

A Process for Resolving  
**INTERMUNICIPAL  
PLANNING  
ISSUES**

Produced by the Intermunicipal  
ADR Design Team

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# A Process for Resolving Intermunicipal Planning Issues

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*The Design Team also notes, with sadness, the death of one of our members,  
Lorne McMaster.*

*We hope that this pioneering approach to intermunicipal issue resolution,  
of which he was a part, will grow ever stronger.*



# **EXECUTIVE SUMMARY**



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## Executive Summary

### **Introduction**

*The development of this system for resolving intermunicipal planning and related issues is a collaborative effort between Sturgeon County, City of Edmonton, City of St. Albert, Town of Morinville and Alberta Municipal Affairs. The approach is intended to enhance, not replace, existing planning and legislative processes.*

*The five partners subscribe to the view that “appropriate dispute resolution” (ADR) involves choosing the most appropriate method(s) from the full toolkit of dispute resolution options. The options, described individually in Appendix 2, range from direct negotiation to court adjudication.*

### **Prevention of Disputes**

*A high priority is placed on methods that help prevent issues from escalating into disputes. This is accomplished by three means:*

- ◆ *commitment to an interest based protocol for communication and collaboration;*
- ◆ *allowing for pre-application consultations to facilitate early identification of issues;*  
*and*
- ◆ *encouraging a high degree of self-reliance in finding solutions.*

### **Protocol for Collaboration and Communication**

*The protocol outlines fundamental ways of doing business that focus on building goodwill and communicating in ways that promote understanding, maximize control over outcomes and strive for solutions that represent mutual gains for all participants.*

### **Procedural Framework**

*The procedural framework for resolving issues encourages the inclusion of a non-obligatory, but strongly recommended, pre-application consultation stage. This allows for information and process requirements to be clarified and for the preliminary identification of potential issues. The procedural framework is illustrated in Figure 1 and Figure 2.*

### **Selection of Issue Resolution Options**

*At all steps in the process, primary reliance is placed on the use of interest based processes such as direct negotiation, facilitation and mediation. Which specific method will be selected from the toolkit in any given instance will depend on several factors:*

- ◆ *the type of issue (plan or policy; land use bylaw; subdivision; development proposal; infrastructure proposal);*



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- ◆ *the type of dispute (factual; procedural; corporate values; professional opinion); and*
- ◆ *which objectives are important to the specific situation (for example, prevention; control over decision or outcome; cost effectiveness; timeliness; need to work together in the future; need for a precedent).*

### **Next Steps**

*Once endorsed by the respective municipalities, a more detailed implementation plan will be coordinated by the Intermunicipal ADR Design Team. It will address: the necessary policy framework; roles and responsibilities; documentation; selection and training and other topics as outlined in Appendix 3.*

*The initial focus for implementation is on intermunicipal planning and development related issues. Municipalities are encouraged to explore other possible applications of the process, as they deem appropriate, and to share their experiences with the Design Team. Progress will be monitored so that improvements and refinements can be made as needed.*

*The following resolution is recommended for adoption by the participating municipal councils:*

*“That, in order to prevent escalation of intermunicipal planning and related issues into full-fledged disputes, achieve quicker, more cost-effective resolutions and help build and maintain good relationships, Council approve the principles, protocols and processes contained in the report entitled “A Process for Resolving Intermunicipal Planning Issues”, prepared by representatives from Sturgeon County, City of Edmonton, City of St. Albert, Town of Morinville and Alberta Municipal Affairs.”*



# **SETTING THE STAGE**





# A Process for Resolving Intermunicipal Planning Issues

## 1. An Introduction to the Design Team Participants

Land use planning and development is typically characterized by controversy. The divergent interests of the key stakeholders often seem to be inherently at odds, even irreconcilable. The dispute frequently revolves around the “public good” versus “development” debate but municipalities can also come into conflict with each other for this and many other reasons. They compete for industrial, commercial and residential assessment, for community facilities and for funding from other levels of government. One municipality’s success may come at the actual or perceived expense of another.

We are confident that we can create a process within which the inevitable planning and development conflicts between municipalities can be resolved amiably and economically. This project is undertaken by a partnership comprised of four diverse municipalities that are part of a thriving metropolitan region in the capital city area of the Province of Alberta. The fifth partner is Alberta Municipal Affairs, the provincial government department responsible for programs related to the delivery of municipal government services throughout the province.

### Community Profiles

Community	Population/Year	Area (sq. km)	Common Issues
Sturgeon County	17,145 / 1999	2360	fringe area development, transportation system operation and improvements, drainage, infrastructure, boundary changes, country residential development, economic development, environment, rural and urban values, etc.
City of Edmonton	648,284 / 1999	670	
City of St. Albert	51,716 / 2000	34	
Town of Morinville	6,226 / 1996	12	

## 2. Context

### *Purpose*

In a collaborative spirit, four municipalities - Sturgeon County, City of Edmonton, City of St. Albert and Town of Morinville – and Alberta Municipal Affairs have developed an Alternative Dispute Resolution (ADR) system for identifying and resolving intermunicipal issues. The primary focus is on intermunicipal land use planning related disputes. Nevertheless, it is anticipated that the dispute resolution system developed through this project can be applied or adapted to other types of disputes.



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The system facilitates the early identification and assessment of potential dispute situations, and outlines a procedure that the municipalities can follow to resolve issues. It is probable that, in most dispute situations, other stakeholders will also be involved, each of which will have its own set of interests. This may include, for example, developers, residents, special interest groups, other levels of government or government agencies. In any given dispute situation, these stakeholders will, as appropriate to the situation, be involved in refining and detailing the elements of the process to be followed and in clarifying their interests in the issue.

During the workshop, the Design Team considered what its own interests were in developing this process, as well as hunching what the interests of other key stakeholder groups might be. The purpose of this is not to be exhaustive, but to demonstrate both the diversity of interests and the potential for common ground to be found.

### **Municipal Interests**

- ◆ cost-effective and time-efficient processes;
- ◆ adaptable to other situations;
- ◆ avoids appeals;
- ◆ implements Council policy;
- ◆ adheres to senior legislation;
- ◆ builds a collaborative, trustful environment;
- ◆ respects local autonomy;
- ◆ early warning system avoids surprises;
- ◆ addresses constituents' concerns;
- ◆ practical, implementable, user friendly process;
- ◆ improves tax and employment base or quality of life for residents.

