



EMERGING TRENDS IN MUNICIPAL LAW 2019

What's the Plan?

Planning and Development Strategies to Streamline and Kick Start Development



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1. Introduction

2. Strategies for the Sale of Municipal Land

3. Creating a Vision & Standardization

4. Redevelopment

5. Industrial Land Sales

6. "Short Snappers"

Overview


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Keys to Successful Development

- ✓ Create a Vision
- ✓ Standardization
- ✓ Think Outside the Box
- ✓ Be Proactive

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Typical Real Estate Sale

Typical realtor forms of agreements have perils if land is not already developed



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Including a term in a Sale Agreement that the development must be completed following closing is ineffective

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Promises to develop land after closing...



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Doctrine of Merger

The diagram illustrates the Doctrine of Merger. It consists of three red circles arranged horizontally. The first circle on the left contains the text "PROMISE TO DEVELOP". To its right is a white plus sign. The second circle contains the text "CLOSING/TITLE TRANSFER". To its right is a white equals sign. The final circle on the right contains the text "NO REMEDIES".

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Sale & Construction Agreement

Use a form of Agreement where responsibilities are "front-loaded"

A photograph showing a pair of hands holding a pen and signing a document. The document is white with some text and lines, and the hands are positioned over it.

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Define the Development

Set Deadlines to Commence / Complete Construction

Development Agreement, Security, Permits, Financing in Place

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Risk Management

Option to purchase the lands back if deadlines not met



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Register Option to Purchase on Title




Obtain Transfer Back on Closing

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ORIGINAL PRICE

REPURCHASE PRICE

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For large parcels of land, recommend a staged development

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Success Story #1- City of Red Deer:
Thinking Outside the Box



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Timberlands
13 acre parcel sold in 2 phases

- Phase 1- grocery store & mixed-use retail/residential (complete)
- Phase 2- commercial retail & professional offices

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During Construction



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After



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New Businesses



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Creating a Vision

Growth Expectation → Infrastructure & Servicing Needs → Standards & Expectations

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Planning Vision

- Statutory plans with municipal vision
- Plans for development
- MDP, ASP, NASP, LUB

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Infrastructure Plans

- Master Utility Studies
- What is needed for renewal & for new development
- Determine infrastructure funding or cost recovery options
 - Who will construct? Who will finance?

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Standardization




Create design & construction standards suitable for Municipality's needs


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Clear expectations and requirements



Efficiencies in the plans process for constructing municipal improvements



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Approval & Publication of Design & Construction Standards

Section 638.2 of the Municipal Government Act




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Development Agreements

Important cost recovery tool

Can require an applicant to construct and pay for:

- Roads, walkways & public utilities
- Off-street parking & loading facilities
- Oversized or extended infrastructure


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Standardized Development Agreements

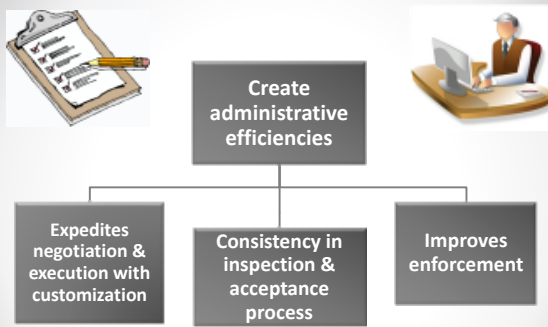
Create level playing field

Create clear expectations of developers



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Create administrative efficiencies



Expedites negotiation & execution with customization

Consistency in inspection & acceptance process

Improves enforcement

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SECURITY IS THE KEY

- Standard level - full cost recovery
- Minimize cost & manage risk
- Avoid stagnation of development

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Standardize the form of security

- Irrevocable letter of credit
- Chartered bank, ATB, or credit union
- Draw on-demand
- Automatically renewable or redeemable

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Off-Site Levies


- Cost recovery tool
- Recoverable infrastructure/facilities:
 - Water, sewer, storm sewer drainage, roads, connections to provincial highways
 - Recreation facilities, fire halls, police stations, libraries

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Spread costs based on benefit

Reduces upfront cost of developers

May encourage development

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Who will construct off-site levy infrastructure?

Municipality Builds

OSL reserves or borrowing

Front-Ended by Developer

Levy credits

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Success Story #2 – Leduc County: Off-Site Levy & Developer Front-Ending

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OSL for roads, water, & sanitary
• Servicing vision for industrial area

OSL policies provide for front-ending
• Developer front-ends portion of infrastructure

County provides levy credits & reimbursement through Agreement

Nisku Spine Road
• Important infrastructure
• Built ahead of capital schedule

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Before - 2011

After - 2017

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Encourages Development in Industrial Area

December 2018:

Amazon announced plans to build new 1,000,000 square-foot customer fulfillment facility at Nisku Business Park

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Success Story # 3

Town of Cochrane

Domtar Site The Quarry

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Before: 2010



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Domtar wood treatment facility:
coal tar/creosote mixture

