

Reference Guide to the *Community Planning Act*

Department of Environment and Local Government

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1. Introduction

This guide provides a general overview of the New Brunswick *Community Planning Act (CPA)*. It provides a summary of the *Act* with respect to land use planning and development, and introduces the various parts of the land use planning tools and processes.

The purpose of the *Community Planning Act* is to enable the Province, local governments, regional service commissions, specific individuals or other entities to create very specific planning documents and tools, and to carry out actions to ensure that developments comply with the regulations, by-laws, permits and approvals. The *Community Planning Act*:

- enables the development of, and changes to be made to, planning documents and tools;
- outlines the process that must be followed in order to create and adopt new by-laws and regulations; and
- provides authority to individuals or organizations or committees to carry out specific actions related to land use planning and development.

This guide is for information purposes only, and is not an authoritative interpretation of the *Community Planning Act*. In the event of any inconsistency between this document and the *Local Government Act* or its regulations, the *Community Planning Act* or its regulations will prevail.

This document is not and should not be construed as legal advice. A lawyer should be consulted on questions about the application or interpretation of the laws of New Brunswick as they relate to the subject matter of this document. Other agencies, such as provincial departments, the federal government, and municipalities, may have requirements not addressed or included in this guide.

This guide may be reviewed and updated periodically as appropriate by the Department of Environment and Local Government.

2. Planning Administration and Authorities

In land use planning and development, there are several organizations and individuals who play specific roles, and the *Act* defines their roles, responsibilities, and authority. This section provides an overview of those roles and authorities, including the powers of local governments to create planning advisory committees, and the ability to determine the duties and powers of those committees. Local governments can also determine who can belong to a committee, how long they may serve, and how it is administered. This section also focuses on the role and power of the Provincial Planning Director, the Local Government planning director, and design review committees.

Under the *Community Planning Act*, authority is given to the Lieutenant-Governor in Council, the provincial government, the Minister of Environment and Local Government, the Director of Planning for the Province, local government councils, and planners/development officers to make and undertake specific actions related to land use planning and development.

When it comes to making regulations and by-laws, there is a clear distinction. Regulation-making authority primarily rests with the Lieutenant-Governor in Council (the provincial government). For by-laws in a local government, the Act gives the authority to the local government council to make land use by-laws.

In the unincorporated areas of the province (local service districts), the authority for rural plans and amendments to rural plans is with the Minister of the Department of Environment and Local Government. However, the Act does give the Minister the authority to undertake anything a council of a local government can do.

a) Advisory Committees (Section 3)

A local government council that provides its own land use planning services (if it does not purchase planning services from a regional service commission or another local government), may, through a municipal by-law, create a planning advisory committee (PAC). The purpose of this committee is to provide council with advice and recommendations related to land use planning.

b) Duties and Powers of Advisory Committees (Section 4)

The powers and duties of a planning advisory committee are to advise and make recommendations to council on planning matters, give its views to council on any by-law made under the *Community Planning Act*, and carry out other duties related to land use planning that council may assign to the planning advisory committee.

c) Membership (Section 5)

This section of the Act outlines membership requirements for planning advisory committees. This includes who and how many members can serve on the advisory committee, and also outlines how members can be removed.

d) Terms of Office (Section 6)

The Act allows the creation of a planning advisory committee, establishes who can be a member, how the committee is to be administered, and how the expenses of the committee will be managed.

e) Provincial Planning Director (Section 9)

The Act gives the Lieutenant-Governor in Council the authority to appoint an employee of the Department of Environment and Local Government as the Provincial Planning Director. It also defines the role and administrative powers of the Provincial Planning Director, such as acting as a development officer in communities without a local planning director, approving specific regional developments, providing technical advice to local governments and regional service commissions, and authorizing specific actions related to compliance and enforcement of the Act.

f) Local Government Planning Director (Section 10)

Where a council of a local government is providing its own land use planning services, the Act allows council to employ staff to carry out planning services, and appoint a planner as planning director and planning officer. The local government planning director serves as a development officer to the local government or regional service commission. Typically in New Brunswick the local government planning director tends to be the manager or director for other planners, development officers and building inspectors. All of whom provide planning and development services to the local government.

g) Design Review Committee By-Law (Sections 11- 12)

The design review committee is a new addition to the *Community Planning Act* that is intended to give councils the ability to create a committee to review and provide advice related to design elements.

