

THE COMMUNICATOR

Alberta Development Officers Association (ADOA)

September 2021

Summer Issue

In this Issue:

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June Meeting Highlights

If you have any **inquiries or topics** you would like for the Board to discuss/address, please email them to admin@adoa.net

- **Due to medical reasons Terry Topolnitsky has stepped down as a member of the ADOA Board. Jordan Ruegg is now the Interim President.**
- Board moved that the ADOA contribute \$1,000.00 to Terry's health care expenses.
- A Survey will be included in the next communicator to ask membership about using some GIC funds for Education or Professional Development..
- The Free conference registration awarded in 2019 was offered to be used in 2021 or 2022 due to the virtual and lower cost nature of 2021.
- Conference Committee update on the status of the virtual conference.

Spotlight

Terry Topolnitsky

We as the Executive Board and the ADOA Membership thank Terry for all that he has done to promote our organization, his extensive work and promotion of the ADOA with the University of Alberta Applied Land Use Planning and Olds College programs, and his leadership as President these last years.

We wish Terry the best wishes in his retirement.



Survey

Summer Communicator Survey

\$25 gift card will be given to a random participant

Please fill out the survey by emailing answers to admin@adoa.net, Please include your name and municipality for draw entry.

In June the board has discussed several options for some GIC funds and would like the member's input on exploring some potential options.

- 1) **If the ADOA was to use some GIC funds to provide physical or virtual workshops throughout the year what type of agenda or programs would be of interest?** Some examples are reviewing Permits and Regulations regarding Campgrounds or projects under AUC Approvals. Or is this of no interest to you?
- 2) **Should the ADOA expand the education subsidy to include \$25,000 from the GIC account to provide expanded access to members for professional development? And if yes, should the ADOA include other forms of Professional Development or stick with the Applied Land Use Planning Certificate program?**
- 3) **The 40th ADOA conference is coming up soon, where would the membership like to go for the conference?**



ADOA CONFERENCE

SEPTEMBER 22

8:15 - 8:30 Onboarding

8:30 – 9:00 a.m. Welcome & Introductions

- MLA Dreesen & MP Dreesen
- Mayor Jim Wood
- Assistant CAO, Planning Director, Dave Dittrick

9:00 – 10:00 a.m. Keynote Speaker

- Tina Varughese

10:00 – 10:15 a.m. Break

10:15 – 10:45 a.m. Breakout Sessions

- Rebecca Schapansky: CPTED
- Tara Logan: Indoor Farmer's Market

10:45 – 11:00 a.m. Break

11:00 a.m. – 12:00 p.m. Speaker

- Nick Price (V3 Companies of Canada):
Land Use Bylaw Challenges

12:00 – 1:30 p.m. Lunch & ADOA AGM

1:30 – 2:45 p.m. Speaker

- Todd Hirsch: Economic Recovery
after COVID-19

2:45 – 3:00 p.m. Break

3:00 – 4:30 p.m. Speaker

- Doug Griffiths

4:30 – 5:00 p.m. Break

5:00 – 7:00 p.m. Round table with Committee

- Virtual Tours of the Indoor Farmer's Market, The Dome & Discovery Wildlife Centre
- 50/50 Draws and Cocktails
- Networking - Discuss the Experience Box



ADOA CONFERENCE

SEPTEMBER 23

8:15 – 8:30 a.m. Onboarding

8:30 – 8:45 a.m. Welcome and Introductions

8:45 – 10:00 a.m. Keynote Speaker

- Scott McDermott

10:00 – 10:15 a.m. Break

10:15 – 11:30 a.m. Keynote Speaker

- Scott McDermott

11:30 a.m. – 12:30 p.m. Lunch

12:30 – 12:45 p.m. Welcome Back

12:45 – 2:30 p.m. Speaker

- Jeneane Grundberg Brownlee: Bill 48

2:30 – 2:45 p.m. Break

2:45 - 4:30 p.m. Bear Pit

4:30 – 4:45 p.m. Closing Remarks

- ADOA and Red Deer County



Resources

Storage Tank Systems – Delegated Authority Change

On June 8, 2020, the delegated authority for flammable & combustible liquid storage tank systems in unaccredited areas of Alberta was transferred from the Petroleum Tank Management Association of Alberta (PTMAA) to the Alberta Safety Codes Authority (ASCA), a division of the Safety Codes Council.