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During



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After: Current Development



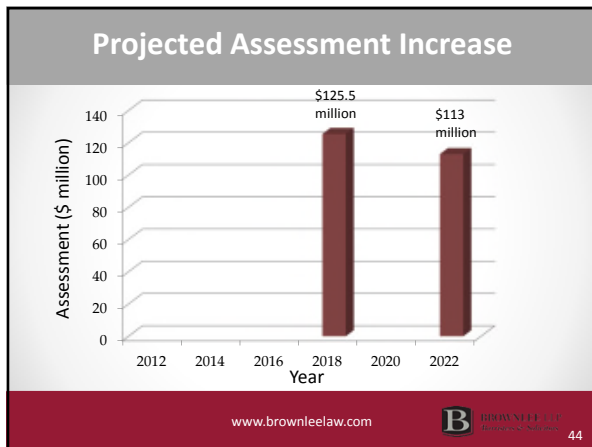
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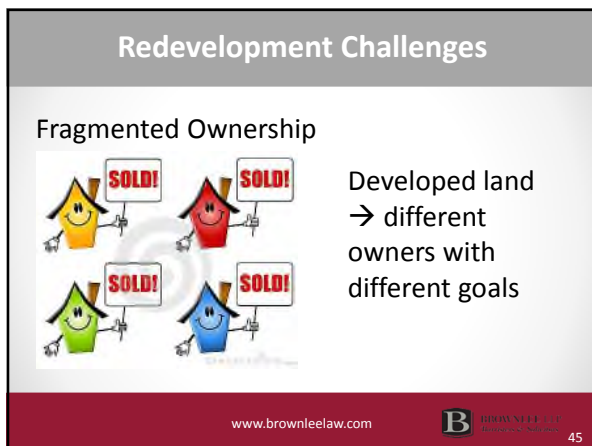
New Development Since 2012



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Anxiety & fear of change

NIMBY

Fear of the Unknown

Vocal landowners can be influential

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Risk of Losing Investment

Developer has to purchase land

Potential outcome unknown

FEAR

Risk losing investment or profit margins too small to make project worth pursuing

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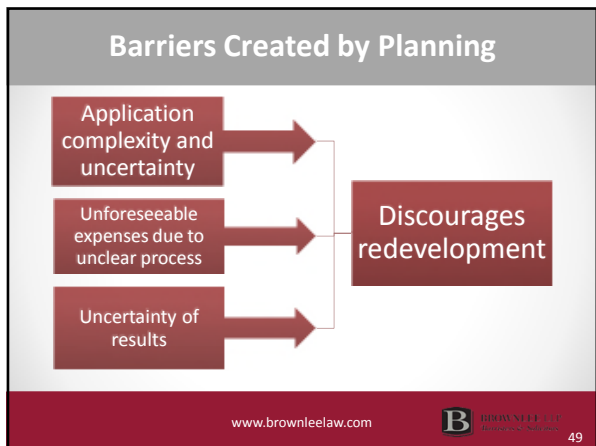
Changing Economic Forces

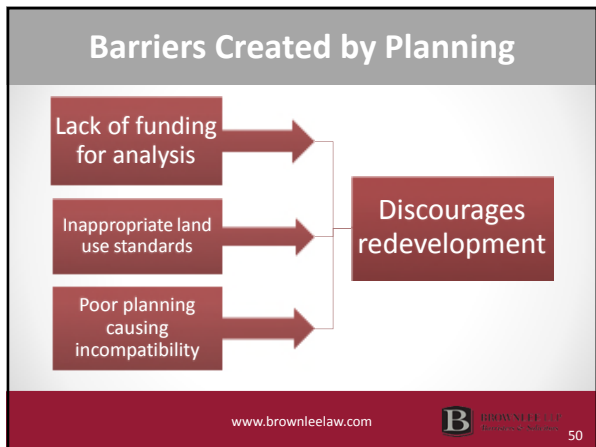


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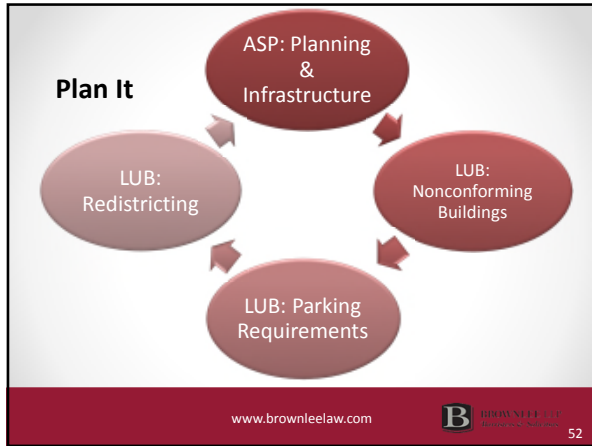
Solutions to Support Redevelopment

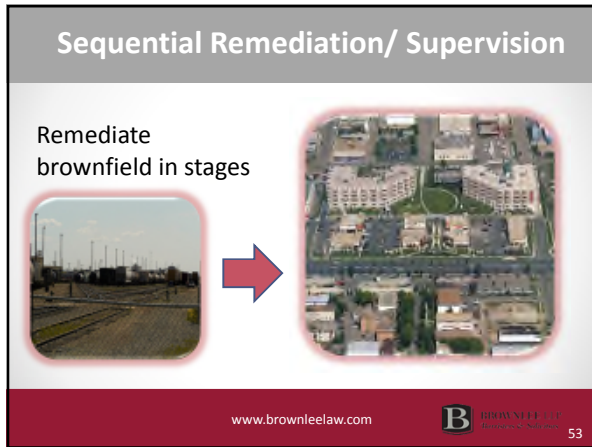
Take Stock

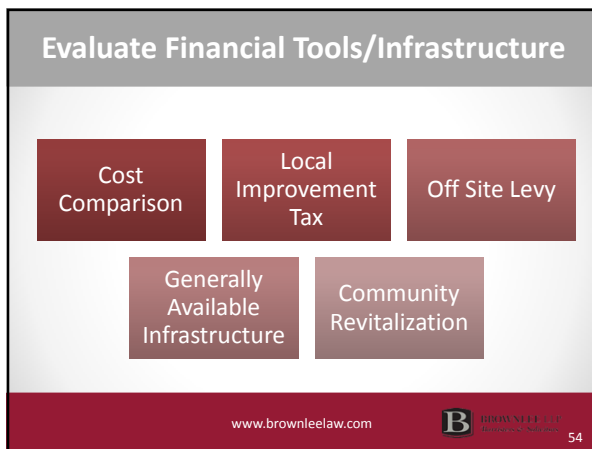
Ripe for redevelopment?