The *Act* allows the council of a local government to create a design review committee through by-law. The council may also appoint members and assign positions such as the chair. Council may fix terms of appointments, determine if the committee members will be paid, and establish duties and procedures for the committee. Council may also determine what matters the committee will consider related to the external appearance of structures.

3. Planning Documents

The *Community Planning Act* allows the creation of different types of planning documents, each with a specific purpose, and some designed for specific types of communities. This section focuses on the different types of documents and plans and their intent.

a) Statements of Provincial Interest (Sections 13– 17)

The *Act* gives the province the authority to develop Statements of Provincial Interest, which are regulations adopted by the Lieutenant-Governor in Council. These statements identify the Province's interests and priorities concerning land use planning and development, such as establishing minimum standards for development throughout the province. All regional plans, municipal plans, and rural plans are to be consistent with the statements. The provincial government is bound by statements of provincial interest. Presently, New Brunswick does not have statements of provincial interest.

b) Regional Planning and Development (Sections 18 – 20)

Regional plans are developed by regional service commissions, approved by the Minister of Environment and Local Government, and adopted as regulations by the Lieutenant-Governor in Council. They outline the interests and priorities concerning land use planning and development in the region. They can establish minimum standards for development throughout a region. All municipal plans and rural plans in a region are to be consistent with the regional plan for that region. The provincial government is not

bound by regional plans. Presently, there are no regional plans in New Brunswick.

c) *Municipal Plan (Sections 21 – 28)*

A municipal plan sets out the policies and intent of the local government regarding the land use planning and development of a community. The *Community Planning Act* gives the local government the authority to create a municipal plan as a municipal by-law. The *Act* outlines the process the municipality must follow to create and adopt a municipal plan. It requires a municipality to have a municipal plan within five years of the *Act* coming into force. The Minister of Environment and Local Government will assess and approve the municipal plan.

The *Act* provides direction on how a municipal plan is to be prepared, and what it can contain. A background study is to be completed before a municipal plan is prepared. This study will look at the economy, finances, resources, population, land use, transportation, municipal facilities, and services and physical aspects of the community.

The municipal plan will contain a series of statements of policy that will focus on how the community is to develop in the future. Unlike rural plans, zoning is not contained in a municipal plan; instead, a separate zoning by-law is created by the municipality.

The municipal plan is created using a public process that includes a public hearing. The *Act* requires the local government to consult with the public and conduct three readings in Council of the proposed plan before it can be enacted. The municipal plan does not commit the municipality or the Province to undertake any proposal in the plan, but it will not allow any development that is not consistent with the policies and proposals of the municipal plan.

d) *Secondary Municipal Plan (Sections 29 – 32)*

There are times when a local government may want to create a more specific or detailed plan for a certain part of the community, such as a neighbourhood or an undeveloped part of a municipality. The *Act* gives a local government the authority to create a secondary plan, to address specific issues that a municipal plan does not already address. In the event of a conflict between a secondary plan and a municipal plan, the municipal plan prevails.

e) *Rural Plan for Villages (Sections 33 – 43)*

A Rural Plan is a ~~land use planning~~ document that sets out the policies and proposals of a village in regards to land use planning and development. It is similar to a municipal plan, but it is less complex, and it contains zoning in the same document.

The *Community Planning Act* allows villages to create a Rural Plan as a municipal by-law. The *Act* outlines the process that must be followed, what a plan may contain, and the policies and proposals the plan must include.

