law will affect the property rights of individuals the Act gives the public a right to be heard respecting the by-law. After first reading but before second reading there must be a public hearing to receive representations regarding the by-law. The hearing will be held by the board or council, or by the planning commission where one has been established.

Notice of the hearing must be given accordance with section 168 of the Act. See Part 11 "Notices and Hearings" for a detailed discussion of the notice requirements.

As a result of the representations at the public hearing a board or council may decide to change or alter the by-law. If so, a second hearing must be held to receive representations regarding the alterations.

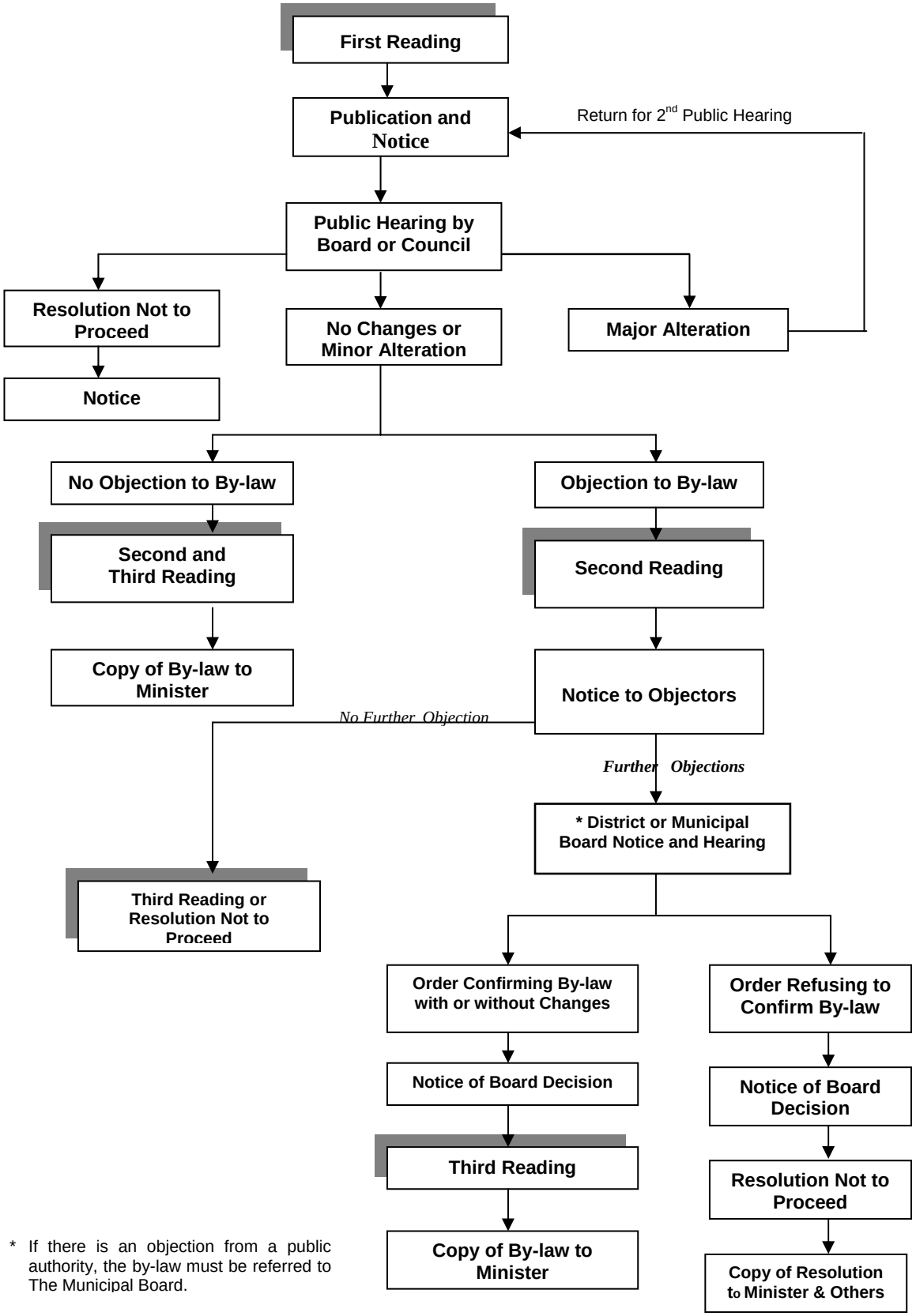
Objections

If there are no objections to the zoning by-law the board or council can proceed to give the by-law second and third readings, or pass a resolution not to proceed with the by-law. If the board or council receives objections it can pass a resolution not to proceed with the by-law or give the by-law second reading and continue with the procedures outlined below.

Notice to objectors

If the board or council gives the by-law second reading it must provide notice to any person who objected to the by-law advising them that they can file a second objection with the board or council [76(3)]. The notice will specify the deadline for filing a second objection. The deadline must be at least 14 days after the date of the notice. The notice may be sent by ordinary mail.

Figure 5.0: General Zoning By-law Adoption Process



* If there is an objection from a public authority, the by-law must be referred to The Municipal Board.

Hearing of Second objections

If a council receives a second objection it must refer the objection to the board of the planning district or, if the municipality is not part of a planning district, to the Municipal Board. If a board receives a second objection in respect of a district-wide zoning by-law the objection must be referred to the Municipal Board. If the second objection is made by a "public authority" (the minister, a planning district board, a municipal council or the Government of Canada) the objection and all other objections to the by-law must be referred to the Municipal Board.

The planning district board or the Municipal Board, as the case may be, will hold a public hearing to receive representations on the objections. The board must give notice of the hearing in accordance with 77(7)(b). Any person may make representation to the board on the objection(s), however, the representation is limited to the objection or objections that have been referred to the board.

Decision of the Board

The planning district board or the Municipal Board must make a decision on the objection and issue an order within 30 days after holding the hearing. In the order the planning district board or the Municipal Board can

a) confirm or refuse to confirm any part of the by-law that was the subject of the objection, or

b) direct the board or council to alter the by-law in the manner it specifies.

A copy of the order is sent to the board or council that referred the objection and every person who made representation at the hearing of the planning district board or the Municipal Board. The order of the planning district board or the Municipal Board is final and not subject to appeal [77(11)].

Process Where a Planning Commission has been Appointed

When a planning commission holds the public hearing after first reading the board or council becomes, in effect, the appeal body rather than the Municipal Board or the planning district board.

After second reading, the board or council will give notice of the right to file a second objection with the board or council. After holding a hearing on any second objections the board or council may then

a) give the by-law third reading if no alterations are made to the by-law;

b) alter the by-law to address any representations on the objection made at the hearing and give the altered by-law third reading without further notice or hearing; or

c) pass a resolution not to proceed with the by-law.

The exception to this process is where a public authority (the minister, a planning district board, a municipal council or the Government of Canada) objects to the by-law. In this case the by-law must be referred to the Municipal Board. The process then follows that shown in Figure 5.0.

5.6 Amending a Zoning by-law

Initiating an Amendment

A board or council can initiate an amendment to a zoning by-law at any time. The owner of the affected property can also apply to the board or council to amend the zoning by-law.

A board or council is under no obligation to proceed with an application to amend a zoning by-law. An application can be refused if, in the opinion of the board or council,

(a) it is without merit;

(b) the proposed amendment is not generally consistent with the development plan by-law; or

(c) it is the same as or substantially similar to an earlier application that was refused within one year before the day when the new application is made.

Amendment Process

The process for amending the zoning by-law is the same as for adopting the zoning by-law. Sections 74 to 79 apply with necessary changes. There is an exception for minor amendments [82(1)].

If a board or council needs to make a minor amendment (one that does not change the intent of the by-law) or to correct an error or omission in the zoning by-law the board or council can apply to the minister to amend the by-law without following the procedure in sections 74 to 79. The minister can authorize the board or council to amend the zoning by-law without giving public notice or holding a hearing. A board or council wishing to amend the zoning by-law without the usual public notice and hearing must apply to the minister. The application must include a copy of the proposed amendment

Development Agreement

Section 81 allows a board or council to require the owner of the affected property to enter into a development agreement, as a condition of amending the zoning by-law. Development agreements are dealt with in section 150 of the Act. For a detailed discussion regarding development agreements see Part 9 "Development Requirements".

The authority to require a development agreement in connection with a zoning by-law amendment helps ensure that the costs associated with a specific development proposal do not fall disproportionately on the municipality.

5.7 Non-conformities

The Act protects existing lawful land uses that contravene a zoning by-law. The provisions on non-conforming uses deal with buildings, parcels and uses that do not meet the requirements of a newly enacted zoning by-law.

In general, lawful existing uses are allowed to continue. The enactment of a zoning by-law does not affect a building, parcel of land; the use of land, or the intensity of a use of land that was lawfully in existence when the zoning by-law was enacted.

5.7.1 Non-conforming Buildings

A building does not have to be complete to be protected as an existing building under the Act. A building is considered to be "existing" if, on the date the zoning by-law is enacted,

> (a) the building is lawfully under construction; or
>
> (b) a permit for its construction is in force and effect, and construction of the building is started by the deadline set out in the permit.

An existing building might not conform to the yard, height, floor area or other requirements of a zoning by-law. A non-conforming building can be altered or expanded provided the construction does not increase the non-conformity. The construction must also otherwise conform with the zoning by-law, other by-laws and any variance.

Damaged non-conforming building

A non-conforming building is allowed to continue to exist, however, if a non-conforming building is significantly damaged it should only be repaired or rebuilt in conformity with the zoning by-law.

Under subsection 89(2), if the cost of repairing or rebuilding the building is more than 50% of the cost of constructing an equivalent new building, the building must not be repaired or rebuilt except in conformity with the zoning by-law. The amount of damage is determined by the board or council. A board or council can also specify a percentage greater than 50% in the zoning by-law.

5.7.2 Non-conforming Parcels

An existing parcel of land includes all the land described in a certificate of title at the time the zoning by-law is enacted. A parcel of land is also considered to be "existing" if, on the date the zoning by-law is enacted, a conditional approval for subdivision of the land has been issued by the approving authority under subsection 126 and the subdivision is registered in the land titles office by the deadline set out in the approval.

A parcel of land will be non-conforming [90(2)] if the size or dimensions of the parcel of land do not conform with a zoning by-law. The owner of the land may still use the land for any use permitted under the by-law. This includes constructing or altering a building on the land provided all other requirements of the by-law such as yards, building height, and floor area are met.

5.7.3 Non-conforming Uses

A use of land, or the intensity of a use of land, is considered to be "existing" if, on the date the zoning by-law is enacted, a permit or approval has been issued by the planning district or municipality authorizing the use of land or the intensity of the use of land.

For example, a person has been given a permit to renovate a single unit dwelling into a two unit dwelling. A new zoning by-law is enacted that does not permit two unit dwellings. Even if the renovation has not been undertaken when the zoning by-law comes into effect, the person may proceed with the renovation, provided the work is done in accordance with the permit that has been issued.

No increase or change in non-conforming use

The use of a building or land will be non-conforming if the use, or the intensity of the use, does not conform with a zoning by-law. A non-conforming use is allowed to continue, however, that use may not be intensified or changed to another non-conforming use.

Discontinuance of non-conforming use

A non-conforming use is considered to have been discontinued if it ceases for a 12 month period or such longer period of time as may be provided in the zoning by-law. Section 91(1) requires that if a non-conforming use has been discontinued for more than 12 consecutive months; the land must not be used after that time except in conformity with the zoning by-law. By discontinuing a use the owner abandons the right to use the property for the non-conforming use.

5.7.4 Altering a Non-conformity by Variance

The Act allows a board or council additional flexibility to deal with non-conformities through the variance process. The owner, or a person authorized in writing by the owner, can apply for a variance to alter a non-conformity [92(1)]. A board or council can make a variance order authorizing

(a) construction on a non-conforming building beyond that permitted under subsection 89(1);

(b) an increase in the intensity of an existing non-conforming use, other than a variance to increase the number of animal units in a non-conforming livestock operation;

(c) the repair or rebuilding of a non-conforming building that has sustained more damage than permitted under subsection 89(2); or

(d) the extension of the 12-month time limit under subsection 91(1) for not more than 12 additional months.

See Part 6 "Variances" for a detailed description of the variance process.

6 Variances

6.1 Purpose of a Variance

A zoning by-law is a by-law of general application to the entire municipality or planning district. As a general by-law it may not be able to adequately deal with the unusual or unique conditions of specific properties. Strict application of the by-law could result in hardship in specific instances.

The variance process allows a board or council to vary the application of the zoning by-law as it affects the person's property in order to mitigate the adverse effects of the by-law.

An example of a person who is adversely affected by a zoning by-law would be someone whose parcel of land is odd-shaped, unusually small or has physical characteristics that make complying with the requirements of a zoning by-law impractical or unreasonable. That person would be entitled to seek a variance in the application of the zoning by-law that would relieve him from complying with the provisions of the zoning by-law that adversely affect his use of the land.

The Act does not specify the types of provisions in a zoning by-law that may be varied. However, the Act places specific restrictions on variances respecting the use of land. A variance that makes a change in the use of land can only be approved if it is a use that is substantially similar to a use that is permitted under the zoning by-law or a temporary change of land use for a period of not more than five years [97(2)].

