LAND MANAGEMENT FOR SENIOR ADMINISTRATIVE OFFICERS

Guide

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Land Management for Senior Administrative Officers Workshop

Introduction

Community land management is a complex task and a vitally important one to all community governments in the NWT.

Effective land management is about more than just the technical aspects of drafting and ensuring correct lease documents. Dealing with such a valuable resource as community land requires a broad range of knowledge and experience that touches on community development, community planning, the financing of land development as well as land agreements and leases. Good land management is about more than pushing paper. In fact, effective land management can set a community apart and make a substantial contribution to community building.

Why is the effective management of land so important to community governments?
Effective land management has a direct impact on:

- Housing choices;
- Community Infrastructure;
- Economic development;
- Community confidence;
- Public health; and
- Community growth

While it is understood that the SAO will generally not be involved in the day to day tasks of land administration, an understanding of key land management authorities, responsibilities and administrative processes is important for an effective SAO. Knowledge of key issues and of what the powers, authorities, responsibilities and processes of the community government are in relation to land also helps SAO's to communicate with his/her land manager and to understand the staff's duties.

SAO's need to be familiar with the key issues related to effective land management and also must be aware of the opportunities and different approaches that may be available to help build on and improve the way their community government deals with land.

This Workshop provides what SAO's need. It can serve as a 'refresher' on the authorities for land management, an opportunity to understand the rationale behind land management practices and it provides SAO's with the information needed in providing advice to their councils.

Land administration requires that council make decisions on the following:

- Acquisition of land;
- Disposal of land including land tenure (selling or leasing);
- Terms and conditions of land contracts and permits;
- Use and development of land; and
- Land pricing

In order to have a good grasp of land management matters, the SAO should have a basic understanding of:

- Legislative authorities;
- Community planning;
- Land development;
- Property and contract law; and
- Surveying

In order to cover off these matters, the material has been organized into five sections:

Section 1 Land Management and Territorial Laws

- An overview of the ‘big picture’ for land ownership and authorities in the NWT.

Section 2 Community Government Laws

- A focus on the opportunities, authorities and responsibilities of community governments as they own and dispose of land.

Section 3 Policy and Planning

- A review of how community planning, land development and land pricing affect and promote good land management.

Section 4 Land Administration Practice

- An overview of key land administration issues and procedures, including land applications, leases and quarries.

Section 5 Land Claims/Self-Government and Community Lands

- A focus on how the major land claim/self government agreements in the North have affected the authorities of community government with respect to land management..

Section One
Land Management: Territorial Laws

Introduction

Section One provides an overview of the laws relating to land in the Northwest Territories with an emphasis on those land laws that impact community governments. The Section provides the 'big' picture and some context for understanding where community government land administration fits into the scheme of things.

The SAO should feel comfortable with this 'big picture' in order to provide any necessary clarification to council as it deals with the range of land management issues facing it.

Beyond the lands owned by the community government, there are several other categories, or 'labels', for land in the NWT.

- Federal crown
- Aboriginal lands
- Private land
- Commissioner's land

The big picture starts with:

The Federal Crown

Most land in the Northwest Territories is federal crown land. Crown land is in public trust and the Government is not usually said to be the owner of land. The Crown has the administration and control of the lands and powers over its disposal. For the most part, those powers to dispose of land are similar to those held by a private landowner.

In the Northwest Territories, Indian and Northern Affairs Canada (INAC) administer Crown land outside of communities.

The *Territorial Lands Act* and Regulations is the federal legislation that is used to administer Crown lands.
While the Act provides a general outline of how INAC manages federal Crown land, there are a number of Regulations passed under the Act that provide the details. The Regulations address how to get permission to occupy and use federal Crown land for:

- leases
- mining,
- oil and gas and
- quarries.

Land Use Permits are now issued by the Land and Water Boards created under the *Mackenzie Valley Resource Management Act*.

The obvious exception to crown land in the NWT is the land owned by Aboriginal organizations under the terms of land claims.

Aboriginal Lands
Aboriginal lands outside community boundaries are usually referred to as settlement lands. These lands cannot be bought or sold, but they can be leased. The ownership of these lands is registered in the Land Tittles Office.
Some parcels of land owned by Aboriginal organizations lie within community boundaries. Aboriginal organizations must work with community governments in the use and development of these lands. Each Aboriginal organization has procedures for the management of its land. These lands are also registered in the Land Titles Office.

Private Land
Besides Aboriginal lands, privately owned land is mostly found within community boundaries. Historically, there has been little private land in smaller communities, while the developed areas of larger centres are mostly privately held. Private lands are

referred to as lands held in fee simple title. This is the highest interest in land that a person may possess. This does not mean that the holder can manage his/her land in any way they want – there are some restrictions on this, as will be discussed in later Sections.

Commissioner's Land

The federal government has, over time, transferred administration and control over Crown land to the GNWT. The initial reason for this transfer was that it is assumed that the territorial government was 'closer to the people' and could do a better job of managing and administering land needed by NWT residents.

The land transferred to the GNWT, or the 'Commissioner', has generally been in and around NWT communities. The legal term used for the transfer is the 'Block Land Transfer', or BLT. The boundaries of the BLT may be the same as the boundaries of the community, but in some cases the BLT boundaries are larger than the community boundary. (Yellowknife is a good example where the BLT extends further than the City's boundaries).

Once the GNWT had control of Commissioner's land, it needed rules for its administration. Those rules are found in the *Commissioners Land Act* and Regulations.

Commissioner's Land Act

The GNWT's Department of Municipal and Community Affairs (MACA) is responsible for administering the *Commissioner's Land Act* and Regulations. The Act and regulations set out the rules for the administration and disposal of Commissioner's land. Subjects dealt with in the Act include:

- land applications,
- land leases,
- quarry permits and leases.

The ‘meat’ of the administration of Commissioner’s land is found in the regulations. It is there that some of the detailed rules for GNWT land management are found.

There are two regulations enacted under the Commissioners Land Act:

- Commissioners Land Regulations; and
- Commissioners Airport Land Regulations

Commissioners Land Regulations

The Regulations under the *Commissioner’s Land Act* contain the details of how the GNWT administers and manages Commissioners land.

The process to accept, review and approve a land application is outlined in the regulations. The application fee for Commissioner’s land is set in the regulations, as well as the length of leases. MACA, working on behalf of the Commissioner, uses the regulation to:

- sign and prepare leases;
- assign leases;
- surrender or cancel leases; and
- issue quarry permits and land use permits

Most of the land administered by MACA is within community boundaries. MACA involves community governments in land matters through consultation. It is important the SAO ensures that council has an opportunity to review and recommend on applications for Commissioner’s land. While the final authority to sign permits and leases remains with MACA, council comment should influence the decisions made.

Commissioner’s Airport Land Regulations

The Commissioners Airport Land regulations is a specific set of rules that provides guidance for the administration of airport lands, including rules for issuing leases at airports. The regulations apply to all land within the surveyed airport boundaries.

It is the Department of Transportation – not MACA – that issues leases in this case. Community governments do not have direct involvement in the administration of these lands. Councils are consulted about building activity on airport lands such as terminals and hangers, but council approval is not required.

Since airports are under the jurisdiction of the territorial government (the land is under territorial administration and control) there is a question of how much attention the Commissioner must pay to community government plans and zoning requirements. Hopefully (!) a cooperative relationship between council and the GNWT has been/will be developed so that both parties understand and support airport development and the related leases required.

Land Titles Act

The *Land Titles Act and Regulations* apply to all titled lands in the NWT. The office of the Registrar of Land Titles is located in Yellowknife.

The Registrar of Land Titles is responsible for issuing a Certificate of Title, which is the 'proof' that the individual or organization named in the title owns the land described in the title. A sample Certificate of Title can be viewed in the Appendix.

Once there is a Certificate of Title for a parcel of land, this Act goes on to describe the procedures for 'filing documents' with the Registrar. Documents that may be filed include leases, transfers of leases, surrenders of leases, mortgages and legal survey plans, an overview of which will be reviewed later in the material.

The key point for SAO's and council to be aware of is that before land owned by the community government can be leased, sold, mortgaged etc., there must be a Certificate of Title registered in the Land Titles Office. And before a Certificate of Title can be issued, there needs to be a legal survey of the land.

Much of the undeveloped land within community boundaries is not surveyed and therefore is not registered in the Land Titles Office.

GNWT Policies

The laws of the territorial government are only part of the story when it comes to providing direction and guiding management practices for Commissioner's land. The GNWT has also implemented a number of policies to guide its land management practices.