The permitting, inspection and spill/incident reporting requirements for storage tank systems are regulated by Part 4 of the National Fire Code – 2019 Alberta Edition (NFC (AE)).

Municipalities that are accredited in Part 4 will continue with permitting and inspections of flammable and combustible liquid storage tanks systems as per their Quality Management Plan (QMP).

The Safety Codes Council remains committed to providing programs and services that help make Alberta a safe place to live, work and play. To determine your municipality's accreditation status pertaining to storage tank systems, please visit the Council's website, www.safetycodes.ab.ca, and use the "where to get a permit" application.

Member Forum Connect (<https://forum.adoa.net/>)

What is it?

The Member Forum is an online discussion place to ask questions, make comments and connect online with the ADOA Community throughout the year instead of just at the annual conference!

In this section we will highlight some of the topics or threads that may be of interest for the greater ADOA Community in the hopes of getting more discussion and a larger knowledgebase on the forum.

Please contact Diane at admin@adoa.ca if you are having access issues.

Highlighted (New) Threads

- MDP/LUB – Broadband
- Variance Powers for Development Officer
- Airbnb
- Safety Codes Fees
- Land Use Bylaw Consolidation
- Cancube Accessory Buildings
- E-Site Development Permitting Function



BROWNLEE LLP
Barristers & Solicitors

What Use Are You Anyway?

Development Permit Applications and Use Characterization

Article 1 of Brownlee LLP's Processing Development Permit Applications Series

A clear development permit (in relation to use, scope and conditions) is a cornerstone of proper planning. This is the first of a series of articles Brownlee LLP will be providing on Processing Development Permit Applications.

One of the most critical aspects of processing the application is properly characterizing the use of the subject development. The characterization of the use lays the foundation for the rest of the analysis of the development permit application, as well as any potential conditions on a development permit, or the reasons for denying the same. This issue (use characterization) should be considered as part of the process to determine that the application is complete under s. 683.1 of the *Municipal Government Act* R.S.A. 1980 c. M-26.1, as amended (the "MGA"). Even after an application has been determined to be complete, the issue of "use characterization" should continue to be considered, given the development authority will be performing a more searching evaluation of the merits of the development permit application after it has been determined to be complete.

In determining the use of a proposed development subject to a development permit application, the development authority, should keep the following three questions top of mind:

Is the referenced use defined in the land use bylaw?

Is the referenced use either a permitted or discretionary use in the subject district? Or, does it more properly fall within a defined use in another district?

Looking at the application as a whole, what is the dominant purpose of the use?

Asking these three questions and abiding by principles associated with each should reduce certain issues from arising during the processing of a development permit application, or anytime thereafter. We discuss each of these questions, and the principles related thereto in further detail below:

If you have questions about your Land Use Bylaw, the items discussed above or other general development issues, please contact a member of the **Brownlee LLP Municipal Team** on our Municipal Helpline at 1-800-661-9069 (Edmonton) or 1-877-232-8303 (Calgary).

Is the referenced use defined in the land use bylaw?

Proposed development within a development permit application does not always reference a defined use, or other required regulations found in the land use bylaw. When a proposed use clearly contemplates a defined use within the land use bylaw but does not cite the use specifically, the development authority may still grant a development permit, should it be satisfied with the rest of the application. However, if granting a development permit in this situation, the development authority should be sure to name the defined use within the permit and otherwise ensure that the permit and any conditions thereunder align with the land use bylaw. In particular, when a defined use is proposed that is not authorized in the subject district, or it is not clear what use is being proposed, the below questions and associated principles should also be considered.

Is the referenced use either a permitted or a discretionary use in the subject district? Or, does it more properly fall within a defined use in another district?

When processing development permit applications, the development authority must be sure to determine whether the use being proposed is truly authorized within the subject land use district, or, if it more accurately falls within a defined use only authorized in a different district.

Expressio unius, or “to express one thing is to exclude another” is an alive principle within the Alberta planning jurisprudence. A development authority must consider definitions within the context of the land use bylaw and cannot approve a use that is permitted or discretionary in one land use district, but that is not an authorized use in the district subject to the application. The fact that uses cannot be varied in this way is grounded in the legislative nature of Council’s bylaw making power. As democratically elected officials, only Council can make decisions about where permitted and discretionary uses are authorized and Council’s decisions must be respected by the development authority, and, if there is an appeal, the appeal tribunal (the Subdivision and Development Appeal Board, or the Land and Property Rights Tribunal, as the case may be).