6.2 Variance Procedure

The variance process is shown in Figure 6.0. A "Procedures Checklist" for a variance is also found in Appendix 3.

The Act [94(1)] allows any person who believes that a zoning by-law adversely affects his or her property rights to apply for an order varying specific provisions of the by-law as they apply to the affected property. The application is made to the municipal council, or the planning district board where the board has adopted a district-wide zoning by-law.

Since a variance alters the application of the zoning by-law as it affects a specific property, it can also affect neighbouring properties. There is, therefore, a requirement for public notice of the application and a public hearing to receive representations on the proposed variance [96]. Where a planning commission has been established, the board or council may delegate authority to hear and make decisions on variances to the planning commission. Notice of the hearing must be given in accordance with section 169. See Part 11 "Notices and Hearings" for a full discussion of the notice requirements for a variance.

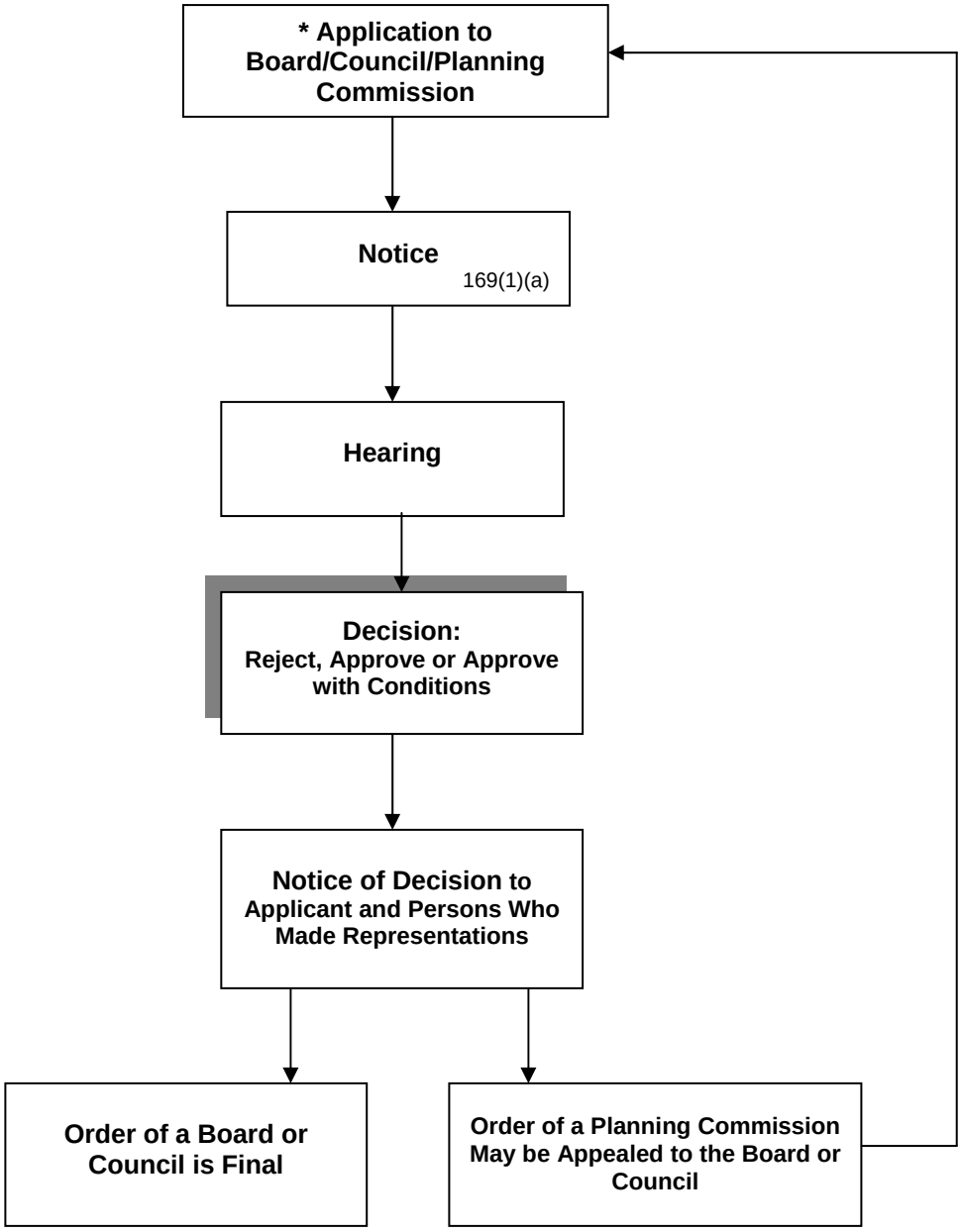
6.3 Decision

After holding the hearing, the board, council or planning commission must make its decision in an "order". It can either reject the requested variance; or it can vary the application of specific provisions of the zoning by-law with regard to the affected property in the manner specified in the order [97(1)].

There are limitations on a board, council or planning commission in approving a variance. A variance can only be approved if the variance

> (i) will be compatible with the general nature of the surrounding area,
>
> (ii) will not be detrimental to the health or general welfare of people living or working in the surrounding area, or negatively affect other properties or potential development in the surrounding area,
>
> (iii) is the minimum modification of a zoning by-law required to relieve the injurious affect of the zoning by-law on the applicant's property, and

Figure 6.0: The Variance Process



***** **Includes an appeal of the decision on a minor variance by a designated officer.**

(iv) is generally consistent with the applicable provisions of the development plan by-law, the zoning by-law and any secondary plan by-law.

Compatibility – a variance can not be approved if it would allow a use or structure that would not be in keeping with the types of uses or structures in the area.

Detrimental or negative effect – a variance can not relieve a person from the adverse effects of the zoning by-law if it will result in adverse effects on other people or properties in the surrounding area.

Minimum modification – a variance can not vary the application of the zoning by-law more than is necessary to deal with the adverse effects of the by-law. For example, a yard requirement of five metres can not be reduced to one metre if a reduction to two metres will give the property owner the necessary relief.

Consistency with by-laws – all decisions of a board or council must be generally consistent with the plans and zoning by-laws in force. A variance can not be used to circumvent the plan or zoning by-law.

6.4 Conditions of a Variance Order

In making a variance order a board, council or planning commission may impose any conditions on the applicant or the owner of the affected property that it considers necessary to meet the requirements of clause 97(1)(b). For example, in order to ensure the variance will not negatively affect other properties or potential development in the surrounding area, a board, council or planning commission might impose conditions to limit the intensity of the use, the hours of operation, or external signage or storage of materials.

The owner of the affected property can also be required to enter into a development agreement with the municipality or planning district. Development agreements are dealt with in section 150 of the Act. For a detailed discussion regarding development agreements see Part 9"Development Requirements".

The board, council or planning commission must send a copy of its order to the applicant and every person who made a representation at the hearing [99]. The order of a board or council on a variance is final and not subject to appeal. A variance order may, however, be revoked if the applicant or the owner of the affected property fails to comply with the variance order or any condition imposed on the applicant or owner [98(2)].

The order of a planning commission on a variance may be appealed to the board or council. The requirements and procedures for appealing the decision of a planning commission are set out in sections 34 and 35.

6.5 Expiry of a Variance Order

A variance order expires if it is not acted upon within 12 months of the date of the decision [101(1)]. A board, council or planning commission may extend the this deadline for an additional period not longer than 12 months if an application is received before the deadline when the order expires.

6.6 Minor Variances

In order to facilitate the handling of minor variances, the Act allows a board or council to authorize, by by-law, a designated employee or officer to make orders that vary

(a) any height, distance, area, size or intensity of use requirement in the zoning by-law by no more than 10%; or

(b) the number of parking spaces required by the zoning by-law by no more than 10%.

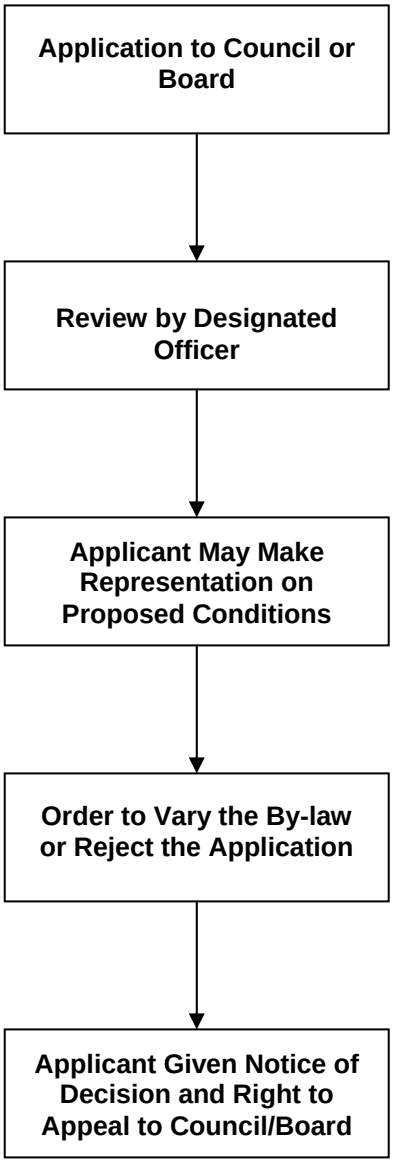
No notice or hearing is required on an application for a minor variance. In making an order on an application for a minor variance the designated employee or officer is still subject to the requirements under section 97(1).

The designated employee or officer may reject the requested variance; or make an order subject to any conditions considered necessary to meet the requirements of clause 97(1)(b). If the designated employee or officer wishes to make a minor variance order subject to conditions, the applicant must be given a reasonable opportunity to make representations about the proposed conditions.

The decision of a designated employee or officer on a minor variance may be appealed to the board or council. The requirements of sections 94 to 100 apply to an appeal.

The process for minor variances is shown in Figure 6.1.

Figure 6.1: Process For a Minor Variance



7 Conditional Uses

7.1 General Conditional Uses

A "conditional use" is a use of land or buildings that may be allowed under a zoning by-law.

Conditional uses will be those specific uses which may or may not be acceptable in a zone depending on the particular circumstances of the proposed development. A board or council may consider it appropriate to impose conditions on the proposed use in order to ensure that it will be acceptable at the proposed location in the zone.

For example, certain local commercial uses may be listed as conditional uses in a residential zone. While the uses may be generally acceptable in the zone, a board or council may wish to impose conditions related to matters such as parking, landscaping, access, signage, outdoor storage or hours of operation to ensure that the proposed use is appropriate for the zone and consistent with the development plan.

General Process for Conditional Uses

The general process for a conditional use application is shown in Figure 7.0. A "Procedures Checklist" for a conditional use application is also found in Appendix 4.

A conditional use application requires a board or council to exercise its discretion in applying the zoning by-law as it affects a specific property. The conditional use can also affect neighbouring properties. There is, therefore, a requirement for public notice of the application and a public hearing to receive representations on the proposed conditional use [105].

Where a planning commission has been established the board or council may delegate authority to hear and make decisions on conditional uses to the planning commission. Notice of the hearing must be given in accordance with section 169. See Part 11 "Notices and Hearings" for a full discussion of the notice requirements for a conditional use.

Decision

After holding the hearing, the board, council or planning commission must make an "order" respecting its decision. It can reject the requested conditional use; or it can approve the conditional use provided the conditional use

(i) will be compatible with the general nature of the surrounding area,

(ii) will not be detrimental to the health or general welfare of people living or working in the surrounding area, or negatively affect other properties or potential development in the surrounding area, and

(iii) is generally consistent with the applicable provisions of the development plan by-law, the zoning by-law and any secondary plan by-law.