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Programs/ Funding

A Venn diagram with three overlapping circles. The left circle is a large black dollar sign (\$). The top circle is red and labeled "FCM". The right circle is light grey and labeled "Green Municipal Fund". The intersection of the dollar sign and FCM circles is shaded. The intersection of the FCM and Green Municipal Fund circles is shaded. The intersection of all three is shaded.

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Success Story # 4

Town of Whitecourt

A graphic showing a stylized industrial building with a chimney, a blue road or river, and a brown bridge. The text "Industrial Land Sales" is to the right.

Industrial Land Sales

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**Field of Dreams:
If you build it, they will come...**


A colorful illustration of a green field with rolling hills, a blue sky with white clouds, and a small pond in the distance.


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Hilltop Industrial Development:

- Started in 2000
- Phases 1-9
- Total acreage: 330
- Phases 7-9 sold en bloc to private developer




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LEGEND

- PROJECT A
- PHASE 1
- PHASE 2
- PHASE 3
- PHASE 4
- PHASE 5
- PHASE 6A
- PHASE 6B
- PHASE 7
- PHASE 8
- PHASE 9

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Venom Energy **Mountain West Services**

Clean Harbors **Pembina**


MasTec Canada **Pennwest Exploration**

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- Private & crown lands (2 years minimum to transfer)
- Sale of fully serviced lots
- Suit to subdivide
- Small phases
- Cuts and fill across phase, not individual lots

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- Report to Council
- Administration delegated authority
- Blue book (all carrying costs)
- Separation between Town staff (project & regulatory)
- Ambassador program



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- Restrict activity to industrial
- Timing is everything
- Show a vision
- Sell a lot, sign deal, do development permit next week

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Benefits:

- Profit for lot sales - \$5 million
- Property tax \$2 million/year
- Work for local contractors
- Growth of community
- Enhances quality planning



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SHORT SNAPPERS

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#1: Increase Permitted Uses



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#2: Get Your Development House in Order


- Standard Development Agreement
- Utility Right-of-Way Agreement
- Road Dedication/ Widening Agreement
- Purchase & Sale Agreement

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#3: Development Agreement

Same agreement as neighbouring municipalities



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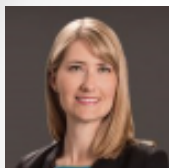
#4: Streamline Planning Process



Enhance administrative approvals

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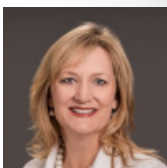
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EMERGING TRENDS IN MUNICIPAL LAW 2019

All About That Tax Base – Achieving Sustainable Tax Revenues in Challenging Times



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Overview


1. Old Tools, New Revenues
2. New Tools, New Revenues
3. Brownfield Properties
4. The Do's and Don'ts of Tax Incentives
5. Tax Recovery Involving Oil and Gas Companies



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The Usual Approach


Revenue = Property Taxes = Assessed Value x Tax Rate



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Broad Authority to Tax

- Business taxes;
- Business improvement area taxes;
- Community aggregate payment levies;
- Local improvement taxes;
- Well drilling equipment taxes;
- Special taxes;
- Community revitalization levies.


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Van Raay Paskal Farms Ltd v County of Lethbridge, 2017 ABQB 274

The business tax bylaw authorizes the council to impose a tax in respect of all businesses operating in the municipality except businesses that are exempt in accordance with that bylaw




s 372(1)


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Van Raay Paskal Farms Ltd v County of Lethbridge, 2017 ABQB 274

Assessment based on storage capacity of the premises occupied for the purposes of the business



s 374(1)(b)(ii)

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Van Raay Paskal Farms Ltd v County of Lethbridge, 2017 ABQB 274

“Business taxes...may be imposed against all, some, or no businesses within the municipality provided the business occupies premises within that municipality...The purpose of these provisions is to provide municipal councils with a broad variety of tools to generate tax revenue in a scheme which allows the municipality to do so in a manner that best suites the local conditions.”

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Van Raay Paskal Farms Ltd v County of Lethbridge, 2017 ABQB 274

“The stated parameters are intended to capture all businesses operating within the municipality’s boundaries and to permit the municipality to select the method that best suits the business reality of a particular municipality.”



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Bergman v Innisfree (Village), 2018 ABQB 326

357(1) Despite anything in this Division, the property tax bylaw may specify a **minimum amount** payable as property tax.




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Clean Energy Improvement Program


- *An Act to Enable Clean Energy Improvements*
- Voluntary Program
- Aimed at incentivizing clean-energy upgrades to properties
- Based off Property Assessed Clean Energy ("PACE")



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Clean Energy Improvement Program


- How it will work:
 - Council may pass a Clean Energy Improvement Tax Bylaw
 - Owner proposes project, and once approved, signs agreement with municipality
 - Municipality funds improvement
 - Municipality recovers installation costs through tax

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Clean Energy Improvement Program

- Eligible Improvements
 - Solar Power
 - Upgraded insulation, windows and doors
 - High efficiency heating and cooling systems

Not Yet Established

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Clean Energy Improvement Program

- Benefits for Municipalities:
 - Foster environmental stewardship
 - now an explicit municipal purpose (MGA, s. 3(a.1))
 - Increase property values
 - Applies to residential, commercial and agricultural properties

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Provincial Education Requisition Credit ("PERC")

- Applies to oil and gas properties that have had their municipal tax written off
- Retroactive to the 2015 tax year
- PERC operates for 5 years, until the 2019 tax year
 - January 2020 – last application date
- Does not apply to other types of uncollectable municipal property tax

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Brownfield Property Tax Incentives

Why consider this tax incentive?