### **Developer / Applicant's Interests**

- ◆ timely decision;
- ◆ recognition of his rights;
- ◆ least cost processes;
- ◆ no interference from outsiders
- ◆ get the necessary approvals.

### **Ratepayers' Interests**

- ◆ decision should reflect public good and public will;
- ◆ cost-effective process that translates into lower tax burden;
- ◆ need to be and feel heard when his interests are at stake
- ◆ protection of community life.

### **Special Interest Groups Interests**

- ◆ need to have their cause recognized and heard when it is affected



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### **Appeal Tribunals**

- ◆ strive toward the self-sufficiency of the disputing parties
- ◆ balance property rights with the public good

### ***ADR – “Alternative” or “Appropriate” Dispute Resolution?***

The term Alternative Dispute Resolution (ADR) typically refers to any method of resolving disputes that uses a consensus or interest-based model. It often includes any process outside of the appeal and court systems, where disputing parties come to mutual agreement on a solution with or without the assistance of a third party. In more current usage, the acronym ADR is sometimes interpreted to mean “Appropriate Dispute Resolution”. This may be better suited to the present purpose, since all participants acknowledge the need for and importance of appeal and court mechanisms. Clearly, the use of principled, interest-based processes to resolve issues in no way diminishes the legislated rights of parties to judicial or quasi-judicial appeals. The system here developed is intended as an enhancement, not a substitute, for existing standard planning processes.

### ***Benefits of an Interest Based Approach***

Not all planning decisions can be brought before an appeal tribunal for a formal hearing. Yet, differences may be present which, if unresolved, can create ill will and strain future relationships. Interest based approaches can often be incorporated into these situations to help create understanding and perhaps find more mutually beneficial solutions.

In other situations, a stakeholder may have access to a hearing tribunal. The municipal partners recognize the significant time and expense involved in the ‘traditional’ Municipal Government Board (MGB) or court ordered decisions. The use of interest-based processes prior to the formal hearing has the potential for considerable time and cost savings. Successful use of such processes may reduce the need for formal remedies or, in some tribunals, narrow the scope of issues to be adjudicated. In addition, they build on a collaborative spirit and leave the control over the outcome in the hands of those most affected by the issue, the disputing parties.

Provincial policies and legislation support this approach. Section 3.0 of the Provincial Land Use Policies gives clear direction to municipalities to jointly address intermunicipal planning issues. Sections 619 and 690 of the Municipal Government Act now require municipalities to attempt a joint resolution of an issue prior to appealing to the MGB. The municipal partners recognize that not all disputes can be resolved by ADR techniques. Judicial and quasi-judicial processes will continue to be a necessary part of the total dispute resolution spectrum. Our aim is to reduce reliance on them to the situations for which they are most appropriate. A dispute resolution system that formalizes the intent of first applying other interest based processes will help achieve this aim and create a more responsive and cost-effective means of resolving issues.

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## **Objectives**

The primary objectives of the ADR Project are to:

- ◆ develop a framework of **preventive measures** to apply to intermunicipal issues;
- ◆ develop a practical framework to **identify the types of disputes** that could be addressed by **various processes** within an ADR system, and;
- ◆ develop a **procedural framework** consisting of a detailed sequence of steps that the municipalities would pursue to resolve a dispute when one arises.

This three-part framework represents a working, functional system that serves as a 'roadmap' for municipalities to follow to achieve successful issue identification and resolution. The participating municipalities will be guided by the referral provisions of their respective municipal development plans in identifying which issues are of intermunicipal importance. In any given instance, only those municipalities directly involved will participate in the dispute resolution process.

## **The Design Process**

The design of a dispute resolution system typically involves a four-step process:

- ◆ an **assessment** that looks at factors in the social, economic, cultural and political environments of all participants that affect the types of disputes, how they typically arise, whether there are patterns to their recurrence and current procedures for resolving them. A cost analysis is also included.
- ◆ the **design** stage considers the range of dispute resolution options that exist, which ones best meet the needs of the participants and what steps and decisions need to be made to implement the preferred option(s).
- ◆ creating an **implementation plan**, that addresses the details needed to make the design work, details of policy, assignment of roles and responsibilities, resources, training needs, and timing.
- ◆ monitoring and **evaluation** to determine whether the system is working or if some refinements are needed. Are the original objectives for the new system being met?

The design team engaged an ADR system design expert to assist with the assessment and design steps. From this, the issue resolution framework was developed. Its use and application will be monitored, with periodic evaluations of its effectiveness and refinements as necessary.

## **3. Opportunities and Challenges**



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The creation of a comprehensive system designed to facilitate mutually beneficial issue resolution is largely untested in the field of intermunicipal relations. A supportive framework is in place through the Municipal Government Act and the provincial *Land Use Policies*. Clearly, municipalities are being asked to become more co-operative and collaborative, but there are few precedents for how to achieve that worthy objective. This represents an opportunity to break new ground and show leadership and creativity in the development of processes capable of handling a range of intermunicipal issues, both complex and straightforward. While the immediate intention is to apply this system to land use planning and related intermunicipal matters, the potential applications to a host of other inter- and intra-municipal topic areas ought not to be ignored.

Municipalities strive continuously to achieve greater efficiency with tax dollars and the best possible outcomes for the quality of life in their communities. Increasingly, it is recognized that these two goals can be better met by processes that search for win – win solutions and that avoid unnecessary expenditure of time and money on adversarial processes.

In this highly interactive metropolitan region, neighbouring municipalities will have many interests in common. Despite this, conflicts will occur. Even as municipalities strive to achieve the same goals – for example, strong economic growth, low property tax rates, high quality of community life – they may come into conflict. Land use proposals that are an economic benefit to one community may be viewed competitively by another municipality seeking similar development. Alternatively, it may be viewed as impacting the other community's goal for a high quality living environment.

Implementation of the processes advocated here represents a significant opportunity to prevent disputes from erupting, to build better teamwork and community relations and create a stronger network in the northeast sector of the region. The processes and procedures developed here should have application to other parts of the region and Province.

