



2013 FDA Process Review of the Bingham Crossing Development Application

Executive Summary

The Foundation for Democratic Advancement (FDA) measured severe deficiencies in the Alberta municipal processes with regard to the Bingham Crossing development application. The FDA measured both individual and cumulative impacts of the Alberta municipal processes on the democratic welfare of Rocky View County residents and users of the area. Although the individual effects were in some cases insignificant, the accumulation of these impacts raises questions about the consistency of the Alberta municipal processes with a free and democratic society. The FDA determined that overall; the municipal processes give a greater voice to special interests over the voice of the citizenry. In addition, the FDA identified municipal processes that unreasonably limit the democratic rights of citizens and do not include adequate offsetting mechanisms; and are therefore in conflict with the Canadian Charter of Rights and Freedoms. The FDA concludes that the Bingham Crossing development application requires an inspection by the Alberta Municipal Affairs Minister and a provincial government-initiated referendum to determine whether this controversial development application should pass or fail. The purposes of the referendum are to compensate for the deficiencies in the Alberta municipal processes and accurately measure the voice of the Rocky View electorate concerning the Bingham Crossing development. In addition, the FDA recommends amendments of the Alberta Municipal Government Act and Local Authorities Election Act. The measurements and findings of this report have implications for all Albertan municipalities. Finally, the report's overall purpose is to ensure that Albertans become more knowledgeable about the outcomes of Alberta government processes, and can then make decisions that are more informed.

This report is in no way an evaluation of the merits and deficiencies of the proposed Bingham Crossing development.

The FDA recommends that the public get involved with the government legislative process and implementation if they want to protect and advance their democratic voice, and create a society of their choosing.



Prepared By

Mr. Stephen Garvey, Executive Director Foundation for Democratic Advancement, Bachelor of Arts in Political Science, University of British Columbia and Master of Philosophy in Environment and Development, University of Cambridge.

Peer Review By

Ms. Sarah Burton, Bachelor Degrees in Commerce and Law, Dalhousie University and Masters of Public Law and Human Rights, London School of Economics and Political Science;
Mr. Steve Finley, Bachelor of Science in Electrical Engineering, Purdue University, Master of Business Administration, Indiana University, and Juris Doctor, Valparaiso University;
Mr. Nabil T. Mansour, P. Eng., Professional Engineer;
Ms. Lindsay Tetlock, Master of Arts in Historical Studies, University of Calgary;
Dr. T. S. Trudgian, Australian Research Council, Research Fellow, Mathematical Institute, The Australian National University.

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About the Foundation for Democratic Advancement

The Foundation for Democratic Advancement (FDA) is an international independent, non-partisan democracy organization. The FDA's mission is

to measure, study, and communicate the impact of government processes on a free and democratic society.

Overall, the FDA works

- 1. to ensure that people become more knowledgeable about the outcomes of government processes and can then make decisions that are more informed;**
- 2. to get people involved in monitoring government processes at all levels of government and in providing sound, practical, and effective suggestions. (For more information on the FDA visit: www.democracychange.org)**

To ensure its objectivity and independence, the FDA does not conduct privately paid research. However, if you or your organization has an important research idea or are aware of an important issue on government processes, the FDA is available to listen to your idea or issue and possibly help raise public awareness by initiating and leading change through report research and analysis. Please contact the FDA at (403) 669-8132 or email us at info@democracychange.org for more information.

An online version of this report can be found at: www.democracychange.org
For further information and/or comments on this report please contact Mr. Stephen Garvey at stephen.garvey@democracychange.org

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Introduction

This report employs non-partisan, independent, and objective research and analysis of the processes surrounding the proposed Bingham Crossing development of a land area in Springbank, Rocky View County, Alberta, Canada. The FDA is not affiliated or associated with any of the Rocky View Council members, the Bingham Crossing developers, Rocky View citizen groups, members of the Alberta Municipal Affairs department or anyone else in the Alberta Provincial government. The Foundation for Democratic Advancement became aware of the Bingham Crossing development issue through a resident of Springbank, and determined that this issue was within the FDA's mission:

To measure, study, and communicate the impact of government processes on a free and democratic society.

The FDA recognizes the significance of local, national, and international government processes on the democratic welfare of individuals, and the importance of measuring and studying government processes in the FDA's locality of Alberta, Canada.

Firstly, the purpose of this report is to research the processes that resulted in the Rocky View Council's 5-4 vote in favour of the Bingham Crossing development following the Rocky View Council public hearing from October 30 to November 1, 2012. Secondly, the purpose is to measure the impact of the processes both individually and collectively on the welfare of individuals in the Rocky View County. This report is in no way an evaluation of the merits and deficiencies of the proposed Bingham Crossing development.

This report provides an objective understanding of the government processes surrounding the Bingham Crossing development and their impacts, and the overall effect of the processes on Alberta planning and development and municipal democracy in Alberta. In addition, as part of its educational knowledge, the FDA presents recommendations for reform of Alberta municipal democracy. Albertans may want to use the measurements, findings and recommendations from this report to make decisions that are more informed. Non-Albertans may want to use the findings and recommendations to make decisions that are more informed relating to democratic processes in their own locality. The report discusses development issues facing Albertans, Canadians, and foreigners, including development-driven growth, pro-development public officials, special interest-based municipal processes, growth and its social and environmental impacts, and the powerlessness of public input.

The FDA is a registered non-profit corporation, and therefore it cannot issue tax-deductible receipts. In addition, the FDA is the sole funder of this report. As a policy to maintain its independence and objectivity, the FDA does not conduct privately funded research projects. **The FDA relies on donations.** If you value this report, please consider donating to the Foundation for Democratic Advancement to help cover the costs of producing this report and communicating its content to the stakeholders, and to continue its work in Alberta, Canada, and abroad.

“Democracy is not a spectator sport.”
- Marian Edelman

Chapter 1: Description of Bingham Crossing Development

Legal land area of development: NW ¼ 34-24-3-W5M and NE ¼ 34-24-3-W5M; located between the TransCanada Highway and Township Road 250 at the intersection with RR 33, directly east of the Edge School in Springbank, Alberta. Springbank is in Division 2 of Rocky View County, and is located about a five minutes drive west of Calgary's city limits.

Development: Bingham Crossing

As a general description, the planned development involves the construction of a large retail area including a senior and public facility. The full build out of the development covers approximately 156 acres (Development Services [DS], 2012, p. 22). Phase 1 of the development is comprised of three cells:

1. Cell A includes a senior facility, potentially local retail stores, and public administration buildings including schools.
2. Cell B includes potentially among other things retail stores, public parks, and a public administration building including schools.
3. Cell C includes primarily regional and local retail.

The total area of Phase 1 is 79.44 acres (DS, 2012, p. 14-17). The FDA estimates that based on the description of the cells, the total retail space of Phase 1 would be approximately 57.74 acres (all of Cell C, 3 acres of Cell B, and 5 acres of Cell A) or 72.68 percent of Phase 1.

Principle Developers

Bingham Crossing Properties Inc. (Ron Renaud, Paul Douglas) (DS, 2012, p. 1).

The development team of Bingham Crossing is Rencor Development (real estate development company specializing in retail properties) and United Communities (development company) (DS, 2012, p. 1). The applicant is Urban Systems (Gary Youde) (DS, 2012, p 1).

Mr. Ron Renaud is the President & CEO of Rencor Developments Inc (About Rancor, 2013).

Mr. Donald J. Douglas is the President & CEO of United Communities (Executive Team, 2013).

Mr. Paul Douglas is a development manager for United Communities (Douglas, 2013).

Mr. Gary Youde is an urban planner for Urban Systems (Youde, 2013a, 2013b).

Bingham Crossing Development (from the perspective of the developers)

“Bingham Crossing will be a master-planned retail, lifestyle and rural town centre in the community of Springbank. Featuring distinct proposed neighborhoods, each with their own amenities, the development will be pedestrian friendly, walkable and environmentally friendly with pathways, parks and green spaces and appropriately scaled to meet the needs of the community” (Development Team, 2013).

Bingham Crossing Development (example of the views of citizen opposition)

A position of the citizen opposition is that the project is an unwanted urban development with large box stores and a large retail footprint that is counter to the rural/agricultural make-up of Springbank, Rocky View County (Formulated by the FDA after reading numerous public comments on the Bingham Crossing development).

For example

Two of the most contentious issues for citizen opposition pertain to Bylaw C-7186-2012 (DC-148) relating to the Bingham Crossing development application, in Cell C - Highway Edge Zone. The Bylaw refers to

1. Grocery store, regional;
2. Retail store, regional.

These retail spaces may be very large and generate excessive traffic movement throughout most of day, especially before major holidays. In hour 1 of the October 30, 2012 public hearing, the applicant did not disclose precise measurements of the retail stores' maximum size. The applicant says this figure will be disclosed in the Master Site Development Plan (MSDP). In addition, in hour 3 of the October 30, 2012 public hearing, it was stated by the applicant that the grocery stores can be as large as 50,000 ft². In hour 1 of the public hearing, the applicant stated that the total commercial space of Bingham Crossing is 270,000 ft² and the senior's facility is 90,000 ft² (Oct. 30/Nov. 1, 2012 Bingham Crossing Public Hearing [BCPH], 2012).

