Alberta Municipal Development Authority Manual

January 2020

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LIST OF FIGURES

LIST OF SOURCES

The Alberta Development Officers Association acknowledges the following sources in the preparation of the Alberta Municipal Development Authority Manual.

1. Alberta Land Surveyors Association – Alberta's Subdivision Process
2. Alberta Municipal Affairs – Land Use Policies
3. Alberta Municipal Affairs – The Legislative Framework for Municipal Planning, Subdivision and Development Control
4. Alberta Municipal Affairs – Subdivision and Development Appeal Board Manual
5. Alberta Municipal Affairs – Subdivision Appeals to the Municipal Government Board
6. Brownlee LLP
7. City of Calgary – Understanding the Planning Process
8. City of Calgary – Procedures and Templates
9. City of Edmonton – Planning and Development Handbook
10. Frederick Laux – Planning Law and Practice in Alberta
11. Government of Alberta – Alberta Municipal Government Act, R.S.A. 2000 c. M-26
12. Government of Alberta – Alberta Subdivision and Development Regulation
13. Red Deer County – Development Department Procedures Manual
14. Town of Blackfalds - Templates
15. University of Alberta Course Guide – Enforcing Land Use Bylaws
16. University of Alberta Course Guide – Introduction to Land Use Planning
17. University of Alberta Course Guide – Introduction to Planning Law
18. University of Alberta Course Guide – Preparing Land Use Documents

This Manual is meant for information purposes only. *It is not meant to be an authoritative guide, and any information contained herein will not override any legal advice obtained from municipal solicitors*. We further note that this Manual is based on the legislation at the time of its release and does not reflect any amendments that may have subsequently been passed and put into force.

The Alberta Development Officers Association is providing this information without warranty, guarantee or further obligation. The ADOA is not liable for any consequence or damages that may occur as a result of misrepresented, misquoted or mistaken information.

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1. INTRODUCTION

1.1 Purpose of the Manual

The Alberta Development Officers Association (ADOA) Executive Committee initiated preparation of this Manual to serve as a practical working handbook and as an instructional tool. The ADOA mandate is to provide resources and information services relating to community planning and development to its membership. This Manual will serve as a reference to those individuals in the field of planning and development and, more particularly, outline the roles and responsibilities of the municipal Development Officer within the Alberta planning system.

The last Manual was prepared in 2005, prior to significant legislative changes that occurred with the adoption of the *New Modernized Municipal Government Act* (MGA). While the MGA outlines the mechanism for the establishment of a Development Authority and its principal functions and roles; it does not refer directly to a municipal Development Officer.

The MGA refers to a Development Authority as being a designated officer, a municipal planning commission, or any other person or organization. Many municipalities still call the position of the designated officer "Development Officer", but many others do not. For the purposes of clarity, we will use the standard definition of Development Officer to be as follows: "an officer designated under Section 624 (2)(a) of the MGA to carry out the duties of development authority in accordance with Part 17 of the MGA."

Unfortunately, resource material that a municipal Development Officer requires is not readily available. Instead, resource materials come from a wide range of sources. Such sources of information have been obtained from the ADOA members, municipalities, the University of Alberta Applied Land Use Program, municipal and provincial web sites, and private sector businesses. This information has been compiled, summarized, and prepared into an easy to read format in this Manual.

1.2 Manual Objectives

This Manual will:

- Clarify the role of the Development Authority and Development Officer;
- Clearly identify the formal statutory duties and responsibilities of the Development Authority in contrast to the informal non-statutory functions;
- Outline the larger planning system in effect in Alberta within which the Development Authority functions;
- Identify and explain the working relationships between a Development Officer and other participants in the development process;
- Provide detailed summaries of the major planning documentation that the Development Officer comes in contact or works with in the performance of his/her duties;
- Provide technical information on specific development related issues that a Development Officer encounters in the performance of his/her duties;
- Present material which reflects the range of municipal situations facing a Development Officer; and
- Present the material in a format which is easily adaptable for use as an instructional aid for new and in-training Development Officers.

1.3 Manual Format

The material presented in the following sections is structured to provide the reader with basic information relating to development and planning in Alberta. Accompanying this information are specific details related to the roles of the Development Authority in general and Development Officer specifically.

Section 1 – Introduction to the Manual, outlining the Purpose of the Manual, the Manual Objectives, and the Manual Format.

Section 2 – Overview of the Legislative Framework, discussing Provincial Legislation, Statutory Documents, and Non-Statutory Documents.

Section 3 – The Development Authority, discussing in detail, its Establishment, Roles, Responsibilities, Decision Making Powers, Variances, and the Development Officer's Roles and Duties.

Section 4 – Other Planning Authorities, highlighting the major functions of the Subdivision Authority, Council, Municipal Planning Commission, Subdivision and Development Appeal Board, Municipal Government Board, and Court of Appeal.

Section 5 – The Land Use Bylaw, reviewing in detail Land Use Districts, Permitted and Discretionary Uses, Non-conforming Uses and Buildings, Key Regulations, and Amendments.

Section 6 – Land Use Bylaw Enforcement, discussing the Authority, Land Use Bylaw Enforcement Alternatives, Site Inspections, SDAB Role Regarding the Appeal of a Stop Order, Potential Problems Caused by Poorly Drafted Land Use Bylaws, Neighbours' Role in Land Use Bylaw Enforcement, Development Officer's Practical Pointers, and Resources.

Section 7 –Levies, including: Off-Site Levies and Redevelopment Levies.

Section 8 - Relevant Other Matters, including Development Agreements, Deferred Servicing Agreements, Encroachment Agreements and Licenses of Occupation, Real Property Reports, Compliance Certificates, Restrictive Covenants, FOIPP, Common Setbacks Required by Provincial Legislation, and Accredited Municipality Building Permit Process.

Section 9 –Templates, including a comprehensive list of sample templates to assist Manual users.

2. OVERVIEW OF THE LEGISLATIVE FRAMEWORK

2.1 Provincial Legislation

The legislative framework for land use planning decisions in Alberta includes the following Provincial Legislation:

- Municipal Government Act
- Alberta Land Stewardship Act
- Subdivision and Development Regulation
- Land Use Policies
- Provincial Approvals
- Reserve Requirements

In addition, the following municipal statutory documents also form part of the legislative framework for land use planning decisions:

- Intermunicipal Development Plans
- Municipal Development Plans
- Area Structure Plans
- Area Redevelopment Plans
- Land Use Bylaw

Non-Statutory Documents

- Outline Plans
- Servicing Concept Design Plans
- Other Non-Statutory Documents

Note: Every statutory plan, land use bylaw and action undertaken, pursuant to Part 17 of the MGA, by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Municipal Government Board must be consistent with the provincial* Land Use Policies*. These policies are available on the Alberta Municipal Affairs Website.

http://www.municipalaffairs.gov.ab.ca/

Municipal Government Act

While there are eighteen wide-ranging individual parts of the *Municipal Government Act*, there are only five or six parts that a Development Officer needs to know well.

Parts 1 and 2 of the *Municipal Government Act* set out the general purpose, jurisdiction, and scope of municipalities and municipal bylaws. That a municipality is to develop safe and viable communities is paramount when establishing the reason or authority for actions. Part 3 sets out special powers and limits on municipal authority. Of particular note from a planning and development perspective are Sections 16-27 that deal with roads. Other than in cities, the title to all roads in a municipality is vested in the Crown in right of Alberta; however, all municipalities have the direction, control and management of all roads within the municipality, except for provincial highways. There are specific requirements to be followed when closing a road, which will involve extensive contact with provincial agencies such as Alberta Infrastructure and Transportation. Other sections that may be important to Development Officers include Sections 50-53 dealing with business improvement areas.