The process to adopt a rural plan requires a public hearing, and for council to conduct three readings of the proposed plan before adopting it. The Minister of Environment and Local Government will assess all rural plans and determine whether the local

government met the requirements of the *Community Planning Act* with respect to the content of the plan, and public involvement in the process, as outlined in the *Act*. A rural plan does not commit the local government or the Province to undertaking any proposal in the plan, but it prevents anything being developed or built that is not consistent with the plan.

f) *Secondary Rural Plan for Villages (Sections 36 – 38)*

There are times when a local government may want to create a more specific or detailed plan for a particular part of the community, such as a neighbourhood or an undeveloped part of the community. The *Act* gives a local government the authority to create a secondary plan to address specific issues that are not already addressed in a rural plan. In the event of a conflict between a secondary plan and a policy or proposal of a rural plan, the rural plan prevails.

g) *Rural Plan for Rural Communities (Sections 44 – 50)*

A Rural Plan for a Rural Community sets out the policies and proposals of a rural community regarding land use planning and development. A rural plan is similar to a municipal plan, but is less complex, and contains zoning in the same document.

The *Community Planning Act* allows the council of a rural community to create and adopt a Rural Plan as a municipal by-law. The *Act* outlines the process that must be followed, what a plan must contain, and the policies and proposals that must be included.

The process to adopt a rural plan requires a public hearing, and for council to hold three readings of the proposed plan before it can be adopted. The Minister of the Department of Environment and Local Government will determine whether the rural community followed the correct process as outlined in the *Community Planning Act*. A rural plan does not commit the rural community or the Province to undertaking any proposal in the plan, but it prevents anything being developed or built that is not consistent with the plan.

h) *Secondary Plan for Rural Plan for Rural Communities (Sections 46 - 47)*

There are times when a rural community may want to create a more specific or detailed plan for a particular part of the rural community, such as a neighbourhood or an undeveloped part of the community. The *Act* gives a rural community the authority to create a secondary plan, to address specific issues not already addressed by a rural plan. In the event of a conflict between a secondary plan and a policy or proposal of a rural plan, the rural plan prevails.

i) *Rural Plan for Local Service Districts (Sections 51 – 52)*

A Rural Plan for a local service district sets out the policies and proposals of a community regarding land use planning and development. It is similar to a municipal plan, but is less complex and contains zoning provisions in the same document.

As a local service district is an unincorporated area, the process of adopting a rural plan is different from that of a local government. The Minister of the Department of

Environment and Local Government has the sole authority for adopting a rural plan. The *Act* outlines the process that must be followed, what a plan must contain, and the policies and proposals that must be included. The process to adopt a rural plan requires a public hearing. The Minister of the Department of Environment and Local Government will determine whether the rural plan has the requirements to be adopted as a regulation.

4. Land Use Controls and Implementation Tools

The *Community Planning Act* provides local governments and planners with tools that can be used for specific purposes to manage land uses. This section highlights the various tools and their intent. These planning tools are in the form of by-laws, and must follow the same process as all other by-laws when being created or changed.

a) Zoning By-Laws (Section 3)

A zoning by-law is a land use tool that divides a community into different zones and outlines how land, buildings, and structures are to be used. The purpose of the zoning by-law or zoning provisions is to implement the policies and proposals of the municipal plan or the rural plan.

A zoning by-law lists what is allowed to occur in which zone. For example, R1- Zone is for residential housing, whereas an industrial zone is created for industrial types of development. The zoning by-law will list what is allowed, and may prohibit certain development from occurring. In the case of a local government, it is able to create a zoning by-law that is a separate from the municipal plan. As previously noted, where a community has a rural plan, the zoning standards are included as provisions within the same document.

Sections 53(1) through 61(5) of the *Act* provide significant details on zoning by-laws. The *Act* lets a local government create zoning standards, and outlines what can be included in the zoning. The zoning by-law can be very detailed, including listing standards that any development in the zone must follow, such as the height of buildings, location of buildings, fences, signage, parking standards, etc.

Before a development can take place, a development approval (a permit in most cases) is required from a development officer. The development approval confirms that the proposed development meets the zoning and its various standards. If the proposed development does not meet the zoning or the standards, a developer can ask for a re-zoning; essentially requesting a change in the zoning rules to allow the development.