Chapter 2: Timeline of Key Events

2013 Spring: Springbank Context Study Report.

2013: Submission of Master Site Development Plan; submission date unknown.

2013 January 17: The five council members who voted in favour of the Bingham Crossing development are served notice of a Freedom of Information request for their email correspondence since January 1, 2009 and December 9, 2012 with Rencor Developments Inc., and its principles and consulting group.

2013 January 15: Bingham Crossing Open House in Springbank. (According to Mr. Ron Renaud, President & CEO of Rencor Developments, this was the twelfth Bingham Crossing open house (BCPH, 2012).

2012 November 27: Start of the final 2012 Rocky View workshops on the County Plan direction and policy. The workshops ended on December 12, 2012 and included seven different locations throughout the County (Massot, 2012, November 19).

2012 October 30 to November 1: Public hearing on redesignation of land for Bingham Crossing development. Rocky View Council vote 5 to 4 in favour of the Bingham Crossing development.

2012 October: Two Springbank residents filed an application for judicial review of the September 11/12, 2012 Rocky View public hearing on Bingham Crossing development.

2012 October 16: Norlaine Thomas of the Springbank Community Planning Association (SPCA) presents survey of public opinion of the Bingham Crossing development to the Rocky View Council.

2012 September 11: Rocky View Council resolved to approve the proposed amendment to the North Springbank Area Structure Plan and the Bingham Crossing Conceptual Scheme (DS, 2012, p. 2).

2012 September 11/12: Public Hearing on the Bingham Crossing development (Bingham Crossing, a less in democracy, 2012, November 5).

2012 September 4: Rocky View Council resolved to undertake Context Study for the North Springbank Area Structure Plan and Central Springbank Area Structure Plan (DS, 2012, p. 2).

2012 June 28: Council held workshop to consider strategic projects for commencement in 2012. It identified the Bingham Crossing land area for review (DS, 2012, p. 2).

2012 March 1: Bingham Crossing developer, Mr. Ron Renaud submitted applications for (DS, 2012, p. 2):

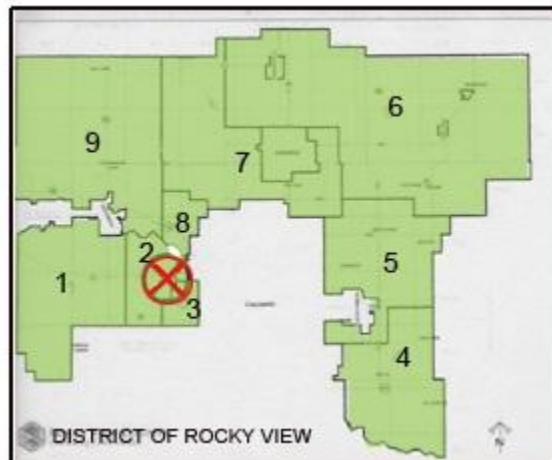
1. An amendment of the North Springbank Area Structure Plan (May, 4, 1999) to change Future Use Concept Map to include the NW ¼ 34-24-3-W5M section of the Bingham land area within Commercial designation;

2. A conceptual scheme for the NE & NW ¼ 34-24-3-W5M sections of the Bingham Crossing land area;
3. A redesignation of a 73.36 ac portion of the NW ¼ 34-24-3-W5M section of the Bingham Crossing area from Ranch and Farm District to Direct Control (DC) District with Ranch and Farm remainder of 76.36 ac.

2010 May 4: Rocky View Council considered an amendment to the current North Springbank Area Structure Plan dated May 4, 1999 and rescinded first reading of a development proposal to re-designate the N ½ of the Bingham Crossing area. Council considered also a proposed Conceptual Scheme (DS, 2012, p. 2).

2006 June 27: Rocky View Council gave direction to the staff for the preparation of a Conceptual Scheme and site specific amendment to the North Springbank Structure Plan on N ½ section of the Bingham Crossing land area as a prerequisite for redesignation and subdivision of the Springbank land area (DS, 2012, p. 2).

2006 May 5: The Rocky View Council received an application to re-designate the Bingham Crossing land area to encourage a regional commercial development was submitted (DS, 2012, p. 2).



Map 1 shows the Rocky View County divided into its nine electoral divisions, with the Bingham Crossing development land area designated by the “x” mark in Division 2 (DS, 2012, p. 23)



Map 2 shows the land area of the Bingham Crossing development land area as identified with the arrow. The land area is divided into sections A & B:
Section A: NW ¼ 34-24-3-W5M and Section B: NE ¼ 34-24-3-W5M. The circled “1” refers to Highway 1 (Trans-Canada Highway) (DS, 2012, p. 23).

Chapter 3: Public Opinion on the Proposed Bingham Crossing Development

Main Research Findings

1. From October 30 and November 1, 2012 a public hearing on the Bingham Crossing development occurred with the following indicators of public participation and interest:
 - a. There were 410 letters in opposition (as cited in Bingham Crossing, a less in democracy, 2012, November 5, Comments) and over 120 letters in support.
 - b. There were three times more speakers in opposition to the development than in support (Massot, 2012, November 5; Magnuson, 2012, November 2).
 - c. The public hearing lasted two days and a total of 18 hours (Massot, 2012, November 5; Magnuson, 2012, November 2).
2. In regards to the redesignation of the land for Bingham Crossing development, the Rocky View Development Services states that it received 61 letter submissions in support of the redesignation and 4 submissions opposing it (DS, 2012, p. 1).
3. Surveys of Rocky View Public Opinion
 - a. Bingham Crossing Properties paid for a Rocky View County wide survey of 315 people (including 97 people from Springbank (Division 2)) (Innovative Research Group [IRG], 2012, p. 2).

Some of the survey results

- i. In Division 2, the initial survey found that 28 percent of respondents strongly opposed the Bingham Crossing development, and 16 percent strongly supported the development (IRG, 2012, p. 16).
- ii. In the Final survey of Division 2, 28 percent of respondents strongly opposed the Bingham Crossing development, and 28 percent strongly supported the development (IRG, 2012, p. 25).
- iii. In the 315-person survey, 84 percent of the respondents were 10 kilometers or more from the proposed Bingham Crossing development site. No person was surveyed within 1 kilometer of the proposed development site (IRG, 2012, p. 7-8).

The margin of error for the 315-person survey was 5.5%, with larger margins of errors in each sub-grouping of the sample. The Final Draft of the survey report did not disclose the margins of error for each sub-grouping (IRG, 2012, p. 3).

Survey limitations

The margin error of 5.5 percent only accounts for random sampling errors, not systematic errors. Some of the systematic errors and/or potential for them are as follows:

- i. The Bingham Crossing Properties paid for and determined the scope of the survey, thus adding subjective elements to the survey. For example, Bingham Crossing Properties decided that the survey covers all of the Rocky View County, and on the percentages of those persons surveyed from the nine electoral divisions. According to the representative from Innovative Research, the choice as to the scope of the survey was the developers (BCPH, 2012, hr 1-2).
- ii. Some types of survey questions may influence survey results. For example

“Based on your initial feelings and what we’ve discussed today, do you strongly support, somewhat support, somewhat oppose, or strongly oppose the Bingham Crossing retail village at Highway 1 and Township Road 250?” (IRG, 2012, p. 25).

This question is asked after the respondents answered detailed questions about project elements. In addition, the wording of the question may influence survey results by suggesting that the Bingham development already exists at Highway 1 and Township Road 250, instead of, for example, stating that the development ‘will be located at...’ or ‘planned to be located at...’.

- iii. The methodology of the Final Draft report does not indicate the time of day when, between October 10 and October 14, the survey was conducted. The time of day is an important indicator of who was chosen or available for survey.
- iv. The survey is restricted to people with landlines, and thereby ensures that people with cell phone service only are not included (IRG, 2012, p. 3). This exclusion may skew the correspondence of the survey results to what all residents of Rocky View County think about the Bingham Crossing development.
- v. The cross-section in the survey only covers age, gender, region, income, work-status, education, and children at home (IRG, 2012, p. 6). There is no survey coverage of professional/work background, ethnicity, or length of residency in the corresponding Rocky View Divisions. This lack of cross-section coverage may affect negatively the correspondence of the survey results to what all residents of Rocky View County think about the Bingham Crossing development.
- i. The survey did not consult persons living within 1 km of the development. It is possible and perhaps probable that many of these people would be opposed

to the development. This lack of inclusion of persons living in close proximity to the development may influence survey results.

- b. The Springbank Community Association surveyed 428 Springbank landowners.

Some of the survey results

- i. 365 landowners (or 85.3 percent) of those surveyed state they are opposed to the Bingham Crossing development.
- ii. Of the 257 comments by those persons surveyed, 237 (or 92.2 percent) of the comments are opposed to the Bingham Crossing development (Thomas, 2012, p. 1).
- iii. In the FDA's opinion, the survey comments are a reliable and very good information source on views for and against the Bingham Crossing development.

The margin of error of the Springbank survey is lower than the Rencor paid survey because of the former's larger sample size to the total population, and the Springbank survey's larger number of persons surveyed. The margin of error only accounts for sampling errors, and not systematic errors in the survey. (Springbank survey's margin of error of 4.23 percent to Innovative Research survey's margin of error of 5.5 percent, not including higher margin of errors in the Divisions (Thomas, 2012, p. 1)).