Land Pricing Policy

Territorial legislation provides little direction on pricing Commissioner's land. However the Land Pricing Policy provides a range of specific guidance. MACA uses this Policy for setting lease rents on Commissioner's land. The Policy addresses pricing for regular leases and equity leases as well as sales of land.

Land Lease-Only Policy

The Land Lease Only Policy applies to those areas where the settlement of land claims or treaty rights has not been completed. The Policy is meant to protect the interests of Aboriginal groups by ensuring that 'crown' land remains available for selection and is not sold to others. The Policy does make some exceptions to the general rule of 'lease only'. The exceptions generally address possible transfer of land to community governments where there is a need for land for development purposes.

Municipal Lands Policy

It is the Municipal Lands Policy that generally has the most direct impact on community governments. The Policy sets out the conditions under which the GNWT will transfer Commissioner's land to community governments – or allow community governments to act on behalf of the Commissioner in disposing of Commissioner's land. In short, the Municipal Lands Policy outlines the principles and the rules for community land administration. As such, it is a Policy that will be reviewed in more detail in Section Two.

Community Government Legislation

The final area of legislation to introduce is the key one for community government. It concerns the territorial laws that provide for the creation of community government and the authorities of community governments when it comes to land.

There is a range of community government legislation in the NWT. The variety of legislation reflects the different sizes, needs and complexities facing community governments in the NWT. The current list of legislation is:

- *Cities, Towns and Villages Act;*
- *Hamlets Act;*
- *Charter Communities Act;*
- *Tåîchô Community Government Act; and*
- *Settlements Act*

Settlements are not authorized to own land. However the territorial legislation provides the authority for all other NWT community governments to:

- own land;
- use, subdivide and develop land;
- own land close to, or under, a body of water; and
- develop and operate a quarry.

Community governments do not own mineral rights however.

The legislation also states that before a community government owns and deals in land it needs to have a set of rules in place for how it deals with land. That set of rules is known as a 'land administration by-law' and that is the focus of the next Section.

Section Summary:

A variety of legislation exists to deal with the variety of land ownership in the NWT. The federal government has its own laws to deal with federal crown land, the GNWT has laws dealing with Commissioner's Land and emerging Aboriginal governments are developing laws to deal with their land. Community governments are governed by the provisions of GNWT legislation and policies (such as the Municipal Lands Policy) in how they acquire and dispose of land.

Section Two
Land Management: Community Government Laws

Introduction

Section One provided an overview of territorial laws relating to land and its management within community boundaries.

A key point in this discussion is that the laws focus on two different types of land ownership and control.

Land administered and controlled by the GNWT within community boundaries is governed by the *Commissioner's Land Act* and Regulations. The GNWT has developed, over the years, a system to administer this land, and often works in partnership with community governments.

Section Two focuses on land owned by community governments.

Authority and Responsibility

Community governments of nearly all types – cities, towns, villages, hamlets, charter communities and Tåîchô community governments – are empowered to own and manage land within their boundaries. The authority to own and deal in land comes from the territorial legislation that creates the particular form of community government – whether it be, for example, the *Hamlets Act* or the *Charter Communities Act*.

The *Hamlets Act* says:

55.(1) A hamlet may, for a municipal purpose,

(a) acquire real property;

(b) use, hold or develop real property owned by the hamlet; and

(c) subdivide, in accordance with the *Planning Act*, real property owned by the hamlet.

This provision provides clear authority for a community government to own land.

However, along with authority comes responsibility. The *Hamlets Act* also says:

55.(3) A hamlet may not acquire real property unless
(a) council has made a land administration bylaw and the acquisition is made in accordance with that bylaw; and
(b) the acquisition is specifically authorized or approved by a bylaw.

The key 'condition' for owning land is that Council must adopt a land administration by-law.

Sections 55 and 56 of the *Hamlets Act* are included in the Appendices for further reference on community government authority and responsibility regarding land dealings.

Land Administration By-laws

The creation and application of a land administration by-law is central to successful community government land management.

- The big picture and what the SAO should know

In the broadest sense, a land administration by-law is rule book by which Council must play when dealing in land.

SAO's should be able to advise Council on the rules in play when considering and approving a land administration by-law.

The legislation does not provide a lot of direction on the contents of the by-law.

In fact, the legislation governing land ownership is much different than that governing land use. When Council considers the passing of a by-law regulating the use of land – such as a

community plan or zoning by-law the *Planning Act* provides a great deal of guidance on what can and cannot be included in the by-laws. Planning and land use will be discussed further in Section Three.

While there may not be detail on land administration by-laws in community government legislation, the GNWT does provide policy guidelines. These guidelines are contained in the Municipal Lands Policy.

Municipal Lands Policy

Council should be aware of the Municipal Lands Policy because generally it is the reference point used by the GNWT in deciding whether to transfer land to a community government.

The Municipal Lands Policy can be viewed at:
http://www.gov.nt.ca/publications/policies/maca/Municipal_Lands_(21.02).pdf

The principles of the Policy are central to its operation. Those principles talk about how community governments should draft their rules for land dealings. It says that the rules should reflect the following principles:

- Fairness to all residents
- Consistent administrative practices
- Compatible with other governments
- Discouragement of land speculation
- Pricing of land in a way that is reasonable but that recovers the cost of development

How community governments go about managing their land and keeping with these principles is largely up to them. There is more than one way to skin the cat.

A key message that SAO's can deliver to Council is that:
While the good news is that council does not need the Minister's approval for its land administration by-law, the bad news is that failure to follow the Municipal Lands Policy could make it difficult to acquire more land from the territorial government in the future.

Land administration By-law Contents – the Nuts and Bolts

A land administration by-law is doing its job for Council when it addresses the following matters:

- Focus on the lease – terms and conditions for leasing land
- Rules for disposal of land by Council
- Procedures for advertising and notice of available land
- Pricing for land disposal
- Establishment and operation of a land development reserve fund
- Rules for transfer of interests in land
- Revenue collection and enforcement
- Quarries
- Land use permits

See the Appendices for a sample land administration by-law that addresses all these matters.

Land administration by-law – SAO responsibilities

As SAO, there is a responsibility for by-law review prior to first reading. The level of review required by an SAO often is related to the support and experience of land administration staff available within the community government.

Preparation and review includes being aware of any potential issues. Pricing and arrangements for the advertising and disposal of available land are often flash points that will get the attention of the public.

Land administration by-law – Council responsibilities

When a draft by-law is complete, Council must review the by-law and give first and second readings to it. The territorial legislation directs that after second reading, a public meeting must be held and that notice of the meeting must be provided at least two weeks prior to the public hearing being held.

In order that Council is accountable for its dealings in land, the territorial legislation and therefore the land administration by-law require that land transactions – acquiring land and disposing of land – be done by by-law.

Acquisition By-laws

The type of the community government – hamlet, city, town etc. – usually helps to define the extent of land owned by that community government.

Historically, hamlets have owned only the land underneath their assets, while cities, towns and villages have owned vacant land as well, usually land earmarked for lot development.

Two important issues help to explain the differences in land holdings amongst community governments.

- Historically the GNWT was responsible for land development in all communities except the tax-based ones.
- Also, the fact that aboriginal land claims were not settled throughout much of the NWT meant that local land ownership was not yet appropriate.

When does Council Need to Pass an Acquisition By-law?

The legislation provides a very broad definition of 'acquisition'. The need for a by-law arises anytime council is to acquire 'an interest in real property'. This includes buildings and land, just land or just buildings.

In most cases, the 'interest in real property' that council would like to acquire is presently owned by the GNWT. The passage of an acquisition by-law by council is the formal way of requesting the transfer of this interest from the GNWT.

With respect to land, it is a safe bet that land being acquired is Commissioner's land. And if it is undeveloped land, then it is also a safe bet that there is no existing title to the land – there is no legally registered interest for this particular parcel of land presently existing in the Land Titles Office.

Until 'title' to the land is created and registered in the Land Titles Office, the community government will not yet gain ownership of the parcel. In order to 'raise title' for a parcel of land, a legal survey is required. Arranging for, and completing a legal survey for a parcel of land to be acquired is usually the responsibility of the community government.

Council must be aware that a number of steps will be required after the passing of the by-law, before the community government obtains title to the land. Those steps involve actions by:

- MACA,
- the Commissioner's office and
- the Land Titles Office.

It is not a speedy process.

The SAO needs to be familiar with the process and the requirements on the part of the community government. The end of the process is the issuance, by the Land Titles Office, of a Certificate of Title for the lands to be acquired.

The SAO should also be aware that different rules apply when the parcel of land in question borders a water body. This is discussed in more detail in Section Four.

Once a parcel of land is in the hands of a community government, then what?