Successfully achieving this new approach has its challenges. Diligence is required to ensure that the old methods do not re-assert themselves inappropriately. The interest-based processes require a commitment that extends from the lowest to the highest levels of each organization, wherever implementation is to occur. New skills may have to be developed, some old practices abandoned or re-thought. All of this will require the support of our respective elected officials and an action-oriented implementation plan.



### 4. Prevention of Disputes

The reality of intermunicipal relations is that there will be divergent goals, objectives, standards, attitudes and expectations between municipalities. A key aspect of this dispute resolution system is to examine and act upon opportunities for **preventing** a potential conflict situation from becoming a formal dispute. Ordinarily, strategies that prevent disputes or limit the chances of escalation are most cost-effective and they should be rigorously exercised at the earliest possible opportunity.

#### *Type of Communication*

At the heart of this is an understanding of the ways in which communication can either escalate or **defuse** a situation. Positional communication tends to escalate a situation, creating defensiveness, assigning blame and generally eroding working relationships. Interest-based communication processes on the other hand tend to diffuse issues, building trust and understanding, looking for mutual benefits, strengthening relationships.

The **form of communication** may also set the tone for subsequent decision-making processes. A formal written response, or a motion from council may be required. But at what point? Can the message be delivered first by a phone call or other means? What form of response or feedback is in order? Choosing the most appropriate form of communication for the issue at hand, the intended audience and the stage in the process can contribute positively to the outcome for all parties.

#### *The Municipal Environment*

Municipal and inter-municipal conflict emerges from a complex environment of social and cultural values and expectations, economics and politics. These are manifested both individually and organizationally. Each municipality shares some attributes with each other. For example, all Alberta municipalities operate under the same legislative framework. However, each also differs from the others in important respects. Awareness of each other's unique qualities creates **understanding**, less reliance on assumptions that may or may not be accurate and a sounder base for the decisions we make about how to work together.

Another critical factor in terms of how an issue is handled is **timing**. Generally, the earlier a matter can be raised and addressed, the more likely a satisfying outcome can be achieved. Many issues in intermunicipal relations are subject to deadlines and have somewhat restrictive timeframes. Administrative review, referral and approval timelines are one of the variable aspects of municipal culture and they need to be understood and respected to the fullest possible extent.

Municipal politicians are frequently **lobbied** by individuals or groups within their constituencies, often about matters that may be under review by their administrations.



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The timing of political involvement varies from municipality to municipality and may have considerable influence on how an issue unfolds. The democratic processes that are part of the essential nature of local government not only allow, but encourage direct contact between politicians and their constituents. One of the most frequently cited strengths of local government is its closeness to the people it serves. How this is balanced with the role of decision-maker may have considerable impact on the issue resolution process and eventual outcome. The process needs to recognize these factors and strive for a clarity and openness that encourages all participants to suspend judgement of an issue until the information needed to make a sound decision has been fully disclosed.

### *Preventive Strategies*

**The system is designed to place maximum emphasis on opportunities for dispute prevention.** It does this by:

- ◆ committing these partners to an **interest-based Protocol for Collaboration and Communication**;
- ◆ introducing the opportunity for **pre-application consultations**; and
- ◆ encouraging a high degree of **internal self-sufficiency** in resolving issues (e.g. direct or step negotiation, as described in Appendix 2).



# **DESIGNING THE PROCESS**





### 5. Protocol for Collaboration and Communication

The intermunicipal partnership of Sturgeon County, Town of Morinville, City of St. Albert and City of Edmonton believes that a collaborative approach to intermunicipal issues is in our overall best interests, individually and collectively. This collaborative spirit is encouraged by Alberta Municipal Affairs. Our commitment to this protocol for interest based issue resolution does not diminish our ability or obligation to act in the best interests of the constituents we represent. Neither does it alter our contractual or legal rights and responsibilities.

Our approach is interest based, which means all parties' interests will be used as a measuring stick or benchmark for making mutually agreed upon decisions. And it is principled, meaning honest, fair, ethical and respectful. We agree to conduct our joint business and resolve particular issues according to the fundamental principles that focus on the themes of goodwill, communication, processes and outcomes. The protocol below underpins all interactions that are described procedurally in Figure 1 in Section 6.

#### **Goodwill**

- ◆ *We acknowledge the importance of goodwill among us.*
- ◆ *We will build trust among us by living up to our commitments and avoiding surprises that may compromise others.*
- ◆ *We respect each other's roles, interests and accountabilities.*
- ◆ *We will give each other the benefit of the doubt, accept honest mistakes and seek explanations before reacting.*

#### **Communication**

- ◆ *We will strive to understand and be understood by others.*
- ◆ *We will focus on issues rather than personalities.*
- ◆ *We will communicate in ways that promote common understanding, quick and effective resolution of issues, prevention of disputes and stronger relationships.*
- ◆ *We will share information to the fullest extent possible and use it to promote mutual gain.*
- ◆ *We will inform affected partners of matters of shared interest.*

#### **Processes**

- ◆ *We will seek resolution of an issue as near to its entry point as possible and will leave maximum direct control over the outcome with the parties.*
- ◆ *We recognize and respect each other's decision-making processes and lines of authority.*
- ◆ *We will provide appropriate opportunities for stakeholders to be involved.*

#### **Outcomes**

- ◆ *We will seek solutions that meet our joint and individual interests to the fullest extent possible.*
- ◆ *We will honour the agreements we reach and be clear about what has been decided and how the agreement will be carried out.*
- ◆ *We acknowledge that there may be times when we can only "agree to disagree".*
- ◆ *We will reconvene when necessary to review our agreements as conditions change.*



## 6. Procedural Framework for Issue Resolution

### *Types of Disputes*

Four broad types of dispute have been identified, more than one of which may be present in any given situation:

- ◆ a **factual dispute** is a disagreement focussed on some aspect of the use of information in making a decision, for example, its accuracy, validity, adequacy, appropriateness, application or interpretation;
- ◆ a **professional opinion dispute** is a disagreement that originates from real or apparent differences in the practical, theoretical or conceptual beliefs, values or ethics of the parties;
- ◆ a **procedural dispute** is a disagreement over the process, stakeholders, timing, information requirements, or other aspects of the way in which decisions are made; and
- ◆ a **corporate value dispute** is a disagreement resulting from real or perceived differences between the purpose, goals, principles or criteria of one municipality and those of another.