Survey limitations

- i. The Springbank Community Association, an informal association of concerned Springbank citizens who function on a volunteer basis, funded the survey. This organization may influence survey results.
- ii. The survey lacks a random process for determining those persons surveyed, which in turn may influence survey results. However, the Springbank Community Association partly offset the lack of random selection by having ads in the local newspaper (Rocky View Weekly) for three weeks about participation in the survey, and attaching survey information posters on mailboxes throughout Springbank.
- iii. The survey did not consult renters or spouses, only landowners. It is possible and perhaps probable that renters and students living in Springbank may have a different view of the development than landowners. This exclusion may influence survey results.
- iv. The methodology of the Final Draft report does not indicate the time of day when, between October 10 and October 14, the survey was conducted. The time of day is an important indicator of who was chosen or available for survey.

c. General Limitations of Surveys

There is the possibility that the two surveyors may have corrupted the actual survey results to obtain favourable outcomes by, for example, dismissing adverse results. The FDA is not aware of any public accountability mechanisms to ensure the authenticity of the actual data collected in both surveys. The FDA has no evidence that corruption of the surveys' data occurred.

4. From September 11 to September 12, 2012 a public hearing on the Bingham Crossing development occurred with the following indicators of public participation and interest (Junkin, 2012, September 18):
 - a. The public hearing lasted 13 hours.
 - b. Applicant Gary Youde of Urban Systems stated, "We have had over 90 letters of support including every adjacent landowner."
 - c. Council received 95 letters of support of the project with 36 opposed to the project including an email containing 177 signatures.
5. In 2012 Rocky View County held seven workshops on the future and direction of the County with the following indicators of public opinion (Massot, 2012, November 19) :
 - a. 204 persons participated in workshops. 194 participated in the online survey.
 - b. 96 residents agreed with the statement, "The rural nature and importance of county residential, hamlet, and agricultural communities should be maintained."
26 residents disagreed with the statement.
25 residents remained neutral.
 - c. 92 percent of those who attended the workshop held at the Hamlet of Langdon, supported maintaining the rural nature of the County.
 - d. 78 percent of those person who attended the workshop held at the GoldenRod Community Hall in Airdrie, supported maintaining the rural nature of the County.
 - e. 78 percent of those person who attended the workshop held in Beiseker, supported maintaining the rural nature of the County.
 - f. 72 percent of those person who attended the workshop held in Springbank, supported maintaining the rural nature of the County.
 - g. 55 percent of those person who attended the workshop held in Cochrane, supported maintaining the rural nature of the County.

6. In 2010 the Reeve Task Force on Growth and Planning received the following indicators of public opinion (Massot, 2012, November 19):
 - a. 59 percent of written submissions to the Task Force rejected larger urban-type development.
 - b. 74 percent of written submissions wanted to limit larger urban-type development.
 - c. 79 percent of written submissions supported preservation of agricultural land.

Analysis

The two surveys of public opinion on the Bingham Crossing development are inconclusive because of their limitations and incongruence between them. One survey states that from Division 2, 28 percent strongly oppose the development (and 40 percent strongly and somewhat oppose the development) while the other survey states that 85.3 percent of people from Division 2 oppose the development. Due to the limitations of both surveys and corresponding questions about the accuracy of the results, the FDA cannot say objectively and conclusively which survey is more accurate. Public Works Canada provides, for example, a standard for the conduct of a telephone survey (The Standards for the Conduct of Government Canada Public Opinion Research - Telephone Survey, 2013).

The 18-hour duration of the Bingham Crossing public hearing on October 30-November 1, 2012 and high level of public participation for and against the development are evidence of a controversial project with strong support both for and against development. That there were almost 4 times more letters submitted to the Rocky View Council in opposition to the development and 3 times more citizens against the development at the public hearing demonstrate significant opposition to the project.

Letters to the Rocky View Development Services regarding redesignation of the Bingham Crossing land area were significantly more in favour of the redesignation than not (61 letters to 4 letters).

The 13-hour duration of the Bingham Crossing public hearing on September 11-12, 2012 and the public participation for and against the development are evidence of a controversial project with strong support both for and against the development. Although there were 95 letters of support for the development, there were 36 letters opposed to the development including an email with 177 signatures.

Some of the results from the Rocky View workshops on the future and direction of the County confirm public support for the rural nature of the County, and conversely, opposition to the Bingham Crossing development. The workshops in Springbank, Beiseker, Golden Rod Community Hall, Hamlet of Langdon, and Cochrane show strong support for maintaining the rural nature of the County.

The public feedback to the Reeve Task Force on Growth and Planning demonstrate support for the rural nature of the County and opposition to urban-type developments.

The FDA believes that due to the limitations of the two surveys and other evidence of public opinion, an accurate measure of support or opposition to the Bingham Crossing development in Rocky View County is inconclusive. However, there is significant evidence as noted above and as shown in Table 1 below that two times or more residents from Divisions 1, 2, 3, 8 are opposed to the Bingham Crossing development than support the development.

Table 1 FDA’s Summary of Public Opinion of the Bingham Crossing Development

Event or information	Evidence of Public Opinion	Reliability	Findings	Limitations
October 30/ November 1, 2012 Public Hearing	410 letters in opposition; 120 in support; three times more speakers in opposition; 18 hr hearing	Yes	About three times more people in opposition to the Bingham Crossing development	Public turnout at the hearing may not reflect overall the public’s interest in the development issue.
2012 Redesignation report on Bingham Crossing	61 letters in support; 4 letters in opposition including email 177 signatures	Yes	About three times more people in opposition to the Bingham Crossing development	Public input on the report may not reflect overall the public views of Rocky View County
2012 Survey by Innovative Research Group	Final survey of Division 2, 28% strongly support and 28% strongly oppose the development	No	Survey results inconsistent with other evidence of public opinion of the development	Survey has systematic errors and the potential for them which render the survey results unreliable.
2012 Survey by Springbank Community Association	Final survey, 85.3 percent opposed, and 14.7 percent in favour of the development	No	Survey results consistent with other evidence of public opinion of the development	Survey has systematic errors and the potential for them which render the survey results unreliable.
September 11/12, 2012 Public Hearing	95 letters in support of development; 36 letters opposed to development including email containing 177 signatures; hearing lasted 13 hours	Yes	More than double of the respondents oppose the development	Public turnout at the hearing may not reflect overall the public’s interest in the development issue.
Rocky County 2012 Workshops	Survey results, and results from five workshops	Yes	Majority or more of respondents supported maintaining the rural nature of the County	Survey results and public input may not reflect overall the public view of the County’s direction

Table 1 (Concluded)

Event or information	Evidence of Public Opinion	Reliability	Findings	Limitations
2010 Reeve Task Force on Growth and Planning	Survey of public opinion	Yes	Majority or more of respondents supported preservation of agricultural land and rejected of larger urban-type development	Survey results may not reflect overall the public view of the County's direction
Overall Findings	More than twice the number of residents from Division 2 and the surrounding Divisions 1, 3, 8 are opposed to Bingham Crossing development than support the development; it is unclear the number of residents from Divisions 4, 5, 6, 7, 9 that support or oppose the development.			

Chapter 4: Alberta Municipal Government Act

Legislative Research

Sections with high relevance to the development approval process as identified by the Foundation for Democratic Advancement include:

1. Section 231(1) pertains to council advertised bylaws and resolutions which the public may petition to vote on. There are no public petitions allowed for section 22 and Part 17. Section 22 relates to road closures and Part 17 pertains to Planning and Development (Alberta Municipal Government Act [AMBA], 2000).
2. Section 232(1) relates to public petitioning for a new bylaw, bylaw to amend, or repeal a bylaw or resolution. There are no public petitions allowed under Parts 8, 9, 10, 17. Part 8 pertains to Finance Administration including budget and borrowing, Part 9 to Assessment of Property, Part 10 to Taxation, and Part 17 to Planning and Development (AMBA, 2000).
3. Section 619(5) allows an applicant for development to appeal a decision by council to reject a development proposal (AMBA, 2000).
4. Under section 619(8) the Municipal Government Board may order the council to amend the statutory plan or land use bylaw in order to comply with a license, permit, approval or other authorization granted by the NRCB, ERCB, AEUB or AUC. The Board's jurisdiction concerns matters relating to whether the proposed statutory plan or land use bylaw amendment is consistent with the license, permit, approval or other authorization granted under subsection (1) (AMBA, 2000).
5. Under section 636(1)(a), (b) in preparing a statutory plan, the municipality may provide the means for any person who may be affected to make suggestions, representations, and notifications to the public for a plan preparation process or means to make suggestions and representations (AMBA, 2000).
6. Under section 641(3) and with regard to direct control district, a council may delegate its decision on a development permit application to a development authority with directions that it considers appropriate (AMBA, 2000).
7. Under section 641(4) and with regard to direct control district, decision by council on development permit applications is not subject to appeal, and appeal of the development authority is restricted to whether or not the authority followed the council's directions (AMBA, 2000).

8. Under Section 645, the development authority has the power to stop, demolish, or carry out other actions against a development or land use or building in whole or part if it violates a land-use bylaw, regulations under Part 17, development permit or subdivision approval. The person who receives the notice may appeal the development authority's decision (AMBA, 2000).

