THE COMMUNICATOR

Alberta Development Officers Association (ADOA) November 2023

Fall Issue

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Photo Darla Wiebe

Words from the Editor

Another successful ADOA convention. Leduc did a great job. The beer tours seem to be a hit with the ADOA members, noted for next year.

As you know the ADOA will be hosting the 40 year anniversary conference in the City of Calgary. We are very excited about it and hope it is a memorable fun time for everyone. Mark September 24-27, 2024 on your calendar and don't plan anything for the Saturday because you will be exhausted! In fact, we have arranged for the hotels to give you the conference rate for Friday and Saturday night if you would like to live it up Calgary style for the weekend. If you are looking for some ideas check out 100+ Things to Do In and Around Calgary in 2023 (visitcalgary.com). If you have any suggestions for speakers for the conference, please reach out to any of the executive members. Would love to hear what the association is looking to see.

There is a great article in this Communicator from Todd Pawsey regarding landfills. Thank you Todd for submitting this, it is a great read and advice. I would really like to encourage members to submit this type of information to share with the committee, it's so helpful to know how others handle similar situations.

The executive would like to have the round table meeting again this year, all members are invited to attend virtually. Of course, the more the merrier. I'm looking forward to hearing thoughts on enforcement as this seems to be a challenge sometimes. A few members have been rewriting their Land Use Bylaw and we would love to hear the good, bad and ugly with that process. When the date has been decided we will let the members know.

One of the hot topics right now is the housing shortage. The government has allotted 4 billion in the Housing Accelerator Fund for this issue. They expect a minimum of 100 000 housing units to come out of this incentive. Seems like a lot of money to me, but a Big Mac meal costs around $13 these days so it's all relative. Ontario seems to be discussed a lot in the news on the housing market. In Toronto it was illegal to build fourplexes for years which seems so odd to me. They have now legalized fourplexes. These multiplex dwellings are also exempt from the floor space index which is great for developers but could make for pretty crowded neighborhoods. Maybe another topic for the round table meeting?

When Recycling is No Longer Green

Todd Pawsey, County of Paintearth

A cautionary tale of when something is not all that it appears to be! This spring the County had been approached by a new acreage site owner who wanted to develop a recycling center business on their parcel of about 40 acres, just short of a full LSD.

Their initial inquiry was met with positivity as "who doesn't like the idea of recycling?" … right? This was the first step in what we could only have foreseen as either an intentional deception or a very naïve landowner, who thought they had been given the green light to proceed, as part of their conditions of purchase for the property. Only when the above two semi-trailer loads of commercial demolition waste from the city of Calgary showed up did we realize at the County that somewhere communications had failed. Upon my initial – and very polite! – "cease immediately and get a permit, or face fines and further action email" … we began a process with the applicant that shed a light on some happenings in Calgary that could come to an industrial land anywhere in Alberta!

We commenced a review of our LUB for waste recycling and storage, as well as some best practices as we have a great operator of a regional landfill site that has been great to work with, and a financial benefactor to the County for years. They filled us in on the downturn in volume they've been facing, due to the plight of Calgary incidents of "pop up dumps" on industrial properties. Company X gets a "recycling center" permit, and begins accepting 10-20 x more waste than they recycle, until the parcel is filled to the max. At which point they've made their hundred$ of thousand$ (or more) off waste handling tipping fees, then walk away from the property leaving the municipality to remediate, often at huge costs and no recourse to recover, other than an eventual tax sale of the lands involved.

So we were skeptical to say the least, and through 2 months of requesting detailed information from the applicant who had by now applied for a Dev Permit, we had to decide "reject now" at application stage or "reject on merits" should we have proceeded. With great help from our Brownlee friends, we rejected the application as incomplete due to their repeated failure to supply a lengthy list of clear information – in the event that we'd review on merits should they get that far! We would be ready to defend in either case.

As the application "may have" required a provincial license, the appeal went to the LPRT, but we (Brownlee and us) were looking to take it back to the SDAB as no license was in place. No decision gained on that aspect but makes for a story another day! During the hearing, the land agent appointed to the applicant by the LPRT office, offered to meet with us, clear up the situation, and we agreed if they withdrew the appeal so as to start over. End of the appeal process, thank you!

The wrap up meeting with the land agent, who by now had actually met the appellants and saw the dumped waste, was shown our lengthy list of requirements for an actual “recycling” center and was in full agreement that this application was no such an animal. Further, once we walked through the submitted info, Calgary issues, and s. 17 of the Matters Pertaining to Subdivision and Development Regulations, it was clear that the parcel could not have been developed as the residence on the acreage precluded a separation of 300 m or 450 m from a waste storage or handling facility. End of story, and he left to go inform the appellants of such, and also carried a copy of the MGA based clean up enforcement letter, again very politely written by yours truly.

In an email with the City of Calgary LUB bylaw enforcement on this issue, I’d like to share some stats of what they’ve faced, so that all of us can be aware that this can happen in your own neighbourhood! Since Feb 2022, 12 parcels in Calgary have been ID’d as illegal dump sites, with 10 brought into compliance. 7 shut down completely. 13 MGA Stop Orders (6 appealed but denied), 72 LUB charges, and estimated 80 million pounds of waste removed – at cost to the city. When asked about the company associated with our application, the reply was that Company X “is known to us” by Calgary officials.