- Derelict properties
- Unsightly properties
- Under utilized properties
- Social and economic desire to redevelop
- Generate new or increased tax revenue

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Brownfield Property Tax Incentives

Brownfield Property – Minimum Requirements (s. 364.1):


- Industrial or commercial property (except designated industrial property).

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Brownfield Property Tax Incentives

Brownfield Property – Minimum Requirements (s. 364.1):

- Property that, in the opinion of the municipal council:
 - Is or possibly is contaminated;
 - Is vacant, derelict or under-utilized; and
 - Is suitable for development or redevelopment for the general benefit of the municipality

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Brownfield Property Tax Incentives

Brownfield Property Tax Incentives can be granted in one of two ways:

- 1) By Bylaw
- 2) By Agreement





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Bylaw Stream

Contents of Bylaw:

- Must identify brownfield properties in respect of which an application can be made
- Must specify the taxation year(s) during which identified properties may qualify for an exemption or deferral




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Bylaw Stream

Contents of Bylaw:

- Must specify any conditions which, if breached, will result in cancellation of the exemption or deferral, and the taxation years in which the condition(s) apply

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Bylaw Stream

Procedural requirements:

- Before second reading, Council must give notice of and then hold a public hearing with respect to the proposed bylaw (MGA, sections 606 and 230)

Administrative requirements:

- After bylaw is passed, owner of brownfield property identified in the bylaw can apply for an exemption or deferral

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Agreement Stream – Requirements

- Council may enter into an agreement with the owner of a brownfield property → full or partial exemptions or deferrals of tax
- Agreement must state:
 - i. Taxation years to which the exemption or deferral applies (not retroactive);
 - ii. Conditions on which the exemption or deferral is granted; and
 - iii. Consequences, rights and remedies arising in the event of any breach

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Agreement Stream – Requirements

- Before voting on a resolution to enter into an agreement of this nature, Council must give notice of and hold a public hearing with respect to the proposed agreement



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Brownfield Property Tax Incentives

Practical Considerations:

- Council has more direct control over tax incentives under agreement stream
 - Downside: investment of Council resources (reviewing agreements, public hearings)
- Bylaw stream may be more efficient but will require more administrative resources
 - Appointment of designated officer, process for vetting applications under bylaw, etc.

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Cancellation, Reduction, Refund or Deferral of Taxes

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

- (a) cancel or reduce tax arrears;
- (b) cancel or refund all or part of a tax;
- (c) defer the collection of a tax.




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New West Partnership Trade Agreement (NWPTA)


Removing obstacles to trade, investment or labour mobility between the four provinces

Removing discrimination or preferential treatment of province's people, investments and goods or services.

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Limits on Business Subsidies

- Shall not provide business subsidies that provide an advantage to an enterprise that results in material injury to a competing enterprise of another party
- Shall not provide business subsidies that entice or assist the relocation of an enterprise from another party
- Shall not provide business subsidies that otherwise distort investment decisions

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New West Partnership Trade Agreement (NWPTA)


“... A business subsidy does not include a financial contribution made available to entities within a particular industry or group of industries where the measure pursuant to which the financial contribution is made available establishes objective criteria or conditions governing eligibility that are not structured, in law or in fact, so as to make the financial contribution uniquely available to one single entity, whether that entity is structured as one legal entity or a group of legal entities.”

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New West Partnership Trade Agreement (NWPTA)


Not a “business subsidy” within the meaning of the NWPTA:

- Generally Available Financial Program
- Generally Available Infrastructure


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Tax Recovery Involving Oil and Gas Companies

Property Taxes (Land)	<ul style="list-style-type: none">• Register Tax Notification• Sell Land at Tax Auction
Property Taxes (M&E and Linear)	<ul style="list-style-type: none">• Seize and Sell Goods• Commence a Civil Claim

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Insolvency Overview



What is Insolvency?


Types of Insolvency Regimes

- Bankruptcy
- Receivership
- CCAA (*Companies' Creditors Arrangement Act*)

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Regent Resources Decision

- *Regent Resources* (2018 ABQB 669)
 - What happened?
 - What does this mean to us?
 - Where are things now?

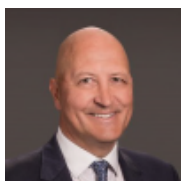
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Linear Property Taxes

- MGA, section 348
- *Re Virginia Hills Oil Corp and Dolomite Energy Inc.*
 - What happened?
 - Where are things now?
 - What does this mean to us?

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Questions?



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EMERGING TRENDS IN MUNICIPAL LAW 2019


Creating Economic Development:
Strategies for Taking Concept to Reality



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- **Introduction** – the concept to reality process
- **Economic Development** – defined and key elements
- **Examples/Concepts/Models** – what are we talking about
- **Strategies** – how to and tools
- **Closing Comments & Advice**

Overview




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Introduction

Concepts to Reality



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Economic Development


Defined

 ...its all about the money/base, etc., right?


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Economic Development

Defined

 ...its all about the money/base, etc., right?





Well, not so much...or not entirely.


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Economic Development

Defined

Most Common/Key Elements – of successful economic development projects:




-  **Strengths** – building off unique strengths
-  **Extensive Research and Marketing** – SWOT, etc.
-  **Relationships** – local partnerships and regional collaboration
-  **Champion** – leadership from Local Leaders


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Economic Development

Defined

Next Most Common/Key Elements:





-  **Quality of Life** – the motivation, the glue, the engagement
-  **Planning** – long term and strategic plan
-  **Vision** – and engagement of residents, youth, and community in a vision


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Economic Development

Defined




Lastly, Common/Key Elements:

-  **Population Diversify** – new or diverse demographics
-  **Retention/Expansion** – of businesses, population
-  **Innovation** – green innovations, new industries like cannabis, etc.
-  **Economic Diversification**

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Economic Development

Defined

 +  = 

KEYS are closer to home, more human, and very much dependent upon relationships

RESULT might be growth, retention, expansion, diversification...tax \$

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Economic Development

Defined

FOCUS:

Relationships – strategic alliances, partnerships, collaboration, and more...