9. Under sections 536, 537, 538, persons can apply to the Court of Queen's Bench for

a. A declaration of an invalid bylaw or resolution or an order requiring a council to amend.

b. Repeal a bylaw because of a vote by the electors on the amendment or repeal.

Sub-section (b) does not apply to Part 17 Planning and Development because planning and development decisions do not allow for a public vote (Sections 231(1) and 232(1)).

Sections 539, 540 limit applications to the Court of Queen's Bench to invalid proceedings or manner of passing of bylaw or resolution (AMBA, 2000).

10. Under section 571, the Alberta Municipal Affairs Ministry may inspect any matter connected to the management, administration or operation of any municipality. The Chief Administrator of the municipality must produce for examination and inspection all books and records of the municipality (AMBA, 2000).

11. Under section 572, the Alberta Municipal Affairs Ministry may require an inquiry into a matter connected to a municipality, if the Minister receives a petition signed by at least 20 percent of the electors of the municipality or a request from a council. Inquiries directed at affairs of the municipality, conduct of a councillor, or employee or agent of the municipality, or a person who has an agreement with the municipality relating to duties and obligations are acceptable (AMBA, 2000).

12. Under section 574(1) and pertaining to sections 571 and 572, the Municipal Affairs Minister may dismiss the council, or any member of it, or the chief administrative officer, if an order resulting from an inspection is carried out to the satisfaction of the Minister. In addition, the Minister may appoint an official administrator who has all the powers and duties of the council, and/or direct the election of a new council or member of council who had been dismissed (AMBA, 2000).

13. Under section 578(1), the Municipal Affairs Minister has the power to delegate power, duty or function of the Minister under the Municipal Government Act to any person, including the power to form Minister opinions and beliefs. However, this delegation does not apply to the power or duty to make regulations (AMBA, 2000).

Citizen-Initiated Referendum in Non-Albertan Municipalities

The following section draws comparisons to legislation from other countries and states/provinces including, British Columbia, Bolivia, California, and Switzerland.

British Columbia

There is no municipal legislation that allows citizen-initiated referendums on development applications (Local Government Act [RSBC], 1996; Surrey B.C. Mayor Dianne Watts Interview, 2013). Citizen participation is limited to public hearings on bylaws, public petition for services in special electoral areas, and a referendum process for approval of new services to a community (RSBC, 1996, Sections 797.4, 801.2, 801.3, & Division 4, Public Hearing on Bylaws). However, there is provincial legislation that allows citizen-initiated referendum on any matter within the jurisdiction of the B.C. Legislature Assembly. The petition must have at least 10 percent of voters' signatures from all electoral districts. In order for the initiative to be successful, the petition must attain more than 50 percent of the votes from the B.C. electorate or more than 50 percent of the votes in total from each of 2/3s of the B.C. electoral districts (Recall and Initiative Act, 1996).

Bolivia

There are provisions for citizen-initiated referendums at all levels of government, including presidential, in Bolivia's constitutional legislation. This demonstrates a valuation of direct and participatory democracy in Bolivia (Bolivian Constitution, 2009, Article II).

California

There is constitutional legislation that allows citizen-initiated referendums at the municipal level of government subject to legislated procedures of the city or county, and consistency with the general referendum principles of the California Constitution (California State Constitution [CSC], 1879, Article 2, Sections 11-12). Although some people consider California ungovernable due to its citizen-initiated referendums, the FDA believes that this assumption is more attributable to the referendum process than the referendum itself. There is no process or enforcement to prevent special interest groups from paying the California electorate to sign referendum petitions. Legislation and enforcement against this practice would help eliminate special interest based referendums.

Switzerland

There is legislation that allows citizen-initiated referendum at the federal, cantonal, and municipal levels of government (Federal Constitution of the Swiss Confederation [FCSC], 1999; Referendum, 2013). For instance, the Canton of Uri allows cantonal popular-initiated referendum and communal popular-initiated referendum at local levels (Constitution Canton of Uri, 1984, Chapter 4). Switzerland's referendums have been criticized for allowing tyranny of the majority, one example being the 2009 Switzerland referendum on banning minarets, the symbol placed at the highest point on a mosque, on buildings (Cumming-Bruce, 2009; Swiss Approve Minaret Ban In Referendum, 2013). The FDA recognizes that there is no perfect process, and that checks and balances are required to determine and protect the constitutional and human rights of the public, including minority groups. In the FDA's opinion, the issue in Switzerland is not popular-initiated referendums, but adequate protection of these rights.

Analysis

The Alberta municipal process does not allow community members to vote directly on planning and development decisions. Although planning and development decisions involve public hearings, there are no mechanisms for council and/or a development authority to act accordingly with the will of the public. Ultimately, the Alberta legislature deems that community voices are important enough to be heard through public hearings, but not important enough to be granted any form of veto power on planning and development decisions. In addition, there is no requirement or mechanisms to ensure that a council or development authority listen to what community members express. The only requirement is that community members have an opportunity to voice their views in front of a council and/or development authority. The issue at stake in Alberta is non-substantive rights (rights subordinate to other laws or not part of the order of the society such as public involvement in planning and development decisions limited to public hearings) versus substantive rights of community members (rights independent of other laws or part of the order of society such as public veto power over planning and development decisions).

Sections 231(1) and 232(1) of the Alberta Municipal Government Act favour private development over public opinion by denying citizens a direct and final say on development applications, and yet at the same time allow development applicants an opportunity to appeal development decisions under section 619(5). This process is inconsistent with a people-based democracy by favouring special interests (with more non-substantive rights) over community members.

Section 536(1) allows citizens the right to challenge legally through the Court of Queen's Bench a council's bylaw or resolution on grounds of violation of the legal process. It is very difficult, however, to prove a violation of legal process. There must be confirmation of bad faith by the councillors or a development authority, or evidence of a process violation, for instance no public hearing, and in fact, they often take place. The mere fact that a development decision did not yield a satisfactory result is not evidence of bad faith or violation of process.

Under section 571, citizens may encourage the Alberta Municipal Affairs Minister to inspect, for example, the affairs of a municipality and/or conduct of a councillor if it showed through survey that at least 20 percent of a municipality's electorate supports the inspection. Again, similar to section 536(1), this is a restrictive and non-substantive approach for citizens. In addition to the cost of conducting the survey, there is no guarantee a successful survey will ensure that the Minister will authorize the inspection, or that the inspection will yield a result satisfactory to the citizens who initiated it.

Summary of Municipal Processes in Regard to Development Decisions

1. A council or development authority as appointed by council determines the outcome of a development application.
2. Community members have minimal barriers to participation in public hearings and open houses, however, these hearings and open houses are the only source for a meaningful or relevant say in development initiatives. The public's right to voice its views in public hearings and open houses is non-substantive. Neither council, a development authority, nor a developer are required to act on the views of community members, and community members have no veto over council and development authorities' decisions.
3. The public's only recourse against planning and development bylaws is to file legal action with the Court of Queen's Bench for violations of the municipal process or attain the support of 20 percent of the municipal electorate for Alberta Municipal Affairs to consider an inquiry into municipal affairs. In both cases, these are restrictive and non-substantive approaches.
4. Development applicants can appeal decisions, a non-substantive and non-restrictive right not available to community members.
5. A council or development authority has the power to stop a development if it violates the agreed upon terms of the development, a process the developer can appeal legally. Again, this is a non-substantive and non-restrictive right reserved for the developer and not the public.
6. The Alberta Minister of Municipal Affairs has the power to inspect the affairs of a municipality and dismiss any council members or employees of a municipality.

The power and authority in the Alberta municipal system as it relates to planning and development rests with the Minister of Municipal Affairs, followed by the municipal councillors and/or development authorities, Court of Queen's Bench, development applicants, and lastly the citizens of municipalities.

The FDA acknowledges that development applications tend to be complex in nature and involve various stakeholders. Certain development decisions such as shelters for homeless persons may need protection from public opposition in order to protect the interests of minorities (Surrey B.C. Mayor Dianne Watts Interview, 2013). However, the FDA questions why development decisions for private applications are exempt from the members of a municipality making the final decision as to whether or not development applications are accepted or not. Certainly, the interest of the municipality as a whole should determine the outcome of development decisions, and public referendums are a democratic method to achieve this end. To allow councillors or development authorities to make the final decision as opposed to the people of municipalities (or at least have the option to decide) favours the development applicants as their influence need only extend to a few. To be consistent with democratic society, the FDA believes that the people of the municipality should have a substantive and final right to decide on private development applications if reasonable conditions for citizens-initiated referendums are satisfied. The recommendations on page 43 elaborate these conditions.

The basis for citizen-initiated referendums is that in a democratic society, ultimate political authority rests with the people. The FDA found examples of this process in California, Switzerland, Bolivia, and British Columbia (at the provincial level). Citizen-initiated referendum is enshrined in the California Constitution as part of the order of democratic society, a political and democratic right in Switzerland, and part of the system of government in Bolivia. As the California Constitution states,

“...all political power is inherent in the people” (CSC, 1879, Article 2, Section 1)....

“The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them” (CSC, 1879, Article 2, Sections 8(a))....

“The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State (CSC, 1879, Article 2, Section 9(a)).”