For example, the by-law can:

- regulate minimum size and dimensions of lots and other parcels of land;
- establish the minimize size and dimensions of lots for a specific use of land;
- establish the maximum density of population for a zone;

- establish the height, number of storeys, ground area, floor area and bulk of buildings and structures; and
- establish the percentage of land that may be built on.

b) Variances from Zoning By-Law (Section 55)

There are times when a development being proposed is not permitted by the zoning by-law. Although the development is not listed in the zoning by-law as a permitted use, it may be similar to or compatible to what is in the zone. A planning advisory committee or regional service commission can allow a use of land or a building that is not permitted under the zoning by-law, if the planning advisory committee or regional service commission believes what is being proposed is similar to or compatible with a use permitted in the zoning by-law.

c) Building By-Laws (Section 62)

The *Community Planning Act* allows a council to make a building by-law that can prescribe standards for building, location or relocating, demolishing, altering, structurally altering, repairing or replacing of a building or a structure.

The by-law can also prescribe a system of permits (for example, a building permit) and allows terms and conditions to be attached to the permit. It can also set out the conditions for which a permit can be issued, suspended, reinstated, revoked and renewed, as well as any fees associated with the permit.

The National Building Code is a national standard set for construction of buildings and structures. A council must adopt the National Building Code or a portion of the National Building Code. A development officer or building inspector in a local government or regional service commission will review a proposed development, building or structure to ensure it meets the standards in the National Building Code. It is important to note that other permits and approvals may be required before a local government or a regional service commission will issue a building permit.

d) Deferred Widening By-Law (Sections 63 – 67)

Over time, streets within a community may need to be altered, changed, and increased in size or new streets may need to be built. Authority is provided for a council to adopt a deferred widening by-law, which allows council to acquire land to widen, alter, or divert an existing street or for the construction of a new street. The by-law must include the intention of acquiring land, set out the boundaries, establish building lines, and prohibit development between the street and the building line.

e) Controlled Access Street By-Law (Sections 68 - 69)

There are times when a community may wish to limit or restrict access to a street. This may be done for various reasons, often for reasons of safety. Authority is provided for a council to create a controlled access street by-law to declare all or part of a street controlled access. The by-law can also prohibit a development from directly abutting on the street.

f) Flood Risk Area By-Law (Sections 71 – 73)

This is a tool to manage development in a flood risk area mapped by the Department of Environment and Local Government. In this case, the Minister may designate an area within a local government as a flood risk area. This would be done by a flood map which shows elevations, and the flood risk area shown or delineated on the map.

If a map has been produced by the Minister, a municipal council can create a by-law for maintenance of the floodway, conservation of flood storage, and protection of new development from the risk of flooding. It may also provide the engineering standards, design and techniques that are to be used, and may prohibit all development unless it meets the standards. The by-law may prohibit development to ensure flood storage capacity is not reduced. Council has the ability to allow development in the flood risk area if the developer is able to provide additional flood storage area, or pays the local government an amount for it to create additional flood storage area.

g) Subdivision By-Law (Sections 74 – 90)

The subdivision by-law provides direction on the subdivision of land, parcels, and lots. The *Community Planning Act* defines 'subdivide' as meaning to divide a parcel of land into two or more parcels. There is a provincial subdivision regulation in place; however, the *Act* allows a local government to make a subdivision by-law specific for its community. Where a local government does not have a subdivision by-law, the provincial subdivision regulation applies.

The subdivision by-law allows council to subdivide land based on direction and authority from the *Community Planning Act*. Both the process and subjects that need to be addressed are clearly outlined in the *Act*.

This includes:

- the content of the by-law;
- addresses land for public purposes;
- the subject of exemptions and variances from the subdivision by-law;
- the approval process of a variance, including who can approve the variance;
- details on what must be contained on the subdivision plan;
- exemptions for certain parcels or conveyances;
- details about the tentative subdivision plan;
- expiry of the tentative subdivision plan;
- how streets and lots are to be laid out;
- application for the approval of the subdivision plan;
- approval of the subdivision plan;
- filing of the subdivision plan in the registry office;
- subdivision plan for roads and streets;
- approval of subdivision plan for streets;
- approval of a tentative subdivision plan;

- amendments to the subdivision plan; and
- a subdivision plan by a local government.

h) Development Charges By-Law (Section 94)

Development charges may be imposed to ensure that the capital cost of meeting demands for services are met, without placing a financial burden on existing taxpayers. They also ensure that new taxpayers bear no more than what is necessary to provide the current levels of service appropriate for a developed area.

