



THE COMMUNICATOR

Alberta Development Officers Association (ADOA)

February 2023

Winter Issue

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Photo Darla Wiebe

Words from the Editor

Is it winter? Fall? Spring? What a crazy weather year is has been in Brooks and County of Newell. We had a cold snap before Christmas but other than that it hasn't been too bad of a winter, in my opinion.



Photo Rebecca Arndt

The Development permit intake at the County of Newell has been a bit slow this winter, as expected. The price and availability of supplies has improved so I expect to have a busy Spring, Summer and Fall.

I have a little bit more to add to my Alberta Highlights that was in the previous newsletter. What a wonderful place we get to call home!

DID YOU KNOW?

Alberta has the most sunshine of any province. The winters can be cold but often get chinook winds from the south to raise the temperature.

Agriculture uses up one-third of Alberta's land, approximately half of that is to grow crops and the other half to raise livestock. One half of the province is covered in forests and provide industry in lumber and pulp and paper factories. Commercial fishing is also done in Alberta's northern lakes.

The majority of Canada's fossil fuels are found in Alberta and we produce the majority of Canada's natural gas, crude oil and half of its coal. In 1976 Alberta created the Heritage Fund, it was restructured in 1997 and it takes revenues from our oil and gas revenues and supports health care, education and infrastructure as well as invests and saves for future generations. The Heritage Savings Trust fund is only in Alberta, no other province has this type of fund.

Manufacturing in Alberta's leading industries are food processing, chemicals, petroleum and wood related.

Alberta is the home of the Calgary Flames and Edmonton Oilers which cause lots of hockey controversy during the NHL months, we also have two major football teams, the Calgary Stampeders and Edmonton Elks which was once called Edmonton Eskimos but was changed in 2020. Rodeo is a very popular sport with most towns or cities hosting a rodeo of some kind and the world's most famous rodeo is the Calgary Stampede where people come from all over the world to see. The first stampede was held in 1912 and doubled the population of Calgary that year. The stampede experiences some financial hardship through the wartimes but after the World War 2 the stampede was a site of celebration for western Canada's wartime contributions. In 2012, the 100th birthday of the stampede 1,409,371 people attended the stampede. Of course, this influx of people to the stampede generates tourism all through the province.

Alberta is 661,848 km¹ in size and has 4.371 million population and its the 6th largest province in Canada and in my opinion, the best place in the world to live.

<https://www.britannica.com/place/Alberta-province/History>

https://en.wikipedia.org/wiki/Dominion_Lands_Act

<https://cpconnectingcanada.ca/>

<https://www.alberta.ca/heritage-savings-trust-fund.aspx>

<https://www.calgarystampede.com/heritage/history/next-hundred-years>



As everyone who ever has received an email from me, knows the office has moved. Along with the office, I move as well. The office is now located in Strathmore and I am finding a very vibrant, friendly and welcoming community. The Town where quality of life is a way of life. It is a community of over 13,000 people located 40 km east of Calgary with convenient access to the picturesque Bow River. While agricultural developments cover large areas of the surrounding area, Strathmore provides its residents with the benefits of country living, town services and easy access to large city facilities while residing in an area combining heritage and modern amenities. There are lots of walking trails and a beautiful lake with a dock to sit and read during the warm summer days. Strathmore offers wide choices in restaurants, accommodations, hospitality, local wines and shopping. With direct access to the Trans Canada Highway, travelers have been welcomed to use facilities that have now developed into a thriving country town.

Why would you go anywhere else when we already live in the most amazing place

ALBERTA!

The Communicator will continue to showcase our lovely province in every issue.

Please send me an email if you live in an area or have visited an area in Alberta that should be showcased.

BROOKS!

With a population of 14,924, the City of Brooks is the largest urban centre between Calgary and Medicine Hat and is the second largest community in southeastern Alberta. Located in the heart of the Brooks Newell Region, Brooks ranked #9 in Macleans Magazine's 2021 Canada's Best Communities and had an overall ranking of #2 in all of Alberta.