Chapter 5: Alberta Local Authorities Election Act

Alberta Municipal Election Process

Legislative Research

1. The FDA researchers found no provisions for the public recall of municipal elected representatives in either the Alberta Local Government Act or the Local Authorities Election Act.
2. The FDA researchers found no expenditure limits on municipal political candidates (Local Authorities Election Act [LAEA], 2011, Article 118).
3. There is a cap of \$5,000 on contributions to municipal candidates by persons and Alberta corporations in any year (LAEA, 2011, Article 147.2(1)).
4. There are no restrictions on persons living outside of Alberta or Canada, with or without Canadian citizenship, from contributing to candidates (LAEA, 2011, Articles 147.1(1), 147.2(1)).
5. Municipal candidates may contribute up to \$10,000 to their own campaigns (LAEA, 2011, Article 147.2(1.1)).
6. The FDA researchers found no regulation of semi-public and private media election coverage.
7. There is no required audit of candidates' finances, and therefore the candidates' electoral finance transparency is limited to what the candidates disclose on their disclosure statements (LAEA, 2011, Article 147).
8. Municipal candidates who received campaign contributions from persons and/or corporations are required to complete a disclosure statement showing the number and amount of contributions received under \$100, over \$100 including name and address of each contributor, total amount of candidate's own funds used, total amount of any surplus campaign funds, and financial statement showing total revenue and expenses (LAEA, 2011, Article 147.4(1)).
9. The disclosure statements are available for public viewing (LAEA, 2011, Article 147.4(3)).
10. Election winners are determined based on the first-past-the-post system (LAEA, 2011, Article 95(1)).
11. More than 50 percent of electoral votes required for passage of petition vote on bylaw or resolution (LAEA, 2011, Article 95(2)).

Recall in Non-Albertan Municipalities

The following section draws comparisons to legislation from other countries and states/provinces including, British Columbia, Canada, Bolivia, California, and Switzerland.

British Columbia and Canada

There is no legislation that allows the recall of elected representatives on the municipal level (RSBC, 1996; Surrey B.C. Mayor Dianne Watts Interview, 2013). However, there is provincial legislation that allows the recall of members of the B.C. Legislative Assembly. A petition of at least 40 percent of voter's signatures from the relevant electoral district is required to remove a Member of the Legislature from office. The recall legislation is limited by an 18-month period following an election before a recall application can first be processed (Recall and Initiative Act, 1996). In addition, the Canadian federal government does not have recall legislation; no other province has provincial recall legislation; and no province has recall legislation at the municipal level of government (Citizens need power to recall politicians, expert says, 2013; FDA Global Electoral Fairness Report on Canada, 2013).

Bolivia

There is constitutional legislation that allows recall referendums at all levels of government including presidential. For example, in 2008, Bolivian President Morales won a recall referendum on his presidency (Batty, 2008). The basis for Bolivia's recall referendum is valuation of direct and participatory democracy (Bolivian Constitution, 2009, Article II).

California

There is comprehensive recall legislation that allows citizens to recall elected representatives on the municipal level. Citizens require between 10 percent (if there are 100,000 or more registered voters) to 35 percent (if there are under 1,000 registered voters) of registered voters to initiate a recall referendum. In addition, citizens require a majority vote for "yes" recall in the referendum (California Elections Code, Sections 11200-11386; CSC, 1879, Article 2, Sections 13-20).

Switzerland

There is recall legislation in the Cantons of Uri and Ticino that allows citizens to recall elected representatives on the municipal level. In Ticino recall initiation requires 30 percent of adult signatures, and in Uri recall initiation requires 10 percent of adult signatures. Switzerland has 26 Cantons in its confederation (Recall Elections, 2013). The Canton of Uri allows communal popular-initiated referendum at local levels that includes revocation of local authority (Constitution Canton of Uri, 1984, Chapter 4).

Analysis

There is no provision for the recall of elected representatives on the municipal level in Alberta or in any other province. One purpose of recall is to remove an elected official who does not have majority support of the electorate and to prevent the electorate from having to wait for the next election to remove an official. In addition, the possibility of recall holds elected officials accountable and thereby may help create the impetus for officials to act and make decisions in the interest of the public. The downside of recall is that elected representatives sometimes have to make difficult decisions that have no proven clear or definite outcome. The decision may or may not prove to be in the interest of the majority, despite their best efforts or intention, yet recall legislation could remove them from office regardless. The FDA accepts that there is no perfect process and that in democratic society, it is imperative to err on the side of the people's voice, rather than an elected few.

In British Columbia (B.C.), the electorate can recall members of the Legislative Assembly based on the principle of non-confidence (Recall and Initiative Act, 1996). The B.C. recall legislation does not apply to elected municipal officials.

In Switzerland, six of the twenty-six Cantons allow recall of elected representations and two municipalities out of over two thousand do so as well (Recall Election, 2013; Municipalities of Switzerland, 2013). One purpose of the Switzerland recall is to make dysfunctional governments accountable (Recall Elections, 2013).

Bolivia allows the public recall of any elected official based on the principle that direct public participation in political affairs is a constitutional right (Bolivian Constitution, 2009, Article II).

California allows the recall of elected representatives at the state, city, and township levels of government. The basic premise behind California's recall legislation is that "all political power is inherent in the people" or public sovereignty over political affairs (CSC, 1879, Article 2, Section 1).

Additional Alberta Election Process Deficiencies

1. There are no expenditure limits on municipal political candidates.

Impact

Political candidates with better fund-raising skills and access to higher financial resources will have an electoral advantage over other candidates. Greater financial means allow for extended and pervasive for public exposure, which can influence public opinion and Election Day decisions. The FDA believes that the decision of the electorate during municipal political elections should result from the backgrounds and policies of candidates, and not which candidate has more campaign funds. With no expenditure limit, the election results may not truly reflect the voice of the people from the electoral divisions.

2. Citizens outside of Alberta and foreigners can contribute to candidates.

Impact

The Province allowing citizens outside of electoral divisions and Alberta including foreigners to contribute to candidates potentially weakens the voice of people from electoral divisions.

3. The cap of \$5,000 by individuals and corporations to candidates in any year is inconsistent with Alberta's per capita disposable income of \$33,438 (Economic Statistics Report, 2012).

Impact

Through consensus and Desjardins' household budget calculator, the FDA determines that 10 percent of per capita disposable income is a reasonable maximum contribution amount (Determine How Much to Allocate to Each Expense, 2013). The 10 percent contribution amount takes into consideration other expenditures such as housing, food, services like electricity and heat, clothing, and health. Based on Alberta's per capita disposable income and Desjardins' budget calculator, this amount totals \$13,392 over four years. The \$20,000 cap over four years exceeds the FDA's maximum contribution amount by \$6,608, and therefore the Alberta cap favours wealthy individuals and corporations.

Table 2 FDA's Comparison of Alberta's Cap on Contributions to Alberta's Per Capita Disposable Income

2010 Alberta per capita disposable income	10 percent of per capita disposable income (available for contributions)	10 percent of per capita disposable income over four years	Alberta cap on contributions by individuals and corporations over four years	Difference between 10 percent of per capita disposable income and AB cap	Impact on a free and democratic society
\$33,438	\$3,343	\$13,392	\$20,000	-\$6,608	Favours candidates with support from wealthy individuals and corporations

- The cap of \$10,000 by candidates to their own campaigns is inconsistent with Alberta's per capita disposable income of \$33,438 (Economic Statistics Report, 2012).

Impact

Through consensus and Desjardins' household budget calculator, the FDA determines that 10 percent of per capita disposable income is a reasonable maximum contribution amount (Determine How Much to Allocate to Each Expense, 2013). Based on Alberta's per capita disposable income and Desjardins' budget calculator, this amount totals \$3,348 in one year. The \$10,000 cap exceeds what the FDA's maximum contribution amount by \$6,652, and therefore favours wealthy candidates.

Table 3 FDA's Comparison of Alberta's Cap on Contributions by Candidates to Alberta's Per Capita Disposable Income

2010 Alberta per capita disposable income	10 percent of per capita disposable income (available for contributions)	10 percent of per capita disposable income over one year	Alberta cap on contributions by candidates to their own campaigns in an election year	Difference between 10 percent of per capita disposable income and AB cap	Impact on free and democratic society
\$33,438	\$3,343	\$3,348	\$10,000	-\$6,652	Favours candidates with more personal financial resources

- With the exception of government funded media companies, there is no regulation of media coverage of municipal elections.

Impact

Privately owned media outlets determine which candidates and parties they choose to support, and through narrow and imbalanced coverage of municipal candidates, can attempt to manipulate public support and election outcomes for a particular candidate. Consequently, the electorate might not make electoral choices based on complete and impartial information of all registered candidates. Narrow and imbalanced campaign coverage violates the democratic principle that all political power is inherent in the people. As illustrated in Table 4, the 2012 Alberta provincial election is an example of such coverage.

Table 4 FDA’s Total Media Coverage Findings for Alberta Political Parties in the 2012 Alberta Provincial Election

Alberta registered political parties	Percentage of total media exposure in last two week of the 2012 Alberta election
1. PC Party	33.2%
2. Wildrose Alliance Party	32.0%
3. Alberta Liberals	16.2%
4. Alberta NDP	14.5%
5. Alberta Party	2.9%
6. EverGreen Party of Alberta	0.8%
7. Alberta Social Credit Party	0.3%
8. Separation Party of Alberta	0.1%
9. Communist Party - Alberta	0.0%

The table captures the overall ranking of total media exposure in the last weeks of the 2012 Alberta Election. The percentage is based on the data collected from six major Alberta media corporations (FDA Media Study of the 2012 Alberta Provincial Election, 2012).

