

## Chapter Eleven

# Land-use planning in Manitoba: Existing policies and practices

This chapter is meant to provide an overview and assessment of the current land-use planning tools and practices in Manitoba. The chapter:

- describes the existing policy tools
- describes the planning process with a focus on the process of creating development plans, zoning by-laws, and subdivisions
- identifies areas where the process could be improved

### PROVINCIAL POLICY TOOLS

There are currently a number of policy tools the Government of Manitoba employs to regulate land-use planning and growth management issues within Manitoba's Capital Region. These include:

#### Legislation

The legislative or statutory framework for land-use planning on privately held lands derives from a variety of acts passed by the Manitoba Legislature, the principal acts being *The Planning Act*, *The City of Winnipeg Charter*, *The Municipal Act*, and *The Municipal Board Act*.

#### Regulation

Regulation 184/94 of *The Planning Act* creates Provincial Land Use Policies (PLUPs) which are legally binding and apply to all of Manitoba outside Winnipeg. They run to 43 pages and cover nine policy sectors (e.g., agriculture, renewable resources, and recreational resources), as well as general development and sustainable development.

The PLUPs were last revised in 1994. In January 2003, the Minister of Intergovernmental Affairs of the Government of Manitoba launched a review of *The Planning Act* and *The City of Winnipeg Charter*. A 38-page discussion paper was issued to serve as the basis for consultations with the public, interested organizations, and municipal governments across the province. The discussion paper indicated that the planning law for the Province was basically sound, but needed to be modernized and streamlined to take account of new policy considerations, such as sustainable development, and to enhance its overall effectiveness. The RPAC believes the issue of greater consistency in the policy-planning framework is important in for the City of

Winnipeg and other municipalities and lauds the current review.

**Ministerial statements**

From time to time there are public statements from ministers and/or departments that set forth provincial thinking on substantive or procedural matters related to land use planning. For example, the Minister of Intergovernmental Affairs announced, in the paper *Planning Manitoba’s Capital Region: Next Steps* (January 2001), that the government would “diligently apply the Provincial Land Use Policies.” This announcement has affected the way government departments apply the PLUPs for development plan reviews.

**Precedents and informal processes**

Over time the main provincial departments involved with the review of municipal development plans and other planning issues have created precedents and informal processes and understandings, which, while not legally binding and usually not public, can be influential in determining the provincial response to a specific development proposal.

The above listing represents only a summary of the main sources of provincial policy direction and regulatory control over land use planning in the Capital Region. Clearly, the process of defining, declaring, and applying provincial policy concerns is not always simple, straightforward, transparent, or easily understood. Given the range of interests and values that must be accommodated in the planning process and the interdependence among decisions made on several levels, some measure of complexity is unavoidable.

Other provincial legislation, regulations, and policies also impact of land-use decisions

and planning, such as regulations regarding the installation and maintenance of septic fields and wells, as well as other environmental licensing requirements.

**THE CURRENT PLANNING PROCESS**

All sixteen local governments in the Capital Region have development plans that have been approved by both the municipal council\* and the Government of Manitoba. All sixteen also have adopted zoning by-laws. Some Capital Region municipalities have had planning controls since the 1950s (see the Capital Region background paper, *The Planning Framework in Manitoba’s Capital Region - a Brief Historical Perspective in Planning Manitoba’s Capital Region: next steps*). The City of Winnipeg has had planning controls in place since the early part of the last century.

*The City of Winnipeg Charter* sets out the planning framework for the City of Winnipeg and *The Planning Act* does the same for the other municipalities in Manitoba—including the fifteen other municipalities in the Capital Region.

\* The word “municipality” means any of the 199 incorporated municipalities in Manitoba including the City of Winnipeg. As well, for ease of understanding, in this section, “municipality” also includes Planning Districts. As mentioned elsewhere, there are currently three Planning Districts in the Capital Region involving 9 of the 16 municipalities. Planning Districts are incorporated bodies made up of two or more municipalities, with authority under *The Planning Act*, whose main role is to adopt a district-wide Development Plan, and to administer it and other zoning/planning/building by-laws in the member municipalities. Planning Districts have staff and are directed by a Board made up of elected councilors of the member municipalities.