Land Disposal By-laws

A land disposal by-law is required each time a council agrees to sell, lease or grant an easement over land owned by the community government. *(Note that such a by-law is not required for lands the community government does not own, such as Commissioner's land within the community, even though the community government may be involved in the administration of Commissioner's land within its boundaries.)*

A land disposal by-law is a straightforward expression of council's intent to dispose of particular parcels of land. No public hearing is required prior to the passing of the by-law.

Where it gets interesting is in relation to:

- How the land is 'disposed'; and
- How the public will have a chance at 'acquiring' the land that Council has agreed to dispose.

The SAO has a big role in making sure that the public is satisfied that the land disposal process is fair – advice to council on what a 'fair' process is stands as an extremely important part of SAO involvement in land management.

How the land is 'disposed'

Disposal methods relate to options for sale and options for lease of the land.
Often a council's ability to sell land is constrained by aboriginal claims-related agreements as well as the territorial Land Lease Only Policy.

The pros and cons of sale versus lease can be a hotly debated topic in some communities. As well, there are different approaches to both sales and leases, which is an issue that will be discussed further in Section Four.
(Of particular note for leases is the lease vs. equity lease debate.)

How the public will have a chance at 'acquiring' the land that Council has agreed to lease/sell.

Once council has decided to dispose of particular parcels of land, a decision must be made on how to advertise the fact that the lands are available.

If the supply of land for residential, commercial or industrial uses is greater than the demand for the land, then a first-come, first-serve approach is the best and easiest approach.

However if there is demand, or if there is a real shortage of particular lands, then other approaches may be considered. Anything other than a first-come, first-serve approach will usually require a greater involvement from the SAO. Council may be called on to decide/confirm the best way to dispose of land and will be looking for the advice of the SAO. Examples of different ways to dispose of land include:

Ballot Draws
Ballot draws are one approach to land disposal that attempts to give everyone an equal opportunity to acquire land. A clear set of rules are required before attempting this approach, which is all about the 'luck of the draw' and avoiding potential claims of favoritism or unfair practices.

The City of Saskatoon has a very simple, straightforward set of rules for a ballot draw, or 'lot draw' as it's referred to in Saskatoon. It even calls for the Mayor to pull the names! It is available at
http://www.saskatoon.ca/org/land/residential/lot%5Fprocedures/

Proposal Call

For a special and important land parcel, such as a key commercial spot in the middle of town, another option is the proposal call. Again, a clear set of rules, including a request for both an offer to purchase and a development proposal, can provide council with some options and the opportunity to chose the best deal for the community.

Real Estate Agent

Another approach, used now by the City of Yellowknife, is to contract a real estate agent to market and dispose of community lands. Again, there are pros and cons in such an approach - some would argue that it is best to let an expert handle the marketing of land, while others may argue that 'middle men' add to the cost of the land.

Advertising is Necessary

Council cannot dispose of land in any manner until the public has been informed that particular land parcels are in fact available. This is true even when a first-come, first serve approach is to be used.

The land administration by-law provides detail of how land must be advertised as 'available'. In fact minimum requirements for advertising are stated in the territorial Municipal Lands Policy and should be reflected in the community government's land administration by-law.

Another requirement under the Municipal Lands Policy – and therefore, in the land administration by-law – is that the community government keep a register of all community lands currently on offer and that the register be available for public review. This is especially important when council is disposing of parcels of land through the first-come, first serve approach. The public should be welcome to come into the community government office and have a look at what's available, and at what price.

Land Speculation

Land speculation is a particularly important issue where there is a short supply of developed land.

There are methods to ensure that people do not make a quick profit from community land. They generally involve securing legal commitments to build a house within a certain period of time or commitment to spend a minimum dollar value in the agreement to lease or purchase.

Section Summary:

Territorial legislation provides community governments in the NWT with the opportunity to own, manage and dispose of land. In order to deal in land, councils must adopt a land administration by-law, which outlines the terms and conditions by which the community government will operate. While council has some options in land management, its land administration by-law must follow the general provisions of the GNWT Municipal Lands Policy.

Depending on specific situations, land may be sold or leased by a community government. Central to the provisions of the land administration by-law is how the land is to be priced. Other key considerations include the requirement for specific by-laws each time council decides to acquire or dispose of land, the need for advertising its intent to dispose of land and the method of land disposal.

Section Three
Land Management: Planning and Development

Introduction

The material so far has focused on the authorities and rules for administering and managing land and on how land is acquired and disposed of by community governments.

However it is also important to set the context for land administration. What land? Where? When? How? That's where a discussion on community planning, land development practices and on land pricing can come in handy.

Community Planning

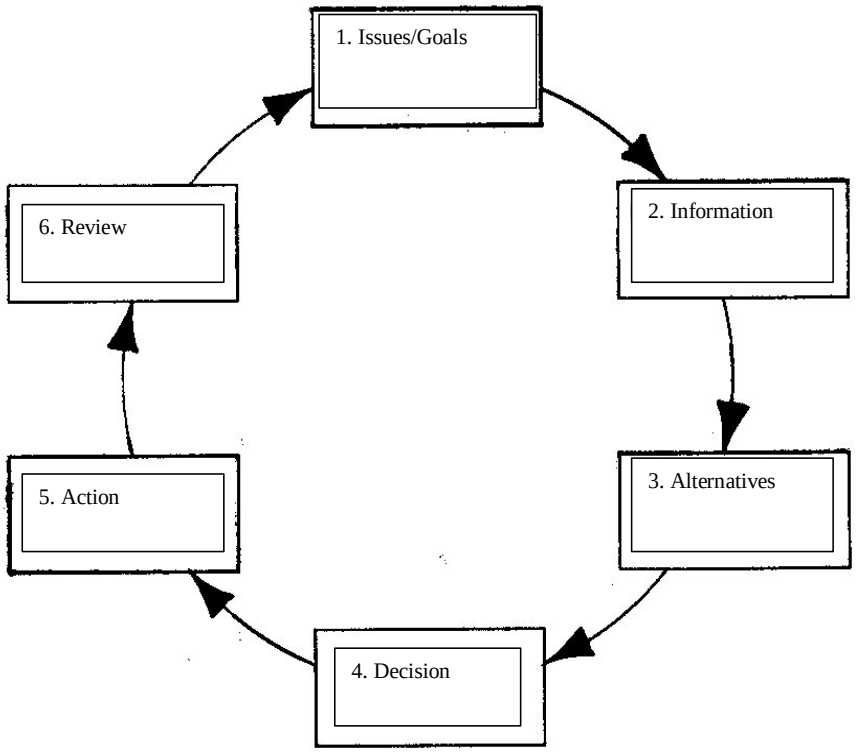
How does an SAO explain what community planning is to his/her Council?

A simple explanation is this: Community planning is a way for communities to organize and control the use and development of land. The community planning process helps a community to make decisions about how land in the community should best be used, what the community priorities are and how to implement those priorities.

Community planning is useful to councils because it helps communities to:

- establish key goals and priorities for community development;
- anticipate future community needs and prepare for future growth and change;
- keep the cost of new development and services to the public as low as possible;
- control the use of land, the location of new development and avoid land use conflicts;
- protect important historic, cultural and natural features; and
- plan development which avoids unsuitable sites.

The land use planning process has been described as a six-step process:[1]



The product of the community planning process is a 'community plan'. A community plan is the document that sets out the pattern for future development of the community, outlining the community's wishes about how, where and when development should take place.

The benefits of a community plan are that it becomes the 'roadmap' on how the community wants to grow and change in the future. Council's intentions are there for everyone to see. It allows the community to have more control over development,

[1] MACA has a short video available entitled 'The Six Step Planning Process' that provides a good overview of the process, with a northern context.

by restricting some types of development and regulating how land is used. A clear plan also provides the Council with a guide for decision making and allows it to develop the land more efficiently and therefore save money.

Successful Planning depends on Citizen Participation
Participation by community residents in the planning process is key in ensuring a sucessful outcome. A plan done in isolation – that is, one done in a planning consultants office and then reviewed and approved by council alone – is not likely be supported by the wider community.

It is important that SAO's advise council to look at options for involving members of the community in the planning process. This could include the formation of a 'steering committee' at the outset of the process, the distribution of newsletters or the holding of open houses to view options and proposals for future land use.

MACA has produced a community participation guide entitled "Involving Community in Council Activity". It is designed for use over a broad range of community issues, not just land use planning, and can be a useful resource in gathering ideas of how best to involve community residents in the planning process.[2]

If community government staff is interested in an overview of how to explain planning, or if community residents are interested in reading more about land use planning, the City of Saskatoon has a useful 'Planning Education Program' at http://www.saskatoon.ca/org/city_planning/planning_education_program/index.asp that is designed as a general introduction to some key planning issues.