The council of a local government may make a by-law that authorizes entry into agreements with developers regarding development charges for land that is to be developed or subdivided.

The development charges may be used to pay for

- Supply and distribution of water,
- Collection, treatment and disposal of sewage,
- Provision of storm water management,
- Roads, streets, sidewalks and trails,
- Traffic signs and signals and transit facilities, or
- Any other purpose referred to in the regulations.

Development charges come into force when filed in the land registration office, and bind the people who live in the subdivision or development where the charges apply.

i) Incentive or Bonus Zoning By-Law (Sections 95 – 98)

Incentive or bonus zoning allows developers more density in exchange for community improvements. An increase in density encourages high-density development that is supportive of compact development. In exchange, the developer would be encouraged to include some community improvements in their projects. Community improvements may include additional open space, affordable housing, special building features, or public art.

When a plan is in effect in a community, a council may, through a by-law, provide for an incentive or bonus zoning agreement for specific zones in the community. The by-law must identify the developments subject to the incentive or bonus zoning agreement, and its location, and must set out the matters and contributions on how the Council may proceed with the agreement. The agreement may include plans, maps, terms and conditions, and how the process may help in the implementation of the agreement. It requires public notices, a public hearing, and filing in the land registration office, and binds all people to the terms of the agreement.

j) Local Government Agreement By-Law (Section 99 – 100)

A local government agreement is a new tool that allows one or more local governments to enter into an agreement to work together on land use planning matters. The local government agreement is a commitment by each local government to work towards achieving joint land use planning and development goals. The local government

agreements can:

- contain a dispute mechanism to resolve any issues that may happen between the local governments;
- list specific infrastructure, services, or facilities that are covered by the agreement;
- specify the proportion of funds each local government is required to contribute;
- specify the process and procedure for amending or terminating the agreement, and
- specify other potential matters the councils agree can be included in the agreement.

If the agreement contains parts that control or limit land uses, then the relevant regional plan, municipal plan or rural plan needs to be amended or zoning by-laws need to be amended to reflect the local government agreement.

The agreement must be filed in the land registration office.

k) Development Scheme By-Law (Sections 101 - 104)

A Development Scheme by-law resembles a municipal plan but it is directed at a particular area of a municipality, and it:

- contains much more detail than could be expected of a municipal plan;
- provides for detailed and controlled mixed development of a sizeable area of land on a stage-by-stage basis, and
- is a complement of the municipal plan.

A Development Scheme can affect or prohibit a development that is inconsistent or at variance with a plan. It:

- delineates the land affected and the conditions of its reservation;
- sets out details of the development to be carried out;
- describes the manner of implementation;, and
- prescribes how the land is to be subdivided.

It requires public notices, a public presentation and a public hearing. It also requires filing in the land registration office, and binds parties to the terms of the scheme. This process is similar to the one for the adoption of a local plan (municipal or rural). A development scheme by-law prevails on zoning or subdivision by-law / provisions.

l) Overlay Zoning (Section 53)

Overlay zoning is a new planning tool that creates a special zoning district. It is placed over an existing 'base' zone(s), to identify additional special provisions. It typically applies when there is a special public interest in a geographic area that does not coincide with the 'base' zones boundaries. It can be used to protect quality/quantity of surface and groundwater, to manage storm water, to create walkable communities, to preserve/enhance rural character, forestry integrity, sensitive areas/wildlife habitat, and aesthetics of the natural environment, and it can be used to encourage economic development or preserve farmlands.