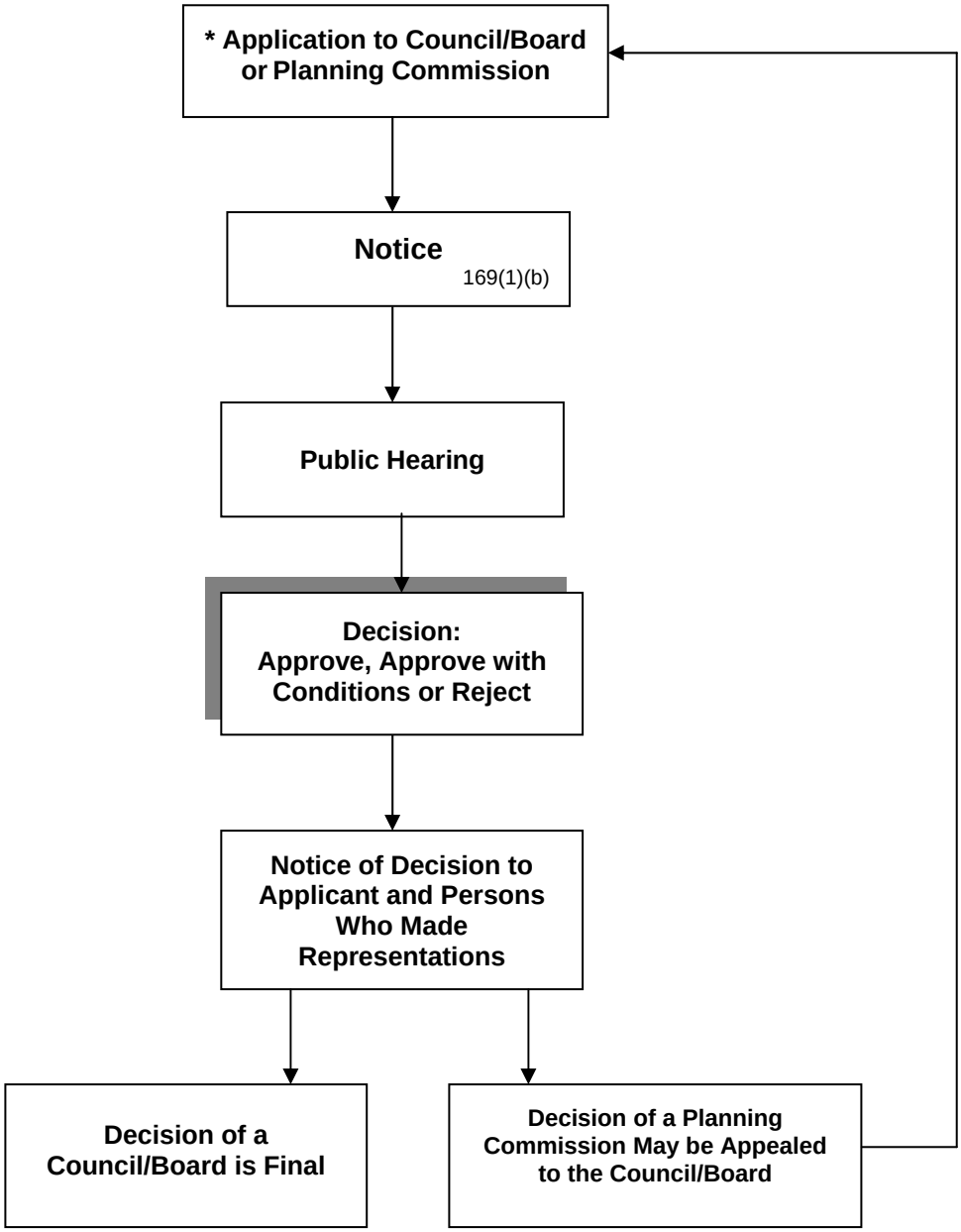
Compatibility – a conditional use can not be approved if it would allow a use or structure that would not be in keeping with or suited to the other uses in the area.

Detrimental or negative effect – a conditional use can not be approved if in the opinion of the board or council it will be harmful or injurious to people or properties in the surrounding area. This can include detrimental or negative effect on other proposed potential development in the area.

Consistency with by-laws – all decisions of a board or council must be generally consistent with the plans and zoning by-laws in force. A conditional use can not be approved if it would be inconsistent or contrary to a plan or zoning by-law.

When approving an application for a general conditional use, the board, council or planning commission may impose any conditions on the approval that it considers necessary to meet the requirements listed above. (Note: There are separate requirements for livestock operations, below.)

Figure 7.0: The Conditional Use Process*



* **Non-livestock operation application**

The owner of the property can also be required to enter into a development agreement with the municipality or planning district. Development agreements are dealt with in section 150 of the Act. For a detailed discussion regarding development agreements see Part 9"Development Requirements".

Revoking approval

The approval of a conditional use may be revoked if the applicant or the owner of the affected property fails to comply with the conditional use order or the development agreement.

Modifying Conditions

A condition imposed on the approval of a conditional use may be changed only by following the same process required to approve a new conditional use.

The board, council or planning commission must send a copy of its order to the applicant and every person who made a representation at the hearing [108].

The order of a board or council on a conditional use application is final and not subject to appeal [109(1)]. The order of a planning commission on a conditional use may be appealed to the board or council that established the planning commission. The requirements and procedures for appealing the decision of a planning commission are set out in section 34 and 35 (appeal of decision by commission) [109(2)].

Expiry of a Conditional Use Order

A conditional use order expires if it is not acted upon within 12 months of the date of the decision [110(1)]. This means the applicant must take steps to establish the use authorized by the conditional use order. A board, council or planning commission may extend this deadline for an additional period not longer than 12 months, if an application is received before the deadline when the order expires.

7.2 Small Scale Livestock Operations

Section 107 of the Act has special provisions regarding the conditions that may be imposed on small livestock operations, involving fewer than 300 animal units.

Subsection 107(1) limits the conditions that may be imposed on a small livestock operation. Any condition must be relevant and reasonable. The conditions may include:

(a) measures to ensure conformity with the applicable provisions of the development plan by-law, the zoning by-law and any secondary plan by-law;

(b) one or both of the following measures intended to reduce odours from the livestock operation:

(i) requiring covers on manure storage facilities,

(ii) requiring shelter belts to be established;

(c) requiring the owner of the affected property to enter into a development agreement dealing with the affected property and any contiguous land owned or leased by the owner, on one or more of the following matters:

(i) the timing of construction of any proposed building,

(ii) the control of traffic,

(iii) the construction or maintenance, at the owner's expense or partly at the owner's expense, of roads, traffic control devices, fencing, landscaping, shelter belts or site drainage works required to service the livestock operation,

(iv) the payment of a sum of money to the planning district or municipality to be used to construct anything mentioned in subclause (iii).

No conditions may be imposed respecting the storage, application, transport or use of manure from the livestock operation, other than a condition permitted under item (b). These matters are subject to regulation by the Province.

Transitional Provisions – No Zoning By-law in Effect

Section 208 contains transitional provisions for handling an application involving a livestock operation with fewer than 300 animal units where there is no zoning by-law in effect:

If a planning district or municipality has no development plan by-law or zoning by-law, the application may be approved only if

(i) approval of the proposed operation is generally consistent with provincial land use policies, and

(ii) the proposed operation meets the siting and setback requirements for livestock operations established by regulation.

If a planning district or municipality has a development plan by-law but no zoning by-law, the application may be approved only if the proposed operation

(i) is generally consistent with the development plan by-law, and

(ii) meets the siting and setback requirements for livestock operations established by regulation;

If a planning district or municipality has a planning scheme but no development plan by-law, the application may be approved only if

(i) approval of the proposed operation is generally consistent with provincial land use policies and consistent with the planning scheme, and

(ii) the proposed operation meets the siting and setback requirements for livestock operations established by regulation.

7.3 Large-Scale Livestock Operations

Division 2 of Part 7 of the Act sets out the process for handling an application to approve a conditional use for a livestock operation involving 300 or more animal units.

Some of the provisions in Division 1 respecting general conditional uses also apply to large-scale livestock operations. These are sections 103 (application for approval of a conditional use), 104 (authorization of a planning commission) 109 (no appeal of a board or council decision) and 110 (expiry of a conditional use order). The process for a large-scale livestock conditional use application is shown in Figure 7.1.

The key differences from the general conditional use process are as follows:

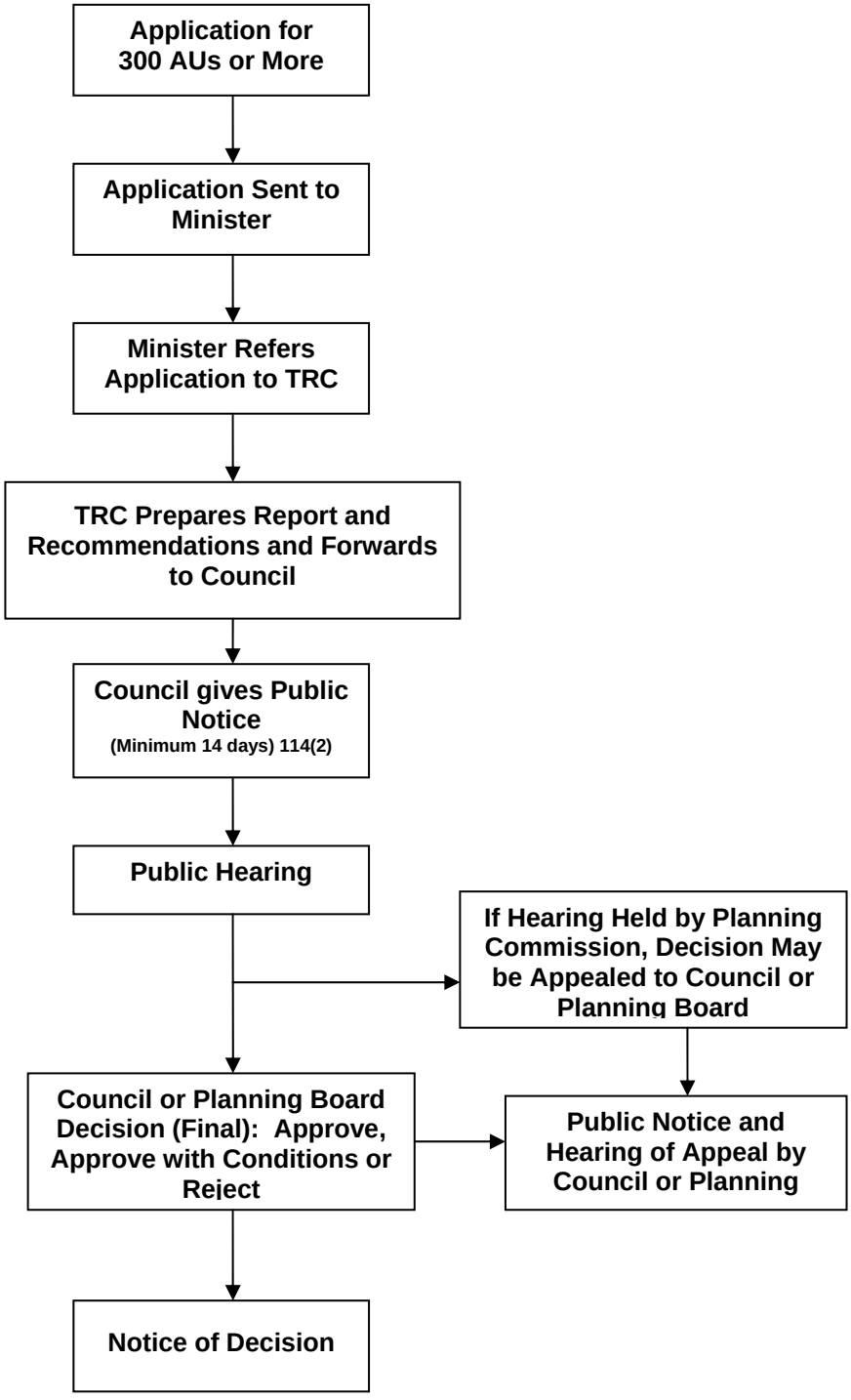
Minister to receive a copy of the application

The Act requires a board, council or planning commission to send a copy of the application and all supporting material to the minister. For administrative purposes, the minister's copy of the application should be sent directly to the TRC Coordinator who is located in the Department of Agriculture Food and Rural Initiatives.

TRC Review

There is a Technical Review Committee (TRC) for each region of the province. The TRC is made up of officials from the Departments of Conservation, Water Stewardship, Agriculture Food and Rural Initiatives, and Intergovernmental Affairs. Other departments that may have an interest in an application may be consulted during the review process. The TRC Coordinator in the Department of Agriculture Food and Rural Initiatives manages the review the application by the TRC.

Figure 7.1: Conditional Use Process For Livestock Operation Application of 300 AUs or More *



* Prior to construction, a livestock operator must obtain all necessary approvals from Manitoba Conservation and other departments

The purpose of the TRC is:

- To provide support to municipalities and planning districts by providing preliminary technical assessments and reports on proposals for livestock operations.
- To assist with the exchange of information between the proponent, the local planning authority, the Province of Manitoba and general public.
- To provide the local planning authority with a review of the technical aspects of the proposal, identify regulatory requirements and provide recommendations based on the site-specific characteristics of the proposal location.

The TRC can require an applicant to provide material in addition to that required by the board or council in the zoning by-law. The report is a public document. It must be made available for inspection and copying at the municipal or planning district office.

Hearings

Once the board, council or planning commission has received the TRC report must hold a public hearing. The hearing must be no sooner than 30 days after receiving the TRC report [114(1)].

Notice of hearing date

114(2) At least 14 days before the date of hearing, the board, council or planning commission must

(a) send notice of the hearing to

(i) the applicant,

(ii) the minister,

(iii) all adjacent planning districts and municipalities, and

(iv) every owner of property located within three kilometres of the site of the proposed livestock operation, even if a property is located outside the boundaries of the planning district or municipality;

(b) publish the notice of hearing in one issue of a newspaper with a general circulation in the planning district or municipality or, when there is no newspaper with a general circulation in the area, post the notice in the office of the planning district or municipality and at least two other public places in the district or municipality; and

(c) post a copy of the notice of hearing on the affected property in accordance with section 170.

The notice of hearing must include notice that the Technical Review Committee report is available for inspection and copying at the office of the planning district or municipality.