Part 4 deals with the formation, fundamental changes, and dissolution of municipalities. Sections 112.1-128 establish the process for the annexation of land.

Part 5 outlines the roles and functions of councils, councillors and council committees. Of

particular importance to Development Officers is the provision relating to pecuniary interest of councillors (Sections 169-173). Where councillors are members of a planning authority, they must be careful to declare any pecuniary interest in the discussion or else they could be disqualified from office. For further information regarding what constitutes a pecuniary interest for a councillor, please refer to Section 170 of the MGA and consult with your legal advisor. Further, Sections 180-200 outline the requirements for Council proceedings, including matters pertaining to voting and passing a bylaw.

Part 6 relates to municipal organization and administration. A Development Officer may wish to refer to this Part, in particular Sections 209-212, should the municipality wish to establish the development officer as a "designated officer" to enforce the Act or any other bylaw. The establishment of the Development Authority, however, is enabled via Section 624 under Part 17.

Part 7 relates to public participation. Of particular importance to Development Officers is Sections 227- 230, concerning meeting with the public and public hearings. Section 227 states, If council calls a meeting with the public, notice of it must be advertised and everyone is entitled to attend it. Section 230 states that when the MGA or any other enactment requires council to hold a public hearing on a proposed bylaw or resolution, the public hearing must take place before second reading of the bylaw or before the voting on the resolution.

***Municipal Development Officers must be familiar with many parts of the* Municipal Government Act.**

Assessment and Taxation are the subjects of Parts 9 and 10. Provisions for a business revitalization zone special tax and local improvement taxes can play a part in land use planning implementation. Part 11 deals with Assessment Review Boards while Part 12 establishes the Municipal Government Board (MGB) Sections 491 to 508 outline the procedures concerning hearings before the MGB.

Parts 13 through 16 establish a variety of special powers, authorities, and miscellaneous matters. Part 13 addresses the enforcement of municipal law, with Sections 541 to 556 being of particular importance to Development Officers as they relate to enforcement matters. Parts 14 through 16 provide legislation concerning General Ministerial Powers, Improvement Districts, and Regional Services Commissions. Part 16 deals with Miscellaneous Matters, and in particular to municipal Development Officers are Sections 606 to 608, which relate to the requirements for advertising and the service and sending of documents.

Part 17 of the Act is the legislative basis for municipal land use planning authority. Unlike other provincial jurisdictions, municipal adoption and amendment of plans and bylaws and municipal planning decisions are generally not subject to provincial review or approval. Note that municipalities have to comply with provincial legislation (i.e. ALSA) and can be made to comply in certain circumstances (i.e. see s. 570.01 and the Minister's ability to "take any necessary measure to ensure the municipal authority complies with the ALSA regional plan. As a result, Alberta has what has often been described as a municipally based land use planning system. One other small part, Part 18, contains transitional provisions and needs to be referred to by Development Officers.

Legislative Framework – Policy and Operations

Figures 1 and 2 provide an overview of the legislative provisions for municipal plans, bylaws, and operating authorities. These are discussed further in the text that follows:

Figure 1: Legislative Framework for Land Use Planning – Policy Level

IDP/ICF

The purpose of having both an Intermunicipal Development Plan and Intermunicipal Collaboration Framework is to ensure that the services and land use planning are compatible and to ensure that your land use plans can be supported by the necessary services and vice versa. Both are important as the IDP will guide regional approaches to managing growth, outline how regional land development will occur, and provide the criteria for infrastructure and services. The ICF will then assess the infrastructure and services elements of the IDP, providing the framework for how the delivery of services will occur. The two documents work together to both plan and organize intermunicipal services. Note that, subject to an exemption from the Minister or where the municipality is a member of a growth region as defined by section 708.01, municipalities must have both an IDP and an ICF with each municipality that have common boundaries.

A framework is not complete for the purposes of section 708.29 unless the councils of the municipalities that are parties to the framework have also adopted an intermunicipal development plan under section 631 or an intermunicipal development plan is included as an appendix to the framework

Municipal Development Plan

Every Council of a municipality must, by bylaw, adopt a Municipal Development Plan (MDP) by April 1, 2021.

Land Use Bylaw

All municipalities must pass a land use bylaw. Section 640 of the MGA provides a number of mandatory items that must be included in a land use bylaw as well as those things that are optional.

Area Structure Plans	Area Redevelopment Plans
Municipalities may adopt an area structure plan to address the particular requirements of an area within the municipality.	Municipalities may adopt an area redevelopment plan to address the re-use and redevelopment of built up areas

Figure 2: Legislative Framework for Land Use Planning – Operations and Appeals

Planning Authorities

Municipalities must establish a development authority to issue development permits, a subdivision authority to receive and decide on subdivision applications, and a subdivision and development appeal board to hear appeals against decisions on development permit applications, subdivision applications, and stop orders.

Subdivision and Development Appeal Board	**Municipal Government Board**
Subdivision and Development Appeal Boards (SDABs) are established by municipal councils to hear appeals from decisions made by the municipality's subdivision and development authority. SDAB decisions shape a community and affect the lives of residents, neighbors, businesses and developers. By hearing appeals and making decisions a SDAB fulfills a vital function in achieving the goal of orderly, beneficial and economic development and use of land set out in Part 17 of the *MGA*. SDAB Members are appointed by council, however, a SDAB is an independent administrative tribunal and is required to be impartial. When considering appeals, a SDAB owes a duty of fairness to participants in the hearing process.	The MGB hears appeals of subdivision authority decisions when the land being subdivided is near bodies of water, highways, historical resources or sites, landfills, waste treatment or storage sites or is in the Green Area.

Court of Appeal

On a point of law or jurisdiction, SDAB or planning decisions of the MGB may be appealed to the Court of Appeal.

Subdivision and Development Regulation

The Regulation relates to both subdivision and development matters. Areas of regulation include:

- Subdivision Application submission requirements, including referrals;
- Imposition of decision time frames (usually 60 days);
- Relevant considerations for Subdivision Authority to consider;
- Condition provisions relating to road access, sour gas facilities, gas and oil wells, country residential subdivision restrictions;
- Setbacks from wastewater treatment facilities, landfills and waste sites, highway developments;
- Additional reserve requirements;
- Registration and Endorsement requirements for Subdivisions.

The regulations can be found at **http://www.canlii.org/ab/laws/regu/2002r.43/.**

Land Use Policies

The Land Use Framework and the Alberta Land Stewardship Act

In 2008 the government adopted a policy statement titled the Land Use Framework (LUF). The LUF sets out an approach to manage public and private lands and natural resources to achieve Alberta's long-term economic, environmental and social goals. The LUF identifies seven strategies to achieve these goals:

- Develop seven regional land-use plans based on seven new land-use regions.
- Create a Land-use Secretariat to oversee implementation of the LUF and establish a Regional Advisory Council for each region;
- Cumulative effects management will be used at the regional level to manage the impacts of development on land, water and air;
- Develop a strategy for conservation and stewardship on private and public lands;
- Promote efficient use of land to reduce the footprint of human activities on Alberta's landscape;
- Establish an information, monitoring and knowledge system to contribute to continuous improvement of land-use planning and decision making; and,
- Include Aboriginal peoples in land-use planning.