Overlay zoning defines the purpose of the district. It should map the district boundaries that relate to achieving the purpose of the district, and should develop specific rules that apply to the identified district. In a groundwater recharge district, for example, provisions may restrict development or require development guidelines that capture and filter water runoff.

m) Variances from a Zoning By-Law or Subdivision By-Law (Sections 55, 77-78)

A variance is typically a minor deviation from the set of rules a local government applies to land use planning and development, and is typically set out in a zoning or subdivision by-law. The manner in which variances are employed can differ depending on the regional service commission or the local government. A variance is granted by a development officer, an advisory committee set up by the council of a local government, or a regional service commission where zoning or subdivision provisions are in effect. They may permit a variance with or without terms and conditions.

n) Re-Zoning and Amendments (Section 59)

If a property owner requests a property to be re-zoned, there is a process that must be followed, and a local government council has specific powers related to the rezoning of property.

If a person applies to a council to have an area of land re-zoned to permit a specific project or development, the council, through a resolution, can impose terms and conditions on:

- the use of the land, buildings and structures;
- the site layout and design, including parking areas, landscaping and entry and exit ways; and
- any other matters council considers to be relevant.

Council can also set out time limits for the project or parts of the project, and may enter into an agreement with the person making the application.

The *Act* sets out other conditions that a council must follow with respect to filing in the registry office and changes to the re-zoning and any agreements.

For an amendment to the rural plan or re-zoning for a rural plan for an unincorporated area, the process is essentially the same as that for a local government. The primary difference is that the decision to approve or not approve a rezoning rests with the Minister of Environment and Local Government, rather than a council of a local government. Sections 55 -59 of the *Act* apply to variances and re-zoning applications for rural plans in unincorporated areas.

o) Non-Conforming Uses (Sections 60 – 61)

A non-conforming use is a use of property/land that was allowed under the zoning provisions at the time the use was established but which, because of subsequent changes to the by-law or provisions, is no longer a permitted use. The use is allowed to

continue if it is not discontinued for more than 10 consecutive months, or the building or structure has not been damaged to more than 50 per cent of the entire building or structure.

The advisory committee or the regional service commission may extend a use to a whole building when partly in use, or can allow for a similar one. Council may require for the maintenance of a non-conforming use, charge the expenses to the owner if necessary, or require the termination of a use if not properly maintained. The owner of the nonconforming use has the right to appeal the standards of maintenance prescribed by the council of the local government.

p) Acquisition of Land (Sections 105 – 107)

Acquisition and expropriation of land relate to the right of the local government to legally take ownership of land that is in private hands, and apply it for a greater public use or benefit. The public use may include the construction or expansion of highways, water systems and other public utility systems, schools, and transportation systems such as rail tracks, airports, pipelines, or parks. Local governments or the Minister for the unincorporated areas may acquire land by gift, purchase, expropriation, or other ways to carry out a proposal in a regional or local plan (municipal or rural). Expropriation has to be done on the territory of the local government and in accordance with the *Expropriation Act*.

5. Making, Amending, Repeal and Review of By-Laws

The *Act* sets out how planning documents are to be adopted and changed. This section focuses on the processes of making and changing various planning documents and tools. There are two types of legal documents: a by-law (adopted by a municipal council), and regulations (adopted by either the Minister or Lieutenant-Governor in Council/the Government of New Brunswick). Each type of legal document has a slightly different adoption and amendment process.

a) Procedure for Making By-Laws (Sections 109 - 110)

Under the *Local Governance Act*, councils have been given the authority and a process for making by-laws. When it comes to planning and development by-laws, there are specific actions which must be taken in addition to those in the *Local Governance Act*.

Ensuring sufficient public consultation takes place for by-laws related to planning and development is important. Council must request the views of the planning advisory committee or regional service commission before making a by-law related to planning and development.

b) Request for Views of Advisory Committee (Section 110)

When making a by-law, council must request in writing the views of the advisory committee or the regional service commission. If the views have not been requested by

council, the by-law would be invalid. The advisory committee or regional service commission has 30 days to respond to the request from council.

c) Public Notice of By-Law (Section 111)

When preparing a by-law related to land use planning, a council shall hold a public hearing to consider objections to the proposed by-law. Council must either give public notice by advertising in a newspaper, or by posting the notice on the local government or regional service commission's website. In addition, council can notify the public of an upcoming public hearing by posting the notice on social media websites. Council must advertise the public hearing notification for a specific period of time in advance of the public hearing.