- There is no required audit of candidates’ electoral finances, including their disclosure statements.

Impact

With no required audit of candidates’ finances, there is the potential for electoral finance wrongdoing, which could affect an election outcome by favouring the dishonest candidates over the honest candidates.

- The first-past-the-post system or single member plurality determines election winners.

Impact

In the first-past-the-post system, the candidates with the most votes in each electoral district win the districts, and therefore only the votes of the winning candidates count towards political representation. In proportional representation, candidates win seats based on the proportion to the number of votes cast for them and a formula of vote reduction for each time a party wins a seat, which then allows other parties increased opportunity at winning the next seat. For example, the Sainte-Laguë method, used by New Zealand, Norway, Sweden, and Germany, adheres to this calculation: the first round of seat allocation for all parties no reduction; all other seat allocations have the following deduction (Sainte-Laguë method, 2013):

$$\frac{\text{Total number of votes received}}{2 \times (\text{number of seats allocated}) + 1}$$

Table 5 Example of the Sainte-Laguë Method

Parties	Total Votes	Seat 1	Seat 2	Seat 3	Seat 4
Party A	50,000	Party A (50,000)	Party B (30,000)	Party C (20,000)	Party A (16,666)
Party B	30,000	Party B (30,000)	Party C (20,000)	Party A (16,666)	Party B (10,000)
Party C	20,000	Party C (20,000)	Party A (16,666)	Party B (10,000)	Party C (6,666)
Party D	5,000	Party D (5,000)	Party D (5,000)	Party D (5,000)	Party D (5,000)

Unlike proportional representation, the first-the-past-post system does not give parties an opportunity to gain additional seats (as shown in Table 4) nor does the system base seats on proportion of votes cast.

Table 6 Example of First-Past-the-Post

Candidates for Riding A	Total Votes	Seat Winner
Candidate A	65,000	Candidate A
Candidate B	64,500	
Candidate C	15,000	

Candidates for Riding B	Total Votes	Seat Winner
Candidate D	45,000	Candidate D
Candidate E	44,780	
Candidate F	40,456	

Consequently, first-past-the-post is only reflective of the candidate with the most votes in each district; whereas, proportional representation is reflective of the most of the votes cast in each electoral zone. Therefore, the political representatives under proportional representation are more reflective of the voice of the electorate than under the first-past-the-post system.

Chapter 6: 2010 Rocky View Municipal Election and 2012 By-Election Results

**Table 7 Research of Election Results, Campaign Expenditure, and Voter Turnout
(Rocky View County, 2013a, 2013b, 2013c)**

Rocky View Division 1 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Rick Butler	1	\$5,415.57	57.43%	19.80%
Bob Everett	2	\$1,751.56	42.57%	14.84%
Totals		\$7,167.13	100%	34.64%

Rocky View Division 2 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Kim Magnuson	1	\$4,483.60	68.32%	21.70%
Herb Coburn	2	\$2,550.00	30.68%	9.52%
Totals		\$7,033.60	100%	31.22%

Rocky View Division 3 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Margaret Bahcheli	1	Unknown less than \$10,000	44.67%	11.15%
Christine Pennell	2	\$9,004.70	40.02%	10.04%
Breanna Sikorski	3	\$1,216.48	12.22%	3.05%
Jay Sarhan	4	Unknown less than \$10,000	3.10%	0.77%
Totals		Unknown less than \$30,219	100%	25.01%

Rocky View Division 4 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Rolly Ashdown	1	\$14,354.66	65.31%	20.14%
Jim Rheubottom	2	\$7,847.00	34.69%	10.94%
Totals		\$22,201.66	100%	31.08%

Table 7 (Continued)

Rocky View Division 5 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Earl Solberg	1	\$12,668.30	52.27%	12.94%
Jerry Gautreau	2	\$5,064.94	46.60%	11.82%
		\$17,733.24	100%	24.76%

Rocky View Division 6 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Greg Boehlke	1	Unknown less than \$10,000	61.05%	15.83%
John McMurray	2	Unknown less than \$10,000	38.95%	10.10%
Totals		Unknown less than \$19,999	100%	25.93%

Rocky View Division 7 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Lois Habberfield	Re-elected by Acclamation	N/A	N/A	N/A

Rocky View Division 8 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Al Sacuta	1	\$7,399.29	50.17%	21.52%
Hopeton Loudon	2	\$8,135.19	33.65%	14.82%
Gerry Neustaedter	3	\$2,180.00	15.02%	6.56%
Totals		\$17,714.48	98.84%	42.90%
			* 98.84% total popular vote is an error by the Rocky View Election Commission; the total should be 100%	

Table 7 (Concluded)

Rocky View Division 9 2010 Councillor Candidates	2010 Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Paul McLean	1	\$11,160.22	51.91%	14.58%
Norman Kent	2	Unknown less than \$10,000	23.29%	6.54%
Enrique Massot	3	\$4,111.47	20.98%	5.89%
Mary Ann Mears	4	Unknown less than \$10,000	3.82%	1.07%
Totals		Unknow less than \$35,269.69	100%	28.08%

Rocky View Division 1 2010 Councillor Candidates	March 2012 By-Election Result	Campaign Expenditure	Voter Turnout: Percentage of Popular Vote	Voter Turnout: Percentage of Total Vote including Non-Voters
Liz Breakey	1	\$7,249.00	46.12%	15.92%
David Rupert	2	\$7,536.05	39.82%	13.75%
Bob Everett	3	\$2,935.22	14.06%	4.83%
Totals		\$17,720.27	100%	34.50%

Analysis

The percentage of the Rocky View electorate represented by the Rocky View Council is 16.72 percent. Due to acclamation of Louis Habberfield, the FDA gave her 16.72 percent popular support, the average popular vote from the 2010 election and 2012 by-election.

The percentage of the Rocky View electorate represented by the five councillors who voted in favour of the Bingham Crossing development is 8.91 percent.

The total electoral expenditure of these five councillors is equal to or less than \$48,128.18. The average electoral expenditures of these councillors are \$12,045.33.

The percentage of the Rocky View electorate represented by the four councillors who voted against the Bingham Crossing development is 7.81 percent.

The total expenditures of these four councillors are to equal or less than \$29,130.89. The average electoral expenditure of these councillors is \$7,282.72.

The five councillors who voted in favour of Bingham Crossing development had 39.54 percent more electoral expenditures than the four councillors who voted against the development. In addition, these five councillors represent 1.10 percent more of the Rocky View electorate.

Due to six candidates from the 2010 Rocky View election having undisclosed \$10,000 total contributions or less, the FDA is unable to determine accurately the total average electoral expenditure for all candidates in the 2010 election and 2012 by-election.

Due to the lack of audit of the candidate disclosures, the FDA is unable say with confidence that the candidates' electoral finance disclosure statements including electoral expenditures are accurate. The FDA has no evidence electoral finance wrongdoing by any of the candidates in the 2010 Rocky View election and 2012 by-election.

In terms of popular vote as mentioned, the nine-person Rocky View Council represents 16.72 percent of the Rocky View electorate, and therefore, 83.28 percent of the Rocky View electorate is not represented by the Council in terms of electoral support.

The average overall voter turnout in the 2010 election and 2012 by-election is 30.90 percent, which means 69.10 percent of the electorate did not vote in these elections.

Table 8 Electoral Expenditure of and Electoral Support for the Rocky View Council

2012/13 Rocky View Council	Average Electoral Expenditure in 2010 and 2012 By-election	% of Rocky View Electorate Who Voted for the Councillors
5 Councillors who voted in favour of Bingham Crossing	\$12,045.33	8.91%
4 Councillors who voted against Bingham Crossing	\$7,282.72	7.81%
Total		16.72%

Chapter 7: Overall Analysis

In terms of democracy and the principle that ‘all political power is inherent in the people’, the FDA found definitive evidence of a troubled municipal system in Alberta. The FDA’s analysis is limited to the planning and development branch of the Alberta municipal system, and includes the Alberta Local Authorities Election Act and Municipal Government Act. In addition, in this report, the FDA measures democratic deficiencies qualitatively through applying democratic concepts to the current municipal processes, and quantitatively through data on outcomes such as election results and electoral expenditure amounts.

The FDA believes that in measuring the impact of government processes on a free and democratic society, it is imperative to examine both the individual and cumulative impacts. In the case of the Alberta municipal system, the cumulative impact is of most relevance. Below are the significant individual impacts with analysis, followed by the cumulative impact of them on a free and democratic society.

1. There is no legal requirement for Alberta’s municipal councils to have independent surveys of public opinion concerning development applications including issues of land area redesignation.

Impact

In the case of the Bingham Crossing project, the FDA identified evidence of public opinion for and against the development. In the FDA’s opinion, the limitations of the two surveys conducted on Rocky View public opinion are sufficient to raise doubts about the results. Consequently, there is no conclusive evidence of public opinion on the Bingham Crossing development, and therefore, there is doubt as to an accurate view of the Rocky View electorate in regards to the development. It is likely that the lack of evidence prevents Council from accurately reflecting the voice of the electorate.