In 2009 the government adopted the *Alberta Land Stewardship Act* (ALSA). ALSA enables several of the strategies identified in the LUF to be carried out by establishing:

- Seven regions that cover the entire province for the purpose of establishing a regional plan.
- The position of the Stewardship Commissioner to oversee the development and implementation of regional plans.
- The scope of regional plans and the process for their preparation and adoption.
- Provisions for the establishment of tools for conservation and stewardship on public and private lands.
- A process for compliance and enforcement of regional plans.

MGA

Section 622 of the MGA

(1) Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Municipal Government Board must be consistent with the land use policies established under subsection (2) and any former land use policy.

(2) The Lieutenant Governor in Council, on the recommendation of the Minister, may by regulation establish land use policies and rescind former land use policies.

(3) If there is a conflict between a land use policy established under subsection (2) and an ALSA regional plan, the ALSA regional plan prevails.

(4) Former land use policies do not apply in any planning region within the meaning of the Alberta Land Stewardship Act in respect of which there is an ALSA regional plan.

(5) In this section, “former land use policy” means a land use policy that was established under section 622 as it read before the coming into force of this subsection and that has not been rescinded under subsection (2).

Provincial Approvals

Certain provincial agencies are responsible for providing provincial licenses, approvals, or permits for specific types of development. In these circumstances, the provincial authorizations will, subject to section 619 of the MGA, prevail over local planning decisions. Section 619 of the MGA provides that applications that are consistent with an NRCB, ERCB, AER, AEUB or AUC license, permit or approval must be approved by the local municipality to the extent that the applications "comply" with the license, permit or approval. These applications include applications for statutory plan amendments, LUB amendments, decisions of Subdivision Authorities or Development Authorities, and Subdivision and Development Appeal Authorities. Section 619(2) arguably leaves little room for local land use planning to municipalities once the provincial NRCB, ERCB, AER, AEUB or AUC has decided to issue a permit, license, or approval with respect to a particular matter.

Where a municipality chooses not to approve an application that is consistent with the NRCB, ERCB, or AUC approval, license, or permit, the MGB may hear an appeal from an applicant. Also, an applicant may appeal to the MGB where a municipality does not pursue required statutory plan amendments or land use amendments within 90 days of an application or such further time as may be agreed to. The decision of the MGB on a matter may be further appealed on a question of law or jurisdiction to the Courts if a municipality or other affected person is not satisfied with a decision of the MGB.

Part 17 of the MGA by no way gives the complete rules and regulations concerning property owners’ land use choices and the manner in which legislation and regulation affect their freedom of choice. Depending upon its nature, a certain development may involve obtaining up to twelve or more approvals and permits beyond what is outlined in the planning legislation.

What follows is a listing of the various provincial approvals affecting development approvals:

- Annexation Legislation – Division 6 of the MGA outlines the annexation process. The Municipal Government Board receives the annexation application and provides its recommendations to the Minister of Municipal Affairs, who in turn recommends to the Lieutenant Governor in Council (Cabinet). The MGB also becomes involved when the municipalities that are party to the proposed annexation fail to come to agreement on the proposed annexation. If this happens, the MGB must hold public hearings before filing its report with the Minister. The final decision rests with the Lieutenant Governor in Council (Cabinet), who will issue an annexation order on such terms and conditions as it considers appropriate.

- Building Standards Legislation – Part 17 of the MGA deals primarily with regulating the external impact of a use or structure. The *Safety Codes Act* regulates for health, safety, and quality control purposes, the interior and exterior design of, and the construction materials, equipment, and protective devices to be used in a building. While the provincial government has the jurisdiction to set building standards and to engage in its overall administration, the Act indicates that day-to-day administration and operation of the building permit process may be delegated to municipalities and to private corporations through a process called accreditation. Accredited municipalities and corporations may enter into contracts with an "accredited agency" for the latter to supply the various permit processing, decision making, inspection and other services under the Act.

- The *Safety Codes Act* regulates the *Alberta Building Code* and the regulations pertaining to electrical, plumbing and gas codes. Municipalities that have been taking on the administration of the issuance of safety codes permits and inspection requirements are able to coordinate these activities with the municipal requirements of development permitting. There is a guide that can be used to assist with the everyday questions that arise when issuing these types of permits, available on the Safety Codes Council Website at http://www.safetycodes.ab.ca/.

- Environmental Legislation

    - *Environmental Protection and Enhancement Act* - The Alberta *Environmental Protection and Enhancement Act* (EPEA) establishes provisions regarding pollution and contaminated sites, among other matters, that are of particular importance to the planning process. EPEA also contains provisions for conservation easements, each of which is a private means of identifying and protecting natural areas by allowing the placement of an easement that restricts development in perpetuity. This limitation applies notwithstanding that other uses may be permitted under a land use bylaw.

    - *Government Organization Act*, Schedule 5 – This Schedule authorizes the Lieutenant Governor in Council to create "restricted development areas" or "water conservation areas" by regulation. The purpose of these regulations is to prevent or control damage to any natural resources, to conserve water resources, to retain land in its natural state, or

A Development Officer must have due regard to many different pieces of provincial legislation. In many instances there is some overlap of jurisdiction.

to restrict certain industrial uses from locating within an area. Where a restricted development area is established, developments therein are prohibited without permission of the Minister of Environment.

- *Natural Resources Conservation Board Act* – Private land developments may also be subject to the *Natural Resources Conservation Board Act* if they are likely to affect the natural resources of Alberta. That Act establishes the NRCB, which is given a broad mandate to engage in an impartial process of review of certain projects to ensure that "they are in the public interest, having regard to the social and economic effect of the projects and the effect of the project on the environment." The types of developments not only include oil/gas installations and confined feeding operations (intensive livestock operations), but also forest industry projects, recreational or tourism projects, metallic or quarry projects, and water management projects. Upon a review by the Board and subject to the approval of the Cabinet, the Board may issue an approval for the development of the project subject to conditions it deems fit, or it may refuse to allow it to proceed. An approval by the Board does not relieve the developer from obtaining approvals required under other legislation, including the MGA.

- *Water Act* - The *Water Act* provides for the management of water resources including the preparation of water management plans. Of special interest to rural municipalities are the provisions requiring an applicant for subdivision of a sixth or subsequent parcel from a quarter section to complete a report confirming the availability of water to serve the development.
  - Further a person wishing to develop rural land for a mobile home park that is to be served by a communal water system, where the water source is a central well drilled on or off-site, must obtain permits and licenses from
  - the Water Resources Branch of Alberta Environment.

- The *Flood Recovery and Reconstruction Act* came into force on December 11, 2013. The *Flood Recovery and Reconstruction Act* amended the *MGA* to provide for regulations for controlling or prohibiting any use or development in the floodway and to exempt the application of these regulations in municipalities with significant development already in a floodway. At the time of drafting this manual, no regulations have been made.

- *Public Health Act* – The *Public Health Act* provides for the review of and action on complaints relating to public health concerns. These issues include the failure of private septic systems where raw sewage has entered adjacent private property or municipal rights-of-way, public utility lots, etc., or water courses. An Environmental Health Inspector, in unison with a Plumbing and Safety Codes Officer from the jurisdiction of the authority, will undertake a review of the complaint. The Environmental Health Officer will issue an Executive Order if the situation is warranted and the Safety Codes Officer will ensure that the failed system is corrected under the issuance of a private sewage disposal system permit. Other developments requiring approvals from the *Public Health Act* include feedlots and piggeries. Agriculture projects are also subject to other regulations such as distances between intensive livestock facilities and animal waste disposal techniques.