## The Development Plan Under *The Planning Act*

The development plan is the core document in the local planning process. It is a municipality's or district's formal medium-to-long range land-use planning document. A development plan constitutes not only the land-use plan that the municipality must follow in authorizing development, but is also the plan the Government of Manitoba follows in that municipality or district. While development plans vary from municipality to municipality, they tend to be fairly general tools, setting out broad land-use objectives and policy statements. The plans contain land-use designations such as Residential, Commercial, Agricultural, Industrial, Parks and Recreation. These classifications tend to be fairly broad, are shown on maps and are accompanied by policy statements setting out general principles to guide the municipality in its land-use decisions. Many of the statements/policies are similar to (but usually more specific) than those in the PLUPs. Because significant background work must be done (engineering, housing, current land use patterns, population studies, etc.) prior to a plan being written, the process of writing a plan, having it adopted, and beginning the process of implementing the plan through the formulation and application of zoning by-laws usually takes at least two years.

In accordance with legislation, municipal councils in Manitoba adopt development plans as by-laws. In the process of adopting a development plan by-law, a municipality must give public notice of the proposed by-law (this includes notifying neighbouring municipalities and the Minister of Intergovernmental Affairs) and hold formal public hearing(s). After it is given second reading by the coun-

cil, the by-law must be submitted to the Minister of Intergovernmental Affairs, who is required by *The Planning Act* to consult with provincial cabinet on the development plan or amendments to the plan. As part of this process, the minister circulates the plan to the appropriate government departments and agencies for comment. Provincial planning officials review the plan to ensure that it is consistent with Manitoba's land-use policies. There is currently no time limit for this process of provincial review and approval. If the plan appears contrary to the PLUPs, provincial government staff will attempt to negotiate with the municipality and/or developer to bring the plan in line with them. If negotiations fail and there are outstanding objections from either the public or the government, the by-law is normally referred to the Manitoba Municipal Board, which holds its own formal hearing and then it makes a recommendation to the minister. (For further information on the Manitoba Municipal Board, see the sidebar article entitled *The Manitoba Municipal Board* on the next page.) The Minister, who is not bound by the Municipal Board's advice, can approve the by-law with no alterations, approve the by-law with alterations, or reject it. There is also no time limit on the period for final ministerial approval of a development plan or changes to the plan.

Once the by-law has received ministerial approval, the municipality may then give it third and final reading. The by-law is then in full force and effect. (See Appendix Five for flow-charts showing all the steps in the process).

After a plan is adopted, it must be formally reviewed at least every five years. In between those five-year review periods however, the plan can be amended. The amend-

ment procedure is the same as the original plan adoption procedure.

### Planning under *The City of Winnipeg Charter*

The development plan for the City of Winnipeg is known as Plan Winnipeg. The City of Winnipeg must follow roughly the same process as other municipalities when it comes to making amendments to its development

plan. One key difference is that the Minister of Intergovernmental Affairs is not required to consult with the provincial cabinet prior to approving changes to Plan Winnipeg. The second is that the PLUPs do not formally apply to the City of Winnipeg, although in practise the Government of Manitoba reviews proposed amendments to Plan Winnipeg in the light of the PLUP regulation.

## The Manitoba Municipal Board

The Municipal Board of Manitoba is established under *The Municipal Board Act* and is charged with hearing both assessment and planning matters. With respect to planning, the Board, whose members are appointed by the Government of Manitoba, hears:

- objections and appeals to local decisions on municipal zoning by-laws (in municipalities not in a planning district)
- appeals to conditions related to subdivision approvals

On these two matters the Board's decisions are final and binding. The Board also:

- hears objections and considers issues related to local development plans referred by the Minister of Intergovernmental Affairs
- considers the establishment of planning

districts upon referral from the Minister of Intergovernmental Affairs

On these two matters the Board provides advice to the Minister of Intergovernmental Affairs.

While the Board does not necessarily consider its decisions as precedent setting, its decisions and recommendations naturally have a significant impact on the way future land-use decisions are made in the region.

The Municipal Board does not hear appeals related to zoning decisions in the City of Winnipeg.

These are heard by Winnipeg City Council and the Council's various committees. In the case of Plan Winnipeg however, the Minister of Intergovernmental Affairs can direct objections to proposed amendments to the plan to the Municipal Board.