A well celebrated aspect about Brooks is our cultural diversity; known as the City of 100 Hellos because of the multiple languages spoken here,

Brooks is

a community leader when it comes to cultural events, inclusion, and diversity. The 2021 census revealed that 48% of the Brooks population is a visible minority and 35% of residents were not born in Canada, coming to Brooks as either an immigrant, Temporary Foreign Worker or refugee. With this immigration also comes a shift in our demographics as many young families move to the Region – we boast an average age 4 years below the national average and this youthful energy is very evident in the way we celebrate our communi-

ty.

And guess what? People that come to our Region stay in our Region. Over 57% of residents in Brooks have lived here for longer than five years. They come, they love it, and they stay. Our welcoming community and ability to forge a sense of belonging for residents is what makes Brooks a place proud to call home.

Submitted by Natacha Entz & Lisa Tiffin, City of Brooks

Thank you!



ADOA LEGAL CORNER with:



BROWNLEE LLP
Barristers & Solicitors

Considering Variances in the Development Permit Process

Article 6 of Brownlee LLP's Processing Development Permit Applications Series

One of the most critical provisions in the MGA is s. 687(3)(d):

Hearing and decision

687(1) At a hearing under section 686 ...

...

(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

This is a provision that applies at the appeal level, i.e. when a development permit appeal is being considered either by a Subdivision and Development Appeal Board or by the Land and Property Rights Tribunal. It will be repeated in each municipal Land Use Bylaw, allowing the Development Authority at first instance to grant a variance (albeit sometimes the Development Authority's discretion is limited by the terms in the Land Use Bylaw). This article will focus on the granting of variances at first instance, by the Development Authority.

✓ Jurisdiction: Is the Criteria related to Standards (which can be varied) or Use (which cannot be varied)?

A typical standard will restrict how a building is to be constructed, or how a use is to be implemented. For example, the following would typically be characterized as standards:

- a) Maximum building height;
- b) Maximum site coverage; and
- c) Minimum parking requirements incidental to a particular use.

In exercising the Development Authority's discretion to grant a variance to the standard (such as those shown above), the Development Authority will need to consider whether the Land Use Bylaw imposes a specific test for exercising this discretion. On appeal (as stated above), the appeal tribunal will need to consider the test under s. 687(3)(d).

However, there are some situations where it is not "black and white" clear whether a criteria goes to use, or to a standard. A frequent "grey" area involves density. In an urban situation this may involve, for example, how many dwelling units can be approved on 1 parcel of land (without the parcel having to be redistricted to a residential district with a higher density). In an rural context, the situation of how many dwelling units are allowed on a parcel (without a redistricting) is also often a live issue, as too will be how many parcels can be subdivided out of a quarter sections to accommodate residential developments (without a redistricting).

In distinguishing between a use criteria (which cannot be varied) and a standard (which can be varied), the legislation recognizes the supremacy of Council's choices. Crafting a land use bylaw, and articulating where certain uses are authorized (as either a permitted or a discretionary use) has a great impact on landowners. The Alberta legislature has vested this authority in Council; only Council, as democratically elected officials, may delineate uses. The principle that a Development Authority (at first instance) and an appeal tribunal (on appeal) may not vary uses respects the authority that the Alberta legislature has vested in Council.

This complex question of whether a land use bylaw criteria is a use (that cannot be varied) or a standard (that can be varied) has been addressed in the following three cases. Note, while these cases arise in the subdivision application context, the same principles apply in the development application context.

County of Wetaskiwin v Alberta (Planning Board), 1982 ABCA 346

In this 1982 Court of Appeal case, the LUB contained the following as one of the listed discretionary uses: "single family residences, being the sole residential parcel subdivided out of a quarter section in locations allowed in the County General Municipal Plan." The Alberta Planning Board approved a subdivision creating a four-acre residential parcel out of a quarter section, notwithstanding that there had been a previous subdivision out of the quarter of this six-acre parcel. In approving the second subdivision, the Alberta Planning Board characterized the density aspect of the bylaw provision in question as a development standard and not one connected with the "use of land". The Alberta Planning Board felt that the condition was an attempt to introduce development standards which would not bind it.