- *Highways Development and Protection Regulation*– The principal focus of this Act is for the regulation of developments along, and their access to, major public roads. Part 2 of the Act contains provisions which empowers the Minister of Transportation to prohibit or regulate, through a permit system, certain developments within prescribed distances of "controlled highways". Regulated developments include buildings, excavations, storage and display of vehicles, pipelines, fences, foliage, and all forms of signs. The permits required under this legislation are subject to any development permit or subdivision approval necessary under the MGA.

- *Historical Resources Act* – This Act gives broad powers to both a municipality and the provincial government to regulate and prohibit private land use and development. The purpose of this legislation is the preservation of buildings, structures, sites, and areas deemed to be of "paleontological, archaeological, pre- historic, historic, cultural, natural, scientific, or aesthetic interest".

  Many municipalities require persons living along a provincial highway to first obtain a permit from Alberta Transportation prior to seeking municipal approval.

  - The Minister responsible for this Act can designate a site, as can the Cabinet, who can create a "provincial historic area". Once a private property is designated under the Act for preservation, all activities on the property and all changes to structures are closely regulated to ensure that nothing is done that will harm the integrity of the preservation order. Of interest is that, while municipalities also have the authority to designate buildings, structures, and properties as Municipal Historic Resources, they must compensate owners for any loss in value to properties caused by municipal designation orders, while the provincial government has no obligation to do so.

- *Responsible Energy Development Act* – to provide for the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta through the Regulator's regulatory activities

- *Special Area Preservation Designation Legislation* – The *Wilderness Areas Ecological Reserves, Natural Areas and Heritage Rangelands Act* enables the designation of areas of the Province under Crown ownership for special treatment of their use and development. This program has little direct impact on development of privately owned land. However, it does have an impact for those seeking to lease Crown land in designated areas for private development purposes.

- *Land Titles Act* - The land registration system used in Alberta is based on the Torrens System of land registration and operates under the legislative authority of the *Land Titles Act*. Under this system, the Province has the custody of all original titles, documents and plans and has the legal responsibility for the validity and security of all registered land title information.

- *Interpretation Act* - Municipalities should be aware of the *Interpretation Act*. Of particular note are Sections 14 and 24. Under Section 14, the MGA is not binding on her Majesty (Provincial or Federal). Thus, where the Province is undertaking development, it does not need to obtain subdivision or development approvals although, in fact, it often does. Further, under Section 24, a reference in any enactment to double registered mail, single registered mail, registered mail, or certified mail includes any form of mail for

which the addressee or a person on behalf of the addressee is required to acknowledge receipt of the mail by providing a signature.

- The *Arbitration Act* governs arbitrations in Alberta conducted under either agreements or required/authorized actions by statute.

- The *Condominium Property Act* provides the legislative framework for the creation and operation of any form of condominium, including residential and commercial. This Act applies to all those who develop, invest in or own condominium projects.

- Originally, the former *Planning Act* established forty-one separate *Airport Vicinity Protection Area (AVPA)* regulations. Most have been rescinded. There are currently two AVPA regulations under the MGA. These are the Calgary and Edmonton AVPA regulations. Land around all other airports in Alberta falls under the applicable LUBs.

    - The Province undertakes a number of planning and related activities of its own. Resource management plans, watershed management plans, capital programming for roads, schools, and hospitals all affect the timing and location of development.

    - The enabling legislation for municipal planning in Alberta provides for a somewhat standard array of plans and land use control measures. As in other provinces a number of other provincial statutes, programs and initiatives significantly affect the municipal planning and development function. Alberta legislation, however, assigns greater independence to municipalities than other provinces. The provincial role is generally limited to broad policy directives and limited exemptions and interventions.

Reserve Requirements (MGA Sections 661 to 670)

Section 661 of the MGA states that the owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation, land for roads and public utilities and, subject to section 663 of the MGA dealing with when reserves are not required, land for environmental reserves and land for municipal reserve, school reserve, municipal and school reserve (or money in place of any or all of those reserves or a combination of reserves and money) as required by the subdivision authority.

Section 666.1 of the MGA states the owner of a parcel of land that is the subject of a proposed subdivision must provide to a municipality land for conservation reserve as required by the subdivision authority pursuant to Division 8 of the MGA.

Section 662 refers specifically to roads and public utilities. This section states that land required pursuant to this section may not exceed 30% of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement. If the owner has provided sufficient land for these purposes but the land is less than 30%, the subdivision authority may not require the owner to provide any more land for those purposes.

Under Section 663, reserves cannot be required from an owner of a parcel of land that is the subject of a proposed subdivision if one lot is to be created from a quarter section of land; land is to be subdivided into lots of 16.0 hectares or more and is to be used for agricultural purposes; land to be subdivided is 0.8 hectares or less; or reserve land, environmental reserve

easement or money in place of it was provided in respect of the land that is subject of the proposed subdivision.

Subject to some exceptions, a Subdivision Authority may require an owner to dedicate environmental reserve where the lands consist of the types set forth in Section 664 of the MGA, including swamps, gullies, ravines, land that is subject to flooding, etc.

Further, Section 664 specifically provides for the creation of an environmental reserve easement in the situation where the owner of a parcel of land that is subject to the proposed subdivision and the municipality agree that any or all of the land that would be taken as environmental reserve should instead be the subject of an environment reserve easement. This type of easement may be registered by Caveat against the land, in favour of the municipality. It must identify to which part of the parcel of land the easement applies, and it must require that the land that is subject to the easement remain in a natural state.

At the time of subdivision, the subdivision authority may require the applicant (with some exceptions) to provide up to 30 percent of the land for roads and public utilities, up to 10 % for municipal and school reserves, and land that is a swamp, gully, or a minimum of six metres adjacent to a water body as environmental reserve.

664.2(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land to the municipality as conservation reserve if (a) in the opinion of the subdivision authority, the land has environmentally significant features, (b) the land is not land that could be required to be provided as environmental reserve, (c) the purpose of taking the conservation reserve is to enable the municipality to protect and conserve the land, and (d) the taking of the land as conservation reserve is consistent with the municipality's municipal development plan and area structure plan.

The requirements for the dedication of Municipal and School Reserves are described in Section 666 of the MGA. A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as municipal reserve, school reserve or municipal and school reserve; to provide money in place of them; or to provide a combination of land and money in place of the reserves. The aggregate amount of land may not exceed the percentage set out in the Municipal Development Plan, which may not exceed 10% of the parcel less the land required to be provided as environmental reserve and the land made subject of an environmental reserve easement. When money is to be factored into the calculations, an appraised market value (described in Section 667) is used or a different method if agreed to by both the Subdivision Authority and the applicant.

There are instances where additional reserves can be taken. These instances include higher density developments and are further described in Section 668 of the MGA and Section 17 of the *Subdivision and Development Regulation*.

The additional municipal reserve, school reserve or school and municipal reserve that may be required to be provided by a subdivision authority under section 668 of the Act may not exceed the equivalent of

(a) 3% of the developable land when in the opinion of the subdivision authority a subdivision would result in a density of 30 or more dwelling units per hectare of developable land but less than 54 dwelling units per hectare of developable land, or

(b) 5% of the developable land when in the opinion of the subdivision authority a proposed subdivision would result in a density of 54 or more dwelling units per hectare of developable land.