There are some by-laws that do not follow the process outlined above. They are: a subdivision by-law, a building by-law, a flood risk area by-law, a by-law establishing a planning advisory committee, a design review committee, or any other by-law prescribed by regulation.

The advertisement of the public hearing either by newspaper or on the local government/regional service commission's website must contain information such as a description of the area affected, the place and hours when someone can view the proposed by-law, and the time and place for the public hearing. It should also indicate to whom written comments can be sent, and may include the reasons for the change.

Before passing a by-law, council must ensure the public has an opportunity to inspect the proposed by-law, and must hear and consider written objections to the proposed by-law. A person is entitled to speak for or against written objections during the public hearing.

Council must make a decision on the by-law within six months after the day the notice of the public hearing was advertised.

d) Approval by Minister (Section 112)

When a land use by-law is created by a council, the Minister of Environment and Local Government must approve that the by-law complies with the requirements of the *Community Planning Act*. The copy approved by the Minister must be filed in the land registry office and published in a local newspaper or on the local government's website.

Councils are required to provide specific information to the Minister of Environment and Local Government when they submit a by-law for approval by the Minister. This includes two copies certified by the clerk, a statutory declaration by the clerk and a copy of any report on which the plan or scheme is based.

e) Approval of an Amendment to Zoning By-Law (Section 113)

During the process to amend/change a zoning by-law or zoning provision, the public has an opportunity to submit written objections. If the owners of at least one-third of the area of land within the area affected by a by-law, and within 100 metres of that rural

plan amendment, submit a written objection and it is presented to council no fewer than two days before the public hearing, then the majority of council must vote in favour of making the by-law in order for it to be valid.

f) Review of Planning Documents (Section 115)

The Minister of Environment and Local Government may require a council to review a plan or development scheme.

g) Consultations by Council (Section 116)

A council has the option of sending a proposed by-law, municipal plan, rural plan, or development scheme to the Provincial Planning Director for comments.

h) Amendment or Repeal of By-Laws (Section 117)

There are times when a council may need or want to make changes to a by-law or repeal the by-law completely. The *Act* provides a council with the authority to make a by-law that amends or repeals a by-law made under the *Community Planning Act*, including a municipal plan, rural plan, or development scheme.

6. Appeals to the Assessment and Planning Appeal Board

The Assessment and Planning Appeal Board is an independent body that provides New Brunswickers with a process for appealing decisions made in relation to land use planning and development services. This section focuses on appealing a land use planning decision, including the role of the Board and its powers. It outlines the authority of the Board, what it can order and decide on, how the public is informed of its decisions, and what powers the Board has to inspect properties.

a) Jurisdiction (Section 120)

A person, including the Provincial Planning Director, is able to appeal to the Assessment and Planning Appeal Board if they believe there was an unreasonable use of power, or there was a misapplication of the *Act*, a regulation under the *Act*, or a by-law.

There are specific time limits for appealing decisions, which vary depending upon the type of decision, permit or approval in question.

b) Orders and Decisions (Section 121)

The Assessment and Planning Appeal Board has several options regarding appeals for hardship or misapplication.

The Board may refer a matter back to a regional service commission, a council, a planning advisory committee, or the development officer who made the decision.

c) Publication of Decisions (Section 122)

The decisions the Assessment and Planning Appeal Board that are considered by the Minister to be of significance are required to be published annually.

d) Power of Inspection (Section 123)

The Assessment and Planning Appeal Board has the ability to authorize a person to enter on and inspect any property, building or structure when a matter is before the Board. Before that person enters any land, building or structure, they may apply for an entry warrant under the *Entry Warrants Act*.

7. Regulations

General (Section 124)

The *Community Planning Act* enables regulations to be adopted by the Lieutenant-Governor in Council/the Province of New Brunswick for specific land use planning subjects. These regulations may establish planning tools throughout the province.