However, the Court of Appeal held that the Alberta Planning Board had exceeded its jurisdiction by approving a subdivision for a use that was not authorized by its bylaw. The Court found that the reference in the bylaw to the number of parcels that could be subdivided out of a quarter section was directed at regulating use. Thus, the Alberta Planning Board had approved a subdivision that did not conform with the use of land authorized in the bylaw. The Court held that, having regard to the general intent of the land use district in question, the bylaw provision was aimed at preserving agricultural use of farmland, and to allow a second residential use on farmland resulted in piecemeal subdivision which was inconsistent with the objective use.

Foothills (Municipal District) v. Alberta Planning Board, 1984 ABCA 236

The Court of Appeal was faced with a similar issue in the 1984 case of *Municipal District of Foothills No. 31 v. Alberta Planning Board*, but reached an opposite conclusion. In this case, there was a minimum site area requirement stipulated under a separate heading called "Minimum Requirements." The Alberta Planning Board approved a subdivision out of a quarter section not applying the minimum site area requirement of the bylaw. It was argued that the Alberta Planning Board had exceeded its jurisdiction based on the logic of the earlier case.

However, the Court found that the site area requirement was arbitrarily applied to every one of the listed uses for the District; therefore, the situation did not mirror that in the previous case and could not be said to relate to uses. Rather, it was a true development standard for which the Alberta Planning Board would have the discretion to vary.

The LUB under "Agricultural District" contained a list of uses under the heading, "Permitted Uses," one of which was "dwellings, detached single family." Under the heading, "General Requirements" it was stated that "In addition to the general land use provision contained in s. 7, the following provisions as contained within this Section shall apply to every development in this District." Then, following that, under the heading, "Minimal Requirements", a minimum lot size of 160 acres was stipulated. Faced with determining whether the requirement should be considered a use or a development standard, Justice Stevenson stated the following:

The Act distinguishes between the prescription of use and the control or regulation of development. These terms are not mutually exclusive and the task of characterization is a difficult one. It is to be noted that the restriction in question here is one of a series expressed to apply to developments. The county itself, then, characterizes these provisions as relating to development. The appropriate vehicle for the prescription of uses is in those portions of the bylaw designating uses, whether permitted or discretionary: that being the scheme of s. 69(2)(b) of the Planning Act. ([s. 640 of the MGA])

In this case, the Court of Appeal recognized the importance in the form of drafting for categorizing uses and development standards. The Court of Appeal in *Sturgeon*, below, also recognized the importance of characterization of bylaw provisions.

Sturgeon (Municipal District) v. Alberta Planning Board, 1994 ABCA 397

In *Sturgeon No. 90 (M.D.) v. Alberta Planning Board and Jones*, the Court of Appeal held that the objective of the subdivision provision respecting lot density requirement was to prescribe use and the Alberta Planning Board was bound by it. This was despite the use being categorized as a "Permitted Use" and despite the fact that the lot density requirement was listed under a separate heading from "Permitted Uses." This case was distinguished from *Foothills* for the following reasons:

- Firstly, the bylaw did not characterize the lot size provision as one related to development.
- Secondly, it could not be said from the text of the bylaw itself that the restriction was one arbitrarily imposed with the intent of precluding subdivision in all cases rather than a rational control of uses. Finding that the objective of the bylaw was to protect the fragmentation of agricultural land, the Court of Appeal held that it was not for the Alberta Planning Board to decide whether the "first parcel out policy" should be applied or relaxed in any individual case.

Summary of Three Cases

The logic employed by the Courts in all three cases suggests that whether a provision is a development standard, or is concerned with use, is determined by having regard to its objective, the critical question being: Is the provision in pith and substance directed at regulating the use of land? If it is, the approving authority is bound. If not, the approving authority may waive the standard. Some factors that the court considers are as follows:

- Is the use permitted or discretionary?
- Is there an express objective for the District included showing an intent to maintain land for agricultural use?
- Is the condition/requirement listed with the use or under a different category, perhaps related to development?
- Is the condition /requirement arbitrary & technical or flexible and targeted at one use?