Decision

After holding the hearing, the board, council or planning commission must make an "order" respecting its decision. It can reject the application; or it can approve the application if

(a) the Technical Review Committee has determined, based on the available information, that the proposed operation will not create a risk to health, safety or the environment, or that any risk can be minimized through the use of appropriate practices, measures and safeguards, and

(b) the proposed operation

(i) will be compatible with the general nature of the surrounding area,

(ii) will not be detrimental to the health or general welfare of people living or working in the surrounding area, or negatively affect other properties or potential development in the surrounding area, and

(iii) is generally consistent with the applicable provisions of the development plan by-law, the zoning by-law and any secondary plan by-law.

The conditions that may be imposed are similar to those that may be imposed on small livestock operations. Any condition must be relevant and reasonable and can include:

(a) measures to ensure conformity with the applicable provisions of the development plan by-law, the zoning by-law and any secondary plan by-law;

(b) measures to implement recommendations made by the Technical Review Committee;

(c) one or both of the following measures intended to reduce odours from the livestock operation:

(i) requiring covers on manure storage facilities,

(ii) requiring shelter belts to be established;

(d) requiring the owner of the affected property to enter into a development agreement under clause 107(1)(c).

No conditions may be imposed respecting the storage, application, transport or use of manure from the livestock operation, other than a condition permitted under item (b). These matters are subject to regulation by the Province.

The board, council or planning commission must send a copy of its order to the applicant; the minister (care of the CPS regional office); and every person who made a representation at the hearing held under section 115

Transitional Provisions – No Zoning By-law in Effect

Section 209 provides direction for handling an application involving a livestock operation with 300 or more animal units where there is no zoning by-law in effect:

An application for a livestock operation involving 300 or more animal units must be made and dealt with in accordance with the hearing and approval process set out in Division 2 of Part 7 (Large scale-conditional use livestock operations).

When a planning district or municipality has no development plan by-law or a zoning by-law, the application may be approved only if

(a) the proposed operation meets the applicable tests in subsection 116(1);

(b) approval of the proposed operation is generally consistent with provincial land use policies; and

(c) the proposed operation meets the siting and setback requirements for livestock operations established by regulation.

When a planning district or municipality has a development plan by-law but no zoning by-law, the application may be approved only if the proposed operation

(a) meets the applicable tests in subsection 116(1);

(b) is generally consistent with the development plan by-law; and

(c) meets the siting and setback requirements for livestock operations established by regulation.

When a planning district or municipality that has a planning scheme but no development plan by-law, the application may be approved only if

(a) the proposed operation meets the applicable tests in subsection 116(1);

(b) approval of the proposed operation is generally consistent with provincial land use policies and consistent with the planning scheme; and

(c) the proposed operation meets the siting and setback requirements for livestock operations established by regulation.

Additional Requirements

Section 118 imposes an additional requirement on the proposed development or expansion of a large-scale livestock operation. The development or expansion can not take place until

(a) the application is approved and the applicant complies, or agrees to comply, with any condition imposed on the approval under this Division; and

(b) the applicant obtains every approval, including any permit or licence, required under an Act, regulation or by-law in respect of the proposed operation or expansion, and complies with, or agrees to comply with, any condition attached to the approval.

Examples of the other approvals that may be required for a livestock operation include a **Water Rights Licence** from Manitoba Water Stewardship, or approval of a **Manure Management Plan** by Manitoba Conservation.

The review and approval of a new or expanding livestock operation by the local planning authority is a critical first step in the development process. However, local land use decisions regarding the siting and development of livestock operations are subject to provincial environmental approval. There will be further review and approval at the provincial level on the environmental aspects of the proposal, which will require more detailed on-site engineering and soil information regarding the storage and application of the manure produced by the operation. This provincial review and approval process will only commence after the proponent receives approval from the local planning authority.

8 Subdivision Control

8.1 Definition of Subdivision

Control over the subdivision of land is a key tool for regulating the development of land. A "subdivision" is defined in the Act as "the division of land by an instrument, including

(a) a plan of subdivision, conveyance, deed, mortgage or grant; or

(b) an agreement granting or extending a use of or right in land, directly or indirectly or by an entitlement to renewal, for a period of 21 years or more;

but not including a lease respecting only floor space in a building."

8.2 When is Subdivision Approval Required

A district registrar may not accept for registration any instrument that has the effect, or may have the effect, of subdividing a parcel of land unless the subdivision has been approved by the approving authority [121(1)]. A "parcel of land" is all the land described on a Certificate of Title.

There are some exceptions to this requirement for subdivision approval.

A district registrar may accept an instrument that has the effect, or may have the effect, of subdividing a parcel of land in any of the following circumstances:

(a) Each parcel resulting from the subdivision consists of

(i) at least 80 acres, and either abuts on a public road or is being consolidated with an adjoining parcel that abuts on a public road,

(ii) two or more legal subdivisions that abut each other, and either abut on a public road or are being consolidated with an adjoining parcel that abuts on a public road,

(iii) a parcel of approximately equal area to the other parcel created by the subdivision of an entire quarter section where the parcels abut each other and either abut on a public road or are being consolidated with an adjoining parcel that abuts on a public road,

(iv) one or more whole lots or blocks in a registered plan of subdivision,

(v) one or more whole lots or blocks and any existing part or parts of a lot or block contiguous thereto in a registered plan of subdivision, or

(vi) at least one parish lot, or more if contiguous, in either the inner or the outer two miles, or a settlement lot (not including a woodlot or a park lot);

This is intended to allow half of a quarter-section, whole parish lots or whole lots or blocks on a registered plan to be registered.

(b) the parcel resulting from the subdivision is not contiguous to and does not abut any other land described in the certificate of title, but does abut on a public road or is being consolidated with adjoining land that abuts on a public road;

This allows for physically separate or detached pieces of land on a title to be given separate titles if the pieces are ensured to have legal access.

(c) the land is being acquired or disposed of by Her Majesty in right of Canada or Manitoba or by Manitoba Hydro;

Subdivision approval is not required for Crown purposes.

(d) the land is being acquired by a municipality for the purpose of

(i) widening or extending a public road, or

(ii) constructing, opening or making a new drain, or widening, altering, diverting or straightening an existing drain under *The Municipal Act*,

and the instrument or plan is accompanied, at registration, by a statutory declaration of an officer of the municipality that the land was acquired for one of those purposes;

Subdivision approval is not required for certain municipal purposes.

(e) the land was part of a government road allowance, public road or public reserve that has been closed by by-law and is being consolidated with adjacent existing titles;

(f) the land is part of a railroad right-of-way and is being consolidated with adjacent existing titles.

8.3 Subdivision Approving Authority

The "approving authority" for subdivision is the minister or a board authorized by the minister under section 120.

Staff of Manitoba Intergovernmental Affairs has been delegated authority to approve subdivisions. The regional managers of the Community Planning Services Branch have been delegated approving authority for subdivisions in most parts of Manitoba. Subdivision approving authority has also been delegated to some planning district boards. At present the five planning district boards that are subdivision approving authorities are:

1. Brandon and Area Planning District,
2. Cypress Planning District,
3. Selkirk and District Planning Area
4. Lac du Bonnet Planning District, and
5. South Interlake Planning District.

8.4 Restriction on Approval

Section 123 requires that a subdivision of land must not be approved unless

(a) the land that is proposed to be subdivided is suitable for the purpose for which the subdivision is intended; and

(b) the proposed subdivision conforms with

(i) the development plan by-law and zoning by-law,

(ii) any secondary plan by-law, and

(iii) the regulations under section 146 (the Subdivision Regulation).

The Subdivision Regulation places specific restrictions on the approval of a subdivision. See the "Evaluation Criteria" discussed below.

Transitional Provisions – No Development Plan or Zoning by-law

210(1) An application for subdivision approval is subject to Part 8 and to the following approval requirements:

(a) if a planning district or municipality does not have a development plan by-law or a zoning by-law, the application may be approved only if approval of the proposed subdivision is generally consistent with provincial land use policies;

(b) if a planning district or municipality has a development plan by-law but no zoning by-law, the application may be approved only if the proposed subdivision is generally consistent with the development plan by-law;

(c) if a planning district or municipality has a planning scheme but no development plan by-law, the application may be approved only if approval of the proposed subdivision is generally consistent with provincial land use policies and consistent with the planning scheme

8.5 Subdivision Approval Process

Subdivision Application

The owner of land, or a person authorized in writing by the owner, may apply for subdivision approval. The form of the application and the information that may be required to make a decision on an application is set out in the Subdivision Regulation.

In addition to the information on the application form, an applicant has to provide a map or maps showing the existing and proposed features of the land. The **existing features** to be shown on the map or maps include:

(a) all significant natural features, such as wooded areas, rock outcroppings, bodies of water, rivers, creeks, swamps, and drainage patterns.

(b) the location of all underground and overhead utility lines;

(c) all buildings and other structures on the land proposed to be subdivided and their uses;

(d) all roads, highways, streets or lanes adjacent to the land proposed to be subdivided;

(e) the location of existing wells and on-site sewage disposal systems;

(f) the nature, location and number, name or other designation of registered plans, easements and rights-of-way on or adjacent to the land proposed to be subdivided;

(g) unimproved or closed road allowances or public roads

(h) municipal boundaries.

The **proposed features** to be shown on the map or maps include:

(a) the location, dimensions, area and number of each lot and block;

(b) the location and widths of all streets, roads and lanes;

(c) the location, dimensions and area of land dedicated to public use;

(d) land use types such as residential, commercial, industrial, or other type;

(e) the pattern of drainage; and

(f) the staging of development.

The approving authority may waive any of these requirements where it considers it appropriate to do so. The requirements may be waived if the information is not required for the approving authority to make a decision on the application. The approving authority may also require an applicant to submit the following **additional information**:

(a) a current survey certificate prepared by a Manitoba Land Surveyor showing existing buildings and structures;

(b) geo-technical data and related engineering reports where the land being subdivided is subject to a high water table or to potential hazards such as flooding, subsidence, landslides, erosion, methane gas seepage, or other similar risks;

(c) contour lines at intervals suitable to illustrate topography, but not to exceed 1 m intervals, related to Geodetic Survey of Canada datum, where available;

(d) high water marks, top of bank, nature of shoreline and elevation of water;

(c) such other material relevant to the application which the approving authority considers necessary for an informed decision.

Review process

In addition to Part 8 of the Act, the process for the review and approval of subdivision applications is set out in greater detail in the Subdivision Regulation. The general process for subdivision approval is shown in Figure 8.0.

Referral

The approving authority must refer the application to government departments and other entities for comment. The scope of the referral is up to the approving authority.

The Subdivision Regulation specifies that the application shall be sent to any entity that in the opinion of the approving authority might be affected by the subdivision. The Subdivision Regulation allows referral agencies 30 days in which to provide comments to the approving authority. After 30 days the approving authority can deal with the application without further delay whether or not comments have been received.

Planning report

The approving authority is required to provide the council with a planning report on the proposed subdivision. The Subdivision Regulation provides guidance regarding the content of a planning report. A planning report should consider the following:

The planning report is intended to give the council information it needs to make an informed decision on a proposed subdivision. The planning report may contain site information or comments from the government departments or other entities, information on any applicable development plan by-law, secondary plan by-law and zoning by-law, recommendations of the approving authority, suggested conditions on approval of the application and any other information that, in the opinion of the approving authority, is relevant:

Site Information – This could include a description of the land to be subdivided, present and proposed use, existing buildings on the proposed or residual parcel, the number and size of the existing title(s) and the proposed and residual parcels, and any other pertinent site information.

Current Land Use By-laws – The report should identify the land use by-laws or other documents that are in force in the area, the plan and/or zoning designations for that area, and comment on conformity with the by-laws and the Subdivision Regulation.

Summary of Referral Agency Comments – The report should contain a summary of what the referral agencies have said in their reports and note any major concerns or comments raised by the various agencies.

Planning Discussion - The report should include an assessment of the proposed subdivision and whether approval, rejection, or approval with conditions is recommended.