Reserves can also be deferred (Section 669), either to the remainder of the parcel that is the subject of the proposed subdivision or other land of the person applying for subdivision approval that is within the same municipality as that parcel of land.

A Subdivision Authority may elect to defer reserves in whole or in part by registering a caveat against other land owned by the developer. This caveat must state the acreage claimed as a result of the deferral. When the land against which the caveat has been registered is later subdivided, the Subdivision Authority is able at that time to demand the deferred acreage previously plus the required reserves attributable to the land being subdivided subsequently.

2.2 Statutory Documents

The MGA provides for three levels of statutory plans: intermunicipal development plans, municipal development plans, and area structure/area redevelopment plans.

Intermunicipal Development Plans – Section 631

Section 631 outlines the provisions that two or more councils of municipalities that have common boundaries that are not members of a growth region as defined in section 708.01 must, by each passing a bylaw in accordance with this Part or in accordance with sections 12 and 692, adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary. Referral to this section should be done for all provisions of the IDP requirements

Municipal Development Plan – Section 632

Every council of a municipality must by bylaw adopt a municipal development plan. By April 1, 2021, a council of a municipality that does not have a municipal development plan must by bylaw adopt a municipal development plan.

All MDP requirements and optional items that may be included in an MDP can be found under this section and should be referenced when completing an MDP for the municipality

Area Structure Plans – Section 633

A municipality may adopt an area structure plan to provide planning guidance for all types of subsequent subdivision and development, including residential, commercial and industrial projects within a specified area of the municipality. Area Structure Plans must describe the sequence of development, proposed land uses, density of population, and general location of transportation routes and utilities and may provide for any other matters council considers necessary.

While the MGA does not provide for joint area structure plans, two more municipalities may opt to adopt a joint area structure plan. An excellent example of a multi-jurisdictional approach to the use of area structure plans is the Heartland Complementary Area Structure Plans, adopted by the City of Fort Saskatchewan, Lamont County, Strathcona County, and Sturgeon County. These ASPs address protection of environmentally sensitive areas, agricultural land conservation, stakeholder involvement and input, and inter-governmental and industrial cooperation. The objective of these ASPs is to utilize a new model which is based on eco-industrial principles and industrial cooperation to develop the region as a global leader in processing, manufacturing, and eco- industrial development.

Area Structure Plan requirements can be tailored to suit a particular municipality, as long as the requirements of the Municipal Government Act are met.

Joint ASPs to address planning for some of Alberta's recreation lakes are other examples of this type of document. For instance, Lacombe and Red Deer County are in the process of preparing the West Sylvan Lake Area Structure Plan, which will provide a framework for new development on one of the most densely developed lakes in Alberta. In some cases, inter-municipal cooperation developed through the preparation of the ASPs is followed up with joint municipal planning commissions and development appeal boards.

Some municipalities adopt a general Area Structure Plan (ASP) for a large portion of the municipality and then adopt smaller Neighbourhood Area Structure Plans (NASPs) within the larger unit. The process for adopting the larger ASP is usually municipally led, while the process for adopting the NASPs is quite often prepared by individual developers.

Area Redevelopment Plans – Section 634 and 635

An Area Redevelopment Plan (ARP) is similar to an area structure plan except that they are utilized in those areas of a municipality that were developed in the past and are ready for redevelopment. It is commonly employed by urban municipalities as a vehicle to address a specific enhancement project, downtown beautification, etc.

ARPs are intended to outline proposals for addressing planning issues in the redevelopment of existing built-up areas. These plans provide a framework for public investment, usually in the form of replacement of infrastructure and opportunities for a change in land use. Where land use changes are to be minimized, an ARP focuses on the preservation and rehabilitation of existing buildings, the provision of parks and playgrounds and the reconstruction of the roadways and other public infrastructure such as sidewalks and light fixtures. An ARP may also address the means by which these objectives are to be achieved.

An ARP must describe the:

- Objectives of the plan and how they are proposed to be achieved;
- The proposed land uses for the area;
- If a levy is to be imposed, the reasons for imposing it, and
- Any proposals for the acquisition of land for municipal, school, parks, recreation facilities or other purposes.

Redevelopment levies Section 647

(1) If a person applies for a development permit in respect of development in a redevelopment area and the area redevelopment plan contains proposals for residential, commercial or industrial

development, a redevelopment levy may be imposed on the applicant in accordance with the bylaw adopting the area redevelopment plan;

(2) A redevelopment levy imposed and collected must be used to provide, in respect of the redevelopment area,

(a) **land** for a park or land for school buildings designed for the instruction or accommodation of students, or

(b) **land** for new or expanded recreation facilities, or both

Land Use Bylaw

Every municipality must pass a Land Use Bylaw as per the MGA; however, it is not a statutory document under the MGA.

Section 640(2) outlines the required contents. These include:

- Division of the municipality into districts;
- Prescription of the permitted or discretionary land uses in each district, with or without conditions;
- Establishment of a decision-making process regarding development permits;
- Provision for how and to whom notice of the issuance of a development permit is to be given; and
- Establishment of the number of dwelling units permitted on a parcel of land
- The discretionary part of the land use bylaw is found in Section 640(4) and includes, among other things:
- Subdivision design standards;
- Size and site restrictions for buildings;
- Setbacks;
- Fencing standards;
- Landscaping requirements;
- Parking and loading facilities;
- Architectural controls;
- Road access;
- Lighting requirements;
- Enlargement, alteration, repair, removal or relocation of buildings;
- Excavation of filling in of land;
- Development on land subject to flooding;
- Use of signs;
- Excavation or filling in of land;
- Development of land subject to flooding or subsistence, within a specified distance of the bed and shore of any water body or water course, and development of land around airports;
- Population density;
- The designation of a district as a direct control district;
- Establishment of any related agreements, forms, fees or procedural matters; and
- Issuance of orders.

Things to Know about Statutory Documents

Section 638.2 of the MGA deals with “Obligation to List and Publish Municipal Policies”. Section 638.2 states the following:

1) Every municipality must compile and keep updated a list of any policies that may be considered in making decisions under this Part:
   (a) that have been approved by council by resolution or bylaw, or
   (b) that have been made by a body or person to whom powers, duties or functions are delegated under section 203 or 209, and that do not form part of a bylaw made under this Part.

2) The municipality must publish the following on the municipality's website:
   (a) the list of the policies referred to in subsection (1);
   (b) the policies described in subsection (1);
   (c) a summary of the policies described in subsection (1) and of how they relate to each other and how they relate to any statutory plans and bylaws passed in accordance with this Part;
   (d) any documents incorporated by reference in any bylaws passed in accordance with this Part.

3) A development authority, subdivision authority, subdivision and development appeal board, the Municipal Government Board or by a person or body referred to in subsection (1)(b) unless the policy is set out in the list prepared and maintained under subsection (1) and published in accordance with subsection (2).

4) This section applies on and after January 1, 2019.

Public Hearings and Notice – Section 692

Municipalities with large numbers of non-permanent residents have challenges ensuring that these ratepayers receive notice pertaining to statutory plans and their respective amendments.