☞ Jurisdiction: Is the provision a mandatory procedural requirement? If so, the criteria is not a standard that can be varied

In the 2015 case *Thomas v Edmonton (City)*, 2016 ABCA 57, the Court of Appeal determined that the variance power could not be applied to a mandatory procedural requirement; variance of standards related only to physical criteria. In that case, the developer had not consulted with neighbours, even though this community consultation requirement was imposed at first instance, i.e. prior to the Development Authority's consideration of the permit.

So, before a Development Authority considers varying a criteria, it must be determined that the criteria relates to a physical standard, rather than a mandatory procedural requirement.

✓ ***Jurisdiction: Does the LUB limit the Development Authority’s discretion to vary the standard? A variance by the Development Authority must be exercised within the limitations under the LUB.***

Some LUBs will limit the Development Authority’s ability to grant a variance to a standard. For example, the LUB may state that the Development authority may grant a variance to a setback, but up to only 50%; if a greater variance is being requested, the Development Authority cannot grant that, and would be obliged to either grant up to a 50% or deny the application. The applicant would then be at liberty to pursue an appeal to the SDAB.

✓ ***Factors: When granting a variance, what considerations apply?***

In a trilogy of 3 cases (*Edmonton (City of Library Board v. Edmonton (City of)*, 2021 ABCA 355, 356, and 357), the Court of Appeal considered the granting of a variance in the context of development permit applications for 3 different cannabis stores, in light of the LUB’s spatial separation requirements from a public library. While the Court of Appeal Justices were not unanimous in their decisions, the following key principles can be gleaned from these cases, and applied in the context of the Development Authority exercising its jurisdiction at first instance:

- a) **Prospective Nature** – when determining the impact the requested variance, the consideration is “prospective” because at the time of the application, the negative effects are not known;
- b) **No Presumption** – in considering the variance, the Board cannot presume that granting the variance will lead to the harmful effects. The Board must consider the evidence presented by the applicants, and then weigh that against the evidence presented by opponents. Conventional language about burdens of proof is not helpful given the role and jurisdiction of an appeal board under the MGA. Parties must put their best case forward towards the outcome they prefer
- c) **Evidence of harm versus opinion/conjecture** – in considering the situation, the Board must determine whether statements are not evidence but rather a feeling of concern that harm will result; concern and conjecture are not evidence. For example, an opponent may state that if the variance is granted, their parcel shall be negatively impact through a reduction in property value. But that landowner may have no expertise/experience respecting property values, and their statement could be characterized as concern/conjecture. The Board should decide what reasonable inferences it should properly draw from the evidence as a whole.
- d) **Goal, Specific Issues and Mitigating conditions** – The Board should consider the goal(s) of the standard, and the extent to which the goal(s) will be undermined or accommodated by various relevant factors. The goal and specific factors will vary from case to case, depending on the type of standard, the nature of the parcel, and the nature of adjacent

parcels. Indeed, it would be appropriate to add conditions to help mitigate against the negative impacts of the requested variance.

Conclusion

A Development Authority is often asked to vary a standard referenced in the LUB. By considering the above checklist, the Development Authority will enhance both the likelihood that a decision will be exercised within jurisdiction, and also that consideration will address planning impact.

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).

Alberta Development Officer Association Newsletter - Safety Codes Update

Feb 2023

Submitted by Nicole Paggett with Park Enterprises Ltd.