Specifically, regulations can be created for:

- Statements of Provincial Interest;
- Regional planning;
- Community planning and development services a regional service commission can provide to a local service district, and fees that can be charged for those services, as well as the amount of those fees;
- The principles and criteria that will be applied to a local government when it establishes development charges;
- Designating the types of easements and prescribing the rights these types of easements vest in the Crown, a local government or a utility, and
- Indicating what a development must be in conformity with before a development or building permit may be issued.

a) Regulations Regarding Planning and Development (Section 125)

The Lieutenant-Governor in Council/the Province of New Brunswick is also able to make regulations related to:

- set-back of buildings and structures from the boundaries of streets or classes of streets;
- the location, layout, equipment standards and licensing of mobile home sites and the fees to be paid by the operators of mobile home parks;
- prescribing the location and dimensions of service stations, gas bars, car washes, and automotive repair garages, including standards for their construction;

- prescribing the location and dimensions, purposes and licensing of public advertising signs and bill boards, including standards for their construction and fees;
- excavation of sand, gravel, clay, shale, limestone, or other deposits for sale or commercial use;
- subdivision of land;
- the building, locating or relocating, demolishing, altering, structurally altering, repairing or replacing or a combination of the work of a building or structure;
- development and building permits; and
- land use and development policies on settlement patterns, commercial and industrial siting, flood plains and planning for coastal zones.

8. Enforcement

This section will explain the tools available and who can use these tools to enforce land use planning tools and plans.

a) Powers of Minister (Section 132)

When it comes to enforcement of the Act and its various by-laws and regulations, the Minister has substantial powers. However, in some cases, only the Lieutenant-Governor in Council has specific powers.

The Minister may choose not to approve a by-law if it is in the public's interest.

In situations where the Minister believes a local government is not conforming to a regional plan, or is not conforming or enforcing its municipal plan, rural plan or a by-law made by the local government, the Minister can order the local government to comply.

If a local government fails to comply with the Minister's order, the Minister, with certain notifications in the Royal Gazette, can exercise all the powers of the Act on the council.

b) Inspection of Property (Sections 133 – 134)

There are times when inspections must be done on properties to ensure they are complying with land use and development legislation or orders. The Provincial Planning Director, a development officer, or a person authorized by the Minister may enter on to a property, at reasonable times with the consent of the owner or occupant, if they believe that a development or building violates the *Act*, a regulation, a by-law or an order under the *Act*.

It is important to note that entry can only happen if consent of the owner or occupier has been given or if the person wanting to enter the property has obtained an entry warrant under the *Entry Warrants Act*.

After the inspection, if something is found to not be in compliance, a written order may

be served on the owner, operator, or occupant of the land, building or premises.

c) Violation of Act (Section 134)

If there is a violation of the *Community Planning Act*, a regulation under the *Act*, or a by-law, the Provincial Planning Director, or council, a development officer, building inspector or other person authorized by the Provincial Planning Director or council may order:

- The cessation of the development (stop work order);
- The altering of the development so that it complies; and
- Doing anything required to restore the land, building or structure to its condition before the development took place.

When an order is given, it must be in a specific form as described in the *Act* and be served on the owner of the land, building or structure by personal delivery (in person) or by registered mail (the person receiving the order has a specific period of time to comply, and must comply with the order and at their own cost.)

If someone fails to comply with the order, the Provincial Planning Director or council may undertake work to bring the property into compliance and recover the costs for the work through court action. These costs would be considered a lien on the property.

d) Application for an Order of the Court (Section 135)

A local government, the Minister or a person designated by council or the Minister may make an application to the Court of Queen’s Bench of New Brunswick or a judge of that court if someone fails to comply with various provisions in the *Act*, a by-law or regulation under the *Act*. The judge then has specific authorities to order the development into compliance.

e) Offences and Penalties (Section 138)

When there is an offence, the *Act* indicates fines can be levied by a judge. A listing of the category of offence for *Act* violations can be found in *Schedule A*. The corresponding fine amounts for each offence category can be found in the *Provincial Offences Procedure Act*.

For further information or clarification, please refer to the Community Planning Act or contact the planning department of your local regional service commission or local government.