Further, before second reading is given to a bylaw adopting:

- an Intermunicipal Development Plan;
- a Municipal Development Plan;
- an Area Structure Plan;
- an Area Redevelopment Plan;
- a LUB; or
- a bylaw amending statutory plans or a LUB,

A public hearing must be held, and notice must be properly given (MGA, s. 692). Where ERCB, NRCB, or AEUB approvals are involved, these requirements may not need to be met.

The public hearing requirements are set out in Section 230. That includes the requirement for Council to give notice of the public hearing in accordance with section 606 of the MGA and conduct the public hearing during a regular or special council meeting.

Further, under Section 230(4), council is required to "hear" the persons who claim to be affected by the proposed bylaw. The notice requirements are set out in Section 606. Notice of a public

hearing must be advertised at least five days before the public hearing in accordance with the newspaper publication provisions of Section 606(2) or by mailing or delivering the notice to every residence in the area to which the matter relates. Many municipalities choose to both advertise for the rezoning as well as mail a notice to all adjacent landowners.

To ensure proper notice is given, municipalities should be sure to allow for delivery time so that persons affected actually receive five clear days' notice before the public hearing occurs. The contents of a notice must comply with Section 606(6). The five days must not include the dates of advertising and the public hearing (for further clarification see the *Interpretation Act*).

In the case of an amendment to a land use bylaw to change the district designation of a parcel of land, notice must be given in writing to the assessed owner and to the owners of adjacent land.

Obligation in Preparing Statutory Documents

In addition to the public hearing requirements discussed above, municipalities also have a mandatory obligation to involve the public in the preparation of statutory plans. Municipalities must perform the following functions while preparing statutory plans (MGA, s. 636):

- Provide opportunities to any person who may be affected to make suggestions and representations;
- Notify the public of the details of the plan preparation process and of the opportunities to make suggestions;
- Notify the school authorities with jurisdiction in the area to which the plan preparation applies and provide opportunities to those authorities to make suggestions and representations;
- In the case of an MDP, notify adjacent municipalities of the plan preparation and provide opportunities to those municipalities to make suggestions and representations;
- In the case of an ASP, where the land that is the subject of the plan is adjacent to another municipality, notify that municipality of the plan and provide opportunities to that municipality to make suggestions and representations;
- In the case of an ASP, where the land that is the subject of the plan is within 1.6 kilometers of a provincial highway, notify the Minister responsible for the Public Highways Development Act of the plan preparation and provide opportunities for the Minister to make suggestions and representations;
- In the case of an MDP, notify (i) the Indian band of any adjacent Indian reserve, or (ii) any adjacent Metis settlement of the plan preparation and provide opportunities to that Indian band or Metis settlement to make suggestions and representations; and
- In the case of an ASP, where the land that is the subject of the plan is adjacent to an Indian reserve or Metis settlement, notify the Indian band or Metis settlement of the plan preparation and provide opportunities for that Indian band or Metis settlement to make suggestions and representations;

In addition to the mandatory obligation to involve the public in the preparation of statutory plans, Section 216.1 of the MGA requires every municipal council to establish a public participation policy for its municipality. Pursuant to the *Public Participation Regulation*, AR 193/2017, a public participation policy must identify:

> a) the types or categories of approaches the municipality will use to engage the municipal stakeholders, and

b) the types or categories of circumstances in which the municipality will engage municipal stakeholders.

2.3 Non-Statutory Documents

NOTE: these documents can be used to varying degrees by different municipalities and may be referred to by different names

Outline Plans

Outline Plans can be used to assist the municipality, the developer and adjacent landowners to plan for the future. They are non-statutory documents that are used by both urban and rural municipalities to assist with planning for future growth. Outline Plans are prepared as an initial stage in major subdivision applications. They are acknowledged in many municipal development and area structure plans as providing the next level of site-specific planning between the overall area structure plan and the subdivision application. Some municipalities may accept an Outline Plan in lieu of an Area Structure Plan, as they provide a municipality with a measure of flexibility. They are usually processed together with land use redesignation, to ensure compliance with other statutory planning documents.

Once approved by a resolution of Council, they form the basic concept of subsequent tentative subdivision plans. There is no appeal route for outline plans as they are non-statutory documents; however, if passed by resolution of Council, the Council decision can still be subject to judicial review.

An Outline Plan usually contains much the same type of information as an area structure plan, except at a more detailed basis and on a smaller land area. An Outline Plan can explain the type, size and location of land uses to ascertain compatibility with adjacent land uses. It can also address transportation and servicing issues, both in relation to internal and external roads and services. Many municipalities require the developers to give other stakeholders a chance to have input in the plan preparation, through the use of open houses and community meetings.

Within the Alberta planning system, the use of Area Structure and Outline Plans varies greatly. Many larger municipalities use outline plans for “neighbourhoods” within a larger area structure plan, while others utilize outline plans instead of area structure plans. The rationale behind the latter use is that because Outline Plans are non-statutory, there is more flexibility on behalf of the municipality and the developer with respect to making revisions at the time of subdivision.

Servicing Concept Design Briefs

A Servicing Concept Design Brief (SCDB) contains most of the elements of an Area Structure Plan. It also states the municipality’s position on the placement of major land use developments, such as municipal and school facilities. The SCDB establishes a general framework for municipal infrastructure, servicing, planning and development and environmental requirements and is generally applied to an undeveloped suburban area considered to be an integrated planning unit.

A municipality may prepare Neighbourhood Area Structure Plans (NASPs) within the SCDB to facilitate development of individual neighbourhoods. An SCDB helps a municipality implement

their capital and long range plans by identifying the highest priority needs. Landowners and developers are also provided with certainty about the municipality's intent to provide services.

A municipal Council may authorize the preparation of an SCDB for any area of the municipality where municipal servicing requirements must be defined well in advance of anticipated development. A municipal Council may adopt an SCDB by simple resolution.

Although SCDBs are non-statutory plans, there are certain administrative and technical advantages inherent in their adoption, such as:

- Non-statutory approval allows substantial flexibility with respect to unanticipated and innovative types of development, land use patterns and servicing concepts/techniques;
- Due to their adoption by resolution of Council and their inherent flexibility, SCDBs may not need to be amended in the light of new technical information, market uncertainty, differing landowners' aspirations and other circumstances which may affect timing and phasing of development;
- As declared policy of Council, SCDBs will be recognized by all municipal departments and agencies;
- Processing timelines are likely to be less than those associated with the conventional statutory ASP process, particularly if there are disagreements among landowners and developers and uncertainties in defining municipal servicing requirements;
- Ongoing input by owners, developers and the public are facilitated; and
- "Fixed" statutory land use planning only needs to be undertaken for smaller neighbourhood cells using the normal NASP, redistricting and subdivision process.

Servicing Concept Design Briefs are not necessarily required by all municipalities. Quite often, a capital plan or other long range planning document will suffice. It may not be necessary to go through the work of creating documents and involving the public with this type of long range planning.

Other Non-Statutory Documents

Other non-statutory planning documents include corridor studies, site specific master plans, community development plans, open space master plans, and land use studies. Municipalities have the option of preparing these non-statutory plans.

Many municipalities have begun to employ Alternate Service Delivery techniques and, as a result, have begun to examine not just "what services" should be delivered, but rather "how services" should be delivered. As a result, municipalities are beginning to focus more on governance than governing.

3. DEVELOPMENT AUTHORITY

3.1 Establishment

The Development Authority is established by Section 624 of the *Municipal Government Act*, which states that a Council **must** by bylaw provide for a Development Authority to exercise development powers and perform duties on behalf of the municipality.