[2] Available through the School of Community Government

Authority for Planning: A brief introduction to the *Planning Act*

Community governments in the NWT are governed by the provisions of the *Planning Act* with respect to land use planning and control.

The *Planning Act* sets out:

a) the legislative (lawmaking) framework for land-use planning;
b) how the land-use planning system works;
c) who the decision-makers are;
d) how to resolve disputes; and
e) how the public can provide input.

The *Planning Act* deals with the key parts of land use planning. As noted earlier, the *Planning Act* provides quite a bit of detail as to how land use planning and development control must be done in the NWT:

- **General plans (commonly referred to as 'community plans')**
  - Adopted as a planning by-law by council, a general plan must include:
    - A map showing the uses of land;
    - Proposals about the content of the Zoning By-law;
    - Proposals for the provision and location of community facilities;
    - A schedule of when these land uses and facilities are to be developed or redeveloped; and
    - Any other text or graphics that will further explain the plan proposal.

- **Zoning**
  - Adopted as a planning by-law by council;
  - Also referred to as development control, land use controls, plan implementation;
  - A zoning by-law promotes and controls development in a community by putting compatible land uses together and by setting out standards for development. Zoning is directly linked to the general plan.

- **Subdivision**
  - Involves the creation of legal title (ownership) to separate parcels of land.
  - A technical and legal process that must meet the concerns of councils and third parties (like banks with respect to mortgages, and utility companies with respect to *easements*).
  - Issues like legal survey and the requirements of the *Land Titles Act* must also be considered with subdivisions.

- **Planning Procedures,**
  - The planning process**,** including giving public notice of meetings, rules for appealing the decisions of a community government, and
  - How to enforce the rules of a planning by-law.

SAO's should be aware that the approval power for planning by-laws and subdivisions rests with the Minister of MACA, not with community governments.

MACA is currently reviewing the *Planning Act* with an eye to make changes which will provide more community control and accountability over the planning and development process. MACA has produced a discussion paper on the *Planning Act* which can be obtained by emailing a request to: planningactreview@gov.nt.ca

Zoning By-laws

The *Planning Act* requires that if a community government adopts a community plan, it must then adopt a zoning by-law. A zoning by-law carries with it the requirement that all proposals for development must receive development permit before proceeding. 'Development' as defined by the *Planning Act*, includes 'a change in land use or any construction, excavation or other change to land'.

Council must appoint a development officer in order to be responsible for the day-to-day administration of the zoning by-law.

Development officers:

- must receive applications for development permits;
- may consider and decide on applications for development permits; and
- may deal with unauthorized construction.

Zoning allows council to exercise a firm and sometimes detailed control over land use, and as such is a central tool in effective land management.

Some examples of the types of regulations that can be placed on buildings and land uses include the following:

- The ground area, height and size of buildings.
- The depth, dimensions and area of yards and other open spaces to be provided around buildings, and the maintenance of these areas;
- The location and maintenance of buildings on their sites and their relationship to other buildings and to streets and property lines;
- The placement, height and maintenance of fences;
- The removal of trees and placement of fill;
- Appearance of buildings; and
- Vehicle access to the site from public roadways.

Land Use Plans

Many communities in the NWT, especially those that do not have a great deal of development pressures, do not feel that such a formal and legalistic form of land use control as zoning is needed. So instead, many smaller NWT communities have adopted a land use plan. A land use plan is adopted by resolution of council and represents council's view of how and where development should proceed in their community. It is not passed under the *Planning Act*, as to avoid the need for the further adoption of a zoning by-law.

Land Use Plans are approved by the Minister of MACA in order to signal that the territorial government agrees with council's vision for future development. In most ways, a land use plan is similar to a community plan in terms of its objectives and approaches.

Enforcement of a land use plan is a less formal process that depends on some goodwill on the part of developers, but more importantly, is closely linked to the land application procedures of a community government.

The above discussion outlines the tools and authorities involved in helping community governments establish a plan for development and the tools to implement that plan.

So when an area of land has been identified for residential development and assuming that land acquisition and disposal matters are addressed, now what?

Land Development – How and Who

SAO's should know that land development practices and policies in non-tax based communities have been through a number of changes over the past 10 years. At one time land development was funded through a capital program of the GNWT, however a cost-recovery approach replaced this grant program in the late 1990's. Resources for land development was then rolled into the block funding approach now utilized by MACA. However some additional resources were made available, on the basis of community need for developed lots, through the re-introduction of capital funding assistance from MACA. This additonal assistance is set to be phased out however, in 2007.

For tax based communities, the rules have generally remained unchanged – land development is a community government responsibility and cost recovery is mandatory.

To begin the overview, it is important that SAO's have a general understanding of the process – the 'how'. Typically, land development occurs in four stages:

STEP 1 PLANNING

- Subdivision Planning
- Lot Demand and Supply
- Five Year Capital Foecasts

STEP 2 APPROVALS

- Land Acquisition
- Land Disposal Rules
- Plan and Zoning Amendments
- Financing Approval
- Subdivision Approval

STEP 3 CONSTRUCTION

- Engineering Design
- Tendering and Project Management
- Legal Survey and Title

STEP 4 LOT SALES OR LEASES

- Land Disposal By-law
- Marketing and Lot pricing
- Revenue Collection

Given the many changes and the fluid situation it is important for the SAO to know 'who does what' when it comes to responsibilities for land development, in order that he/she may be able to advise council of the issues arising as it considers a land development project.

Land Development in NWT Communities – Who does what?

Community Governments are responsible for funding land development within community boundaries.

So what does 'funding land development' really mean? It means paying for the following activities related to a land development project:

- Subdivision Design & Engineering
- Clearing & Slashing of Right of Way
- Drainage work for Subdivision
- Provision of Public Roads
- Power and telephone Servicing to Subdivision
- Legal Survey of Subdivision

As a community government must fund these aspects of land development, a community government can – and must – price the lots at a level that will recover those costs. (Lot pricing is discussed later.)

It is important for both council and the SAO to know that there is a difference between developing land – as defined above – and preparing a particular parcel, or 'building lot' for construction of a house and occupancy.

Preparing a lot for building is the responsibility of the occupant or in the case of non-market housing, the Housing Corporation. This aspect of 'lot development' includes:

- Gravel Pad & Lot Fill
- Culverts and Drainage work
- Installation of a Access Driveway
- Clearing and Slashing of Lot
- Power Service Connection to Building

In the Appendix there is a useful diagram showing land development responsibilities community government and the occupant of a parcel of land. As well, the document entitled 'LAND DEVELOPMENT ROLES AND RESPONSIBILITIES' in the Appendix provides a good summary of responsibilities in the land development process.

So what role does MACA have in the land development process? MACA supplies advice to council on planning issues related to the land development project as well as assistance in ensuring that the legal survey of the lots occurs.

Financing Municipal Land Development

Establishing responsibilities and roles is one important part of the land development equation – the other key part is how to finance those responsibilities. There are several options for a community government in financing land development. No matter which approach is favoured by council, the need for cost recovery is front and centre. Options include:

- Reserve Fund – the land administration by-law directs that all revenue from land be put in a separate reserve fund;
- Block Funding – a portion of the community government grant from the GNWT can be used for some or all of a land development project;

- Long term Loans – a community government can apply for a debenture from the GNWT, or borrow from a bank

Council should know that if borrowing is an option, the lender will need to ensure that the community can repay the loan. They determine this by examining the demand for the lots and their affordability. The credit history and current financial administration of the community government is also reviewed.

It may be that community governments are not ready, willing or able to take on land development projects. In this case, there are options that can be explored. That 'exploration' will need to be led by the SAO, working closely with council.

For example, community government may arrange to enter into business partnerships with Development Corporations, the NWT Housing Corporation or even a private land developer to undertake land development projects.

In such cases, the SAO will need to ensure that the developer enters into an agreement with the community government which outlines construction standards, schedule of development, method of land disposal and method of land pricing for the project.

There are some good examples of community government taking the lead and developing land. The City of Medicine Hat, in southeast Alberta, has for years operated an aggressive public land development program which competes directly with privately held land development projects. The City has an extensive information portal, which it calls the "LandKiosk", including GIS mapping, full disclosure on pricing and land sales policy. It can be viewed at
www.city.medicine-hat.ab.ca/cityservices/land/residential.html

Recovering the Costs of Land Development – Lot Pricing

A value must be placed on each lot created through a land development project. Whether the land being developed is owned by the community government or administered by the

GNWT, there are clear rules regarding 'cost recovery' and lot pricing. The rules for lot pricing on community government land, are found in the land administration by-law (which must be based on the principles of the GNWT's Municipal Lands Policy). For Commissioner's land, the rules are in the GNWT's Land Pricing Policy.