2. The Alberta Municipal Government Act gives citizens an opportunity for public input in development applications, but no substantive requirement for councils or development authorities to act in accordance or cooperation with what citizens express in public hearings. The Municipal Government Act explicitly disallows citizen-initiated referendums on development applications.

Impact

Alberta citizens, whether as individuals or as a whole, are not allowed a direct and final say in whether or not development applications pass or fail. This violates the democratic principle that ‘all political power is inherent in the people’, and thereby weakens democracy in Alberta’s municipalities. Although theoretically the council is an extension of the electorate, it does not necessarily represent the majority view of the citizenry in all development decisions. In addition, when a council monopolizes development decisions the outcome is more susceptible to influence by special interests and potential corruption. Five people, in the case of Rocky View County, are likely easier to sway than the 12,767 citizens in Rocky View County that comprise the majority of the electorate (50 percent of 25,534 citizens (Rocky View County, 2013b)).

The FDA acknowledges that in a functioning democracy, the rights of minority groups need safeguards against the potential tyranny of the majority. Similarly, the interests of the community need protection from the decisions of a few elected officials. In the FDA's opinion, adequate constitutional and/or legislative protections of human and political rights will ensure minority interests are satisfied. Further, citizen-initiated referendum results will reflect this.

3. The only recourse for citizens against development decisions is to challenge legally the municipal process or attain the support of 20 percent of the municipal electorate for Alberta Municipal Affairs Minister to consider an inquiry into the affairs of a municipality.

Impact

Citizens have no direct recourse to deal with development decisions.

4. Development applicants have the legal right to appeal development decisions.

Impact

Development applicants have more say and due process in development decisions than the electorate.

5. Citizens have no direct recourse to deal with councillors who, from their perspective, are unworthy of being political representatives. Alberta municipal law has no provisions for the recall of elected municipal representatives. Consequently, citizens must wait until the next election to remove councillors. In the case of a development project, the next election may be too late to stop the implications of that decision.

Impact

With no threat of recall, councillors are not accountable directly to the electorate for their decisions, and therefore, may make decisions that are not in the best interest of the citizenry.

6. The Alberta municipal electoral system is deficient in the areas of electoral financial transparency, campaign coverage by media, campaign expenditure, caps on contributions, sources of contributions, and determination of election winners. These deficiencies might result in favouring certain candidates over others, or cause election results to less accurately reflect the voice of voters from electoral divisions.

Impact

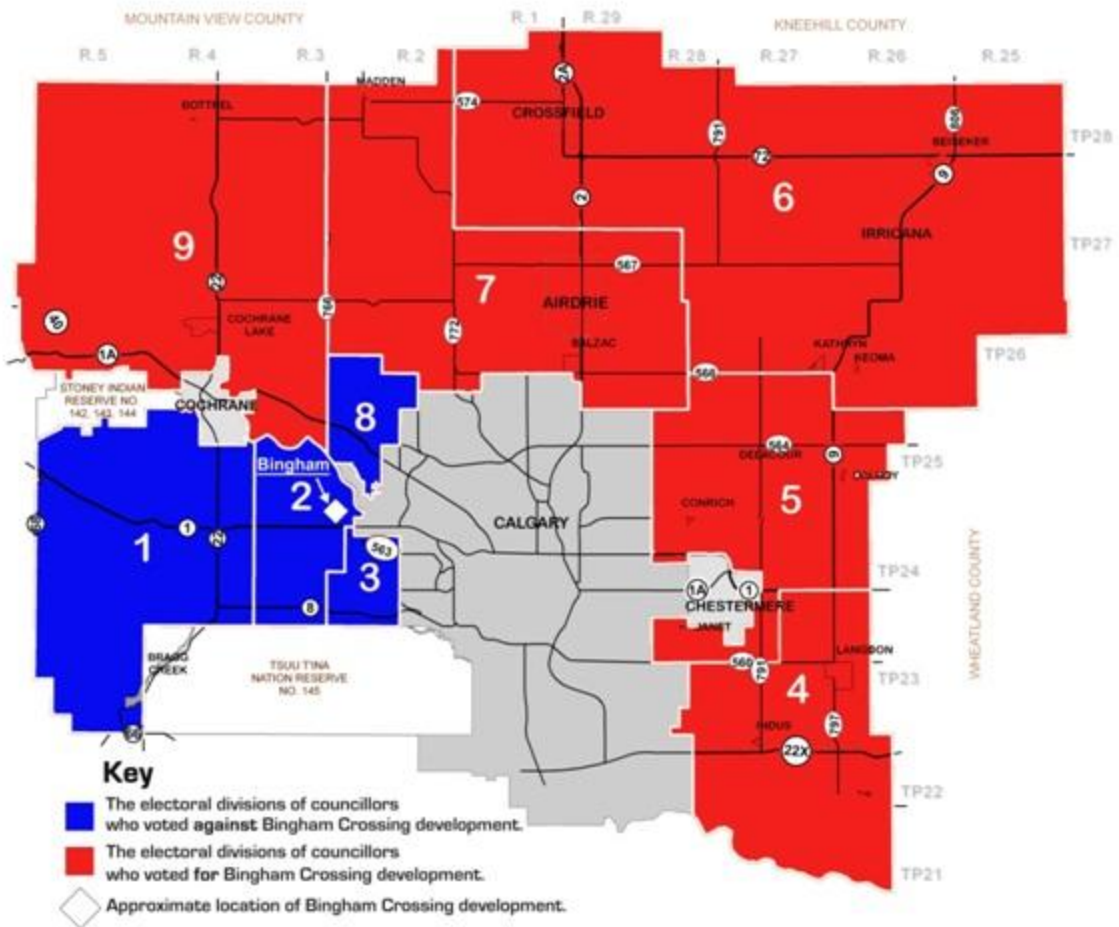
Through unfairness in the election process, inherent process deficiencies, and a high potential for electoral wrongdoing, election winners may not reflect the voice of the majority. The fact that the five councillors who voted in favour of the Bingham Crossing development had 39.4 percent more electoral expenditures than the four councillors who voted against the development is evidence of the potential for electoral finance misconduct. The fact that the Rocky View Council represents only 16.7 percent of the Rocky View electorate is proof positive that the Council represents only a small portion of electorate.

7. Additional issue

The awkward geographic shape of the Rocky View County weakens the ability of the Council to reflect fairly the voice of the electorate. In the case of the Bingham Crossing development only one electoral division (Division 2) was directly affected by the development, three other electoral divisions (Divisions 1,3,8) were affected from a nearby distance, and the five other divisions (Divisions 4,5,6,7,9) were affected from a far distance. Yet, the Council members representing the distant divisions through majority rule determined the development decision. There are no provisions in the Alberta Municipal Government Act to account for this geographic scenario such as legislation that would give special consideration and more substantive rights to divisions affected the most from a development project due to their proximity. Each councillor from the nine divisions received equal and majority say in the decision on Bingham Crossing development.

Impact

Councillors from divisions affected the most from a development project due to proximity have limited input and control regarding development decisions in their communities. The interests of the majority (the council) supersede the interests of the minority (the applicable electoral divisions).



Map 3 depicts the division over the Bingham Crossing development, and the fact that those councillors against the decision were the most impacted from the development, while those councillors in favour of the development were the least impacted from the development.

8. Cumulative Impact

There is no requirement for councils to have independent and scientifically accurate or reliable surveys of public opinion regarding controversial development initiatives. Public participation in development decisions is limited to input at public meetings with no substantive requirement for government or development contractor to consider their concerns or demands. Citizens cannot initiate referendums relating to development projects and have limited legal recourse to challenge development decisions. Applicants for development projects have legal say in these matters and greater say than the public. Citizens cannot recall elected representatives. The Alberta municipal electoral system has a number of deficiencies that undermine a proven correlation between election results and the voice of the electorate. Finally, councillors most directly impacted by development decisions do not have the opportunity for proportionate input.

Impact

Development decisions likely do not reflect the voice of community members from electoral divisions, and most likely do not reflect the voice of community members from electoral divisions most affected by development decisions given their proximity to developments, such as Division 2 in the case of the Bingham Crossing development.¹

¹ The rezoning of the Shawnee Slopes (Calgary) from a golf course to 1,700 private homes is another recent Alberta example of the people of a municipality being disallowed substantive say in controversial private development applications and the opportunity to recall elected officials who cease to have the majority support of the electorate (Approval of Shawnee Slopes development criticized, 2013).

Chapter 8: Conclusion

There is strong evidence that the Rocky View Council's decision 5-4 in favour of the Bingham Crossing development does not necessarily represent the electorate of the Rocky View County, likely does not represent the electorate of Division 1,3, 8, and most likely does not represent the electorate of Division 2. In addition, there is substantiation that the Alberta municipal processes are inconsistent with both the democratic principle that 'all political power is inherent in the people' and a broad and reasonable application of Article 1 of the Canadian Charter of Rights and Freedoms:

“The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

The Canadian Supreme Court interprets Article 1 as a reasonable limit on all the rights guaranteed by the Charter including the democratic right to vote. To determine whether right infringement has occurred, the Supreme Court requires consideration of reasonable limits on rights, minimal impairment of those rights, and overall balance of competing prejudices between competing rights. In the case of the Bingham Crossing development decision, the FDA believes that the Alberta Legislature has unjustifiably impaired the democratic rights of community members from Division 2 of Rocky View County, and this impairment may cause significant impact on their lives.