Evaluation Criteria

The Subdivision Regulation sets out general evaluation criteria the approving authority must use in reviewing a proposed subdivision. The proposed subdivision shall be suited to the purpose for which the subdivision is intended, and the approving authority shall consider the following:

(a) its topography;

(b) its soil characteristics;

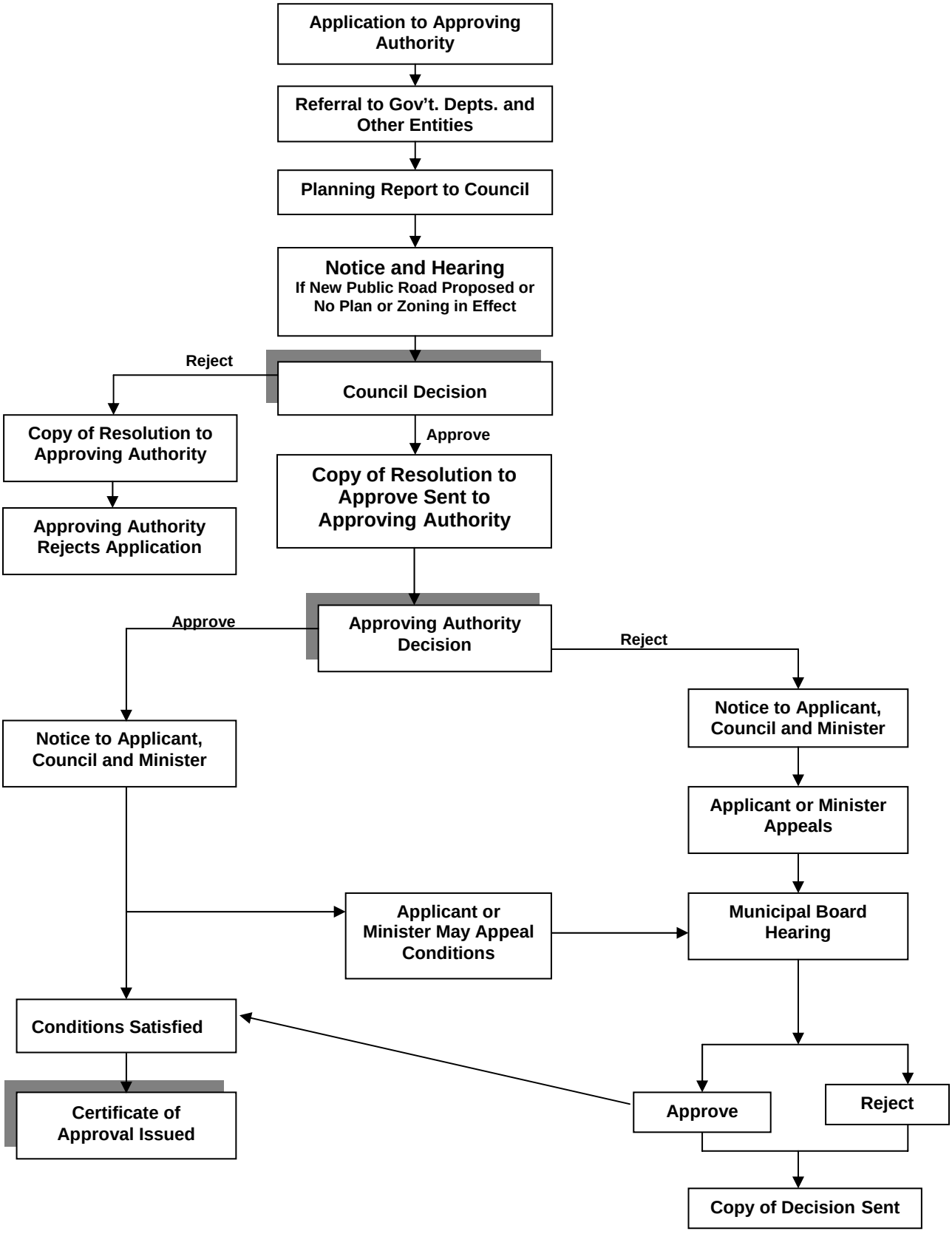
(c) its surface and subsurface drainage, including water table levels;

(d) potential hazards such as flooding, subsidence, landslides, erosion and other similar risks;

(e) existing and prospective uses of land in the vicinity;

(f) layout of streets and lanes;

Figure 8.0 Subdivision Approval Process



(g) provision of sewage disposal, potable water and other services;

(h) distinction and compatibility between pedestrian and vehicular traffic;

(i) segregation of traffic flow as between major thoroughfares and minor streets;

(j) convenience of access;

(k) dimensions, shape and orientation of each lot;

(l) protection against pollution, including methane gas seepage and other potential environmental risks;

(n) anticipated need for school sites, recreational facilities and parks;

(o) provision for buffers between incompatible land uses;

(p) protection of natural features or heritage resources;

(q) connections to a provincial or regional road network;

(r) the efficient use and conservation of the value of the land;

(s) protection of critical fish and wildlife habitat;

(t) protection of ground water and surface water; and

(u) such other matters as the approving authority considers relevant to the land.

The Subdivision Regulation also sets out general requirements (standards) for public roads and lots in a proposed subdivision. The minimum sizes for lots contained in the Regulation do not apply where minimum lot sizes have been established in the zoning by-law.

Review by Council

A subdivision can not be approved without the approval of the council in which the land is situated.

125(1) Upon receiving the application and a copy of the planning report from the approving authority, the council must consider the application and decide, by resolution,

(a) to reject it; or

(b) to approve the application, with or without any of the conditions described in section 135 (conditions of subdivision approval).

Transitional Provision – No Development Plan or Zoning by-law

If a planning district or municipality does not have a development plan by-law, a zoning by-law, or both by-laws, when a council approves a subdivision application, it may, in addition to the other conditions of approval set out in section 135, require the applicant to enter into a development agreement with the owner of the affected property limiting, regulating or prohibiting an existing or future use of the land or a building. [210(3)] This provision is intended to allow a council some control over the future use of the land in the absence of a development plan or zoning by-law.

Hearing when road created

Major subdivisions can often have significant impacts on neighbouring properties. Land use matters are considered in the preparation of the development plan and zoning by-law, however, the detailed design of the subdivision can also raise issues such as changes in the level and pattern of traffic.

If the proposed subdivision will result in the creation of a new public road, Section 125(2) requires the council to hold a public hearing to receive representations on the proposed subdivision. Council must give notice of the hearing in accordance with section 169.

Transitional Provision – No Development Plan or Zoning by-law

210(2) If a planning district or municipality does not have a development plan by-law and a zoning by-law, the council must, before making its decision,

(a) hold a public hearing to receive representations from any person on the proposed subdivision; and

(b) give notice of the hearing in accordance with section 169.

This provision allows for a public discussion of the land use implications of a proposed subdivision where the development plan and zoning by-law are not yet in place.

Council's Decision

The council must provide the approving authority with a certified copy of any resolution it makes respecting a subdivision application [125(4)]. A resolution of council is final. A council may not reverse a decision notwithstanding *The Municipal Act*, however, a council may, by resolution, vary or rescind any condition it has specified or specify new conditions [125(3)].

Conditions of Approval

Section 135 sets out the conditions that may be attached to a subdivision approval. A subdivision of land may be approved subject to one or more of the following conditions, which must be relevant to the subdivision:

1. Any condition necessary to ensure compliance with the Act or another Act, or the regulations made under them, or a development plan by-law, secondary plan by-law or zoning by-law.

2. Any condition necessary to satisfy the requirements of a municipal by-law, including the payment of subdivision examination fees and capital levies, and the requirement to pay property taxes.

3. A condition that the applicant enter into a development agreement with the government, the municipality or a planning district, as required, respecting

   (a) the construction or maintenance - at the owner's expense or partly at the owner's expense - of works, including, but not limited to, sewer and water, waste removal, drainage, public roads, connecting streets, street lighting, sidewalks, traffic control, access, connections to existing services, fencing and landscaping; and

   (b) construction or payment by the owner of all or part of the capacity of works in excess of the capacity required for the proposed subdivision.

4. Any condition recommended or required by a government department or other entity to which the application was referred by the approving authority.

5. Any condition necessary for the proper design of the subdivision or to implement the reorganization of titles.

6. A condition that the applicant dedicate the following land, without compensation:

   (a) land for adequate public roads and municipal services in the subdivision;

   (b) land for public reserve purposes, not exceeding 10% of the land being subdivided, but only if the land is being divided into parcels of less than 4 hectares;

   (c) land for school purposes, not exceeding 10% of the land being subdivided;

   (d) land not suitable for building sites or other development because it is unstable, subject to severe flooding, required for source water protection, or is otherwise

unsuitable because of topographical or subsurface features, such as wetlands, gullies, ravines, natural drainage courses, creeks, ponds or lake beds;

(e) shore lands designated in a development plan by-law as land to be dedicated upon subdivision as a Crown reserve or a public reserve, including land that is or might be required to provide access to shore lands.

7. As an alternative to dedicating land under item 6(d) or (e), a condition that the applicant enter into a development agreement with the government, the municipality, or the planning district as required, whereby the applicant agrees to conditions limiting, regulating or prohibiting any use, activity or development on the land.

8. A condition that a zoning by-law be amended.

Decision of the Approving Authority

If the council rejects the application, the approving authority must reject the application [126(1)]. If the council has approved the application the approving authority must consider it.

After considering an application approved by council, the approving authority must either reject the application or give conditional approval to the subdivision. The approval is subject to any conditions specified by council in its resolution, and any additional conditions described in section 135 that the approving authority considers appropriate [126(2)].

If the approving authority fails to make a decision on an application within 60 days from the date of the council resolution, the applicant may consider the application to have been rejected by the approving authority and appeal the matter to the Municipal Board. See "Appeal to the Municipal Board" below [126(5)].

Notice of decision

The approving authority must send a copy of its decision to the applicant, the council and, where a planning district board is the approving authority, to the minister [126(3)].

The approving authority may add conditions to a conditional approval, or vary or rescind a condition it has imposed on a proposed subdivision [126(4)]. The applicant has a right to appeal any new or varied condition to the Municipal Board.

A conditional approval is valid for 2 years. If the applicant does not satisfy the approving authority that the conditions imposed on a subdivision approval have been met within two years, the conditional approval expires [127].

The approving authority may extend the two-year period for one additional period of not more than 12 months. However the request for an extension must be received by the approving authority before the conditional approval expires. Under the Subdivision Regulation a fee (currently $150) is payable to the approving authority to extend a conditional approval.

8.6 Appeal to the Municipal Board

Right to appeal

An applicant has the right to appeal a decision of the approving authority to approve or reject an application to the Municipal Board.

The applicant can appeal a decision to impose conditions on the approval including conditions specified by the council or conditions that the approving authority has considered appropriate. The applicant can also appeal a decision to impose new conditions or vary or rescind conditions under subsection 126(4) [129(1)]. There is no appeal where a subdivision application has been rejected by a council [129(2)].

Where a planning district board is the subdivision approving authority, the minister also has the right to appeal the decision to the Municipal Board.

How to appeal

An appeal may be commenced by sending a notice of appeal to the Municipal Board within 30 days after the approving authority gives notice of its decision. An applicant may also appeal to the Municipal Board if the approving authority has failed to make a decision on the application within 60 days of council's resolution to approve the application [129(3)].

A notice of appeal must include the following information [129(4)]:

> (a) the legal description of the land proposed to be subdivided and the municipality in which that land is located;
>
> (b) the name and address of the applicant;
>
> (c) the name and address of the appellant;
>
> (d) if the decision being appealed relates to conditions imposed in a conditional approval, a description of the conditions being appealed.

Appeal hearing

The Municipal Board will hold a hearing to consider the appeal [130(1)] giving at least 14 days notice of the hearing to the applicant, the minister, the approving authority, the council and any other person the board considers appropriate.

Decision of Municipal Board

Within 30 days after the hearing is concluded the Municipal Board must make an order

> (a) rejecting the proposed subdivision; or
>
> (b) approving the proposed subdivision, subject to any conditions described in section 135 that it considers appropriate. 131(1)

In making a decision, the Municipal Board is subject to section 123 (restrictions on approval). The Municipal Board and must send a copy of the order to the applicant, the approving authority, the council, the minister and any other party to the appeal [131(2)].

If the Municipal Board approves a subdivision subject to conditions, the approval is valid for two years from the date of the order. If the applicant fails to provide evidence satisfactory to the approving authority that the conditions have been met within two years the conditional approval expires. The approving authority may extend the period for an additional 12 months under section 127 [131(3)].

8.7 Shortened Process for Minor Subdivisions

Section 134 of the Act provides for a shortened subdivision review process for a "minor subdivision". There are two types of minor subdivisions. A minor subdivision could be either of the following:

> (a) a subdivision where an area of land is to be transferred and consolidated with an adjacent parcel covered by another title so that no additional title results; or
>
> (b) a subdivision that results in a single new parcel in a city, town, village or local urban district. This will primarily occur as an infill lot or an extension to an existing development.

The shortened process may be used only if

> (a) the parcels resulting from the subdivision conform with the development plan by-law, the zoning by-law and any secondary plan by-law;
>
> (b) no new public roads will be created as a result of the subdivision; and
>
> (c) the subdivision does not require any change in access to a provincial road or provincial trunk highway.

- The process for subdivision review can be shortened for a minor subdivision in two ways [134(3)]. First, a designated employee or officer of the municipality may be authorized to approve the application. The designated employee or officer can approve an application with or without conditions, but may not reject it. If the designated employee or officer believes an application should not be approved, the application should be referred to the council for a decision. A decision of the designated employee or officer is deemed to be a decision of the council.
- Second, the approving authority is not required to circulate the application to government departments and other entities except in accordance with the requirements for minor subdivisions as set out in the Subdivision Regulation. The shortened process for approving minor subdivisions is shown in Figure 8.1.

8.8 Public Reserve Land

The subdivision process can result in the dedication of public reserve land. The Act contains special provisions respecting the use and disposal of public reserve land.

Under section 138(1) public reserve land may be used only for

(a) a public park;

(b) a public recreation area;

(c) a natural area;

(d) a planted buffer strip separating incompatible land uses; or

(e) public works.

The subdivision process is not the only way in which land may become subject to the requirements of the Act respecting public reserve land. In addition to land dedicated as public reserve land, land that is registered in the name of a municipality and used as a public park or public recreation area is deemed to be public reserve land for purposes of the Act [138(2)].

Closing public reserve land

Section 139(1) allows a municipality may close public reserve land by passing a by-law to close the public reserve land; obtaining written approval of the by-law from the minister. Council must give notice and hold a hearing respecting the proposed by-law prior to second reading.