A key consideration is 'what costs can be recovered'?
The cost of any construction work required to prepare the land for building may be recovered, in addition to planning and designing the subdivision, legal and survey fees.

There is one other cost that may be recovered as a surcharge on the price of a lot. 'Off Site levies' assist in recovering the capital cost of new or expanded infrastructure. Any infrastructure upgrades that are necessary in order to deliver the new lots are costs that can be recovered. Upgrades to access roads or utility services are examples of infrastructure upgrades.

To 'put it all together' and establish prices for lots, it is important to gather key pieces of information. The SAO will have a key role in making sure the information is available and complete. This information includes:

- Post construction reports for subdivision construction, which may include roads, drainage improvements, land fill, water and sewer lines
- Invoices for installation of electrical distribution lines
- Legal survey contracts
- Engineering contracts
- Planning contracts
- Expenditures for off site facilities associated with the subdivision
- Financial reports on grants and contributions by the GNWT
- Expenditure reports associated with land acquisitions
- Land Development Debenture

Not all subdivisions will include all these costs. Most communities have trucked services, and some do their own

planning work. MACA may be of assistance in confirming associated costs, grants and contributions before lot prices are calculated.

Once all costs are known, the total can be applied to the total area of developed land, in order to provide a price per square metre. For example, if total costs for a land development project was $80,000 and the developed lots totaled 4,000 square metres, the cost per square metre would be $20. This in turn would mean that a 500 square metre lot would be priced at $10,000.

The above discussion has as its focus newly developed lots. SAO's should know that lot pricing for existing lots can be based on market value, replacement cost or assessed value, as outlined in the community government's land administration by-law.

Reality Check – the Challenge of Cost Recovery

The above example of a lot price - $10,000 – is not uncommon in smaller NWT communities. In larger centres, with piped services, lot prices are much higher, with Yellowknife prices being seven or eight times that amount.

If one contrasts these numbers with the level of lease payments that have been charged over the years in smaller NWT communities, the goal of 'cost recovery' becomes a real challenge.

After years of very low lease payments ($250 per year on average) developed lots in smaller communities in the NWT were a real bargain! The end of capital grants for land development and move to cost recovery and higher lease rates has been a challenge for councils and community government staff alike. And lease rates continue to rise.

Annual lease payments of $250, or even the new minimum requirements of $600, 'do not compute' with recovering lot costs of $10,000 and higher.

The NWT Housing Corporation has traditionally been the main 'consumer' of developed lots – to the extent that lots are used for public housing, the lot costs can be built into the Corporation's program costs. However, for home ownership programs, lot costs become a 'shared' responsibility between the Corporation and the home owner.

Community governments now face the challenge of cost recovery as they develop and dispose of land. After nominal lease rents for so long, many residents find it difficult to accept large cost increases.

In providing an overview of key elements of land administration, Section Four provides further discussion how council can address these difficult issues.

Section Summary:

Decisions on land disposal and land acquisition are made easier when the community government has a 'plan'. Whether the plan is a legal document adopted under the provisions of the Planning Act or a less formal land use plan, the community benefits. More formal approaches include the zoning of land and issuance of permits for all developments. Key in any process is community involvement.

Land development practices in the NWT have evolved from a government-funded program to cost-recovery with the responsibility squarely on the shoulders of the community government. Roles and responsibilities for community government in the land development process are important to understand, as are the options for financing and pricing land development projects.

Section Four
Land Management: Land Administration Practices

The previous sections have described the legislation, regulations, policies and rules that affect community government land management in the NWT. The emphasis has been on council and SAO responsibilities.

Section 4 addresses some of the 'nuts and bolts' of land management – the administration of land and the tools required for effective administration.

The most important asset a community government has is the community lands administrator/lands officer. Generally, the duties of the lands administrator fall into three areas:

- Advice and assistance to council;
- Advice and assistance to the public; and
- Coordination with, and assistance to, other levels of government.

This position would generally report to the SAO and often staff relies on the SAO for support and assistance in dealings with all three bodies. The SAO must be able to provide that support. The job is made easier for all when the 'fundamentals' are well-covered.

To be effective, the lands administrator should have a good knowledge of

- The land application process for community, commissioner's and federal land; and
- How to use and complete of necessary forms and documents used during land transactions.

To perform effectively, the land administrator must

- Be able to explain the requirements and options for land acquisition to the public; and
- Maintain appropriate local records in the form of maps, legal plans of survey, up to date inventory lists of all land

in the community and individual files for each property in the community.

MACA helps: through the School of Community Government, a comprehensive series of courses for Community Land Administrators is available, which addresses a full range of technical and informational needs for current land management practice.

This section focuses on some of the 'tools of the trade' in land administration and on a discussion of issues related to 'tenure', or the various rights over land, faced by community government councils, SAO's and land administrators in the NWT.

Land Inventories

Perhaps the most basic tool in the community lands chest is the maintenance of an up to date listing of all parcels of land in the community. A land inventory is a list of land parcels, listed in an order that relates to the legal description of each parcel. A complete, accurate and up-to-date land inventory is essential in order to answer basic questions about community land:

- Which parcels of land in the community are available;
- How many vacant or available land parcels are available; and
- The status of any parcel of land; and

Information on community land can be kept in two different lists, or registries.

Public Registry of Available Lots

A registry available to the public, at the 'front counter' of the community government office would list parcels that are available for application. The list would include information on the zoning, the lot price, the lot size and location.

Application Registry

An application registry can be used to track the steps of each individual land application. The details of all applications for

parcels of land in the community should be recorded in the registry.

Accurate, up to date information on land applications can be an extremely important resource for SAO's. Council members and members of the public can and do ask about particular land matters. The registry can provide the answers to questions like:

- 'why is the application taking so long'? and
- 'what needs to be done to complete the application process?'.

As well, the information can help track how long it is taking the community government to accept and approve land applications. This is an important indicator of good customer service.

Mapping

The creation of community maps is a specialized task. MACA arranges for mapping through contracts to produce the aerial photographs and control surveys that are used to prepare an accurate map of the community. The MACA maps are digital maps that can be used on computers as well as printed off on paper. Computer mapping allows for easy changes to information on the maps.

Different pieces of information are added or subtracted in layers. The maps can be easily adjusted to show specific information such as legal surveys, buildings or roads. The most common map used in a community, called a site map, shows all this information on one map.

MACA has developed ATLAS,
http://gis.maca.gov.nt.ca/Website/index.asp

The Town of Hay River has taken the mapping material available on the ATLAS system and upgraded and customized it to provide fast, accurate mapping to help explain land matters with council and the public.

These ‘base’ maps can be used to prepare other types of maps such as community plan maps, subdivision plans, zoning bylaw maps, lease sketches, building number plans and land tenure maps.

Legal Surveys and the Land Titles Office

Legal survey plans establish the limits or boundaries of individual parcels of land in the community. These plans can only be made by a licensed surveyor. Such a person, in the Northwest Territories, is known as a Canada Land Surveyor or C.L.S. It is costly to have a legal survey plan prepared, since the C.L.S. must spend time in the community marking the limits of each parcel of land.

When the plan is complete, it must be stored in a public place. The place where legal survey plans are stored is in the Land Titles Office or L.T.O. The Land Titles Office for the Northwest Territories is in Yellowknife. Copies of the plans are also available at the regional offices of Municipal and Community Affairs (MACA). Legal surveys plans can be purchased from the Land Titles Office.

In the Northwest Territories, land that has not been legally surveyed cannot be registered in the Land Titles Office. Many new houses, especially in smaller communities, are built on parcels of land not registered in the Land Titles Office. If the land is not ‘registered’, then it is impossible to register other interests, like mortgages for example, on individual parcels of land. Since an important purpose of the L.T.O. is to offer security in the registration of interests in land The Commissioner has therefore allowed an unofficial registry of mortgages to be created. This system is run by MACA and has been in use since the 1980’s.

See the Appendix for a brief description of the range of documents that may be registered in the Land Titles Office.

Land Application Process

Perhaps the real 'nuts and bolts' of the land management process is the land application process. The SAO must ensure that it is prepared to deal with applications for parcels of land from the public, government agencies and business interests.

Some examples of applications that come through the door:

- Lease of a lot to a private individual for a new business;
- Lease of a lot to a private individual for a house;
- Lease to the NWT Housing Corporation for housing; and an
- Easement to the NWTPC for a power line.