The Alberta Legislature's position that community members are not entitled to substantive rights concerning planning and development decisions limits the voice of these members in matters that may affect them significantly due to their proximity to proposed developments. The FDA believes that no adequate mechanisms exist by which community members can overcome the limitations on their democratic rights. As a result, the FDA deems that given the limitation on community members' rights, inadequate compensating mechanisms, and the impact of this limitation on, for example, their rural lives through large-scale urban developments, these community members are owed substantive rights and adequate procedure relating to planning and development decisions. As per evidence revealed in this report, the FDA does not accept that the elected officials necessarily represent the community members, and therefore warrants reparation of their democratic rights. Moreover, the FDA argues that community members should be entitled substantive rights concerning planning and development decisions. Developers and other stakeholders might argue that the complexity of such decisions should limit public involvement, however, community members are also stakeholders and potentially more affected by development decisions than other groups. This argument is particularly relevant in Rocky View County due to its unusual geography, rural nature, and the Bingham Crossing development project.

In conclusion, the cumulative impact of the Alberta municipal processes as discussed in this report is inconsistent with the principles of democracy and justifiable limits on the rights of the citizenry. When special interests through development applications and the municipal processes are favoured systematically over the voice of the people then the outcome is inconsistent with a free and democratic society.

“Be the change you wish to see in the world.”
- Mahatma Gandhi

Chapter 9: Recommendations

Based on its measurements and findings, the Foundation for Democratic Advancement recommends that under section 571 of the Alberta Municipal Government Act, the Alberta Municipal Affairs Minister require an inspection into the Bingham Crossing development decision of October 30/November 1, 2012, and through new municipal legislation order a referendum on the Bingham Crossing development. The referendum should include all of the Rocky View electorate, and be weighted proportionally based on the proximity of the development to the electoral divisions: referendum votes from Division 2 weighted 4 times; votes from Divisions 1,3,8 weighted 2 times; and votes from Divisions 4,5,6,7,9 weighted 1 times. Based on these weightings, a majority of votes for “no” to the development is required, whereas 50 percent or more is required for “yes” to the development.

Table 9 Example of Hypothetical Bingham Referendum Results Based on Proportional Weights

Rocky View Divisions	Votes “yes” to Bingham	Votes “no” to Bingham	Weights	Weighted Results For Bingham	Weighted Results Against Bingham
Division 2	510	1,190	4x	2,040	4,760
Divisions 1,3,8	1,988	3,690	2x	3,976	7,380
Divisions 4,5,6,7,9	3,924	2,623	1x	3,924	2,623
Totals				9,940	14,763

Referendum Results	59.76% “no” to Bingham 40.24% “yes” to Bingham Development fails to pass
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Based on its measurements and findings, the FDA recommends that the Alberta Legislature amend the Alberta Municipal Government Act with the following:

1. Allow citizen-initiated referendums in the case of municipal development decisions on private applications. The threshold for referendum petitions should be no greater than 30 percent. In the case of a municipality with unusual geography like Rocky View County, the threshold for a referendum petition should be no greater than 10 percent. The success of referendums should be based on attaining a majority of the votes cast and with at least 50 percent of the electorate casting a vote. In the case of a municipality with an unusual geography, the votes should be weighted proportionally based on proximity to a proposed development as described above.
2. Allow citizen-initiated recall of municipal elected representatives. The threshold for referendum petitions should be no greater than 30 percent of the total electorate from the relevant electoral district. The success of a recall vote should be based on attaining a majority of the votes cast and with at least 50 percent of the electorate casting a vote.

Based on its measurements and findings, the FDA recommends that the Alberta Legislature amend the Alberta Local Authorities Election Act with the following:

1. Require financial audits of all winning municipal candidates' electoral finances. In addition, public subsidies for audits should be available to candidates who meet financial need conditions.
2. Disallow corporations and trade unions from making electoral contributions.
3. Place caps on contributions to candidates in any year that reflect 10 percent of Alberta's current per capita disposable annual income.
4. Place caps on contributions by candidates to their own campaigns in an election year that reflect 10 percent of Alberta's current per capita disposable annual income.
5. Place expenditure limits on candidates' campaigns that are reasonably attainable by all registered candidates. The Canadian federal campaign expenditure limits, as an example, reflect limits that are reasonably attainable by all registered candidates (FDA Global Electoral Fairness Report on Canada, 2013; Elections Act, Articles 441(1)(a), 441(3)).

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Appendix

Email correspondence between Mr. Stephen Garvey, Executive Director Foundation for Democratic Advancement and the Alberta Municipal Affairs Ministry

From: Stephen Garvey [mailto:stephen.garvey@democracychange.org]
Sent: Friday, January 18, 2013 4:28 PM
To: Comments (Alberta Municipal Affairs)
Subject: question

To whom it may concern,

I have a question regarding the Alberta Municipal Government Act.

Pertaining to:

Petitions for Vote of the Electors - Advertised Bylaws and Resolutions

Petition for vote on advertised bylaws and resolutions

231(1) Except for a bylaw under section 22 or a bylaw or resolution under Part 17, after a proposed bylaw or resolution that is required to be advertised under this or another enactment has been advertised, the electors may submit a petition for a vote of the electors to determine whether the proposed bylaw or resolution should be passed.

Does Article 231(1) mean that petitions for vote of the electors are not allowed for municipal decisions on whether to approve or disapprove proposed development projects?

--

Regards,

Stephen Garvey, BA, MA

FDA Founder, Executive Director, and Director of Research and Project Initiative

Twitter: @sjgarvey @democracychange

Website: <http://www.democracychange.org>

Facebook: <http://www.facebook.com/democracychange>

Blog: <http://www.foundationfordemocraticadvancement.blogspot.com/>

Sent: Tuesday, January 22, 2013 11:43 AM
To: 'stephen.garvey@democracychange.org'
Subject: question

Dear Mr. Garvey:

Thank you for visiting the Alberta Comments website and for submitting your question concerning petitions under the Municipal Government Act (MGA).

Section 231(1) of the MGA concerns petitions for a vote of the electors in response to advertised bylaws and resolutions. Under this section it states that there are two exceptions to this provision, section 22, regarding road closures, and any resolutions or bylaws made under Part 17, concerning planning and development. However there are provisions in Part 17 for public involvement, including notification, public hearings and appeals, for various planning matters related to statutory plans, land use bylaws, and subdivision or development decisions.

For your information section 232(1) refers to petitions for new bylaws and petitions. With respect to a petition requesting a new bylaw, or an amendment or repeal of a bylaw, under Part 17 of the MGA, such a petition has no effect.

If you have any further questions regarding a vote of electors concerning Part 17 of the MGA, please contact the Municipal Services Branch of Municipal Affairs at 780-427-2225, or toll-free in Alberta by dialing 310-0000 first.

Alberta Municipal Affairs

From: Stephen Garvey [mailto:stephen.garvey@democracychange.org]
Sent: Sunday, March 03, 2013 2:24 PM
Subject: Re: question

Thank you for your informative reply to my question regarding Section 231(1) of the Municipal Government Act.

I would be grateful if you respond to my related follow-up questions:

Are there any provisions in the Alberta Municipal Government Act that allow the Alberta Provincial government to intervene in the affairs of a municipality in matters pertaining to bylaws, resolutions, and planning and development issues?

If so, what are these provisions?

If not, by being author of the Municipal Government Act, does the Alberta Provincial government have the legal right to intervene in the affairs of a municipality if it wants to? If so, what provisions guide this intervention?

Many thanks,

--

Regards,
Stephen Garvey, BA, MA
FDA Founder, Executive Director, and Director of Research and Project Initiative
Twitter: @sjgarvey @democracychange
Website: <http://www.democracychange.org>
Facebook: <http://www.facebook.com/democracychange>
Blog: <http://www.foundationfordemocraticadvancement.blogspot.com/>

Sent: Monday, March 04, 2013 1:24 PM
To: 'Stephen Garvey'
Subject: RE: question

Hello Stephen:

The government does not normally interfere in matters that are local in nature and are municipal responsibilities as outlined in the MGA. This is particularly the case involving local planning and development.

However, there are certain situations that might result in an investigation, inspection or inquiry of the municipality, and these are referred to in Part 14 General Ministerial Powers.

Section 570 and 570.01 (1) pertain to the minister ordering action involving intermunicipal disagreements and municipal compliance with regional plans.

Section 571(1) concerns any matter connected with the management, administration or operation of any municipality, allowing an inspection to be conducted.

Section 572(1) refers to a inquiry ordered by the minister after receiving a sufficient petition, or by a request from council. An inquiry may be conducted into the affairs of the municipality, the conduct of a councillor, or an employee or agent, the conduct of a person who has an agreement with the municipality relating to the duties or obligations of the municipality.

Section 574(1) refers to the action the minister can take after an inspection or inquiry. The minister can direct the municipality to take action, and if it is not carried out then the minister can dismiss council or member of council or the chief administrative officer. The minister can appoint an official administrator to supervise council. Section 578(1) allows the minister to delegate to any person the power duty or function of the minister under the act.

Regards,

Alberta Municipal Affairs

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Maps

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