How to create, document, maintain, rely upon...


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Models/Examples

Examples

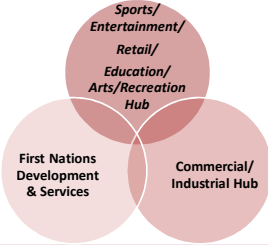
Alberta's Industrial Heartland – industrial hub
Cross Iron Mills – shopping/sports/commercial hub
Olds Fibre and CCI – broadband internet providers
Aquaterra, ACE Water, New Water – regional utilities

Economic Development Entities...

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Models/Examples


Concepts/Models



Sports/Entertainment/Retail/Education/Arts/Recreation Hub

First Nations Development & Services

Commercial/Industrial Hub

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Strategies

Sports/Entertainment/Retail/Education/Arts & Recreation Hub – WHY?

Attract growth
Replace exiting or fading industry
Diversify and resiliency
Quality of Life
Strength or Partner
Partnership

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Strategies

Sports/Entertainment/Retail/Education/Arts & Recreation Hub – WHAT YOU NEED?

PLANNING
SERVICES
PARTNERS
ASSEMBLY OF LANDS

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Strategies

Sports/Entertainment/Retail/Education/Arts & Recreation Hub – WHAT YOU NEED?

PLANNING
SERVICES
PARTNERS
ASSEMBLY OF LANDS

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Strategies

Sports/Entertainment/Retail/Education/Arts & Recreation Hub – HOW?

```
graph LR; A[Strategic Alliance] --> B[Letter of Intent]; B --> C[Memorandum of Understanding]; C --> D[Other];
```

- Strategic Alliance**
 - Non-Binding
 - Often unwritten
- Letter of Intent**
 - Non-binding
 - Express intentions
- Memorandum of Understanding**
 - Non-binding
 - Moving closer to agreement
- Other**
 - Whatever you want

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Strategies

Sports/Entertainment/Retail/Education/Arts & Recreation Hub – HOW?

MOU & Interim Agreement:

- Research
- Community engagement & Visioning
- Identify/Engage your partners, representatives, committees
- Identify leader(s)/champion(s)

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Strategies

Sports/Entertainment/Retail/Education/Arts & Recreation Hub – HOW?

MOU – GOALS/OUTCOME:

- A VISION
- LONG TERM/STRATEGIC PLAN
- ENGAGED COMMUNITY & LEADERSHIP
- FINAL BINDING AGREEMENTS

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Strategies

Commercial/Industrial Hub – Why?

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Strategies

Commercial/Industrial Hub – WHAT YOU NEED?

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Strategies

Commercial/Industrial Hub – WHAT YOU NEED?

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Strategies

Commercial/Industrial Hub – WHAT YOU NEED?

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Strategies

Commercial/Industrial Hub – WHAT YOU NEED?

• If you got it, great!

- Utility bylaws
- Rates/Charges bylaw

Municipal Services

- Service requirement
- Define a service level
- Address how new additions/expansions to the systems are handled
- Default and termination
- Municipal purchase

Franchise Agreements

- "wholesale" supply or "retail" to the consumer?
- water license compliance/amendments?
- rates, rate setting, and disputes?
- capital cost of existing capacity – connection fee?
- Contribution to future capital repairs and replacements?

Inter-Municipal Service/Supply Agreement

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Strategies

Commercial/Industrial Hub – WHAT YOU NEED?

Municipal Services

- If you got it, great!
- **Utility bylaws** – terms of service
- **Rates/Charges bylaw** – all charges for utility related services

For gosh sakes – get it into bylaws...

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Strategies

Commercial/Industrial Hub – WHAT YOU NEED?

Franchise Agreements

- Service requirement
- Define a service level
- Address how new additions/expansions to the systems are handled
- Default and termination
- Municipal purchase

Caution – particularly with new utilities/developers

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Strategies

Commercial/Industrial Hub – WHAT YOU NEED?

Inter-Municipal Service/Supply Agreement – e.g. water

- “wholesale” supply or “retail” to the consumer?
- water licence compliance/amendments?
- rates, rate setting, and disputes?
- capital cost of existing capacity – connection fee?
- Contribution to future capital repairs and replacements?

Great Tool – but with complications

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Strategies

First Nations Development & Services – WHY?



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Strategies

First Nations Development & Services – WHAT IS IT? WHAT ARE THE OPPORTUNITIES?

- **On Reserve Services:**
 - **Water** – bulk supply and/or distribution
 - **Sewer** – bulk treatment/disposal and/or collection
 - **Natural Gas** – bulks supply or full distribution model
 - **Emergency Services** – sharing fixed costs and sharing service
 - **Planning/Development**
- **On Reserve Development:**
 - Trend towards self government/management of lands
 - Tremendous potential for on-reserve development
 - E.g. Tsuut'ina First Nation – massive commercial development SW Calgary


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Strategies

First Nations Development & Services – WHAT DO YOU NEED?

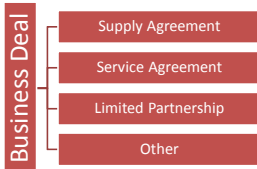



KEY ELEMENTS - First Nations Arrangement

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Strategies

First Nations Development & Services – WHAT DO YOU NEED?



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Strategies

First Nations Development & Services – WHAT DO YOU NEED?

Land Access

- Distribution Permit
- Dedicated Lands
- Lease
- Sublease

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Strategies

First Nations Development & Services – WHAT DO YOU NEED?

ISC

- Funding Commitments
- Land Grants
- Supports

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Strategies

First Nations Development & Services – WHAT DO YOU GET?