The municipality must register the approved by-law in the appropriate land titles office. A district registrar may require a plan to effect the closure.

Money in place of reserve land

Where a municipality receives money from the sale or lease of public reserve land, or money paid to a municipality in place of a dedication, the municipality must keep separate account for money [140(1)]. The money and interest earned on the money may be used only for public parks or other recreational purposes [140(2)].

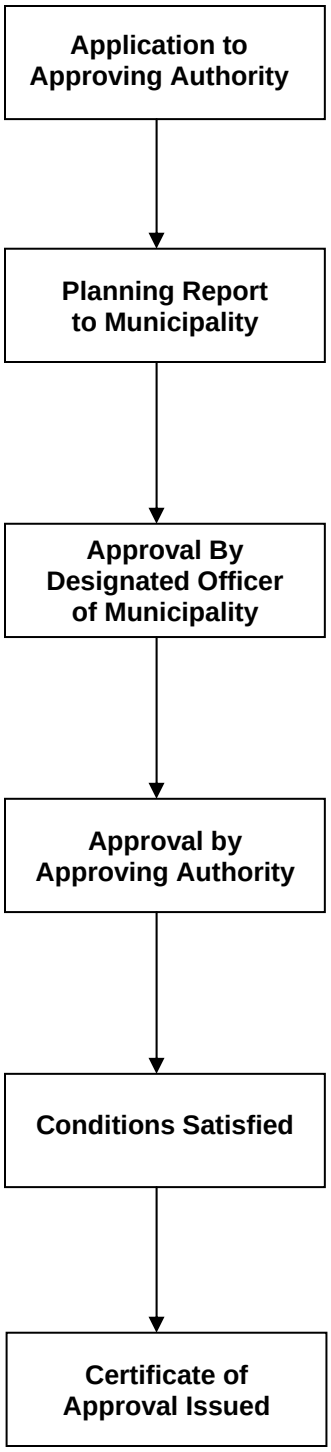
Section 141 sets out the requirements for the use of money paid in place of school lands.

8.9 Fees, Charges and Levies

Section 142 allows a board or council, by by-law, to set fees and charges to be paid by applicants. Fees and charges may relate to technical, administrative, professional, consultative or other services required by the municipality or planning district to examine and approve a subdivision application.

A council may also, by by-law, set the levies to be paid by applicants to compensate the municipality for the capital costs specified in the by-law that may be incurred by the subdivision of land [143(1)].

Figure 8.1: Shortened Process for Minor Subdivisions



The levies are to be paid into a reserve fund that council must establish under *The Municipal Act* [143(2)]

8.10 Obsolete Plans of Subdivision

Although a plan of subdivision is registered in the Land Titles Office, the land may not be developed for a period of time. The Act provides a process to deal with plans of subdivision that have become outdated or obsolete. A council may, by by-law, declare that a plan of subdivision, or any part of a plan, that has been registered for eight years or more is not a registered plan of subdivision for the purpose of this Part [144(1)]. The effect of declaring a plan "obsolete" is that transfer of any part of the land (such as one or two lots) would require subdivision approval.

Registration in land titles office

Immediately after first reading of the by-law, the council must register a certified copy of the proposed by-law in the appropriate Land Titles Office. After the by-law is registered, no person may subdivide a parcel contained in the plan of subdivision to which the proposed by-law applies, without the approval of the approving authority. 144(2)

Notice and hearing

After first reading of the by-law, the council must hold a public hearing to receive representations from any person on the proposed by-law. The hearing date must be no more than 40 days after the first reading of the by-law. Notice of the hearing must be given in accordance with section 169 [144(3)].

Decision of Council

After the public hearing, the council must give second and third readings to the by-law; or pass a resolution not to proceed, in whole or in part, with the by-law [144(4)]. The council must send a certified copy of a by-law or resolution to the minister and each person who made a representation at the public hearing, and must register a copy in the land titles office [144(5)].

Declaring a plan or part of a plan obsolete is permanent. After a council has passed a by-law declaring a plan or part of a plan obsolete, it may not pass a subsequent by-law to revive or partially revive the plan of subdivision [144(7)].

8.11 Cancelling Plans of Subdivision

It may be necessary to cancel or amend a registered plan in order to facilitate the development of an area of land in the municipality. A council may apply to the Municipal Board for an order cancelling a registered plan of subdivision, in whole or in part, or amending a registered plan of subdivision [145(1)].

The Municipal Board may direct the cancellation, in whole or in part, or the amendment of a registered plan or directing a new plan to be registered

For more details on the powers of the Municipal Board respecting subdivisions see sections 96 to 103 of *The Municipal Board Act*.

9 Development Requirements

9.1 Development Permits

Part 9 of the Act prohibits development unless a development permit has been issued and the development complies with the permit. A board or council will normally establish procedures for issuing development permits in the zoning by-law. A zoning by-law may also establish types of development that do not require a permit.

The requirement to obtain a development permit prior to undertaking a development is in effect as of January 1, 2006. The requirement for a development permit applies even if the municipality or planning district does not yet have a development plan or zoning by-law in effect.

Applying for a Development Permit

An application for a development permit must be made to the board of the planning district in which the proposed development is located. If the proposed development is not located in a planning district, to the council of the municipality in which the proposed development is located. 147(2)

The board or council may issue the development permit if it is satisfied that the proposed development generally conforms with the applicable provisions of the development plan by-law, the zoning by-law and any secondary plan by-law 148(1). The Act contemplates that every municipality and planning district will have a zoning by-law in effect. The following transitional provisions apply to a planning district or municipality that is not subject to a development plan by-law, a zoning by-law, or both by-laws, as of January 1, 2006. [205]

Transitional provisions – No Development Plan or Zoning by-law

Approval required

206(1) Before any development takes place, the owner of the affected property, or a person authorized in writing by the owner, must apply for approval of the development

(a) to the board of the planning district in which the proposed development is located; or

(b) if the proposed development is not located in a planning district, to the council of the municipality in which the proposed development is located.

Exception

206(2) A planning district or municipality may, by by-law, specify minor developments - other than livestock operations - that do not require approval.

General development approval

207 An application involving any type of development other than a livestock operation or the subdivision of land is subject to the following approval requirements:

(a) if a planning district or municipality has no development plan by-law or zoning by-law, the application may be approved only if approval of the proposed development is generally consistent with provincial land use policies;

(b) if a planning district or municipality has a development plan by-law but no zoning by-law, the application may be approved only if the proposed development is generally consistent with the development plan by-law;

(c) if a planning district or municipality has a planning scheme but no development plan by-law, the application may be approved only if approval of the proposed development is generally consistent with provincial land use policies and consistent with the planning scheme.

Review of application

A board or council should deal expeditiously with an application for a development permit. The Act allows a board or council up to 60 days to review an application to ensure it generally conforms with the applicable by-laws [148(2)].

The Act contains specific limitation on the number of dwelling units that may be permitted on a parcel. Under section 149 no person may be issued a development permit to construct more than one dwelling unit or mobile home on a parcel of land, unless permitted to do so under the zoning by-law.

Withholding a permit

The Act has special provisions for instances where a board or council is in the process of amending a development plan or zoning by-law that could affect whether a development is permitted or not.

In addition to the 60 day review period, section 148 allows a board or council to withhold issuing a permit for a further 125 days if, at the time the application was made, the board or council had authorized the preparation of a by-law (a development plan by-law, zoning by-law, or secondary plan by-law) or an amendment; and the proposed development does not generally conform with the proposed by-law or amendment.

The board or council may refuse to issue a development permit if the proposed by-law or amendment is passed within the 125 day period and the proposed development does not generally conform with the development plan by-law, zoning by-law, or secondary plan by-law, as adopted or amended. However, if the proposed by-law or amendment is not passed within the 125 day period, the board or council must issue the development permit if the proposed development generally conforms with the by-laws in effect at the time the application was made.

If a development permit is issued, the owner of the affected property is entitled to compensation for damages resulting from the delay in issuing the permit. If the owner and the applicable board or council are unable to reach an agreement on compensation, subsections 88(3) and (4) (arbitration if no agreement) apply, with necessary changes.

Transitional Provision - Applications received before the Act in force

A development application received by a planning district or municipality before the coming into force of the Act is to be dealt with in accordance with the process in effect in the district or municipality at the time the application was received [204].

Transitional Provision - Permits and orders continue

Permits, orders and approvals made or issued under the former Act remain in effect as if they had been made under the Act [199].

9.2 Development Agreements

The Act allows a board, council or planning commission to require a development agreement as a condition of amending a zoning by-law, making a variance order or approving a conditional use [150].

A development agreement between the owner of the affected property and the planning district or municipality can be in respect of the affected property and any contiguous land owned or leased by the owner.

A development agreement may deal with one or more of the following matters:

(a) the use of the land and any existing or proposed building;

(b) the timing of construction of any proposed building;

(c) the siting and design, including exterior materials, of any proposed building;

(d) the provision of parking;

(e) landscaping, the provision of open space or the grading of land and fencing;

(f) the construction or maintenance - at the owner's expense or partly at the owner's expense - of works, including but not limited to, sewer and water, waste removal, drainage, public roads, connecting streets, street lighting, sidewalks, traffic control, access and connections to existing services;

(g) the payment of a sum of money to the planning district or municipality in lieu of the requirement under clause (f) to be used for any of the purposes referred to in that clause;

(h) the dedication of land or payment of money in lieu of land, where the application is for an amendment to a zoning by-law to permit a residential use, use for a mobile home park or an increase in residential density (in this case item 6 of section 135 applies to the dedication).

A development agreement may provide that it runs with the land. When a caveat with a copy of the agreement is filed in the appropriate land titles office, the agreement binds the owner of the land affected by it, and the owner's heirs, executors, administrators, successors and assigns [151(1)].

A development agreement can be entered into before an order, approval or amendment to a by-law is made, but the agreement is not binding until the amendment has passed or the order or approval has been made [151(2)].

Transitional Provision - Agreements and contracts continue

Agreements and contracts entered into by a planning district or municipality under the former Act that are in force immediately before the coming into force of the Act are continued as if they were made under the Act, subject to any provision of the Act that affects them. [200]

10 Northern Manitoba

Part 10 of the Act contains special provisions respecting how the Act applies to Northern Manitoba. Northern Manitoba is generally that part of Manitoba north of township 21 and not within a municipality, provincial park, provincial forest or wildlife management area.

10.1 Definitions

Minister

In Northern Manitoba "the minister" means the minister appointed by the Lieutenant Governor in Council to administer *The Northern Affairs Act* except for the purposes of Part 8 (Subdivision Control) [153(2)]. The minister appointed to administer the Act is the approving authority for any application to subdivide land in Northern Manitoba. 162

Incorporated Communities

An incorporated community is a community incorporated under *The Northern Affairs Act*. An incorporated community is deemed to be a municipality. The community council of an incorporated community is deemed to be a municipal council for the purposes of the Act. 154

Unincorporated Areas

The minister is deemed to be the council for an area of Northern Manitoba that is not in an incorporated community. 155

10.2 Minister's Authority

156(1) The minister may, by regulation, delegate his or her authority as a council to the community council or the local committee for a community to do one or more of the following:

(a) adopt a development plan by-law and zoning by-law for the community;

(b) administer and enforce the development plan by-law and zoning by-law, including making variance orders and approving conditional uses;

(c) issue development permits;

(d) enter into development agreements.

The delegation of the minister's authority may be subject to terms and conditions set out in the regulation. [156(2)]

Municipal Board

The minister may appoint one or more persons to perform the functions of the Municipal Board with respect to any matter under the Act involving Northern Manitoba. [157]

10.3 Land Use Control

Authority to Adopt By-laws

A development plan by-law and a zoning by-law may be adopted for any part of Northern Manitoba [158(1)]. In an incorporated community the development plan by-law and a zoning by-law must be adopted by the community council [158(2)]. In a community (that is not incorporated) the development plan by-law and a zoning by-law for the community must be adopted by the minister, unless the minister has delegated that authority to the community council or local committee for the community. 158(3)

A development plan by-law and a zoning by-law for any part of Northern Manitoba that is not in an incorporated community or a community must be adopted by the minister. 158(4)

Adopting a Development Plan By-Law

159 When a development plan by-law for a community is prepared by the community council or the local committee, the normal adoption process for a development plan is modified in the following manner:

- After second reading the by-law is submitted to the minister. Approval by the minister is not required, however, the minister may refer the by-law to the Municipal Board under section 49. If the minister does not refer the by-law to the Municipal Board, the council or committee may give third reading to the by-law 60 days after the by-law is submitted to the minister.
- If the minister refers the by-law to the Municipal Board, the council or committee may give third reading to the by-law 60 days after the minister provides the council or committee with a copy of the Municipal Board report.