A Development Authority **may** include one or more of the following:

- A Designated Officer
- A Municipal Planning Commission (MPC)
- Any other person or organization

Section 625 of the *Municipal Government Act* states that a Council **may** by bylaw authorize the municipality to enter into an agreement with:

- A Regional Services Commission, or
- With one or more municipalities to establish an intermunicipal services agency

to which the municipality **may** delegate any of its subdivision authority or development authority powers, duties or functions.

3.2 Roles

The *Municipal Government Act* identifies a number of functions of the Development Authority, including, but not limited to, the administration of the Land Use Bylaw (Section 640 to 643), the issuance of Stop Orders (Section 645), and the administration of Statutory Plans, including Intermunicipal Development Plans (Section 631), Municipal Development Plans (Section 632), Area Structure Plans (Section 633) and Area Redevelopment Plans (Section 634).

All municipalities identify specific roles of the Development Authority in the Land Use Bylaw, however, there is no single way of determining these specific roles. Among other things, a Land Use Bylaw **must** establish a method for making decisions on applications for Development Permits and for issuing Development Permits

A survey of a number of different municipalities shows a wide variety of methods that the Development Authority uses to exercise its development powers and duties on behalf of the municipality. In general, the Land Use Bylaw defines who shall act on behalf of the Development Authority. In many instances, the Development Authority is comprised of a Development Officer and a Municipal Planning Commission, but it can also include Council in the case of decisions affecting Direct Control districts.

While Section 624 of the *Municipal Government Act* allows for a “designated officer” (Development Officer) to act as the Development Authority for a municipality, there is no specific job description that outlines the duties and responsibilities of a Development Officer. Indeed, Development Officers often have a myriad of different roles and responsibilities that they are responsible for. Typically, a municipality outlines the specific responsibilities of the Development Officer in the Land Use Bylaw or a Development Authority Bylaw.

The primary responsibility of a Development Officer is to review, process and issue Development Permits pursuant to the requirements established by the *Municipal Government Act,* the municipality's Land Use Bylaw and Statutory Plans and other relevant legislation and policies. Some municipalities assign other planning-related duties or other technical work. Such examples include but are not limited to matters related to safety codes, economic development, tourism, bylaw enforcement, municipal assessment and finance, recreation, and public works.

3.3 Responsibilities

Most Land Use Bylaws provide a general statement of the responsibilities of the Development Authority, while providing more specific detail regarding the roles of the Development Officer, the Municipal Planning Commission and Council, with respect to the administration of the Land Use Bylaw and the issuance of Development Permits. It is not uncommon that a Development Officer performs various administrative functions of the Development Authority, including:

- Maintenance of the Land Use Bylaw (including all amendments and resolutions affecting it);
- Keeping a register of all applications for Development Permits and the decisions made by the Development Authority;
- Issuance of decisions made by the Development Authority;
- Collection of Development Permit application fees;
- Issuance of notifications that Development Permit applications have been deemed complete pursuant to the timelines established by the *Municipal Government Act*;
- At a minimum, decision-making on Development Permit applications for Permitted Uses.

Depending on the municipality, additional Development Authority duties that Development Officers, Municipal Planning Commissions and service agencies perform include:

- Decision-making on Development Permit applications for Discretionary Uses;
- Issuance of Stop Orders.

As was discussed previously, a Development Officer may have other duties besides those related to Land Use Bylaw maintenance and enforcement. These duties may include those related to Council activities and duties related to the Subdivision Authority.

3.4 Decision Making Powers

The *Municipal Government Act* provides considerable flexibility to the Development Authority in the use of its discretionary authority. The Development Authority must undertake a thorough assessment of relevant planning documents and policies and other related factors prior to making a decision. This assessment should include, at minimum, the following:

- Statutory Plans;
- Site/building design (size, structure, height, construction materials, architectural controls, themes);
- Orientation and relationship to surrounding land uses;
- Parking requirements – provision of stalls and availability;
- Transportation – existing volumes, capacity and traffic generation;
- Viewscapes of existing developments; and
- Landscaping – treatment of property lines abutting different land uses.

Section 640(2)(c)(iii) of the *Municipal Government Act* contemplates that a Land Use Bylaw may provide for revocation or suspension of a Development Permit, but there is nothing in the *Act* indicating when this can be done and by whom. The lack of specific direction from the *Act* suggests that Council has the power to set the rules in that regard, subject to provisions of the *Municipal Government Act*.

3.5 Variances

The MGA is silent with respect to the granting of variances. Variances typically can be granted by a Development Authority; however, the degree of variance and who can grant the variance differs greatly from municipality to municipality and should be set out in the Land Use Bylaw. As zoning regulations apply to large areas and a large variety of situations, there are times when a developer needs a regulation to be varied. A developer cannot request a variance on the use on a lot (Section 640(6)(b)). Common uses of a development permit variance include varying the setback from a property line or varying the height restrictions. Many development permit variance applications are referred to adjacent landowners for comment prior to the Development Authority rendering a decision.

The ability to grant variances places pressure on the Development Authority since it necessitates a subjective value judgment based upon an assessment of many planning factors as should be indicated in the Land Use Bylaw. These factors include special circumstances that are applicable to the subject property, such as size, shape, topography, locations, buildings, or surroundings, or where the strict application of the LUB that would deprive the subject property of the privileges other properties in the vicinity and under the same land use district may be enjoying. Subject to the wording of the LUB regarding the variance power, the Development Authority may have the ability to grant pre- and post-development variance and in doing so may have to have regard to other applicable legislation. The consequences could be very controversial regardless of whether a decision to approve or refuse a variance is made.

3.6 Development Officer's Roles and Duties

Development Officers play a critical function in the planning and development process in Alberta. Most of the duties of a Development Officer are planning-related, however, often a Development Officer can become involved with other non-planning-related activities.

Planning Responsibilities

In most municipalities, the primary function of the Development Officer is to receive, process and decide on applications for Development Permits in accordance with the municipality's Land Use Bylaw, and the requirements of the *Municipal Government Act*. The Development Officer must make these decisions according to procedures outlined in the Land Use Bylaw. In its procedures, the Land Use Bylaw must include provision for any conditions to be attached to the permit, either in general or in relation to specific permit types. Council, in adopting the Land Use Bylaw, also provides direction with respect to discretionary authority, for example, what types of Development Permit applications can be approved by the Development Authority as represented by the Development Officer and/or Municipal Planning Commission and provide specific guidelines on when "variances" can be considered.

When making a decision on a Development Permit, a Development Officer follows the requirements under Section 683.1 and may consider the general process outlined below:

- The Development Officer must first determine which land use district the proposed development is located within;
- The second step is for the Development Officer to determine whether the proposed development is classified as a "Permitted Use" or a "Discretionary Use" under the land use district;
- The third step is for the Development Officer to assess the proposed development application with respect to the municipality's Land Use Bylaw and Statutory Plan requirements;
- The final step is for the Development Officer to either render a decision on the Permit or to refer it to the Municipal Planning Commission (or Intermunicipal Planning Commission if applicable) for a decision, depending on the provisions of the municipality's Land Use Bylaw.