I hope everyone has had a good start to 2023! It seems the start of a new calendar year always affords us the opportunity to reflect and look back on where we have come from and where we want to go. I hope you will join me on a brief walk down memory lane! Park Enterprises is celebrating their 28th year as a permitting and inspection agency. Our team began as an electrical inspection agency, with a staff of 2 in 1995 and shortly thereafter expanded to include building, plumbing (including private sewage) and gas and a staff of 4 providing service to the south corner of the province. The company continued to grow over the years to today where we have a staff of 28 and provide service to a 2 hour radius around Red Deer and south to the Canada / USA border. The safety codes industry continues to evolve and change and we have had the opportunity to see the growth and development within many municipalities in the province as well as to see the change in building trends and emerging technologies.

Some of this new technology includes the beginning of utility scale solar systems around 2017 to now seeing dozens and dozens of them throughout the province as well as adjusted codes in line with evolving technology relating to solar panels. We have seen “green energy” overlap with construction methods including homes constructed with hay bales or tires. Today we are seeing new technologies impacting construction methods such as 3D printing. Amidst all of the technology, we navigate the imagination of those within various municipalities throughout our diverse province. Social media and tv continue to impact construction and safety codes with tv shows or the advertising of structures using shipping containers, grain bins or other repurposed structures.

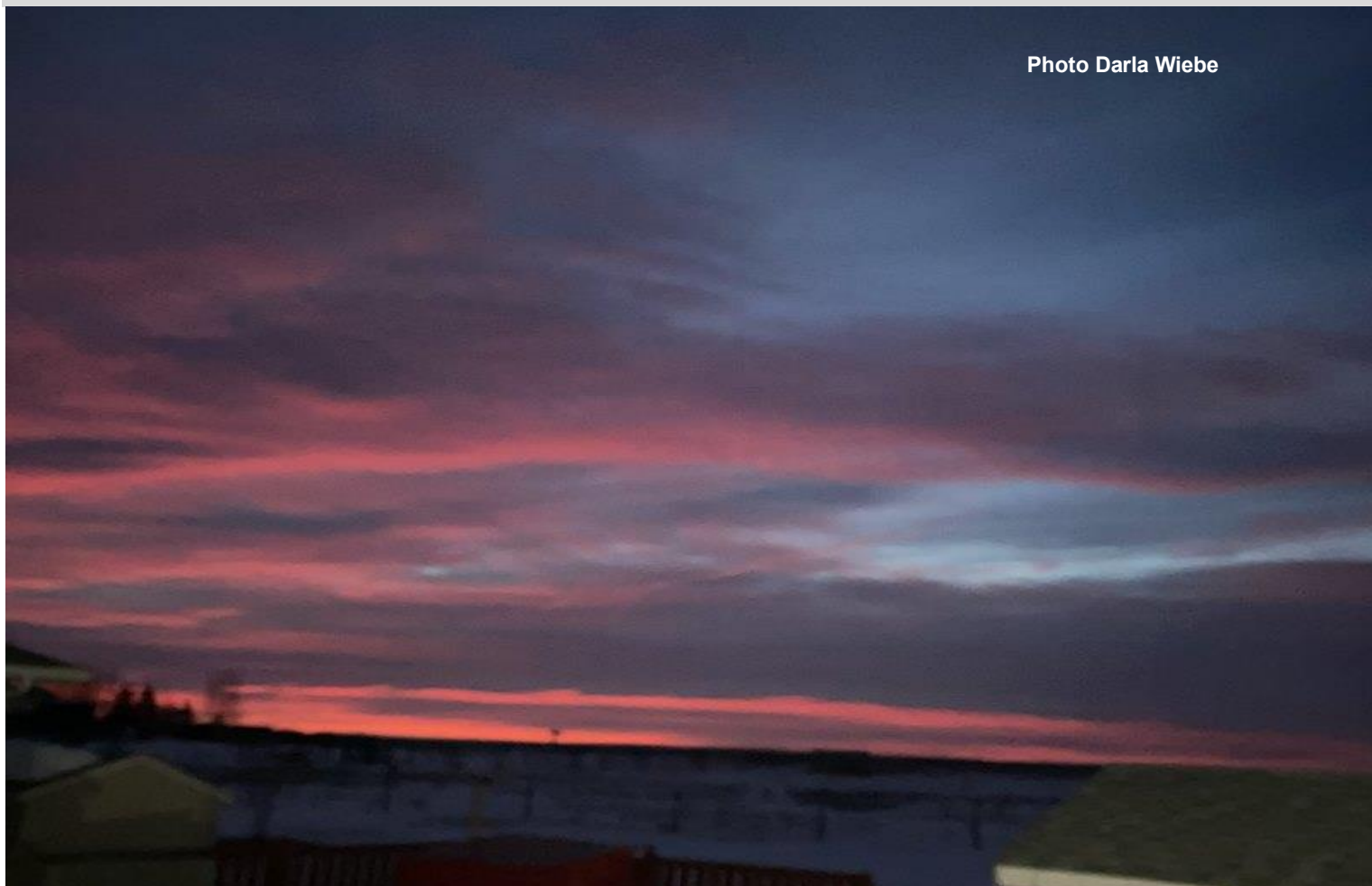
As a private agency, it can be challenging to navigate the implementation of current codes and standards as well as allowing room for new innovations to continue to advance the industry while managing a customer service driven business with a priority on safety, which means people don't always get to do what they want or it may be more costly to do so. It is important to remember that various jurisdictions have different rules and guidelines. Alberta is very unique in the framework of our safety codes industry compared to the rest of the nation or the United States. Alternative solutions including alternate construction methods can be reviewed by a safety codes officer and potentially approved. If refused, there is now an appeal process through the Safety Codes Council for the applicant to appeal the safety codes officers decision, which allows applicants more opportunity to have their innovations or technologies considered.