## Zoning By-laws

After a development plan has been adopted the next step in municipal planning is the adoption of a zoning by-law (ZBL). The main difference between a zoning by-law and a development plan is that the ZBL is intended primarily to be an immediate, specific and detailed implementation tool, whereas the plan is more general and long range and is written as policy. For example, where the development plan might give an area an industrial designation and provide some general policy guidelines for industrial development in the area, the ZBL might divide that designated area into M1 Light Industrial and/or M2 Heavy Industrial. The ZBL will set out specific criteria relating to such matters as building location, building height, minimum front, side and rear yard sizes, fence requirements, parking requirements, permitted, non-permitted, and conditional uses.

Under *The Planning Act* municipalities outside the City of Winnipeg must submit proposed zoning by-laws (or amendments to the ZBL) to the Government of Manitoba, which reviews them to ensure they conform to the applicable development plan.

Under *The City of Winnipeg Charter*, the City of Winnipeg is not obliged to submit its proposed zoning by-laws to the Government of Manitoba. While municipalities do not require provincial government approval to adopt the ZBL, the Province does have the right to appeal by-laws that it believes do not conform to the development plan.

## Subdivisions

In Manitoba, for the purposes of ownership, land is divided into parcels that are described in titles of ownership. For a number of reasons the owner of a parcel of land may

wish to divide that parcel into one or more parcels of land. This process is known as subdivision of the land. It can simply involve the split of a parcel into two new parcels or transforming a larger tract of land into numerous parcels, often for residential housing, commercial, or industrial development. In all cases the subdivision must conform to existing zoning by-laws and development plans, and the subdivision must be authorized by the appropriate authority (referred to as the approving authority). Subdivisions in the City of Winnipeg must be authorized by the City of Winnipeg, while subdivisions outside the City of Winnipeg must be authorized by the Minister of Intergovernmental Affairs. The Minister has delegated approving authority to senior departmental staff and to some Planning Districts that have requested it. In the Capital Region, the Selkirk Planning Board (which includes the City of Selkirk, the RM of St. Andrews, the RM of St. Clements, and the RM of West St. Paul) and the South Interlake Planning District Board (which includes the Town of Stonewall, the RM of Rockwood, and the RM of Rosser) have the authority to approve subdivisions.

Outside the City of Winnipeg applications for subdivision are made to the approving authority, which circulates the application to affected provincial government departments and boards. The approving authority then provides the relevant municipal council with a report and recommendations. The council can reject the subdivision, approve it, or approve it with conditions. If the council rejects the subdivision, there is no appeal and the process is halted. However, if the council approves the subdivision (with or without conditions) the approving authority still has the options of rejecting the proposal, approv-

ing it or approving it with conditions (and it can add to the conditions put in place by the municipal council). Applicants can appeal to the Municipal Board. In cases where the Planning District Board serves as the approving authority, the Minister of Intergovernmental Affairs has the right of appeal to the Municipal Board.

In the City of Winnipeg application for subdivision must be made to the City. If the subdivision does not require the dedication of land for a road, a committee of Winnipeg City Council can approve the subdivision. If it requires land for a road, a Winnipeg City Council Committee reviews the application, holds public hearings and makes a recommendation to Winnipeg City Council, which makes the final determination on the application. Appeals to City decisions on subdivision applications can be made to City Council, whose decision is final and binding. Under this process there is no requirement for the City to circulate information about the application to any other government or agency.

**Other Planning Processes and Tools**

There are a number of other important planning, development, and building processes and tools including development agreements (whereby the developer enters into a legal agreement with the municipality usually relating to services and conditions on the development proposal), and building by-laws and building codes (which set out detailed building and construction standards and requirements). Property taxes and other fees can also play a significant role in determining where development takes place. Occupancy by-laws, maintenance by-laws, by-laws respecting nuisances, and parking all impact on planning, development and land use in a municipality.

Planning obviously has implications that go far beyond land use. Building codes for example, have an impact upon both energy use and accessibility.