Depending on the type of dispute, the responsibility for resolution may more appropriately fall to staff, management or elected officials. The following chart outlines this relationship.

**Relationship between Type of Dispute and Level of Resolution**

Level of Resolution \ Type of Dispute	Staff <sup>***</sup>	Management <sup>***</sup>	Council
Factual <sup>*</sup>	Resolution/clarification	Resolution	N/A
Professional Opinion	Resolution/clarification	Resolution	N/A
Procedural <sup>**</sup>	Resolution/clarification	Resolution/clarification	Resolution
Corporate Value	Clarification	Clarification	Resolution

\* If a factual dispute advances to the Council level, the standard should be that the Councils have the same agreed-upon facts.

\*\* Depending on the scope of authority, procedural disputes can be resolved at any level. Issues of public participation and matters with important external implications may be more appropriately referred to Council.

\*\*\* The distinction between “staff” and “management” will be unique to each municipal organization.

### **The Process**



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The procedural framework for intermunicipal issue resolution consists of a **four step process**, illustrated in **Figure 1** and **Figure 2** and described below. The process is supported throughout by the Protocol for Collaboration and Communication and a variety of issue resolution options. Some of these are internal to the organization, others rely on external support and some may be either internal or external. The options are described in detail in Section 7 of the report.

### *Step 1: Pre-application Consultation*

Legislated planning processes ordinarily require a municipality to commence processing upon receipt of a completed application. Nevertheless, applicants are encouraged to make inquiries regarding their intentions prior to filing a formal application. This is potentially beneficial for major complex proposals where the number of issues and the number of stakeholders may be large. It will facilitate the early identification of potential intermunicipal issues and initiate discussion. **Pre-application consultation** is not mandatory, but may also streamline the process of preparing a complete application and may smooth the formal approval process once initiated. Thus, it can be beneficial at two levels, facilitating the working relationship between the municipality and its client, the applicant and reducing the likelihood of surprises later on as intermunicipal issues come to light earlier.

The intent of this consultation is not to render a decision. It is to inform the applicant of the information requirements and the steps in the review process and to gain a preliminary understanding of potential issues and possible solutions. This step takes place at the administrative level and can be beneficial whether or not intermunicipal issues are present in a given situation.

Including **public consultation** at this stage can also be considered, particularly if the project is expected to generate significant public interest or concern. Early consultation offers the opportunity to involve the public in searching for solutions, particularly if processes such as facilitation, partnering, early neutral evaluation and negotiated rule making are incorporated. (These terms are described in the toolkit in the Appendix.) This is in contrast to the typical public hearing process that occurs near the end of the review process, and tends to be adversarial, focussing on positions and attempting to sway decision-makers to one's preferred point of view.

Another example of where the informal consultation phase is of value is in the development of a significant municipal plan (e.g. a municipal development plan or area structure plan), a major policy or a land use bylaw. These are longer term projects of a scale that would require early and ongoing consultation with other affected parties, rather than simply the referral of a completed draft as the approval period approaches. The negotiated rule making process could be adapted to suit this situation. Ordinarily, this consultation will rely primarily on **informal internal supports** such as direct negotiation, peer evaluation and partnering. On occasion, for a major plan or project, the proponent may wish to engage an external expert to conduct a facilitation or



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mediation process to gauge and address public or key stakeholder concerns at an early stage or as the process unfolds.

Through enhanced **early identification processes**, many issues can potentially be resolved before a major investment is made in supportive plans and documents and before the proponent is strongly committed to the details of his proposal.

### *Step 2: Formal Review*

The **formal review** step commences once an application requiring a decision is submitted. The internal review process and the intermunicipal referral process, if required, will proceed in tandem. Similarly, any required or desired public consultation processes need to be synchronized with other aspects of the formal review. The goal, admittedly not achievable in all cases, is to resolve issues to the satisfaction of all parties such that the approving authority can make its decision with the expectation that no appeal will be launched.

The formal review process may be constrained by a variety of legislated or Council approved timelines for comment and decision-making. While these must be taken into account, time may be saved in the long run by extending the original timeframe to allow for negotiation and other issue resolution processes to be concluded. These municipal partners are committed to using the most appropriate **interest based resolution processes** at this stage to resolve issues between them.

**Figure 2** illustrates a more detailed sequencing of the formal review stage. Where no intermunicipal concerns are identified, the local authority proceeds with its internal review process. When intermunicipal issues are identified, respective staff will undertake to resolve them. The key internal supports likely to be used are direct negotiation and peer evaluation. Unresolved issues will be referred to a management level, where the choice of options may be expanded to also include managerial review, and the external supports of early neutral evaluation and mediation. Beyond this, unresolved issues may be brought to the attention of the elected officials who may attempt to negotiate a resolution with their political colleagues or direct administration to engage in a mediation process (if this had not already been done).

Within Step 2, opportunities exist for the process to loop back to an earlier level or to skip a step that may be redundant or unlikely to contribute to a resolution. For example, management may clarify a specific point and refer the matter back to staff to continue the process. Ultimately, if issues remain unresolved despite all previous efforts, the authority with jurisdiction will make its decision (Step 3 of Figure 1) and will communicate it to the affected municipalities.

### *Step 3: Final Decision*



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After a full review process with a concerted effort being made by all parties to resolve issues, a **decision point** is reached. The municipality must render its final decision. The expectation is that decisions will be communicated in a timely fashion to participants in the process. If issues remain unresolved at this point, **legislated rights** of an affected municipality or other stakeholder or the applicant may be exercised. As municipalities, the intention of this process is to ensure that appeals are launched only as a last resort where all other efforts have fallen short.