Construction and safety codes continue to change, new research is taking place and committees formed to investigate the impact of potential code changes such as farm buildings or adjustments to the energy code. We have seen immense changes to our team and processes in our 28 years in business. Safety code inspections used to comprise of “Work complete, passed” or trust within a verbal understanding or handshake on site to today, where much more documentation is necessary for oversight, transparency, historical data and potential legal ramifications. In the last 10 years we have had the opportunity to learn from experience to establish internal processes to better serve our clients. We have seen industry changes such as private sewage be split out from a plumbing designation to its own completely separate industry and certification. New Home Warranty and Builder Licensing has been implemented. Changes to common projects such as secondary suites or temporary heat have been implemented. New technologies have been adopted into code, with more changes on the horizon.

There is a vital thread connecting planning, development, safety codes and community sustainability, connecting us all. It has been an honor for our team to have the opportunity to be part of the history and the future of your communities as we navigate continuous change and the impacts to our various roles and responsibilities. I strongly believe our greatest resource is each other. Our municipal partners, regulatory bodies, contractors, homeowners. Leveraging the knowledge and experience of various stakeholder groups has assisted to entertain new ideas, innovations, bridging gaps between municipal departments like building code and fire code. Over time, we continue to build the pathway towards efficiency and sustainable development. We look forward to another construction season and working alongside our partners in Planning and Development as we continue to navigate the ongoing challenges of our industry!

Photo Darla Wiebe



LAND USE BYLAW REVIEW

Submitted by the County of Vermillion River & Municipal Planning Services.

The topic of land use bylaws in Alberta has been a focus among some groups on social media in recent days. Many municipalities in Alberta are currently reviewing (or have recently updated) their Land Use Bylaws to be consistent with the provincial legislation and their statutory plans.

The following information has been prepared to help your municipality's Administration respond to public inquiries about your Land Use Bylaw review project and to answer frequent questions and concerns being raised online.

What is a Land Use Bylaw?

- All municipalities are required by the *Municipal Government Act* (MGA) to adopt a Land Use Bylaw. Land Use Bylaws are sometimes referred to as Zoning Bylaws.
- A Land Use Bylaw divides a municipality into different districts (or zones) to help separate certain uses that are incompatible (e.g., heavy industrial uses near residential areas), and to direct certain types of uses to areas where they are most suitable (e.g., where servicing exists, highway access is available, etc.).
- A Land Use Bylaw establishes the rules and regulations for how land can be used, what types of developments are allowed or prohibited in the specified Land Use Districts, and the decision-making processes for subdivision and development applications.
- **It is important to note that Land Use Bylaws do not regulate nor facilitate land expropriation.**

Why Update a Land Use Bylaw?