Expand Service Areas

Local attraction

Cost share

Revenue in lieu of taxes


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Strategies

Next Level

- What happens when you ***need to co-own*** something?
- What happens when all the little ***relationships*** makes it ***complicated to manage?***
- What happens when you ***need to make joint decisions?***

...the next level of complexity, collaboration, ownership, governance, partnership...

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Strategies

New Corporate Entity

New Corporate Entity

- The regional partners will join together to create a new corporate entity to:
 - Provide the service;
 - Own the assets;
 - Be the employer (if desired)
 - Be contracting party with others



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Strategies

Why New Corporate Entity?

Complexity	Permanency
Joint ownership of assets	Independence

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Strategies

Why New Corporate Entity?

Other Reasons

SAVE
Economies of Scale

Extra Cash Funding

Capital Investment from Partners

Municipal Limitations

Complex Services

Regional Planning

←—————→

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Strategies

Real World Examples

Economic Development Corporation/entity

Growing Up

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Strategies

Real World Examples

Economic Development Corporation/entity

- Can be used for:
 - Attraction of new industry
 - Growth of existing industry
 - Physician recruitment
 - Broadband development

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Strategies

Real World Examples

Economic Development Corporation/entity

- Features – Example #1
 - New corporate entity created to develop inter-municipal region
 - Provides support to regions and business
 - Markets and attracts new business

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Strategies

Real World Examples

Economic Development Corporation/entity
(continued)

- Features – Example #1
 - Building on existing strengths in the region of available industrial land close to key transportation hubs
 - Promotion of region as a whole
 - Sharing of taxation revenue


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Strategies

Real World Examples

Economic Development Corporation/entity
(continued)

- Features – Example #2
 - Membership of Muni/Ag Society/Chamber of Commerce/Post-Secondary Institution and Municipality
 - Promotion of Town as place to work, live and play
 - Development of broadband fibre optic network


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Strategies

Real World Examples

Economic Development Corporation/entity
(continued)

- Features – Example #3
 - Provides finance, IT, HR, market intelligence, administration and external relations to its economic development divisions

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Strategies

Real World Examples

Economic Development Corporation/entity
(continued)

- Features – Example #3
 - Each division promotes:
 - Startups
 - Commercialization of post-secondary research
 - Research park with buildings and land
 - Marketing platform for locally made products

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Strategies

Real World Examples

Features

Economic Development Corporation/entity

- Local promotion of local/regional strengths
- Separate legal entity
- Immune from local politics
- Full time staff

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Strategies

Real World Examples #2

Solid waste management

- Can be very profitable
- Operation of Class II landfill



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Strategies

Real World Examples #2

Solid waste management

- Presence of heavy industry/commercial activity
- Acceptance of regional waste
- Generates substantial profits for partners
- Generates good paying jobs

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Strategies

Real World Examples #2

Solid Waste Management

Features of Entity

- Leveraging of existing assets
- Regionally owned landfill assets
- Separate legal entity
- Immune from local politics
- Full time staff



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Strategies

Real World Example #3

Wireless/broadband



- Municipally owned broadband infrastructure and service delivery



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Strategies

Real World Example #3





Wireless/broadband

- Typically done in areas of under-development
- If under-developed, this could negatively affect growth

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Strategies

Real World Example #3




Wireless/broadband #1
Features

- Partnership of municipalities and rural utilities
- Separate owned entity – Entity owns infrastructure and provides service


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Strategies

Real World Example #3




Wireless/broadband #1




Features

- Full time staff hired
- Regional benefit provided for business and rural quality of life
- Access to federal and provincial grant \$\$


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Strategies

Real World Example #3




Wireless/broadband #2



Features

- Owned by economic development corporation
- Fibre optic system throughout area

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Strategies

Real World Examples

Regional transit

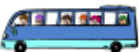
- If citizens cannot get to work, school or to recreation, they may choose to relocate elsewhere




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Strategies

Real World Examples

 **Regional transit**

- Joint initiatives done to ensure entire region has access to transportation
- Supplements existing municipal transit/not replacement of existing transit

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Strategies

Real World Examples

 **Regional transit**

- Creation of new entity to use for inter-municipal transit
- Sharing of costs for inter-municipal transit
- Supplements existing intra-municipal transit

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Strategies

Real World Examples

 **Regional transit**

- Full time staff for operations and management
- Corporate entity ownership of inter-municipal assets
- Joint planning of routes for benefit of region

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Strategies

Common Features


Corporate entity

Full time/expert staff

Immune from politics

Municipal funding

Good agreement


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Strategies

Common Features

Differences

- Regional v. solo
- Municipal ownership
- Choice of structure
- Municipal control

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Strategies

The Next Level

Choice of New Corporate Entity


- There are many choices
- Not all alike and there are many distinguishing characteristics
- Some are better than others
- **Not going to discuss this here today**