Again, the SAO should have a good idea of the steps involved in the process.
The key steps include:

- Assisting applicants to choose an available parcel which meets their needs while conforming with the community plan (and zoning by-law);
- Assisting clients in filling out the land application form and drafting a sketch plan;
- Confirming the application is complete and correct;
- Collecting the appropriate application fee;
- Providing an official receipt of a completed application;
- Recording the application;
- Consulting with other agencies;
- Preparing a recommendation to Council; and
- Advising the applicant of the Council decision

In some cases, MACA assists the community government with these tasks.

Tenure and Rights over Land

How are interests in land 'nailed down'? What does council need to know? What are the key concepts and issues that an SAO should be aware of?

While it is not the intention to discuss the details of property law, a general overview helps to set the scene for the various 'interests' in land about which both an SAO and council should have general knowledge.

Private ownership, or a fee simple estate has the greatest bundle of rights. Those rights include:

- right to sole possession;
- right to use;
- right to mortgage (security);
- right to sell;
- right to lease;
- right to income; and
- right to the absence of a term

It is the exceptions to these rights that are of interest for community government land management.

Government can limit these rights, through powers of

- Expropriation;
- Taxation (property taxes); and
- Land Use regulation (zoning)

Also, when land is transferred, the Crown can also hold back interests in land that would otherwise be held by the owner – whether the owner is to be the community government or in time, members of the public.

Three common reservations to the Crown within municipal boundaries are:

- The 100-foot strip along the seacoast and navigable rivers and lakes

Land within in this area is not available for sale or lease. Sometimes it is debatable where the 100 foot (or 30.48 metres) setback begins and ends.

- The beds of water bodies

  The reservation about the beds of bodies of water prevents community governments from leasing the land underneath the water, even if all land around those water bodies is Commissioner's, municipal or private.

- Mines and minerals (Subsurface rights)

  Transfer of land to community government is not going to include the rights and ownership over mines and minerals. This is not to be confused with granular materials such as quarries – see below.

The Lease

In the smaller communities of the NWT, parcels of land have generally not been sold, but rather leased. A lease

- is a contract for land;
- provides exclusive rights of occupation and use of land; and
- is for a stated period of time

but does not provide ownership rights over the land. The lessor remains the owner. The lessor is usually the community government or the Commissioner.

Standard Leases

Historically, rates of home ownership in smaller communities have been low. If someone doesn't own the house they live in (for example, an NWT Housing Corporation rental unit), then there is no particular need to own or build up any equity in the parcel of land underneath the unit. This, combined with the former grant programs for developing land, resulted in a standard lease being issued.

A standard lease is a lease where the lessee makes annual lease payments over the term of the lease but does not accumulate any equity, or value. With the above-noted land

development programs that accessed GNWT grants and did not practice cost recovery, the annual lease rates were very low, usually about $250 per year.

Equity Leases

However, things have changed. Land development is based on cost recovery now and more and more people own their own homes. In communities where residents are acquiring home ownership and sale of land is not practiced or permitted, it makes sense that home owners also acquire equity in the land. The manner in which this occurs is through the issuance of an equity lease.

In the past, all monies paid over the term of the lease were retained by the Commissioner (the GNWT). Historically, lessees paid but did not obtain any of the value, or 'equity' in the land.

Instead of paying an annual lease rental that builds up no value for the lessee, an **equity lease** is a lease for which the lessee's annual payments (excluding interest) build up towards the eventual full value of the lot. It is the equivalent of paying the lot price, and should the land ever be available for sale, the lot price will have already been paid.

The rules for payment of equity leases can vary. Some community governments require upfront payment of the full value of the lease, while others allow for payment over time, with interest. Council's land administration by-law provides the details.

Lease agreements must contain the conditions under which the land is rented. These conditions often describe what the lessee may and may not do with the land. To avoid inactivity or speculation, leases usually state that buildings or other improvements must be made within a certain period of time.

In Section Three, land use control and zoning was discussed. It was suggested that in some smaller communities, council is not interested in introducing a zoning regime. In the absence of

zoning, and the issuance of development permits under the zoning by-law, land leases can be used to control development. Some examples include setbacks from property lines, storage of fuel, and land use.

Easements

An easement is permission to use a portion of someone's land for a specific purpose. Pipelines and power lines are common examples of development that requires an easement. Easements can be registered in the Land Titles Office. Easements can be used as security for a loan and the rights are transferable. A right of way is another form of easement.

It is important that existing easements continue when land is transferred. In order to ensure that governments and utility companies can access lands to continue to provide services.

Land Use Permits

Some developments and use of land are not long-term in nature and do not require a lease to proceed. Land Use Permits (LUPs) are usually issued for activities and operations on lands that are temporary and/or short-term in nature. Examples are winter roads, geophysical seismic operations, use of access roads, and other related activities.

SAO's should be aware that usually a lot of information is required when someone applies for a land use permit, because the uses often can have a big impact on the land and there may be some big environmental issues. Activities such as:

- Earth moving;
- Road building;
- Clearing of land, establishing rights of way;
- Creation of camps for long term use; and
- The use of explosives

would normally require a land use permit.

LUP's are also handy for the construction phase of proposed permanent activities or facilities – for example a new community access road or new solid waste facility.

Indian and Northern Affairs Canada (INAC) has prepared guides that address all aspects of land use management with a particular emphasis on the impact of temporary activities. These manuals are:

- Environmental Operating Guidelines Access Roads and Trails
- A Guide to Territorial Land Use Regulations

Owing to the range of potential environmental issues, both MACA and community governments must work closely with the Land and Water Boards before issuing a permit. DIAND also can assist in the monitoring and inspection of work underway.

Quarries

A "quarry" is defined as:

> "any work or undertaking in which granular materials are removed from the ground or land by any method, and includes all ways, works, machinery, plant, buildings and premises belonging to or used in connection with the quarry." (GNWT *Commissioner's Land Act* and *Hamlets Act*)

Quarries are not mines. Granular material is not a mineral. Quarrying involves surface lands and the removal of granular materials. Unlike mines and mining, quarry operations do not deal with issues related to subsurface rights.

Community government legislation provides the opportunity to approve quarry activity, to charge fees and specifically allows a community government to operate a quarry should it wish to.

However, for many communities in the NWT, the undeveloped land outside the built up area of the community is still administered by the Commissioner. It is in these areas that proposals for quarrying are likely to take place. If the GNWT

administers the quarry operation, it does so under the Quarry Regulations of the *Commissioner's Land Act.*

The GNWT is, however, willing to sign agreements with community governments that would allow for community government administration of quarries on Commissioners land. The agreements allow a community government to charge and keep fees. The agreements also call for the community government to collect royalties on behalf of the GNWT and to pass the royalties on to the GNWT.

Quarry development and 'who gets access to quarries' can be a hot item for council. The prospect of increased development in the NWT suggests that development and administration of quarry sites will become an increasingly important issue. The SAO should be ready to advise council on key quarry issues.

Quarry Considerations

In considering any proposal for quarry development, the first step is to make sure that all the information is clear, including:

- The size and location of the area to be quarried;
- What material is being quarried;
- How much material;
- How long the quarrying operation is to last; and
- Proposals for cleaning the site up after use (restoration)

A good sketch map or plan of the area to be quarried, including the access and location of stock piles should also be available for council review.

The answers to these questions will help council decide what sort of tenure, or permission, to give to the operation.

Lease versus Permit

Both a lease and a permit have the effect of granting permission to a contractor to use lands for a quarry operation. However the benefits of a lease are:

- A quarry lease is useful when the site is to be used for many years by one operator.
- A lease provides security for the operator if he/she is planning on doing major development on the site.
- A lease provides exclusive possession of the site, and allows for stockpiling.
- If a lease is to be granted, council will need to pass a disposal by-law.

However a key consideration for council is that if there are limited sites in the community for quarries, the granting of a lease could give the operator a monopoly over the provision of local gravel, sand etc. This may not be in the community's best interest.

Quarry Permit

The alternative is a quarry permit. A permit allows for short term use of land – usually for one year. A permit does not give exclusive occupation to a contractor – in other words, more than one permit could be given for the same quarry site. A permit does not require council to pass a land disposal by-law, since no exclusive interests in land are being granted.

As well, quarry permits are usually used in situations where a quarry has already been developed and the use is small-scale and short-term.

Fees

Council can charge fees to offset the costs related to the operation of a quarry in a community. This can include a fee for

- road maintenance;
- quarry administration; and
- site restoration.

Quarry fees collected by the community government must be put in a special account.