- Municipalities regularly update their Land Use Bylaw to ensure the regulations are consistent with current provincial legislation, properly address current development trends, strategic planning priorities and consider available environmental and demographic information. This is usually done every 5 to 10 years.
- Municipalities may undertake a focused review and update of their Land Use Bylaw (e.g., to address one or two issues, or to be consistent with new Provincial legislation). They may also decide to undertake a full, comprehensive review of the entire document.
- Land Use Bylaw projects can take months or years to complete, depending on the complexity of the municipality, timing with other projects and priorities, and the scale of the review.
- As development trends change and new technologies emerge, Land Use Bylaws must be updated to ensure the regulations properly address the land uses being proposed. Examples of this include changing demands for rural residential (acreage) development, cannabis production facilities, home occupations, renewable energy production, Alternative Energy Systems, tourist home/rental accommodations, agri-tourism and recreation, etc.
- Land Use Bylaw review for rural municipalities focus on improving economic development conditions so that the municipality can respond to shifting economic drivers and conditions and encourage rural economic development within their boundaries.
- Land Use Bylaw updates often review ways to encourage more people to live in rural municipalities. This can include:
 - Encouraging or supporting new businesses and growth in hamlets to support rural populations and services such as health care and schools.

- Allowing additional dwellings (e.g., in-law suites or garage suites) on residential lots to enable multiple generations to live on the same property or to provide rental income.
- Supporting innovative and value-added agricultural operations to diversify farming opportunities in rural areas that support new and young farm families remaining on the farm or develop new farming operations at an affordable scale within the municipality.

Who is Responsible for Updating the Land Use Bylaw?

- A municipality can decide to undertake a Land Use Bylaw update using municipal staff, or they may choose to engage the services of a consultant, depending on the scale of the project, the workload of the municipal staff, and the expertise required to complete the project.
- Municipal administration and/or consultants are responsible for writing the draft content; the decision to adopt or reject the proposed changes to the Land Use Bylaw is the discretion of Council.

Does a Land Use Bylaw Update Include Public Engagement?

- **The *Municipal Government Act* requires that (at minimum) a public hearing be held prior to the adoption of any amendment or changes to a Land Use Bylaw by Council.**
- Anyone impacted by a proposed change to a Land Use Bylaw can speak at (or provide a written submission) the public hearing, where the Council must consider the input prior to their consideration of the bylaw for adoption.
- Municipalities must provide notice of the public hearing. The notice must be consistent with the requirements of the *Municipal Government Act* and the municipality's public notification bylaw/policy (if one exists).
- Major Land Use Bylaw update projects typically include a public engagement program that includes in-person and/or virtual open houses, workshops, surveys, social media postings, and newsletters.

What is a Fifteen-Minute City/Community/District?

- Several cities in North America are currently exploring opportunities to implement the general concept of "fifteen-minute communities" in their planning documents (a local example of this is the City of Edmonton).
- The general intent of "fifteen-minute communities" is to encourage a "community of communities", or "small towns within a big city", where people can meet many of their daily needs within a 15-minute walk, transit trip, or bike ride from where they live. The concept does not aim to reduce inter-city travel, whether by personal vehicle, transit or other means; rather, it aims to provide residential areas with more of the services, shops, and amenities that their residents access daily – closer to their front door.
- Fifteen-minute communities recognize that not everyone (youth, seniors, people with mobility restrictions) can regularly drive long distances to meet their needs. The concept intends to make living easier for people choosing to live in cities and to support investments in public transportation and pedestrian infrastructure.
- The fifteen-minute community concept is not being considered for rural or small urban communities. Instead, it aims to bring some of the benefits of small-town life (shopping local, living close to services, etc.) to the city in areas where automobile dependence rates and travel times are high.

2021-2022 Board of Directors

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