The principle of *expressio unius* was applied by the Alberta Court of Appeal in the case of *Newell (County) No. 4 Development Appeal Board v. Brooks (Town)*, 1998 ABCA 198. In this case, the Development Appeal Board (the “Appeal Board”) granted a development permit for the expansion of a pre-existing and authorized feedlot (defined as an “intensive livestock operation” under the land use bylaw) within the Urban Fringe District. Note that this case was decided prior to approval for confined feeding operations and manure storage facilities being vested in the Natural Resources Conservation Board (see *MGA* s. 618.1).

In this case, the expansion to the intensive livestock operation applied for by the developer was not listed as a permitted or discretionary use within the Urban Fringe District, meaning the existing feedlot was a non-conforming use. The Application was initially denied by the development authority on two grounds, including that the proposed development did not comply with the land use bylaw.

In reversing the development authority’s decision, the Appeal Board noted that the existing feedlot and the proposed expansion thereto were of a similar agricultural nature and would not significantly change the impact of the surrounding neighbourhood. The Appeal Board approved the expansion, and relied on a “similar use” provision in the land use bylaw. The decision of the Appeal Board was further appealed to the Court of Appeal.

In addition to finding that the Appeal Board did not have the authority to approve the expansion of a non-conforming use (see *MGA* s. 643), the Court of Appeal held that the Appeal Board could not rely on a “similar use” provision within the land use bylaw to approve uses that were neither permitted nor discretionary. The use could not be of a similar nature to one or more of the enumerated uses within the Urban Fringe District, as “intensive livestock operation” was specifically defined in the land use bylaw, and only authorized in another district. The Court stated that:

*"While it [an intensive livestock operation] is a permitted or discretionary use in some districts, it is not a permitted or discretionary use in an Urban Fringe district. It cannot be "similar in nature" to one or more of the listed uses in the district.... **The proposed use can hardly be encompassed in a listed use when it is itself a distinct use defined in the By-Law and a listed use in some land use districts.**"*

The effect of the Appeal Board's decision was to effectively add the intensive livestock operation use to the permitted and discretionary uses for the Urban Fringe District, which the Court found improper.

This case is an example of the *expressio unius* principle of drafting. If Council has clearly contemplated that a use (here, intensive livestock operation) is only available in another district, the inference is that it is prohibited in the subject district.

A carefully worded and broad use definition can encompass other specific uses definitions; but the land use bylaw would need to be clear in that regard.



Looking at the application as a whole, what is the dominant purpose of the use?

The dominant purpose of a proposed use is a critical aspect for the development authority to consider when characterizing the use. When determining whether a use fits within a particular definition, the development authority should go beyond the stated use within the application and look at the context in which it is being proposed. This analysis, known as the "dominant purpose test", requires the decision maker to consider the essential character of the dominant purpose of the proposed development, in an exercise of substance over form.

For example, the Court of Appeal applied the dominant purpose test in *Old Strathcona Foundation v. Edmonton (City)*, 2000 ABCA 205 to reverse the granting of a development permit for an 850 seat cinema above the parking garage of a hotel. In the case, the development authority refused a development permit for the cinema (defined as a "spectator entertainment establishment" under the land use bylaw) as an addition to a hotel. The proposed cinema was to comprise of four newly constructed storeys on top of the existing two-storey parking garage. A spectator entertainment establishment was only authorized to rise to four storeys, unless it fronted onto a specified roadway and was for "hotel development", an undefined term.

On appeal the subdivision and development appeal board (the "Appeal Board") reversed the decision of the development authority, and granted a development permit, subject to conditions. The decision of the Appeal Board was then appealed to the Court of Appeal.

In response to whether the proposed cinema was classified as undefined "hotel development", the Court of Appeal held that the relevant inquiry was whether the dominant purpose and intended use of the development was in its essential character that of a hotel. In the case of the proposed addition to an existing hotel, the question was whether the dominant purpose and use of the hotel development as redeveloped with the addition would remain that of a hotel. In this case, the Court held that appending a cinema onto an existing hotel did not satisfy the dominant purpose test for that of hotel development and reversed the decision of the Appeal Board.