Coming Into Force

After adopting a development plan by-law or a zoning by-law, the community council or local committee must file a copy of the by-law with the minister in accordance with regulations made by the minister. [160(1)] The development plan by-law comes into force 30 days after the day it was filed with the minister. [160(2)]

The minister may disallow a development plan by-law or a zoning by-law, in whole or in part, by written notice to the community council or local committee. Upon disallowance, the by-law or the disallowed part of it ceases to be in effect and is deemed to be repealed. [160(3)]

Transitional Provision for Livestock Operations

A development plan in Northern Manitoba must contain a livestock operation policy. Any application for the expansion or development of livestock operations in an area of Northern Manitoba that is not subject to a development plan by-law or a zoning by-law must be dealt with in accordance with section 208 or 209. [161]

11 Notices and Hearings

11.1 Notices

Sending Notice to a Person

When any notice or other document under the Act must be given or sent to a person, it may be personally delivered to the person; or sent by ordinary mail to the person [163(1)]. The notice or other document sent by ordinary mail is deemed to be received by the person on the fourth day after it is mailed [163(2)].

If for any reason it is not possible or reasonable to give or send a notice or other document to a person in accordance with section 163, the notice or document is deemed to be sent to the person if a copy of it is posted in the office of the applicable planning district or municipality for seven consecutive days [164].

If the Act requires a notice to be given to a person who made a representation at a hearing and a written submission was made at the hearing on behalf of more than one person, notice is deemed to have been given if the notice is sent to one of those persons [165].

Requirements for Notices

A notice of a hearing given under the Act must meet the applicable requirements of this Division [166]. Section 167 prescribes the required contents of a notice. A notice of a hearing must

(a) give the date, time and place of the hearing;

(b) give a summary of the matter to be considered at the hearing;

(c) state that any person may make a representation on the matter at the hearing;

(d) state that documents related to the matter to be considered at the hearing may be inspected or copied at the office of the applicable planning district or municipality and any other location specified in the notice;

(e) in the case of a hearing to consider a proposed by-law of general application, describe the area affected, by reference to designations or zones in the planning district or municipality, or state that the by-law applies to the entire district or municipality; and

(f) in the case of a hearing to consider a matter affecting a specific property, identify the location of that property.

A person reading the notice should be able to determine whether the by-law would affect their property and, if so, in what way. A by-law of general application could include a new development plan or zoning by-law, or an amendment that would be applicable to all properties in the municipality or planning district, or all properties in a zone or policy area. A matter affecting a specific property would typically involve a change to a zoning map or policy map, or some other amendment that pertained to specific identifiable properties. The notice for a by-law affecting specific properties should include a sketch showing the location of the properties affected. The notice could also identify the properties by reference to commonly understood descriptions such as land locations, physical features, street names etc.

The planning district or municipality must allow persons to inspect documents related to the matter to be considered at the hearing at its office at the times set out in the notice; and provide copies of the documents for a reasonable fee [171].

A sample Public Notice, in this case for a development plan amendment, is shown in the Appendices.

11.2 Notice on Policy Matters – Section 168

Section 168(1) of the Act establishes the notice requirement for hearings on matters related to planning districts, development plans and zoning by-laws. These include a hearing on:

(a) the establishment of a planning district;

(b) the alteration or dissolution of a planning district or the amalgamation of planning districts;

(c) the adoption of a development plan by-law (or amendment);

(d) the adoption of a zoning by-law or a secondary plan by-law (or amendment).

Publication

Notice of hearings on these "policy" matters must be published in a newspaper with a general circulation in the planning district or municipality. The notice must be published on two occasions at least six days apart, during the period beginning 40 days before the hearing and ending seven days before the hearing.

When there is no newspaper with a general circulation in the area, a copy of the notice must be posted in the office of the applicable planning district or municipality and at least two other public places in the district or municipality at least 14 days before the hearing [168(2)].

Specific Notice

168(3) At least 27 days before the hearing, a copy of the notice of the hearing must also be sent

(a) to the applicant, if there is one;

(b) to the minister (c/o the regional manager, CPS Branch);

(c) to all adjacent planning districts and municipalities;

(d) when the hearing is held by the council of a municipality that is part of a planning district, to that planning district and all other municipalities in the district; and

(e) when the hearing is held by the board of a planning district, to all municipalities in the district.

Notice to affected property owners

168(4) If the hearing is held to consider an amendment to a by-law that would affect a specific property, a copy of the notice of hearing must be sent at least 14 days before the hearing to the owner of the affected property, and every owner of property located within 100 metres of the affected property; **or** where the affected property is not remote or inaccessible, a copy of the notice of hearing must be posted on the affected property in accordance with section 170.

11.3 Notice on Administrative Matters – Section 169

Section 169 of the Act establishes a different notice requirement for hearings on matters that are more administrative in nature [169(1)]. This requirement applies to:

(a) a hearing on an application for a variance under section 96;

(b) a hearing on an application to approve a conditional use under section 105, except for an application subject to Division 2 of Part 7 (Large-scale conditional use livestock operations);

(c) a hearing on an application for subdivision under subsection 125(2);

(d) a hearing on the adoption of a by-law to close public reserve land under subsection 139(2);

(e) a hearing on the adoption of a by-law to declare an obsolete plan of subdivision under subsection 144(3).

For these matters, at least 14 days before the hearing, a copy of the notice must

(a) be sent to the applicant, if there is one;

(b) be posted in the office of the applicable planning district or municipality;

(c) be sent to the minister (c/o the regional manager, CPS Branch)in the case of a hearing to consider a by-law to close public reserve land or the declaration of an obsolete plan; and

(d) be sent to the minister (or the board of the planning district if the board has been designated as a subdivision approving authority) in the case of a hearing to consider a subdivision application. 169(2)

A copy of the notice of hearing must also be sent at least 14 days before the hearing to every owner of property located within 100 metres of the affected property; or where the affected property is not remote or inaccessible, notice must be posted on that property in accordance with section 170. 169(3)

Notice of Variance Involving Livestock Operations

There are specific notice requirements for variances involving a livestock operation. If a hearing is to be held to consider an application to vary a separation distance between a building on the property and a livestock operation, a copy of the notice of hearing must be sent to the owner of the livestock operation.

If a hearing is to be held to consider an application by the owner of a livestock operation to vary a separation distance involving the operation, a copy of the notice of hearing must be sent to every owner of property located within the separation distance that is proposed to be varied.

11.4 Posting a Notice

Subsection 170(1) sets out the requirements for posting a notice on an affected property. The notice must be

(a) at least 28 x 43 centimetres in size with the words "NOTICE OF PUBLIC HEARING" printed in large bold letters;

(b) posted outdoors for 14 days immediately before the date of the hearing

(i) in conspicuous locations on the site of the property,

(ii) facing each public road adjacent to the property, and

(iii) not more than 1 metre inside the boundary lines of the property; and

(c) kept in legible form.

Evidence that a notice was posted on two occasions at least six days apart during the 14 day period referred is proof that the notice was posted for the entire 14 day period. 170(2)

11.5 Hearings

Conduct of hearing

The requirements respecting hearings apply to any body holding a hearing under the Act including a board, council, planning commission, or the Municipal Board. A body holding a hearing must

(a) hold the hearing at the date, time and place set out in the notice of hearing;

(b) hear any person who wishes to make a representation on the matter to be considered at the hearing; and

(c) keep written minutes of the hearing. [172(1)]

A hearing may be adjourned to a fixed date. Unless the new hearing date is announced at the time of adjournment, the body holding the hearing must give notice of the continuation of the hearing as if it were a new hearing [172(2)].

Representations

A person may make a representation at a hearing under the Act by making an oral submission at the hearing; or filing a written submission with the body holding the hearing, before or at the hearing. 173(1) The body holding the hearing must keep a record of all representations made at the hearing [173(2)].

Combined hearings

If a development application would require a hearing body (a board, council or planning commission, or the Municipal Board) to hold multiple hearings because the application requires amendments to more than one by-law; or other approvals that require hearings; the hearing body may hold all of the required hearings related to the proposal that it has jurisdiction to hold together in a single combined hearing [174(1)].

The notice of hearing for each matter to be considered at a combined hearing may be combined into a single notice as long as that notice meets all of the requirements of the Act [174(2)].

12 Enforcement

12.1 Inspections

Authority to Conduct Inspections

The board of a planning district or the council of a municipality may, by by-law, designate the employee or officer of the district or municipality to carry out the powers under this section [184].

Section 175 sets out the powers of inspection and enforcement. A designated employee or officer of a planning district or municipality may enter land or a building to conduct an inspection to determine if a person is complying with:

(i) a by-law adopted under the Act that the district or municipality is authorized to enforce,

(ii) the terms or conditions of a permit, approval or order made or issued under the Act,

The designated employee or officer may take any action authorized under the Act or a by-law to enforce or remedy a contravention of the above matters.

When conducting an inspection, the designated employee or officer can request that anything be produced to assist in the inspection. Things that might assist with an inspection could include documents and records, or other things such as raw materials, stock or products related to the use of the property. The designated employee or officer can make copies of anything related to the inspection. The designated employee or officer can also, on providing a receipt, remove a record, document or other item related to the inspection. [175(2)]

No person may interfere with a designated employee or officer who is conducting an inspection or enforcement action [175(3)].

Requirements for an Inspection

- There are several requirements related to an inspection. First, the designated employee or officer must, upon request, produce identification showing that he or she is authorized by the planning district or municipality to conduct the inspection or enforcement action. 176(2)
- Second, except in an emergency, an inspection or enforcement action must normally take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.
- Third, the designated employee or officer may only enter the land or building in question with the consent of the occupier. If the designated employee or officer is refused entry, or has reason to anticipate that entry will be refused, the designated employee or officer can apply to a justice to obtain a warrant to enter the land or building and conduct an inspection or enforcement action under section 177 [176(1)].
- In some situations it may be prudent to have someone other than the designated employee or officer conduct or assist in an inspection. The warrant can authorize the designated employee or officer and any other person named in the warrant to enter the land or building and conduct an inspection or enforcement action.

Emergencies

In an emergency, or in extraordinary circumstances, the Act allows the designated employee or officer to enter land or a building without giving reasonable notice, or any notice. In these situations the Act also allows the designated employee or officer to take any inspection or enforcement action without the consent of the owner or occupier of the land or building and without a warrant. [176(3)]

12.2 Orders

Order to remedy contravention

If the designated employee or officer finds that a person is contravening a by-law, or the terms or conditions of a permit, approval or order made or issued under authority of the Act, the designated employee or officer may issue a written order requiring the person to remedy the contravention. [178(1)]

Content of an Order

The order can direct the person to stop doing something, or to change the way in which the person is doing it. The order can also direct the person to take any action or measure necessary to remedy the contravention and, if necessary, to prevent a recurrence of the contravention.

An order should state a time within which the person must comply with the order; and state that if the person does not comply with the order within the specified time, the district or municipality may take any action required to remedy the contravention, at the expense of the person. [178(2)]

Review by Board or Council

If a person against whom an order is made disagrees with the order, he or she has recourse to the board or council. The person can require the board or council to review the order by making a written request to the board or council. The request must be no later than 14 days after the order was made. [178(3)]

If a board or council receives a written request it must review the order. After the review the board or council may confirm, vary, or rescind the order. [178(4)]

12.3 Remedying Contraventions

If a person does not comply with an order to remedy a contravention within the time specified in the order, a planning district or municipality may take any action or measure that is reasonable to remedy the contravention. However, the planning district or municipality can only take action after the deadline for the person to request the board or council to review the order has passed. If a review of the order has been requested the board or council can decide to allow the district or the municipality to take the action or measure. [179(1)]

The costs of an action or measure to remedy a contravention taken by a planning district or municipality are a debt owing to the district or municipality by the person who contravened the by-law. [179(2)]

12.4 Injunctions

A planning district or municipality may also apply to the Court of Queen's Bench for an injunction or other order to enforce a by-law made under the Planning Act, or to restrain a contravention of the by-law. The court may grant or refuse to grant the injunction or other order, or may make any other order that it considers fair and just. [180]

12.5 Offences and Penalties

Offences

A person is guilty of an offence if they contravene

(a) a provision of the Act;

(b) a by-law adopted under the Act; or

(c) the terms or conditions of a permit, approval or order made or issued under the Act.

When a contravention continues for more than one day, the person is guilty of a separate offence for each day the offence continues. [181(2)]

If a corporation commits the offence, a director or officer of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of an offence. The director or officer of the corporation is liable on summary conviction to the penalties under the Act, whether or not the corporation has been prosecuted or convicted. [181(3)]

Penalties

Every person who is guilty of an offence under the Act is liable on summary conviction to

> (a) in the case of an individual, a fine of not more than $5,000., or imprisonment for a term of not more than six months, or both; and
>
> (b) in the case of a corporation, a fine of not more than $20,000. [182(1)]

When a person is convicted of an offence, a justice may, in addition to imposing a penalty, order the person to comply with the provision of the Act or the by-law that the person contravened. The justice can also order the person to pay to the planning district or municipality the amount of the costs incurred by the district or municipality as a result of the contravention. [182(2)]

Time Limit for Prosecution

A prosecution under the Act must be commenced no later than two years after the day the alleged offence was committed. 183

13 Miscellaneous Provisions

13.1 Duties of minister

The Act sets out some of the general duties of the minister. The minister may [189(1)]

(a) make recommendations to the Lieutenant Governor in Council on the development of provincial land use policies;

(b) co-ordinate provincial land use and development policies and programs with federal and local government land use and development policies and programs;

(c) conduct a study of any issue related to land use and development in the province;

(d) issue guidelines to planning districts and municipalities on any matter under the Act;

(e) promote co-operation between planning districts and municipalities on regional land use and development issues; and

(f) promote public participation in the development of land use and development policies.