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Strategies

	Municipally Controlled Corp.	Regional Services Commission	Part 9 Company	Society	Federal Non-Profit Corp.	Co-Operative
Governing Legislation	Business Corporations Act	Municipal Government Act	Companies Act	Societies Act	Canada Not-for-profit Corporations Act	Cooperatives Act
Can a Commission be a member?	Yes	No	Yes	Yes	Yes	Yes
Can profits of entity be paid to Members?	Yes	No	No	No	No	Yes
Ease of changing governing corporate documents	Easy	Municipal Affairs consent necessary	Court order necessary	Easy	Easy	Easy
Issuance of shares?	Yes	No	Yes	No	No	Yes
How do Members financially contribute to entity?	Through rates and in unanimous shareholder agreement	Through setting of rates for services	Through rates/fees and membership agreement	Through rates/fees and membership agreement	Through rates/fees and membership agreement	Through rates/fees and membership agreement
Will Members also pay for services provided?	Yes, if it is set it up as such	Yes, if it is set it up as such	Yes, if it is set it up as such	Yes, if it is set it up as such	Yes, if it is set it up as such	Yes, if it is set it up as such
Are capital contributions mandatory?	Only if agreed upon	Only if agreed upon	Only if agreed	Only if agreed	Only if agreed	Only if agreed
Can other binding obligations be imposed upon members?	Through: 1. USA and 2. service agreements	Through service agreements	Through: 1. membership agreement and 2. service agreements	Through: 1. membership agreement and 2. service agreements	Through: 1. membership agreement and 2. service agreements	Through: 1. membership agreement and 2. service agreements
Can there be disproportionate share/membership interest?	Yes	No	Yes	Yes	No	No
Any removal restrictions on who can be a director?	No	Only elected officials	No	No	No	No
Municipal Affairs consent necessary to create?	No, as of July 1, 2018	Yes	No	No	No	No

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Strategies

	Municipally Controlled Corp.	Regional Services Commission	Part 9 Company	Society	Federal Non-Profit Corp.	Co-Operative
Municipal Affairs approval to sell assets?	No	Yes	No	No	No	No
Corporation Registrar consent necessary?	Yes	No	Yes	Yes	Yes	Yes
How long to obtain external consents?	Advance public hearings are required	9-18 months to get ministerial consent	N/A	N/A	N/A	N/A
How long to create with Registrar after submission of documents?	Same day as submissions	N/A	3-4 months for Registrar to process	3-4 months for Registrar to process	5 working days	3-4 months for Registrar to process
Are there mandatory public hearings on material changes to entity?	Yes, as of July 1, 2018	No	No	No	No	No
Ongoing reporting to Municipal Affairs?	No	Yes	No	No	No	No
Mandatory financial reporting to Council?	Yes	No	No	No	No	No
Is there a need to register in both provincial and federal corporate registries?	No	No	No	No	Yes	No
Will entity automatically own assets upon creation?	No	No	No	No	No	No
Will it be necessary to take additional steps to transfer assets to entity after its creation?	Yes	Yes	Yes	Yes	Yes	Yes
Can entity expropriate land in its own name?	Yes	No	No	No	No	No
Can entity borrow from Alberta Capital Finance Authority?	No	Yes	No	No	No	No

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Strategies


Key Considerations

Partners

Services

Proportionality/Voting

Timing

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Strategies

Key Considerations

-  Municipal Control
-  Debt re: Project
-  Ownership of Assets
-  Funding of Project

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Closing Advice & Comments


**Remember
the Keys**

**See The
Opportunities**

**Build the
Relationships**

**Plan For &
Build For the
Long Term**



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EMERGING TRENDS IN MUNICIPAL LAW 2019

Changing with the Times:
Key Employment and Labour
Tool Kit for Municipal
Organizational Change




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Key legal tools and knowledge to minimize cost and maximize workplace integrity during a reorganization:

- I. Working Notice
- II. Contracting Out
- III. Position Reorganization
- IV. Timely Planning, Action and Communication

Overview



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Working Notice

What is it?


- Written advance notice of conclusion of employment without just cause
- Must be clear / certain end date
- **Replaces severance payment / liability**
- Same amount (i.e. "months") as severance payment period would be

Why Seldom Used?

- Have to continue to work with the employee during notice period
- Work quality
- Risk of organization or workplace morale damage

Advantages

- **Zero Cost!**
- Can be dignified and respectful departure during reorganization



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Contracting Out

What is it?

- Eliminating in house jobs / tasks and retaining outside private contractor

HR Consequences

- Employee Layoff = Severance / Notice Liability
- Less control over private contractor

Obstacles

- Some union collective agreements prohibit or restrict contracting out
- All union employers must demonstrate good faith business rationale

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Position Reorganization Can Trigger Constructive Dismissal

What is it?

- Fundamental change to terms and conditions of employment

Clear examples

- Demotion
- Salary/wage reduction

Grey area risk

- Significant job description change
- Significant reporting structure or org chart change
- Forced location change
- Hostile workplace

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Consequences of Constructive Dismissal

If the employee does not object, resign and sue, no liability or legal issue is triggered	Thousands of employees are constructively dismissed each day, often without the employer or employee even recognizing these potential issues or risks
Employee option to resign and sue as if wrongfully dismissed	
The employee would have to elect to resign without too much delay to trigger and claim for this liability	Liability for severance the same as if the Employee was terminated without cause

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Defences to Constructive Dismissal Claims

```
graph LR; A[Not a fundamental change/no repudiation of contract] --> B[Duty to mitigate in non-hostile workplace]; B --> C[Duty to mitigate through alternative employment];
```

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Proactive Tools to Avoid Constructive Dismissal When Implementing Change

Reasonable working notice

Informed consent

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Reasonable Working Notice

Key requirements for effective legally valid working notice:

- Clear, detailed and written description of the change
- Black and white, unequivocal and effective date for the change
- Employee written and signed acknowledgement of the working notice of change letter

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Informed Consent

- Informed, voluntary consent cures all
- Key elements for valid consent defence:

Clear, detailed and written communication of the requested change

Adequate time for the employee to fairly consider

Signed written acknowledgement from the employee agreeing to the changes and

The opportunity to seek independent legal advice if they wish

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Key HR Reorganization Tools

Working Notice

Contracting Out

Position Reorganization

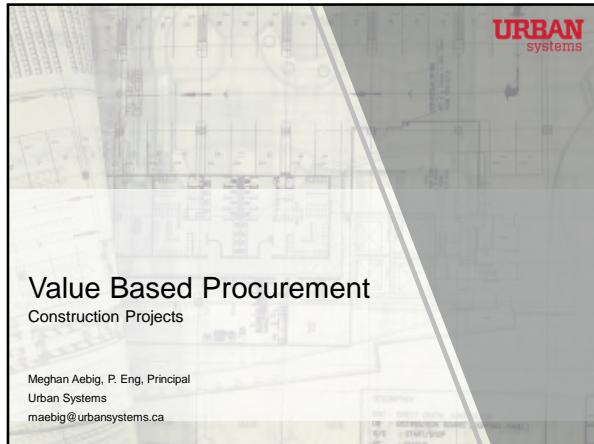
Timely Planning, Communication and Action