In 1997 the federal government published the Model Energy Code (MEC) for Buildings for provincial and municipal jurisdictions to adopt. The Code specifies comprehensive minimum energy-efficiency standards for new building construction. Depending on location and type of energy source, buildings built to comply with the Energy Code use less, in some cases significantly less, space-heating energy than similar houses not built to code. (Natural Resources Canada web site) In addition, there also exists a LEED™ (Leadership in Energy and Environmental Design) Green Building Rating System. It is a voluntary, consensus-based standard for developing high-performance, sustainable buildings. (US Green Building Council web site) This system gives Platinum, Gold, Silver, and Bronze ratings for buildings that complete 10 prerequisites and achieve a certain number of points in a variety of categories, ranging from building materials to water quality.

Both Ontario and BC both make direct reference to the MEC in their building code and the City of Calgary now stipulates that all public buildings must meet the LEED™ Silver minimum standard. Other jurisdictions are considering adopting these standards. Strong arguments can be made for the adoption of more stringent building codes that places municipalities in a more competitive position with other jurisdictions due to lower operational costs through savings in energy consumption.

*In Full Citizenship: A Manitoba Provincial Strategy on Disability*, the Government of Manitoba committed itself to adopting the

Universal Design Institute’s document *ACCESS: A Guide to Accessible Design for Designers, Facility Owners and Managers* as preferred accessible design guidelines for those buildings where the provincial government has design control. This guide is based on the national Building Code of Canada and includes specific technical information and drawings necessary to achieve better fundamental accessibility features in the renovation of existing facilities and in any new construction.

### **AN ASSESSMENT OF PLANNING POLICIES AND PRACTICES**

Through the public hearing process a variety of complaints were made to the RPAC about the current planning policies and processes. Many of these focussed on the PLUPs and the approval of development plans.

The RPAC heard that the language in the PLUPs is unduly vague, with the result that any proposed local development can be made to appear to conform to the parameters of provincial policy. The committee was also told that successive provincial governments had been inconsistent in their interpretation and enforcement of the PLUPs. Up to a point, the RPAC accepts these criticisms as valid. The RPAC recognizes that:

- There is an inconsistency in not formally requiring Plan Winnipeg to conform to the PLUPs while requiring this of all other municipal development plans. The RPAC was told PLUPs do not contain sufficiently detailed urban policies to provide guidance for them to apply to the City of Winnipeg.
- There is inconsistency and unnecessary delay by requiring the Minister of Intergovernmental Affairs to consult with cabinet on all amendments to development plans outside the City of Winnipeg.

- There is inconsistency in the requirement that Plan Winnipeg requires public hearings for subdivisions requiring new public roads while *The Planning Act* does not contain a similar requirement.
- PLUPs are too general. Furthermore there may be situations for which these policies do not provide adequate direction. The PLUPs are written in such a general fashion that they are difficult to interpret in a consistent manner.

However, a review of the planning statutes and policy statements used in other Canadian jurisdictions reveals a similar (or even greater) generality and multiplicity of aims, suggesting there are distinct limits to the precision of language and the consistency of interpretation that can be expected. When one is dealing with communities as diverse as those in Manitoba and wishes to balance public and private interests, the rules governing development must impose appropriate constraints without becoming too rigid. It might be necessary to develop Capital Region specific PLUPs.

Presenters to the RPAC hearings also pointed out that:

- There appears to be a lack of regional coordination in land-use planning. Presenters said that there is not enough circulation between municipalities of information related to proposed development plan, zoning by-law, and subdivision changes. Those municipalities that did circulate such information rarely received responses, particularly from the City of Winnipeg.
- Some presenters expressed the view that there was too much provincial interference in local decision-making. Others, however, said there was not enough provincial intervention at critical times.

The sidebar on the Gunn Road controversy in Transcona at the end of this chapter provides a good example of the problems that can be created when development issues spill across borders and there is a lack of planning co-ordination.

Citizens, developers, and governments within the Capital Region are entitled to clear rules concerning when, how, and on what basis the provincial government will review, approve, modify, or reject development plans at the local level. There needs to be a clearer basis for designating certain planning matters as sufficiently important to require regional and/or provincial action.