If the community government is administering a quarry on behalf of the GNWT – on Commissioner's Land – it must also collect royalties and pass them on to the GNWT.

Site restoration

Depending on the situation, quarry site restoration may be an important consideration – or condition – of council's approval. Site restoration addresses how to 'fix-up' the site after the quarrying is finished. There can be safety, environmental and visual issues associated with a quarry no longer in use.

In fact it may be in the best interest of council to require the operator to submit a "Letter of Credit" – a type of bank loan that is given to the community government until the operator does everything he/she promises to do, in terms of fixing up the site after use as a quarry. If the operator does not fix things up, then the community government can cash the Letter of Credit in order to help pay for the restoration work required.

Section Summary:

Land Administration practices go to the heart of "the job to be done" – that is – what is required for effective administration of land. A well organized community lands office can be an effective tool in maintaining and indeed enhancing community satisfaction with land applications and other requests for information. The land administrator of a community needs to have the support of the SAO and needs to be able to explain the requirements and options for land acquisition to the public. He/she also needs to maintain good records, legal plans of survey and inventories of lands in the community, which includes maintaining individual files for each property in the community.

The effective land administrator, supported by the SAO, should have a good handle on his or her office and its organization, including matters such as:

- Land Inventories;
- Mapping in the community;
- Legal Surveys and the Land Titles Office;
- The Land Application Process in the Community;
- Tenure and Rights over Land;
- Leases; and
- Easements, Land Use Permits and Quarries.

This is by no means an exhaustive list, but this is a good base from which the SAO can observe and, where necessary, direct the operations of the community's land administration office.

Section 5
Land Claims/Self-Government and Community Lands

Introduction

In the Northwest Territories, the settlement of land claims and self government agreements can have a significant affect on the authorities and responsibilities of community government. This chapter provides a summary of how community land management is addressed in the different agreements.

The following aspects are discussed:

- Land Ownership by Community Governments
- Community Boundaries
- Land Ownership by Aboriginal Claimant Groups within Communities
- Community Land Use Planning
- Zoning
- Expropriation
- Property Assessment and Taxation

The experience of Nunavut with respect to community lands is also discussed as it provides another example of how land claims agreements have affected community land management in the North.

The last section will provide a summary of the agreement in principles (AIP) and interim measures agreements (IMA) that have been signed. However the land management implications for community government in these areas will not be known until final agreements are in place.

Overview of Final Land Claim and Self Government Agreements

In the Northwest Territories, there have been four major final agreements. These are the:

1984 - Inuvialuit Final Land Claims Agreement
1992 - Gwich'in Comprehensive Land Claim Agreement
1994 - Dene/Metis Sahtu Final Comprehensive Land Claim Agreement
2003 - Tlicho Final Agreement

In Nunavut, the Nunavut Land Claim Agreement was passed in 1993.

All of these agreements except the Inuvialuit agreement have separate chapters or articles dealing with community lands. As a community government official you should be familiar with the provisions dealing with your community.

The municipal/community lands chapters are found in:

- Chapter 22 - Gwich'in
- Chapter 23 - Sahtu
- Chapter 9 - Tlicho
- Chapter 11 - Nunavut

The creation and responsibilities of the Tlicho community self governments is described in chapter 8. The Tlicho agreement is the first self government agreement in the NWT.

The Inuvialuit Final Land Claim Agreement does not have a community lands chapter. As a result in the Inuvialuit communities many of the items discussed in the next pages are not specifically addressed.

The Salt River First Nation has negotiated a Treaty Land Entitlement. This sees the First Nation holding "reserve land" under the Indian Act within the Town of Fort Smith. The Town and Salt River First Nation have an agreement on the lands dealing with servicing, zoning and taxation.

Land Ownership by Community Governments

The Tlicho and Nunavut agreements have granted the surface rights of most lands within community boundaries to community governments. The Gwich'in, Sahtu and Inuvialuit agreements are silent on transferring ownership of land to community governments. However the lands claim agreements allows for the negotiation of self governments agreements. The Deline Self Government and the Beaufort-Delta Self Government AIP speaks to many aspects of regional and community self government. Both AIPs include the intent to transfer vacant Commissioners land to community governments.

In the case of the Tlicho, the four community governments were granted fee simple ownership of all lands within the boundaries except those lands that were exempted. The exemption lands are spelled out in the agreement. These include lands used by the Government of Canada and the Government of the Northwest Territories such as sites for schools, health centres, airports and the RCMP. Much of the land that was occupied by Housing Corporations units was transferred to community governments with the agreement that community government would accept 99 year and low rent leases between them and the Housing Corporation.

In the Tlicho communities fee simple ownership of lands has been ***vested*** in name of the community governments. To obtain a certificate of title (COT) for these lands after a legal survey is completed the community government sends a notice of title to the Registrar of the Land titles Office. Given the ownership has been established in the Tlicho Final Agreement the Registrar will issue a COT when requested by the community government.

The "ownership" of lands was transferred to community governments in Nunavut. All lands within the built up area were transferred to Nunavut community governments, except those lands on a government exemption list. This list is similar to the one in the Tlicho agreement except lands used by the Housing Corporation were not transferred to community governments. The agreement states all vacant Commissioner lands must be managed for ***the use and benefit*** of community governments. The Government of Nunavut acts as trustee for community government lands. These means the Commissioner must obtain approval from the community government on any land dispositions and all revenue collected on these lands belong to community governments The Commissioner is also required to transfer the

ownership of the lands when requested by the community government through the land titles system. In the Tlicho the lands were vested in the name of the community government and therefore there is no Commissioner involvement in the management of the lands.

The Tlicho agreement does not allow community governments to sell their fee simple estate in lands for at least 20 years. As a result all lands owned by Tlicho community governments can only be leased. This policy can be changed after 20 years if the community has voted in favour of lands to be sold. A 20 year lease only policy also applies in all of the Nunavut communities. In 1995 separate community referendums were held in each community and all communities voted in favour of continuing a lease only policy.

The Tlicho and Nunavut agreement require that in the future if there any surplus Crown land that these lands must be transferred to the community governments.

The GNWT Land Lease Only Policy no longer applies in the Inuvialuit, Gwich'in, Sahtu and Tlicho area. It applies in all other areas of the NWT since land claims/treaty entitlements have been not finalized.

Community Boundaries

Community boundaries are established for community governments to define the geographic area that community government can make laws. The Minister of Municipal and Community Affairs approves the establishment of community boundaries.

Community boundaries were reviewed as part of the land selection process under the Gwich'in, Sahtu, Tlicho and Nunavut agreements. One of the reasons for the review was the status [bundle of rights] of aboriginal lands is different depending on whether the lands are inside or outside a community government boundary. See the discussion in the next section.

Community boundaries were not reviewed or established in the Inuvialuit agreement. The Inuvialuit agreement established boundaries called "community sites". These sites are small blocks of land in Tuktoyaktuk, Paulatuk, Holman and Sachs Harbour which are smaller than the hamlet boundaries. At the time of the agreement the community site included the built up area of the community. The Inuvialuit selected all of the land as 7.1

a) immediately outside these community sites. The Crown lands within the community site or “the hole in the donut” were not affected by the agreement. The result is some of the community infrastructure such as water supply facilities is on lands owned by the Inuvialuit. As well in some communities, today housing is being built outside the “community site”

Generally speaking the community boundaries for Nunavut communities cover a larger area that those established in the Northwest Territories.

In the Gwich’in, Sahtu, Tlicho and Nunavut agreements changes to community boundaries will require the consultation and approval of these boundaries by the claimant groups. This is in addition to the standard GNWT approval to change the boundaries The Gwich’in, Sahtu and Nunavut agreements include the criteria to determine the location of a community boundary. There is a separate section of chapter 8 of the Tlicho agreement dealing with changes to municipal boundaries. The Tlicho government will have to approve any changes.

Land Ownership by Aboriginal Groups within Communities

In all five of the land claim/self government agreements, the vast majority of the lands selected by aboriginal groups have been outside of community boundaries. In some of the agreements some lands have been selected by the aboriginal claimant organization. This has happened in the Inuvialuit, Gwich’in and Sahtu area.

In the Inuvialuit communities much of the land outside of the built up areas but within the community boundary is owned by the Inuvialuit. This is because the way “community sites” were defined in their agreement. See the discussion under community boundaries for more information. As a result much of the land within community boundaries in the four coastal Inuvialuit communities is owned as 7.1 a) lands by the Inuvialuit.

In the Gwich’in and Sahtu agreement, the aboriginal land corporations have selected lands within community boundaries. These are called “municipal lands” in their Agreement. Lands selected outside community boundaries are called “settlement “lands. In the Gwich’in agreement the Gwich’in were given monies to purchase existing private lands on the open market. Much of the money was spent within the Town of Inuvik.