Importantly, the Court noted that it was an error to conclude that because the proposed development is an addition to the existing parking garage which, in turn, is an integral part of the existing hotel, that it necessarily followed that the proposed development was "hotel development". This holds true for all development permit applications – whether a proposed use of an application is a defined term, or another use altogether, the development authority must consider the essential character of its dominant purpose, in the context in which it is being proposed. If the interpretation leads to a variance of the object and purpose of a provision of the land use bylaw, or interprets a use in a way that the land use bylaw cannot reasonably bear, the proposed interpretation is likely not the dominant purpose of the use.

Conclusion:

Properly characterizing a proposed use within a development permit application is a critical step to ensuring orderly development patterns. Keeping the above three questions and the associated principles in mind when processing development permit applications will help to prevent certain issues from arising during application processing and throughout subsequent stages of the development process.

The Brownlee Municipal Law Team is pleased to offer our services in a number of planning and development areas, including processing development permit applications, subdivision applications, all related appeals, and adoption of planning bylaws. For more information, please contact a member of the Brownlee LLP Municipal Team on our Municipal Helpline at 1-800-661-9069 (Edmonton) or 1-877-232-8303 (Calgary).

Article

Overview Land & Property Rights Tribunal

The Land and Property Rights Tribunal (formerly Municipal Government Board) hears subdivision and development appeals where there is a provincial interest. Otherwise, the appeals are heard by the local Subdivision and Development Appeal Board.

Subdivision

The Tribunal hears subdivision appeals where the land that is the subject of the application is:

- within Alberta's Green Area
- 'adjacent' to or contains a body of water
- 'adjacent' means contiguous or would be contiguous if not for a railway, road, utility right of way, or reserve land
- adjacent to or contains (either partially or wholly) land identified on the Listing of Historic Resources or public land set aside for use as historic resource
- the subject of a license, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission
- the subject of a license, permit, approval or other authorization granted by the minister of Environment and Parks
- within the following distances:
 - 1600 metres of a provincial highway
 - 450 metres of a hazardous waste management facility
 - 450 metres of the working area of an operating landfill
 - 300 metres of the disposal area of any landfill
 - 300 metres of a wastewater treatment plant
 - 300 metres of the working area of a non-hazardous waste storage site
- Some of these distances may be varied in writing by a provincial government department, in which case the SDAB will hear the appeal.

Development

The Tribunal also hear appeals of development authority decisions where the land that is the subject of the application is:

- the subject of a license, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission
- the subject of a license, permit, approval or other authorization granted by the Minister of Environment and Parks

Overview of the Land and Property Rights Tribunal from <https://www.alberta.ca/land-planning.aspx>

* Reminders *

**If you are leaving your job or Alberta,
please let us know...**

This way we can keep our membership current.

Thank you for your cooperation!

- *Remember your membership is to you the Individual if you leave your job for whatever reason your membership stays with you for the rest of the year.*

ADOA Fees & Education Subsidy

Membership fees include a subsidy program for education to advance your knowledge. If you have any educational needs related to being a Development Officer please contact admin@adoa.net to apply.

Contributions Wanted

- Perfect snapshot?
- Topics of concern?
- Spotlight a Interesting or unique development?
- Have an original article you'd like to have published?
- Nominate a Development Officer for the spotlight?

Please make a submission at admin@adoa.net



2019 - 2021 Board of Directors

Board Member	Role	Municipality	Contact
Jordan Ruegg	Interim President Education (Co-Chair)	Smoky Lake County	jruegg@smokylakecounty.ab.ca (780) 656-3730
Cheryl Callihoo	Past President Bylaw and Policy Chair	Town of Barrhead	cclalihoo@barrhead.ca (780) 674-3301
Natacha Entz	Secretary	City of Brooks	nentz@brooks.ca (403) 794-2251
Diane Cloutier	Treasurer Chair Conference Committee Liaison	Lac La Biche County	diane.cloutier@laclabichedcounty.com (780) 623-6732
Tyler McNab	Communications Chair	Sturgeon County	tmcnab@sturgeoncounty.ca (780) 777-7097
Roger Garnett	Membership Chair	County of Vermilion River	rgarnett@county24.com (780) 846-2244
Vacant	-	-	-
Vacant	-	-	-

Diane Burtnick	Executive Assistant	admin@adoa.ca (780) 913- 4214
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Contact Us

Send us an e-mail or give us a call for more information about our membership and our non-profit group.

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