At several points in the above discussion of the development plan and subdivision approval process, mention was made of the fact that there are no fixed time limits on the Government of Manitoba in terms of communicating its concerns or rendering a final decision. During the RPAC's meetings municipal representatives said that the provincial approval process was too slow. Municipal representatives noted that there are specified deadlines for the steps they control in the land-use planning process, but few for the Province. Also, undue delay in the approval process can lead to the loss of development opportunities.

The RPAC recognizes that each case in the land-use planning process is unique. At times, delay is unavoidable. It is also the case that the affected parties, whether they are municipalities, developers or citizens, will see flaws in the procedures when they do not approve of the eventual decisions. Delays at the provincial level may reflect the fact that the proposal is complex and may have given rise to controversy within the affected municipality. Finally, timeliness in decision-making

needs to be balanced with thoroughness and attention to the long-range implications of particular actions. Soliciting and integrating the response of the main provincial departments involved—Intergovernmental Affairs, Conservation, and Agriculture and Food—necessarily takes time. Staff reductions in those departments may have added to the delay in recent years. The requirement for consultation with the full cabinet can also be another source of delay. Finally, time is required to discuss developments with all affected parties.

There is no simple answer to the frustration caused by the delays and the need for adequate opportunities to challenge development proposals in order to identify the full range of interests and values involved, including the cumulative, regional, and future impacts of local decisions.

The RPAC recognizes that rigid deadlines for provincial approvals would not take sufficient account of the diversity of the municipal land-use proposals that come forward. However, there would be value in the Government of Manitoba publishing some guidelines for the normal timing for the approval of different types of proposals. Published guidelines would set expectations for proponents of developments and for municipal governments. They would provide discipline and benchmarks for provincial departments that must review proposals. They would remove the temptation for undue delays of highly controversial proposals. In the event that the time needed to complete the provincial approval exceeds the normal guidelines there should be a requirement for the Minister of Intergovernmental Affairs to notify the affected municipality and indicate the length of the extension required to complete the process.



The following two chapters of this report outline the patterns of growth in the Capital Region and the environmental issues that this growth has given rise to. These chapters are followed by a chapter that makes a series of proposed changes to Manitoba's land-use planning process intended to make the system more effective, efficient, and consistent. Aside from proposing changes to existing policies and practices, it proposes the introduction of a number of new policy tools.

# Planning in the Transcona and the Springfield Industrial Zone: a case study

Through presentations to the RPAC's public hearings, written submissions, and a site visit by several committee members, the RPAC became aware of serious problems created for a residential area in north Transcona. The problems are created by the close proximity of heavy industrial activity that has expanded over several decades.

We received information and opinions from residents of the area, from the Member of Parliament for Winnipeg-Transcona (Bill Blaikie) the Member of the Manitoba Legislative Assembly for Transcona (Daryl Reid) and from the Reeve of the Rural Municipality of Springfield (John D. Holland).

The residential area in question is bounded by Plessis Road to the west, Gunn Road to the north, and Bellevance Street to the east. The area was zoned and subdivided for residential use in 1974. Immediately north of Gunn Road is an area that was zoned M2, Heavy Industrial Use as far back as 1959 under the Rural Municipality of Springfield's Planning Scheme. From 1960 to 1991 authority over land-use planning in the two areas resided first with the Metropolitan Corporation of Greater Winnipeg (1960-1972) and then the unified City of Winnipeg. In both cases this authority existed through the operation of the Additional Zone, which extended planning

authority from Winnipeg into the adjacent municipalities. Planning authority for the industrial area reverted to the Rural Municipality of Springfield in 1991, following the abolition of the Additional Zone. The area has remained zoned as industrial and this designation was confirmed in the Springfield Development Plan 1998, which came into force and effect in 2001.

Consistent with the designation of the area as industrial, many of the businesses located there involve heavy equipment, noise and dust, and dangerous products or by-products. Residents of Gunn Road and adjacent streets, along with their elected representatives, expressed frustration and concern about heavy truck and rail transportation, noise and dust, fear of industrial spills and toxic fumes, confusion over which fire and ambulance services (the Rural Municipality of Springfield or the City of Winnipeg) would respond to emergencies, and the cumulative impact of uncoordinated development on the overall environment and quality of life of the community.