If requested, the minister may also provide advice and technical planning assistance to a planning district or municipality [189(2)].

13.2 Interdepartmental Planning Board

The allows the Lieutenant Governor in Council to appoint an Interdepartmental Planning Board consisting of officials from government departments and agencies involved in matters related to land use and development. [190(1)] . The Interdepartmental Planning Board has authority to

(a) advise and assist the minister and government departments and agencies on all matters affecting the use and development of land in the province;

(b) co-ordinate government policies affecting the use and development of land in the province;

(c) review and make recommendations to the minister on any proposed special planning area or development plan by-law, and all matters relating to planning districts; and

(d) perform any other duties assigned to it by the Act, any other Act, or the Lieutenant Governor in Council. [190(2)]

13.3 Protection from liability

The Act protects from prosecution a member of a board, council or planning commission, or any person acting under authority of the Act, for anything done, or not done, or for any neglect,

(a) in the performance or intended performance of a duty under the Act; or

(b) in the exercise or intended exercise of a power under the Act;

There is, however, no protection from prosecution if the person was acting in bad faith. [192]

13.4 Regulations

193(1) The Lieutenant Governor in Council may make regulations

(a) respecting special planning areas, including regulations

(i) respecting applications for development in special planning areas, and

(ii) respecting the process for approving development in special planning areas;

(b) respecting development plans;

(c) establishing siting and setback requirements for livestock operations for the purposes of subsection 72(3);

(d) respecting the form or content of any document required under the Act;

(e) defining any word or expression used but not defined in the Act;

(f) respecting any matter necessary or advisable to carry out the purposes of the Act.

Ministerial regulations

193(2) The minister may make regulations respecting planning districts, including regulations

(a) respecting the form and content of applications to establish, dissolve, alter or amalgamate planning districts;

(b) respecting the extent to which *The Corporations Act* applies to planning districts.

Appendices

Appendix 1 - Adoption of a development plan Procedures Checklist

Appendix 2 - Adoption of a zoning by-law Procedures Checklist

Appendix 3 - Variance Procedures Checklist

Appendix 4 - General Conditional Use Procedures Checklist

Appendix 5 - Sample Public Notice

Appendix 1 - Procedures Checklist
Adoption of a Development Plan By-law (or Amendment)
Sections 45 – 55

1. **First Reading** of development plan by-law

- Set date for the public hearing and prepare the Public Notice
- It is recommended that a copy of the by-law and public notice should be sent to the CPS Regional Office

2. **Publication of Notice** [see 168(2)]

- Publish the Notice in a newspaper: *2 times* – at least 6 *days apart in the period* between *40 days and 7 days before the public hearing*

  OR *where there is no newspaper in general circulation*

- Post the Notice in the office of the planning district/municipality and two other public places in the planning district/municipality *- at least 14 days before the hearing*

3. **Notice of the hearing** - send notice by mail at least 27 days before the hearing to:

(i) the applicant (if there is one)
(ii) the minister (c/o the CPS Regional Office)
(iii) all adjacent municipalities and planning districts (including the City of Winnipeg, if applicable)
(iv) all municipalities within the planning district

4. **Notice to affected property owners** – if the hearing is to consider an amendment that would affect a specific property:

- send a copy of the notice *at least 14 days before the hearing* to:

  (i) the owners of the affected property
  (ii) every owner of property within 100 metres of the affected property

  OR *where the property is not remote or inaccessible*

- post a copy of the notice on the affected property – for at least *14 days before the Hearing* [see the requirements for posting in 170(1)]

5. **Hold the Public Hearing**

- keep written minutes of the hearing
- keep a record of all representations at the hearing [173(2)]

6. **Following the Public Hearing** – the board or council may:

- give second reading (without changes or with minor changes that do not alter the intent of the by-law) or
- alter by-law and hold a public hearing on the alteration; or
- pass a resolution not to proceed with by-law

7. Following **second reading**:

- send notice to those who made representations at hearing - *served personally or by regular mail*

  and

- send 2 certified copies of the by-law to the minister (c/o CPS Regional Office) along with a copy of the minutes and each written submission filed at the hearing.

  OR *if the board or council passes a resolution not to proceed*

- send a copy of the resolution to the minister (c/o of the CPS Regional Office) and to any person who made representation at the hearing

8. **Minister's decision** - the minister may

  (i) approve the by-law without alterations or conditions; or
  (ii) approve the by-law subject to the board or council making an alteration to the by-law complying with a condition imposed by the minister; or
  (iii) reject the by-law.

9. **Final Decision of the board or council** – after receiving a written notice of the minister's decision the board or council may

- give third reading to the by-law, after making any alteration to the by-law and complying or agreeing to comply with any condition imposed by the minister; or
- pass a resolution not to proceed with by-law.

10. **Notice of final decision** – after third reading

- send notice to those who made representations at the hearing and to every person who made representation at the Municipal Board hearing, if one was held.
- send a certified copy of the by-law to the minister (c/o the CPS Regional Office) and an electronic copy of the by-law in a format acceptable to the minister.

  OR *if the board or council passes a resolution not to proceed*

- send a copy of the resolution to the minister (c/o of the CPS Regional Office) and to every person who made representation at the hearing and to every person who made representation at the Municipal Board hearing, if one was held.

Appendix 2 - Procedures Checklist
Adoption of a Zoning Plan By-law (or Amendment)
Sections 74 – 79

1. **First Reading** of zoning by-law

- Set date for the public hearing and prepare the Public Notice
- It is recommended that a copy of the by-law and notice should be sent to the CPS Regional Office

2. **Publication of Notice** [see 168(2)]

- Publish the Notice in a newspaper: *2 times* – at least 6 *days apart in the period* between *40 days and 7 days before the public hearing*

  OR *where there is no newspaper in general circulation*

- Post the Notice in the office of the planning district/municipality and two other public places in the planning district/municipality *- at least 14 days before the hearing*

3. **Notice of the hearing** - send notice by mail at least 27 days before the hearing to:

  (i) the applicant (if there is one)
  (ii) the minister (c/o the CPS Regional Office)
  (iii) all adjacent municipalities and planning districts (including the City of Winnipeg, if applicable)
  (iv) all municipalities within the planning district

4. **Notice to affected property owners** – if the hearing is to consider an amendment that would affect a specific property:

- send a copy of the notice *at least 14 days before the hearing* to:
  (i) the owners of the affected property
  (ii) every owner of property within 100 metres of the affected property

  OR *where the property is not remote or inaccessible*

- post a copy of the notice on the affected property – for at least *14 days before the Hearing* [see the requirements for posting in 170(1)]

5. **Hold the Public Hearing**

6. **If no one objects** to the by-law at the hearing the board or council may:

- give second and third reading (without changes or with only minor changes that do not alter the intent of the by-law) or
- alter the by-law and hold a public hearing on the alteration; or
- pass a resolution not to proceed with by-law.

7. **If an objection is received** at the hearing the board or council may:

- may give second reading (without changes or with only minor changes that do not alter the intent of the by-law) or
- pass a resolution not to proceed with by-law.

8. **Notice to Objectors** – if the board or council gives second reading to the by-law, as soon as practicable send a notice to every person who objected stating that

a) the person may file a second objection with the board or council by the deadline specified in the notice. The deadline must be at least 14 days after the date in the notice.
b) if a second objection is not filed before the deadline the by-law may be given third reading without further notice

9. **If no second objection is filed** by the deadline the board or council may

- give third reading to the by-law, or
- pass a resolution not to proceed with by-law.

10. **If a second objection is filed**:

(i) a municipality must refer the objection to the board of the planning district,
(ii) a planning district or a municipality that is not a member of a planning district must refer the objection to the Municipal Board,
(iii) if an objection is filed by the minister, a planning district board, a council or the Government of Canada, all objections must be referred to the Municipal Board.

11. **Notice of board decision –** the Municipal Board or the planning district board will make an order confirming or refusing to confirm the by-law or directing the board or council to alter the by-law. The board will send a copy of its order to the board or council and to every person who made representation before it.

12. **Third Reading –**the board or council may give third reading to the by-law if:

- the Municipal Board or the planning district board made an order confirming the by-law, or
- it complies with an order of the Municipal Board or the planning district board to alter the by-law.

Appendix 3- Procedures Checklist
Variances under Part 6
Sections 94 – 99

1. **Application** for Variance

- application may be made to the council or board by a person who believes the zoning by-law adversely affects their property rights.
- application must be in the form and accompanied by any supporting material or fee the board or council requires.

2. Set the date for the public hearing and prepare the Public Notice

3. Notice of Hearing [see 169(1)]

At least 14 days before the hearing date:

- send notice of hearing to the applicant (regular mail)**.**
- post the notice in the office of the municipality or planning district; and
- send the notice to every owner of property within 100 meters of the affected property

  OR *where the property is not remote or inaccessible*
- post a copy of the notice on the affected property, [see the requirements for posting in 170(1)].

4. Public Hearing

Hold the hearing as advertised in notice. The hearing can be adjourned to another fixed date.

5. Decision of Council:

After holding the hearing the board or council must make an order:
(a) rejecting the application; or
(b) approving the application if it meets the provisions in section 97(1)(b),

The board or council may impose conditions or require the owner of the property to enter into a development agreement.

The order of a board or council is final and not subject to appeal.

6. Notice of Decision:

Send a copy of the order to the applicant, and every person who made a representation at the hearing, by regular mail or served personally.

Appendix 4 - Procedures Checklist
General Conditional Uses under Part 7
Sections 103 – 108

1. **Application** for Conditional Use

   - application must be made to the council or board by the owner or a person authorized in writing by the owner.
   - Application must be in the form and accompanied by any supporting material or fee the board or council requires.

2. Set the date for the public hearing and prepare the Public Notice

3. Notice of Conditional Use Hearing [see 169(1)]

At least 14 days before the hearing date:

- send notice of hearing to the applicant (regular mail)**.**
- post the notice in the office of the municipality or planning district; and
- send the notice to every owners of property within 100 meters of the affected property

OR *where the property is not remote or inaccessible*

- post a copy of the notice on the affected property, [see the requirements for posting in 170(1)].

4. Public Hearing

Hold the hearing as advertised in notice. The hearing can be adjourned to another fixed date.

5. Decision of Council:

After holding the hearing the board or council must make an order:
(a) rejecting the application; or
(b) approving the application if it meets the provisions in section 106(1)(b),

The board or council may impose conditions require the owner to enter into a development agreement.

The order of a board or council is final and not subject to appeal.

6. Notice of Decision:

Send a copy of the order to the applicant, and every person who made a representation at the hearing, by regular mail or served personally.

Appendix 5- Sample Notice

Name of Municipality/Planning district
UNDER THE AUTHORITY OF THE PLANNING ACT

NOTICE
OF PUBLIC HEARING

On the date and at the time and location shown below, a PUBLIC HEARING will be held to receive representations from any persons who wish to make them in respect to the following matter:

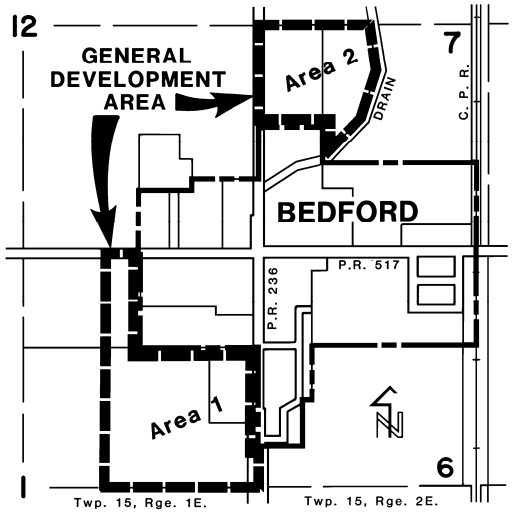
LAKE PLACID PLANNING DISTRICT BY-LAW NO. 1-2008 being an AMENDMENT TO THE LAKE PLACID PLANNING DISTRICT DEVELOPMENT PLAN BY-LAW NO. 2-2007, as amended.

HEARING LOCATION:	Rural Municipality of Rockford Council Chambers at 574 Main Street, Stonehenge, Manitoba
DATE & TIME:	December 25, 2008 at 8:00 P.M.
GENERAL INTENT OF BY-LAW 1-2008:	To expand the General Development area of the Village of Bedford in the Municipality of Rockford.

AREAS AFFECTED:

a) Redesignate an area located generally south-west of Bedford in NE 1-15-1E shown outlined in a heavy broken line and marked as Area 1 on the attached map from "Agricultural Rural Area" to "General Development Area",

b) Redesignate an area located generally north of Bedford in SW 7-15-2E shown outlined in a heavy broken line and marked as Area 2 on the attached map from "Agricultural Rural Area" to "General Development Area".



FOR INFORMATION CONTACT:	Jane Smith, Secretary-Treasurer, Lake Placid Planning District 574 Main Street, Stonehenge, Manitoba, Phone 333-1234

A copy of the above proposal and supporting material may be inspected in the office of the Lake Placid Planning District at the above address during the hours of 8:30 a.m. to 4:30 p.m. Monday to Friday.