In the Tlicho agreement the regional Tlicho government did not select any lands within the community boundaries, as all of the lands were transferred to the community governments set up under the agreement.
In Nunavut in a few communities the regional Inuit land corporations obtained fee simple title for a few parcels of land within the community boundary.

In all cases no subsurface rights to land within community boundaries have been transferred to community governments or aboriginal groups. Any transfers include only the surface rights.

In the Sahtu and Gwich'in agreement a difference is made between "settlement" lands (lands outside community boundaries) and "municipal" lands (lands within community boundaries.). Municipal lands owned by the aboriginal corporations can be sold to anyone. Settlement lands can never be sold but only leased. In the Inuvialuit agreement there is no distinction between lands within or outside a community boundary. The Inuvialuit may sell land to only an Inuvialuit business or individual. The Inuvialuit as a matter of policy has chosen not to do this. In Nunavut lands owned by aboriginal corporations within community boundaries can be sold.

Community land use planning

To date, in all areas where the final agreements have been signed, the community governments continue to be responsible for land use planning within their boundaries. The authority comes from the GNWT Planning Act. The Planning Act is being reviewed and at the moment plans adopted by a community government requires approval of the Minister of Municipal and Community Affairs.

All of the agreements, except the Inuvialuit agreement, have established authority for a co-management group to do regional land use planning. These groups are responsible for land use planning outside of community boundaries. These agreements may require consultation between the regional land use planning body and the community government when either group is preparing or amending a plan. As a result community government may need to formally involve (consult) the regional land use planning organization doing community land use planning. For example the Gwich'in Land Claim Agreement says local or territorial governments are responsible for land use planning within community boundaries and the government shall

consult with relevant Gwich'in community in the development of a plan [section 24.2.6]. This would include the Gwich'in Planning Board.

Zoning and the laws of general application

As is the case with community land use planning the authority for zoning has not changed as a result of the current final agreements. The question arises what affect community plans and zoning have on lands owned by aboriginal groups within community boundaries.

The laws of general application are a term that says a government can make laws affecting individuals, corporations or private landowners that are normally associated with good governance. For example community by laws to protect property or persons such as traffic bylaws, fire protection bylaws and zoning bylaws. Unless there is something expressly stated otherwise it is assumed that governments can pass these bylaws and have them apply to all private lands even though these lands are owned by an aboriginal group. To be perfectly clear about the affect of these laws on lands selected by aboriginal groups the chapter on community lands will speak to this issue. Sometimes the term "laws of general application" are used to remove any doubt. For example the Inuvialuit agreement says

APPLICATION OF LAWS TO INUVIALUIT LANDS

7.(97) Except as otherwise provided in this Agreement, Inuvialuit lands shall be subject to the laws of general application applicable to private lands from time to time in force, including, without restricting the generality of the foregoing, territorial laws and ordinances that apply or are made to apply generally to private lands.

Section 23.1.1 of the Sahtu agreement says "Sahtu municipal lands will have the legal characteristics similar to other privately owned lands within municipalities".

A landowner can choose not to develop their land. However if they chose to develop their lands they must follow any zoning bylaw adopted by the community government. All the current land claim agreements do not reduce the authority of community governments to make bylaws that apply to private lands including lands owned by aboriginal corporations.

Expropriation

Expropriation allows a government to force a private individual to sell land to the government even if they do not want to. This happens rarely and only after negotiations regarding the price of the land. The process requires a court approval process where the government must prove the lands are necessary and the landowner is given fair compensation. Examples might be government needs land to widen a road or build a new road and the landowner(s) refuses to sell the land. In some cases the federal or territorial governments may wish to acquire community government lands. Senior levels of Government normally have the powers of expropriation. The following is a clause from the Tlicho agreement

> *As a general rule, recognizing that the integrity of Tlîchô Community lands is maintained, such lands shall not be expropriated, and if done, the minimum interest shall be taken. (9.3.1);*

Section 23.3 of the Sahtu agreement has a section dealing with the acquisition of Sahtu municipal lands for public purposes. In the Sahtu and Gwich'in agreement lands owned by aboriginal corporations can not be expropriated by community governments. There is an arbitration process if the parties can not agree on the terms of the transfer.

The Inuvialuit agreement outlines the process for community governments to acquire municipal land for a "nominal" rent in sections 7 (61) to (63).

All agreements will discuss expropriations and usually have a separate chapter on this item. Normally the agreements are written to make it difficult for the Government of Canada to expropriate aboriginal lands.

Property Assessment and Taxation

The ability of community governments [and territorial government] to raise property taxes on aboriginal lands within their community boundaries is usually negotiated as part of land claims/self government agreements. In general most agreements allow community governments to raise property taxes on aboriginal land if the

- Lands have buildings or improvements on them, or
- Lands are vacant and undeveloped within a subdivision.

There is usually a provision to exempt property taxes on vacant, remote lands that are outside the built up area of a community. For example, the Sahtu agreements says

"serviced lands" are:

(a) lands within a planned and approved subdivision and which are available for development; or

(b) lands which are connected to or receiving local government services;

"improvements" do not include improvements which are used primarily for wildlife harvesting or other traditional purposes, including trapping cabins, camps and tent frames; and

"real property taxation" means any tax, levy or charge, or other assessment against lands for local government services or improvements.

Developed Sahtu municipal lands are subject to real property taxation in accordance with legislation. Other Sahtu municipal lands are not subject to any real property taxation by the federal, territorial or local government.

In the Inuvialuit agreement property tax can only be charged on buildings and not land s 47(7).

The Gwich'in and Sahtu agreements granted a 15 year "tax holiday" to the aboriginal land owners on municipal land. These groups do not have to pay property taxes on their lands within community boundaries for 15 years. The Government of Canada has agreed to pay the property taxes on these lands during the 15 year transition period.

In most agreements where lands are selected by aboriginal groups within communities, there usually is a provision dealing with property tax sales. The common authority for community government is to be able to acquire ownership of private lands, through a court approval process, if the private land owner is unable or unwilling over a period of years to pay their property taxes. In the case of the Gwich'in and Sahtu agreements, "municipal" lands may be subject to property taxes. If a lessee on aboriginal land does not pay the property taxes, these taxes can be recovered from the aboriginal corporation by the community governments [or territorial government]. However the community government can not obtain ownership of these lands through a tax sale process.

Overview of Outstanding Land Claims/Self Government Agreements

There are a number of negotiations currently underway. Some of the negotiations have lead to agreements in principles or interim measures. A summary is provided below:

Self Government Agreements in Principles (AIP)

Deline Self Government in Principle, 2003
Beaufort- Delta Self Government Agreement in Principle, 2003

Interim Measures Agreements (IMA)

- Deh Cho Interim Measures Agreement, 2001
- Northwest Territory Metis Nation (formerly the South Slave Metis) Interim Measures Agreement, 2002
- Akaitcho Interim Measures Agreement, 2001

The Deh Cho IMA says the GNWT will not sell or issue new leases on undeveloped Commissioner land without the support of the affected Deh Cho First Nation(s). A required consultation process on land applications with timeframes is set out in the agreement. See sections 31 to 35 of the agreement for more details. There is also a separate section dealing with lands within the Town of Hay River. [See sections 36 to 38] The Agreement also applies to federal crown lands within communities such as Trout Lake, Nahanni Butte, Jean Marie River and Wrigley. The Government of Canada can not issue leases without prior consultation of the affected First Nation(s).

The Akaitcho and Metis Nation IMA have a consultation process on land applications. This agreement requires the Minister of MACA and officials to consider comments from the defined aboriginal groups before making a decision. The Government of Canada is also required to consult on dispositions of federal Crown land. In the case of the South Slave Interim Measures Agreement the Crown (either DIAND or MACA) will give reasonable and fair consideration to any responses from the South Slave Metis Council when a decision is made.

In most IMAs the Crown is required to provide in writing their decision to the affected aboriginal organization.

Summary

The settlement of lands claim and self governments' agreement has a profound effect on community governments. The Tlicho agreements led to the establishment of four community governments. The Tlicho and Nunavut agreements have transferred land ownership to community governments. The self government provisions in the Inuvialuit, Gwich'in and Sahtu have yet to be exercised and therefore its impact is yet to be known. Indications are that land ownership may be transferred to community governments. Care is normally taken in the negotiations and signing of agreement so that the authorities and responsibilities of community government are protected.

To effectively manage lands in your community government you need to understand those agreements that apply to your community. Each agreement is different and you need to understand the details.