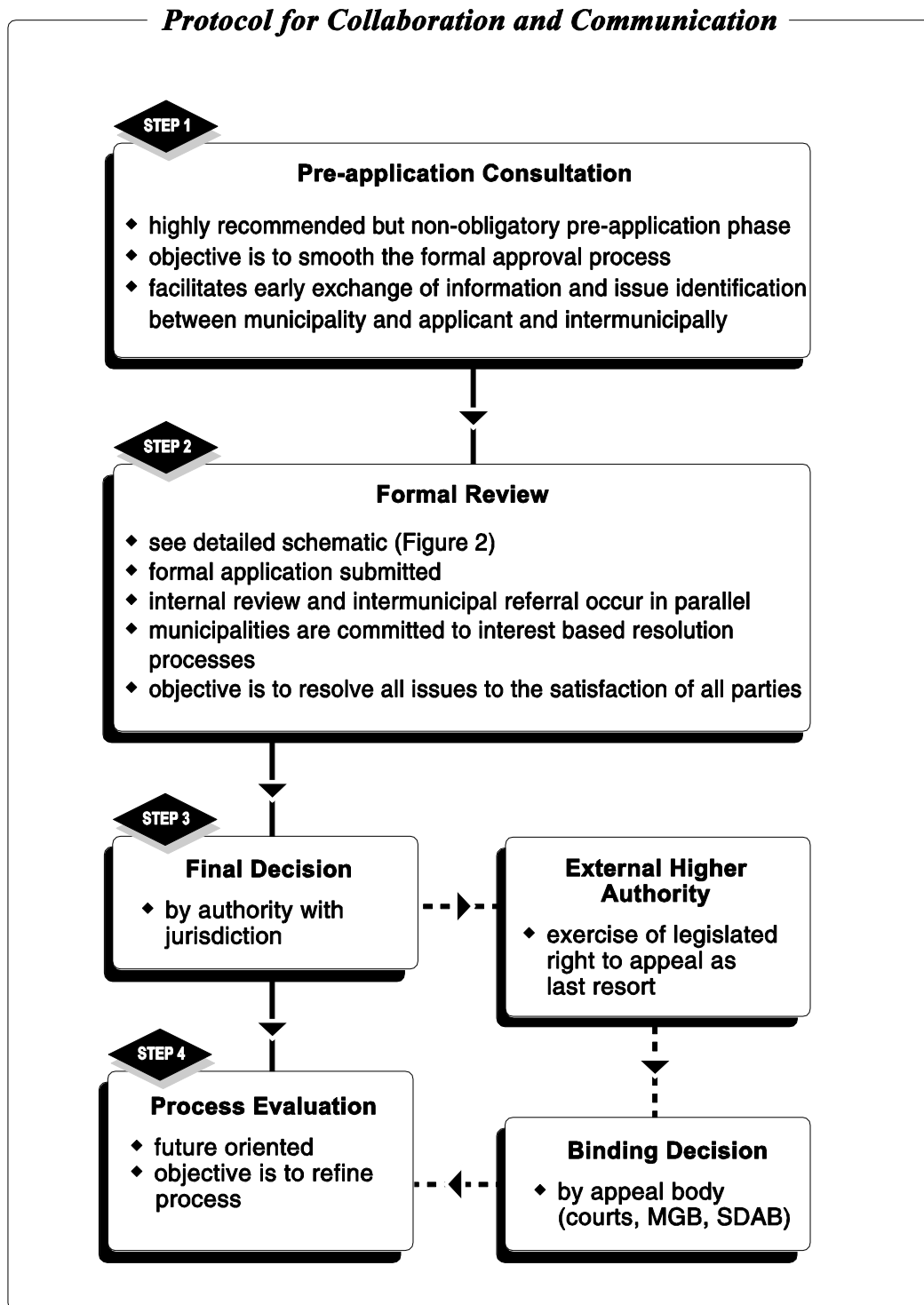
The importance of the **issue resolution process** is not diminished even when it has not met with total success. The subsequent appeal process can be enhanced if, as a result of their negotiations, municipalities have developed a clear understanding of which issues have been settled and where their differences remain. This can assist the appeal panel in defining the scope of the hearing process, save time and may bring a more conciliatory tone to the hearing. These are potentially significant benefits to this issue resolution process and to the requirements to first attempt mediation where this has already been legislated.

### *Step 4: Process Evaluation*

The **debriefing and evaluation** of the issue resolution process on a case by case basis will provide valuable information to be applied in refining the process and strengthening it for future application. Working knowledge of how the process performs will also be helpful in assessing suitability for applying the process to other types of issues. To be effective, the evaluation should occur soon after the process is concluded and it should incorporate a systematic procedure for obtaining feedback from all stakeholders in the process.