Be careful out there with recycling applications, as the famous philosopher Kermit the Frog has stated, “It ain’t easy being green…”

ADOA LEGAL CORNER with:

BROWNLEE LLP
Barristers & Solicitors

Is My Work Here Done?

Completeness Review of Development Permit Applications

By Alifeyah Gulamhusein, Partner

Article 9 of Brownlee LLP's Processing Development Permit Applications Series

Municipal councils and development authorities are responsible for the development processes within their municipality. Creating an efficient and reliable system for processing development permit applications can facilitate development and help ensure compliance with the *Municipal Government Act*, regulations, and the municipality's planning documents.

In this ninth article in a series of articles by Brownlee LLP, we will discuss determining whether an application for a development permit is complete. In particular, we will consider the following:

- ☑ Is an application required?
- ☑ Is the application complete?
- ☑ Is the decision about completeness appealable?

☑ Is an application required?

Unless specifically exempt in the land use bylaw, all development requires a development permit (MGA, s 683). And development is broadly defined.

Every municipality must enact a land use bylaw (MGA, s 640). The main purpose of the land use bylaw is to establish districts and assign permitted and discretionary uses to those districts, The land use bylaw must also establish a method of deciding applications for development permits and issuing permits, including the types of permits to be issued, how to apply for a permit, how applications will be processed, the conditions that may be attached to a permit, the length a permit is in effect, the scope of the development authority's discretion and any other matters necessary to regulate and control the issuance of development permits (MGA, s 640(2)(c)). The land use bylaw should also address other administrative matters such as the form and manner in which applications will be made and decisions of the development authority will be communicated.

The land use bylaw should clearly outline what documents and information are required for a development permit application. It should also clearly identify the scope of the development authority to seek additional documents and information, as necessary to review an application. At minimum, an application should include the following:

- ✓ a site plan that is clear and legible;

- ✓ a written description of the development;
- ✓ a certificate of title and owner authorization form, if necessary; and
- ✓ building and engineering plans, if necessary.

The documents and information required to review an application will depend on the nature of the application. Considerably different documents and information may be required for a single-family dwelling as compared to an industrial production facility. As such, the land use bylaw should:

- ✓ list what documents and information are necessary for any application;
- ✓ consider additional specific application requirements for specific developments like gravel pits and industrial production facilities;
- ✓ consider additional specific application requirements for developments in specific locations such as a flood plain or environmentally sensitive area; and
- ✓ give the development authority the authority to request additional information or documentation, so long as the material requested as a sufficient connection or nexus to the development itself.

☑ Is the application complete?

In 2017, the MGA was amended to add a new step to the development permitting process: a determination as to whether the application was complete (MGA, s 683.1).[1] Now, the development authority must, within 20 days of receipt of a development permit application, determine if the application is complete. This means the development authority must identify what documents and information are needed for the specific development and determine if, in their opinion, they have the documents and information necessary to review the application.

If the development authority determines that the application is complete, they must send an acknowledgement to the applicant noting that the application is complete. This will start the 40-day clock to review the application and make a decision, subject to a written agreement between the parties to extend the timeline. Even if an application is complete, a development authority can ask for additional information or documentation necessary to review the application (MGA, s 683.1(10)).

If the development authority determines the application is incomplete, they must send a notice to the applicant advising that the application is incomplete (MGA, s 683.1(6)). The notice must outline what documents and information are outstanding and provide a date by which the outstanding materials must be submitted. The parties can agree to a date or a reasonable date can be imposed.

[1] Subdivision applications also include require a completeness review.

Where the applicant does not submit the requested information by the deadline specified, their application will be deemed refused (MGA, s 683.1(8)). The application is deemed refused because it has not been refused on the merits but because the application was incomplete - the merits were not reviewed. The development authority must issue a notice to the applicant that the application is incomplete and deemed refused and provide a reason for the refusal (MGA, s 683.1(9)). Generally, the reason will be that the outstanding information or documents were not provided by the date required and the materials are necessary to review the application. An applicant whose application is deemed refused can reapply and any moratorium of reapplication does not apply. The downside of a deemed refusal for an applicant is cost in time and money – the applicant must resubmit their application thereby resetting the clock on processing and they must pay another application fee.

Where the applicant does submit the outstanding information and documents by the deadline, the development authority must issue an acknowledgement that the application is complete and this starts the 40-day clock to process the application (MGA, s 683.1(7)).

If the development authority does not make a determination about the completeness of an application within 20 days of receipt or within a timeline agreed upon by the parties, the application will be deemed complete (MGA, s 683.1(5)). This means the 40-day clock to review the application on the merits will begin.

In determining whether an application is complete, a development authority should determine if all the information and documents required by the land use bylaw have been provided and if they have sufficient information to review the application. This will depend on the nature of the application. In addition, the development authority should ensure the documents and information provided are legible, relevant and complete. Since the development authority must provide a reason for refusal if the application is incomplete, it is important the development authority can justify why the requested information and documents are required to review the application. It is not necessarily sufficient to simply say the information or documents are required by the land use bylaw.