Springfield and Transcona representatives blame each other for the problems. Reeve Holland of Springfield noted in his presentation to the RPAC that many of the area's largest operations (the General Scrap auto-wrecking facility, the Brunswick Steel

Plant, Border Chemical, etc.) were approved when the Metropolitan Corporation or the City of Winnipeg were the final planning authority. He also noted that the major environmental clean-up arising from the now defunct Domtar Plant was within the City of Winnipeg. Reeve Holland recognized the concerns of Transcona residents regarding two recently established asphalt processing operations, but noted that the businesses involved had agreed to meet or exceed the environmental standards set by the provincial Department of Conservation. He expressed a willingness to work with City of Winnipeg and provincial officials to resolve the problems arising from past decisions and to avoid them in the future.

On behalf of Transcona representatives, Mr. Daryl Reid, M.L.A., noted that the pace of industrial development in the area had increased since 1991 when planning control reverted to the Rural Municipality of Springfield. He said that, in the eyes of many Transcona residents, the industrial zone had become a lucrative source of revenue for Springfield because it could offer flood-protected land to industry at prices below what they would have cost if they had been within Winnipeg.

He was also critical of the provincial Department of Conservation for the limited number, depth, and quality of the environmental assessments used to support the granting of environmental licenses in the Transcona community. Among several recommendations made to the RPAC, he called for a moratorium on the issuance of new environmental licenses pending an in depth assessment of the cumulative impacts of industrial development on Transcona. He also recommended that in the future devel-

opment in the area closest to Gunn Road residences be restricted to light industrial use and that there be a significant buffer between future industrial development and residential areas. Mr. Reid also expressed a willingness to work with the appropriate authorities to resolve the problems facing the community in northeast Transcona.

The RPAC's purpose in reporting on this controversy is not to take sides or to attribute blame for past decisions. Rather, our goal is to identify some possible lessons to be learned for the future. The case of north Transcona illustrates the following points about land use planning:

- Anticipation, foresight, and accurate forecasting, though difficult to achieve, must be attributes of land use planning.
- Planning and individual development decisions can have cumulative impacts which go unnoticed or are underestimated when the planning process is gradual and incremental in character.
- The impacts of planning and development decisions can spill over the boundaries of one municipal jurisdiction and be deleterious to neighbouring communities unless adequate buffer zones are provided.
- Divided and shifting jurisdictions among the rural municipality, the City and the provincial government led to coordination failures and blaming when unwanted impacts arose.
- Co-ordination problems also arose within the provincial government among the main departments involved—such as Intergovernmental Affairs, Conservation, Transportation, etc.

- Individual citizens—especially those most directly and adversely affected—found it difficult and frustrating to find their way through a jurisdictional maze and to gain access to the appropriate forum to raise their concerns in advance or to seek a redress of their grievances after decisions were made.
- When designations for the future use of land have been made, it is the responsibility of developers and homebuyers to recognize the risks of creating residences in certain locations and the potential for land-use conflicts.

It is not the RPAC's role to resolve current intermunicipal disagreements; our mandate was to provide future-oriented policy advice to the Government of Manitoba. With respect to the north Transcona situation, there is no easy way to resolve the problems arising from past decisions. Elected representatives from both municipal and provincial levels of government have expressed a willingness to work together in finding ways to alleviate the existing concerns of residents and to develop approaches to avoid future problems. The RPAC encourages all the relevant parties to meet—perhaps with the assistance of an independent facilitator—to brainstorm on ideas for addressing the problems. We do not claim to know the right course of action, but we offer the following ideas for discussion:

- the creation of a special committee—consisting of elected representatives, some residents, administrative officials from the City and the Province, and some of the businesses in the area—to share perspectives on possible actions

- the possibility of creating a buffer zone on the south side of Gunn Road, perhaps paid for jointly by the City of Winnipeg and the Rural Municipality of Springfield
- steps to improve communication around developments contemplated in the area, such as designating a contact person in each jurisdiction to share information on proposed projects
- holding joint public hearings in both jurisdictions to ensure that the affected residents are informed and are given an opportunity to raise their concerns
- an agreement between the City of Winnipeg and the Rural Municipality of Springfield to limit future development to light industry and commercial activity in those locations where the most intensive heavy industrial activity already exists.

The RPAC offers these suggestions with the hope that all the relevant parties can find agreement on a plan which is mutually beneficial.