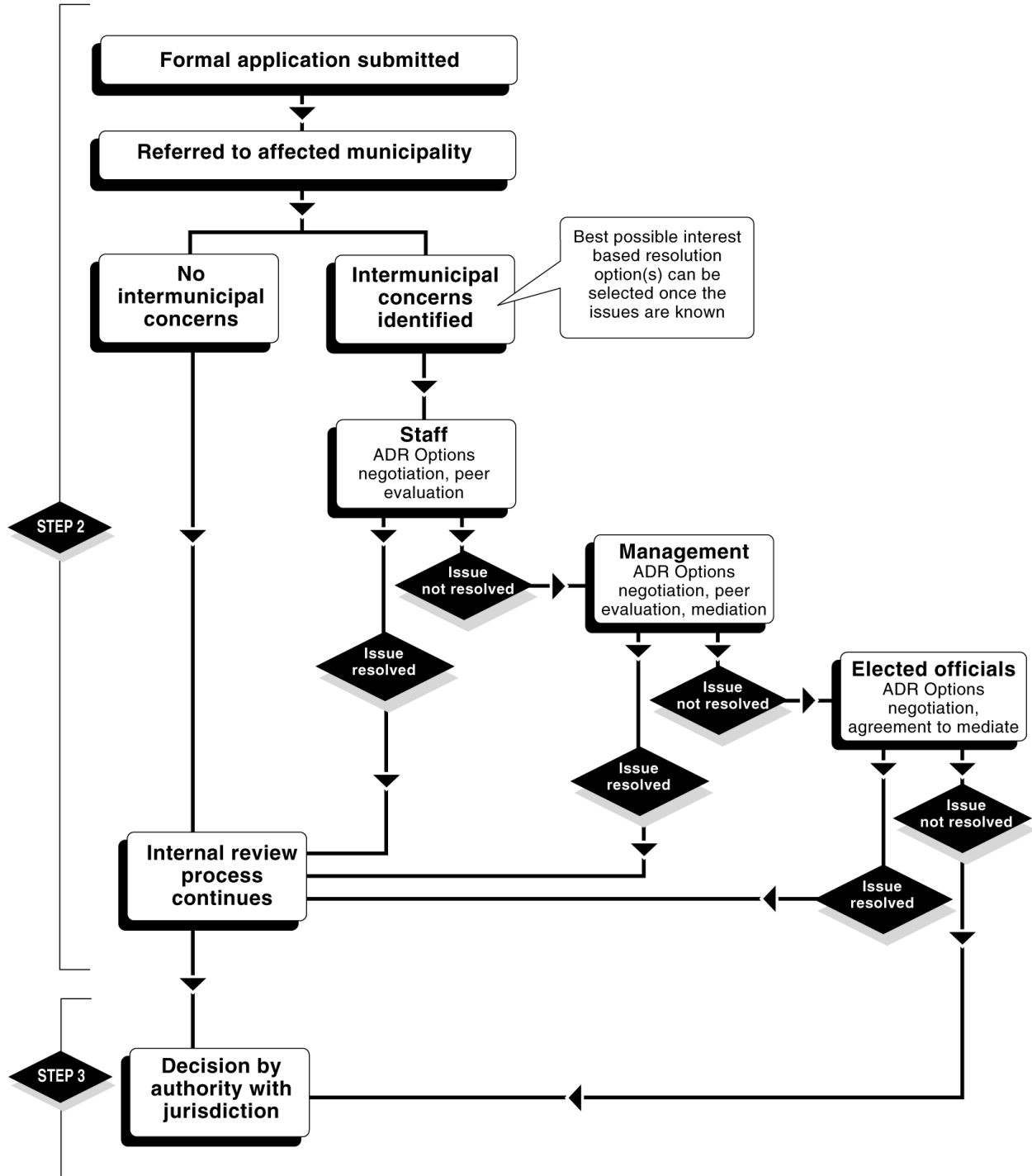


**FIGURE 1** System Design for Intermunicipal Issue Resolution





**FIGURE 2** Detailed Progression of Steps in the Formal Review Stage





### 7. Guide for Selection of an Appropriate Issue Resolution Process

While interest based, principled negotiation approaches are the preferred means of resolving disputes between the municipalities, in some instances, legislated rights to appeal to an administrative tribunal or a court will be exercised. These options also have a proper place in the total spectrum of dispute resolution. Creative combinations of interest based methods, such as mediation, followed by arbitration of any remaining unresolved issues (typically referred to as med/arb), are becoming more common. Over time, more hybrids and new methods can be expected to make their way into practice.

In selecting an appropriate issue resolution process, municipalities must keep clear their dual obligations of being open and accountable in acting for the public good and upholding the rights of the landowner. Beyond this, four general pieces of information need to be integrated: the type of issue; the type of dispute; the key objectives; and the toolkit of options. A worksheet to assist the user in integrating this information is presented as Figure 3 in Appendix 2. To make a good decision about the preferred method(s), the participants need to answer the following questions:

1. What type of issue is being addressed: plan / policy; land use bylaw / regulation; subdivision; development; infrastructure?
2. What type(s) of dispute are involved: factual; procedural; professional opinion; corporate value?
3. Given the type of issue and type of dispute, what are the primary objectives that the dispute resolution process needs to satisfy?
4. Which method(s) from the toolkit are best able to satisfy those objectives and honour the Protocol for Collaboration and Communication?

The types of disputes were described previously. The main types of issues for which this system is being designed include: plans or policies; land use bylaws and regulations; subdivision proposals; development proposals; and infrastructure proposals. Appendix 2 identifies the issue resolution options that are most suited to the various types of issues and disputes that can be expected in an intermunicipal planning environment.

Issue resolution options can be compared on the basis of their relative strengths in meeting a variety of objectives. This rating is somewhat subjective and the selection of options is therefore best done on a case-specific basis. As a guideline, the Intermunicipal ADR Design Team has evaluated eleven issue resolution options, using the objectives thought to be most prevalent in intermunicipal planning related issues. This assessment is summarized in Figure 3. The most common objectives include:

- ◆ preventing disputes, or escalation of an issue into a dispute;
- ◆ cost-effectiveness;
- ◆ quick resolution of issues;
- ◆ maintaining or building better relationships between the parties; and





## A Process for Resolving Intermunicipal Planning Issues

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- ◆ self-sufficiency of decision-making.

Other important considerations may include the need for a precedent to be set, for a neutral opinion, or for the issue to remain private. Additional objectives not identified here may be important in a particular situation. An early task in any issue resolution process is to identify the objectives all parties have for the process.

The dispute resolution toolkit (Appendix 2) includes numerous methods that cover the spectrum from face-to-face direct negotiation to court processes. These are today's best practices. As the field of dispute resolution evolves, new methods and variants of current methods are likely to be introduced.

Some processes are fully self-sufficient in that the entire process is internal to the participants (e.g. direct and step negotiation, partnering, negotiated rule-making). These also tend to be preventive methods that are of special value the earlier they can be applied. Others rely on external assistance, but retain the decision-making among the participants (e.g. facilitation, mediation, early neutral evaluation, managerial review). Still others turn the issue over to an external authority whose responsibility is to hear the matter and decide it (e.g. arbitration, private judging, administrative tribunals, court). All have their place in issue resolution.



# **PUTTING THE PROCESS INTO PRACTICE**

## **8. Next Steps**

### ***Step 1: In Principle Approval***



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Once finalized by the Design Team, joint presentations of the project report will be made to each of the four Councils and the Department of Municipal Affairs for endorsement. The Councils, if supportive, will be asked to pass a resolution approving the issue resolution process.

The recommended resolution is as follows:

*“That, in order to prevent escalation of intermunicipal planning and related issues into full-fledged disputes, achieve quicker, more cost-effective resolutions and help build and maintain good relationships, Council approve the principles, protocols and processes contained in the report entitled “A Process for Resolving Intermunicipal Planning Issues”, prepared by representatives from Sturgeon County, City of Edmonton, City of St. Albert, Town of Morinville and Alberta Municipal Affairs.”*

### **Step 2: Implementation**

#### *Policy Framework*

Each municipality will review its Municipal Development Plan and administrative policies to establish whether amendments would be required to create a suitable policy framework for operationalizing the system. The Design Team will reconvene to share information on this topic. The top priority is to ensure that this issue resolution process is accessible in situations of intermunicipal importance. Each municipality may consider other internal applications as it deems appropriate.