☑ Is the decision about completeness appealable?

A deemed refusal, where the application is incomplete and deemed refused pursuant to section 683.1(8), may be appealed to the subdivision and development appeal board or the land and property rights tribunal (MGA, s 686(4.1)). Essentially, what is being appealed is whether the application is complete, that is whether the applicant has provided the documents and information necessary to review the application. The board that will hear the appeal is determined by the circumstances of the land (MGA, s 685(2.1)).

An appeal of a deemed refusal cannot be made any person affected by a decision of the development authority (MGA, s 685(2)) and the board hearing the matter does not have to give notice to the owners or any other person that the board considers affected pursuant to section 686(3)(c). This means an appeal of a deemed refusal only involves the development authority and the applicant.

Arguably, an appeal must be filed within 21 days after the date of on which the written decision is given. And board considering the appeal must determine whether the documents and information that the applicant provided meet the requirements of section 683.1(2), namely does the application contain the documents and information necessary to review the application and are the documents and information requested necessary to review the application.

Therefore, in an appeal, the development authority must be able to explain why the documents and information requested are necessary. As noted above, they may be necessary because they are required by the land use bylaw. But if the documents and information are not specifically required by the land use bylaw, the development authority must justify why they are necessary. As such, the development authority report should include, at minimum, the following information for the board:

- ✓ an explanation of the proposed development, if possible;
- ✓ a review of the application requirements of the land use bylaw and applicable statutory plans;
- ✓ a review of why outstanding documents and information are necessary to review the proposed application.

The board may determine the application is complete or incomplete. If the board determines the application is complete, that is all the necessary document and information have been provided, it will generally direct the development authority to process the application on its merits. If the board determines the application is incomplete, the deemed refusal is upheld. In this situation, the applicant can immediately reapply, if they wish.

Conclusion

Ensuring an efficient and transparent development permit application is critical to fostering development. It is important that the land use bylaw clearly outlines application requirements and that the development authority clearly communicates if those requirements have not been met. This will increase the timeliness of processing of development permit applications and decrease the chance of appeals.

Tiny Homes & Big Considerations

Fall is in full swing and it has been a busy time in the construction and safety codes industry as we prepare for winter! The past year brought many challenges that impacted development and construction across the nation such as rising interest rates and remaining supply issues. Regardless, we look forward to a new year with preparation underway for many new developments and emerging industries throughout Alberta. Over the years there have been many trends in development, construction, and technology, often in response to items such as housing affordability and growing concern for the environment.

One example that has grown in popularity over the years has been that of tiny or compact houses. Surprisingly enough, this isn't actually a new trend. Since the beginning of the 20th century there have been instances where homes haven't been built according to the "norm", even including mail order home building kits from Sears, Roebuck and The T. Eaton Co. Many of these homes were quite small and grew in popularity in the 1900's.

Financial pressures and environmental concerns inspired the social movement of people choosing to downsize and embrace "minimalist living" with style. Despite the appeal to many of embracing a small living lifestyle, there are a variety of factors and considerations when it comes to ensuring compliance.

When buildings are constructed off site / factory constructed, they must have the appropriate certification, CSA A277 "Procedure for Certification of Prefabricated Buildings, Modules and Panels", this required certification is applicable to tiny /compact homes when constructed off site. A prescriptive foundation, (footings and frost walls) are required for dwelling units.

Some tiny/compact homes are built on a single chassis mounted on wheels with the intent to relocate from time to time and to provide living quarters for seasonal use. These structures fall under the CSA Z241 certification for Park Model Trailers (PMT), which does not fall under the Safety Codes Act and applicable Codes and Regulations requiring safety codes permit and inspections. Interestingly, the Ontario Building Code is the only building code that recognizes PMT's as buildings and must comply with the Code.

The Building Code does not specify a minimum area for a dwelling unit nor minimum areas for individual rooms or spaces. So then, what are the challenges to achieve Code compliance when evaluating tiny or compact homes? Items for consideration when evaluating tiny homes include (but are not limited to):

- Dwelling units are required to have a potable water supply. Along with a water supply comes the requirement for sanitary facilities and hot water supply.
- Bedroom windows are to be egress compliant.
- Smoke and Co alarms required.
- Dwelling units that incorporate stairs will have to meet stair and headroom requirements.
- Minimum ceiling heights, ceiling heights under lofts and hallway and doorway widths create compliance challenges.
- Energy code requirements will apply.
- Lofts must meet guardrail requirements.

Today we still see a modern approach to "mail order" homes with various companies that design and ship homes or cabins to be assembled on site. Although these are not constructed in a factory requiring certification noted above, the minimum building code requirements will still apply and can be challenging to achieve compliance with these specialized structures offering the tiny home experience.

There are many things to consider when considering a tiny home, such as zoning/municipal laws, building codes, standards, insurance, new home warranty requirements, financing, emergency service access, foundation requirements and more. Consult with Authority Having Jurisdiction or your local Safety Codes provider to ensure the successful compliance of any undertaking, even when it seems small, such as a tiny home!

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