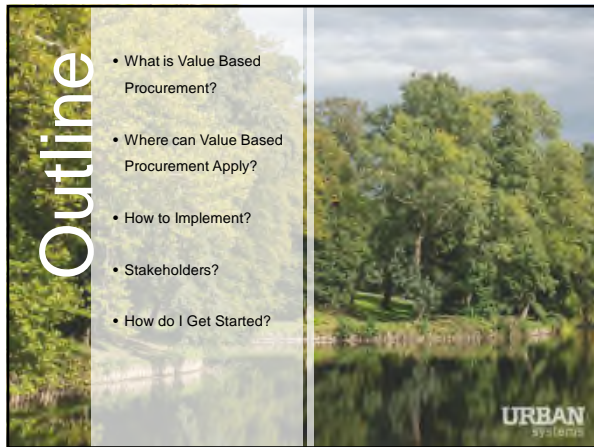
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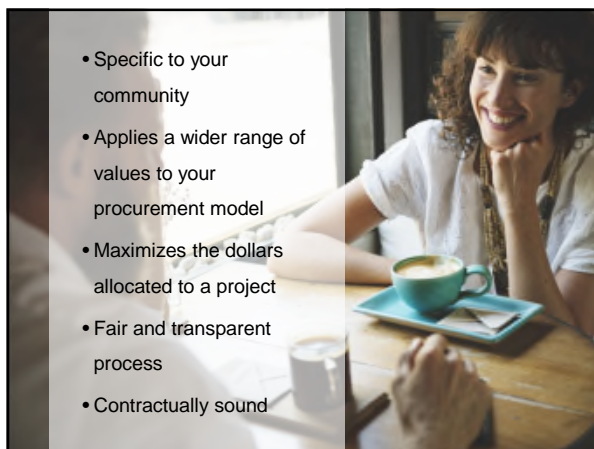












Value Based Procurement Can Maximize

Social value for \$

Environmental value for \$

Economic value for \$

Value Based Procurement

- Operational Spending
 - *(catering, office supplies, printing, etc.)*
- Goods and Services
 - *(planning and engineering services, equipment, etc.)*
- Development Agreements

★ Infrastructure Projects

How?

- 1) Review your Procurement Policy
- 2) Determine Which Community Values to Evaluate



How?

3) Choose a Procurement Model

Examples for Construction Projects:

- Low Price
- Early Contractor Involvement
- Request for Proposal
- Prequalification of Bidders
- Best Value

URBAN systems



Procurement Model Example

Best Value

Developed by Arizona State University

URBAN systems



Why Best Value?



THE CONSTRUCTION INDUSTRY EXPLAINED

URBAN systems

Best Value

- Community Values
- Trade Law compliant
- Wide range of construction projects
- Comparative evaluation model
- Clarification Period




Impact of Clarification/Pre-Award

(General Services Administration)

No	CRITERIA	Traditional RFP	ASU-BV
1	Number of projects analyzed	11	10
2	Total awarded cost	\$14,244,385	\$9,994,887
3	Total awarded schedule	1,822	1,373
4	Percent awarded cost below budget	4.4%	6.0%
5	Average time RFP Release to Contract	68 days	78 days
6	Average BV-PA duration (days)	0	7
7	Average Overall Change Order Rate		50% Decrease
8	Average Overall Project Delay Rate		38% Decrease
9	GSA Satisfaction Rating of Contractor/job		34% Increase

For within BV projects, also tested "≤1 week" PA vs ">1 week" PA

- Longer PA had **33%** lower change order rate (**73% reduced overall**)
- Longer PA had **69%** lower delay rate (**73% reduced overall**)



WHO?

Stakeholders in Value-Based Procurement

- Elected officials
- Staff who procure municipal services
- Current suppliers / vendors / contractors
- Future suppliers / vendors / contractors
- Strategic Advisors
 - Legal Advisors
 - Engineering Consultants



Emerging Trend


- Some values are more straightforward to incorporate into documents than others
- Requires continual learning and adapting of processes
- One size does NOT fit all



URBAN systems

Key Take-Aways

- Needs to be Best Value for your dollar
- Maximize your procurement dollars
- Important to define what is most important to your community
- Requires conversations



URBAN systems

Next Steps

- Contact strategic advisors
- Determine the objectives that you want to achieve with Best Value
- Review your public procurement policy and determine if changes need to be made then change them



URBAN systems



Next Steps

- Have conversations and education sessions with internal stakeholders
- Choose a procurement model
- Educate Future and Current External Stakeholders
- Start Early!

URBAN systems



Summary

Value Based Procurement

- What is it?
- Where could it Apply?
- How to Implement?
- Stakeholders
- Next Steps

URBAN systems



EMERGING TRENDS IN MUNICIPAL LAW 2019

THE BIG THREE of VBP

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1. Prequalification
2. Procurement Rules
3. Contract Delivery Models

Overview


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Prequalification

- Permitted by the **CFTA** and the **NWPTA**
- When should it be used?

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Procurement Rules

- **CFTA** and **NWPTA** rules
- Legitimate Objectives
- Prohibited Practices

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Contract Delivery Models

Question: What contract delivery models deliver more or better value?

Answer: Non- traditional models

- Design Build
- Integrated Project Delivery

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