#### *Roles and Responsibilities*

Each municipality should assign responsibility to senior staff within its organization to ensure that the system is used when an issue arises. Staff responsibility for ensuring that the process is followed in the appropriate situations will have to be tailored to each municipality’s organization and duty assignments. One approach may be to establish a single point of contact with the responsibility of building an understanding of the types of issues likely to arise and screening them for referral to this process, as appropriate. The role of municipal councils and councillors is also critical to the success of the program. The Design Team is committed to regular monitoring of the successes and weaknesses and to making refinements as the need arises.

#### *Documentation*

The policy and procedures should be clearly documented for all staff. Briefings should take place to introduce and explain the processes and should include opportunities for staff concerns to be identified and addressed. A broad base of commitment to the new



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approach will be required for it to be successful. The system should be relatively easy to access and understand if it is to gain acceptance

### *Selection*

The positions and staff most likely to be affected by the introduction of the issue resolution system should be identified and provided training to ensure that they develop the necessary skills. The long-term objective is to have staff generally capable of working effectively with these processes in many types of situations.

### *Training*

The Design Team recommends that joint training sessions be held for selected staff from the four municipal jurisdictions. This offers the advantages of economy, having the training tailored to identified needs and of building stronger relationships between individuals who will likely be applying the new processes. Over time, it may be possible to create an internal network of trained and skilled individuals who can act as neutral third parties for other partner municipalities. Consideration may be given to training for other stakeholder groups as well.

### **Step 3: Support**

It is important to continue to expand the base of support internally and with other customers and the general public to improve the acceptance of interest based issue resolution as a consistent and preferred way of doing business. As the commitment to this and similar approaches expands, the cultures of organizations will evolve to a new norm of mutual gain issue resolution.

### **Step 4: Monitoring and Evaluation**

In making the system operational, it is imperative that the users report back on what works and what needs to be reviewed and refined. A systematic and objective reporting system will be developed to facilitate feedback from all stakeholders. The Design Team is committed to periodic meetings to analyze such data and progress reports and to recommend improvements.



# **APPENDICES**

## **Appendix 1: Definitions**



## A Process for Resolving Intermunicipal Planning Issues

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**ADR** – alternative (or appropriate) dispute resolution. Typically, ADR refers to interest based dispute resolution processes outside of the formal appeal or court settings, hence “alternative”. The reference to “appropriate” dispute resolution recognizes the important and legitimate role that appeals and court processes play in the full spectrum of dispute resolution.

**Collaboration** – a style of problem solving or issue resolution that is as assertive in respect of one’s own interests as it is cooperative towards the interests of the other party(ies).

**Compromise** – an outcome in which each party has lost or forfeited some interests in order to reach a solution.

**Conflict** – a divergence of goals, objectives, standards, attitudes or expectations between individuals or organizations.

**Consensus** – the process of coming to a communally acceptable agreement through group participation in formulating the outcome.

**Consultation** – any process in which affected persons, often the general public, are invited to express their views before a decision-maker makes a decision on the issues.

**Corporate Values Dispute** – a disagreement resulting from real or perceived differences between the purpose, goals, principles or criteria of one municipality and those of another.

**Dispute** – manifest conflict.

**External Higher Authority** – an appeal body or court that is referred a matter with the expectation that a binding decision will be rendered. The referring parties have no influence over the selection of presiding individuals or the specific content of the decision.

**External Support** – neutral third party not affiliated with any of the directly involved municipalities assists in reaching a mutual gain solution. Use of external supports still retains a high degree of self-sufficiency because the locus of decision-making (including the selection of the neutral party and the terms of the resolution) remains internal with the parties.

**Factual Dispute** – a disagreement focussed on some aspect of the use of information in making a decision, for example, its accuracy, validity, adequacy, appropriateness, application or interpretation.

**Internal Support** – person affiliated with one or more of the directly involved municipalities who has the skills or expert knowledge to assist in reaching a mutual gain



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solution. Use of internal supports retains a high degree of self-sufficiency in achieving a resolution.

**Interest** – a fundamental “need” that underlies the position of a party in dispute that must be met in order for an agreement to be reached. Included are any objective substantive, procedural or psychological desires, needs, concerns, fears and hopes.

**Issue** – the matter that is the subject of a dispute.

**Mutual Gain** – a win–win resolution in which all parties’ interests are met to the greatest extent possible.

**Position** – the ideal solution to a dispute from the disputant’s own perspective.

**Procedural Dispute** – a disagreement over the process, stakeholders, timing, information requirements, or other aspects of the way in which decisions are made.

**Professional Opinion Dispute** – a disagreement that originates from real or apparent differences in the practical, theoretical or conceptual beliefs, values or ethics of the parties. Professional opinions evolve from an individual’s life experience, work experience, education and training.

**Stakeholder** – any person, organization or group that has such an interest in the outcome to a conflict that including them is likely to improve the quality of the outcome or its implementation, and excluding them could lead to any agreement being undermined.



### Appendix 2: Dispute Resolution Toolkit

**Direct Negotiation** - An unassisted, face-to-face, interest-based negotiation process between directly involved parties aimed at identifying the issues and developing a mutually agreeable solution. An adaptation of this is referred to as **Step Negotiation** whereby, if the negotiation is unsuccessful in the initial attempt, the issue moves “up the ranks” to successively more senior personnel, according to a prior agreement.

*Satisfies Objectives: collaborative; very cost-effective; timely resolution; preserves relationships; self-sufficiency; privacy*

**Partnering** – A preventive process intended to foster teamwork. At the start of a project, particularly in the construction industry, partnerships are created to identify common goals and interests of the parties to the contract. Lines of communication are thereby established in the event of disputes.

*Satisfies Objectives: collaborative; very cost-effective; timely resolution; preserves relationships; self-sufficiency; privacy*

**Facilitation** - Attempt by third party neutral to reduce tensions, improve communications, and help parties agree to a process to resolve the dispute. The facilitator does not make decisions on substantive issues.

*Satisfies Objectives: collaborative; cost-effective; timely resolution; preserves relationships; self-sufficiency; privacy*

**Conciliation** – A neutral third party talks to the disputants separately, to diffuse emotions, identify common ground, and perhaps to bring the parties back to the table or to find an agreeable solution. The conciliator does not make decisions on substantive issues. “Shuttle diplomacy” is a fairly apt description of the process.

*Satisfies Objectives: collaborative; cost-effective; timely resolution; preserves relationships; self-sufficiency; privacy*

**Mediation** - Use of a third party neutral, trained in the mediation process, and who may or may not have subject matter expertise, to help disputants negotiate a mutually agreeable settlement. The mediator has no independent authority and does not make a decision.

*Satisfies Objectives: collaborative; cost-effective; timely resolution; preserves relationships; self-sufficiency; privacy*

**Early Neutral Evaluation** - Using a neutral fact finder, usually with substantive expertise, to evaluate the relative merits of the parties’ cases. The fact finder provides a non-binding evaluation that can give the parties a more objective assessment of their position, or a better sense of an ethical process that could work, considering the type of dispute, the people involved, etc. This process may increase the chances that further negotiation will be productive.

*Satisfies Objectives: collaborative; cost-effective; timely resolution; preserves relationships; self-sufficiency; privacy; provides neutral opinion*





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**Managerial Review** - A structured settlement process, usually with a neutral present, in which each side makes a condensed presentation of its case before senior representatives of each party, who are authorized to negotiate a settlement. If they alone are unsuccessful, the neutral can assist. This is another variant of the **Step Negotiation** process.

*Satisfies Objectives: collaborative; cost-effective; timely resolution; preserves relationships; self-sufficiency; privacy, provides neutral opinion*

**Arbitration** - Similar to traditional adjudication except that the third party neutral is selected by the parties and is empowered to decide disputed issues after hearing evidence and arguments presented by the parties. The arbitration decision may be binding or non-binding, either through agreement or operation of law, or mandatory (imposed by a court or by legislation).

*Satisfies Objectives: cost-effective; timely resolution;*

**Negotiated Rule Making (Reg/Neg)** - An alternative to traditional procedures for drafting proposed regulations. Reg/Negs bring together representatives of the government and affected interest groups to negotiate the text of a proposed rule before the proposed rule is finalized.

*Satisfies Objectives: collaborative; cost-effective; timely resolution; preserves relationships; self-sufficiency;*

**Peer Evaluation** – A lateral referral of an issue to a colleague who can provide an objective opinion and / or who may have substantive expertise relevant to the issue.

*Satisfies Objectives: collaborative; cost-effective; timely resolution; preserves relationships; self-sufficiency; privacy*

**Private Judging** – A retired judge or a senior counsel is retained privately to conduct a hearing, sometimes incorporating a form of mediation, and arrive at an impartial decision. The decision is binding as it is considered an arbitral award. This process is offered commercially in Ontario; Its status in Alberta is uncertain.

*Satisfies Objectives: cost-effective; timely resolution; preserves relationships; privacy*

**Administrative Tribunal** – A formal quasi-judicial hearing process, usually before an appointed panel, which renders a binding decision. Though not considered precedent-setting, such decisions can be instructive as to the likely interpretation or application of a statute or regulation.

*Satisfies Objectives: sets precedent*

**Court** - An adjudicated, rights-based and usually adversarial process that yields a binding, precedent-setting decision. *Satisfies Objectives: sets precedent*



# A Process for Resolving Intermunicipal Planning Issues

**FIGURE 3** Worksheet to Evaluate an Issue and Select Issue Resolution Options

Check all applicable

**Question 1 Type of Issue**

Plan or Policy
Notes
Land Use Bylaw
Notes
Subdivision
Notes
Development Proposal
Notes
Infrastructure
Notes

Check all applicable

**Question 2 Type of Dispute**

Factual
Notes
Procedural
Notes
Corporate Values
Notes
Professional Opinion
Notes
Other Dispute
Notes

**Question 3 Parties' Objectives**

Check all applicable

	Direct Negotiation	Partnering	Negotiated Rule Making	Peer Evaluation	Managerial Review	Early Neutral Evaluation	Facilitation	Mediation/Conciliation	Arbitration/Private Judging	Administrative Tribunal	Court
Collaborative	●	●	●	●	●	●	●	○	○	○	
May Prevent Dispute	●	●	●	●	●	●	●	○	○	○	
May Prevent Escalation	●	●	●	●	●	●	●	○	○	○	
Parties Control Outcome	●	●	●	●	●	●	●	○	○	○	
Cost Effective	●	●	●	●	●	●	●	○	○	○	
Time Efficient	●	●	●	●	●	●	●	○	○	○	
Helps Build Relationships	●	●	●	●	●	●	●	○	○	○	
Encourages Self-sufficiency	●	●	●	●	●	●	●	○	○	○	
Issue Remains Private	●	●	●	●	●	●	●	○	○	○	
Provides Objective Opinion	○	○	○	○	○	○	○	●	●	●	
Provides External Assistance	○	○	○	○	○	○	○	●	●	●	
Sets Legal Precedent	○	○	○	○	○	○	○	○	○	●	
Other _____											

● Strong  
● Intermediate  
○ Weak

**Question 4 Options That Best Meet Objectives**

Notes



### Appendix 3: Implementation Topics for Further Consideration

Once approval in principle is given by all participating Councils, the Design Team will turn its attention to a variety of implementation questions and issues. Among them, in random order, are:

- ◆ training – who will receive training; of what sort; in what timeframe; by whom; will stakeholders in a given dispute receive training?
- ◆ public relations – how to present the general approach to the public; will their input be sought; how will the public be involved in process refinements for specific situations?
- ◆ screening for appropriate issues to test / implement the process;
- ◆ leadership / champions for the initiative;
- ◆ need for an independent evaluation of the program;
- ◆ handling process disagreements;
- ◆ joint or unilateral announcements of decisions;
- ◆ collaboration with other stakeholders in detailed design;
- ◆ loop back and loop forward (skip a step) opportunities;
- ◆ policy review of applicable planning documents;
- ◆ assigning responsibility;
- ◆ designing a systematic and objective monitoring and evaluation process; who should provide input; how should it be collected?
- ◆ exploring opportunities to link this process to appeal processes.