In addition to issuing Development Permits, a Development Officer is responsible for a range of other duties, including, but not limited to, the issuance of Stop Orders. A Stop Order, issued pursuant to Section 645 of the *Municipal Government Act*, gives the Development Officer broad authority to stop, demolish, remove or replace a development, and/or carry out any actions to ensure that the offending development complies with Part 17 of the MGA (or the regulations thereunder), a Land Use Bylaw, a development permit or a subdivision approval.

Additionally, the Development Officer or Development Authority (with the defined responsibility) must represent the Development Authority at Subdivision and Development Appeal Board hearings and may take part in the preparation of Statutory Plans, Land Use Bylaws and other planning-related policies and plans. Council may also request assistance from the Development Officer with respect to preparation and administration of amendments to the Land Use Bylaw. This assistance may involve all aspects of the amendments, including both administrative functions as well as providing recommendations concerning amendment applications and appearing before Council in an advisory capacity. Additionally, a Council may choose to delegate the authority for Development Permit applications in a Direct Control District to the Development Authority/Officer.

A Council may also choose to involve the Development Officer in the preparation of off-site levy agreements and development agreements. Off-site levies and development agreements can often be somewhat technical, and usually involve the Development Officer as part of a team that includes the Chief Administrative Officer, Municipal Engineer and Municipal Counsel.

Depending on the size of the municipality, the Development Officer may be required to assist the Subdivision Authority in the following matters:

- Subdivision application receipt and processing;
- Subdivision application review in response to circulations from the Subdivision Authority. This assistance could include site inspections on behalf of the municipality, as well as the preparation of reports and recommendations concerning the subdivision applications;
- Preparation of conditions the municipality wishes to attach to the subdivision application regarding roads, walkways, utilities, parking, and off-site and redevelopment levies;
- Maintenance of the necessary files on subdivision approvals.

If Council has established a Municipal Planning Commission (MPC), a Development Officer is likely to work very closely with it with respect to development matters. The Development Officer works as a screening agent for the MPC. The Development Officer has to decide which applications must be presented to the MPC under the LUB and which ones optionally go

depending upon the discretion given to the Development Officer. Even if the MPC, rather than the Development Officer, is responsible for deciding on a particular application, it is still the Development Officer's responsibility to submit information regarding the application, as well as a recommendation for action. Excluding the Development Officer's decision-making authority on given applications, the role as the municipality's technical advisor is the most important responsibility of a Development Officer

Council may choose to designate a Development Officer as a "designated officer" for the purposes of right- of-entry. This is a sensitive responsibility and one which requires legal advice in each instance in which it is considered necessary to consider entry onto land or building.

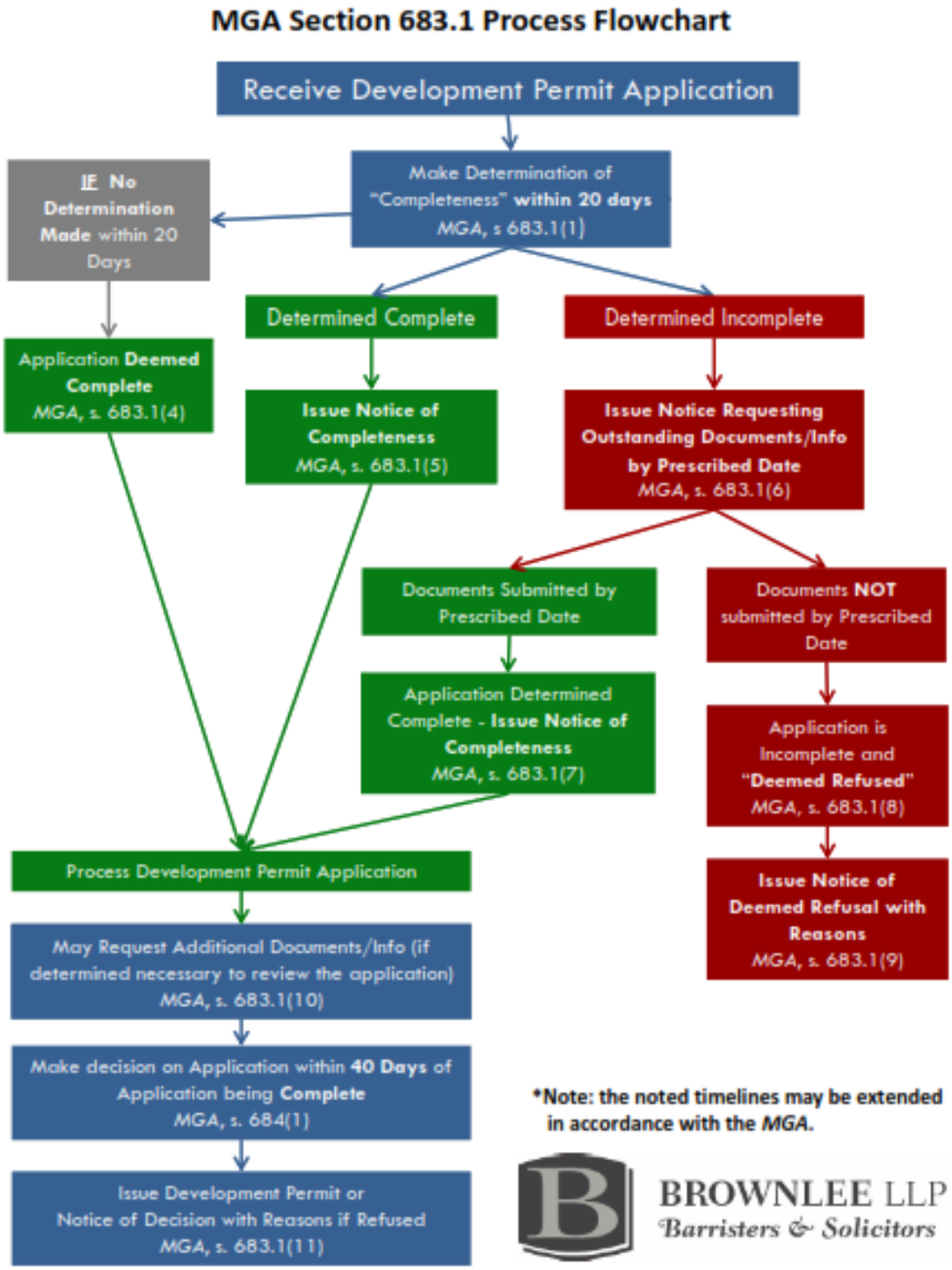
Non-Planning Related

In addition to the planning duties outline above, the Development Officer may assume responsibility for a variety of non-planning duties. Some are direct extensions of his/her role as Development Officer while others are more distant in their connections to the planning functions of the position. A Development Officer's non-planning responsibilities may come from any of the following sources: Council, Chief Administrative Officer, Development Services Director, or his/her own initiative.

The additional areas of responsibility could include any one or more of the following:

- Geographical Information Systems Coordinator;
- Economic Development Officer;
- Bylaw Enforcement Officer; and
- Safety Codes Officer.

Figure 3: Development Permit Approval Process



4. OTHER PLANNING AUTHORITIES

4.1 Introduction

As was mentioned in Section 2, the *Municipal Government Act (MGA)* establishes a hierarchy of planning authorities, each with specified roles, duties and responsibilities. This section provides further details about each planning authority, including its organizational structure, operational procedures, areas of authority and the relevant sections from the *MGA* that pertain to these authorities.

The relationship between the Development Officer and/or Development Authority and each individual authority is highlighted within the relevant planning bylaws or the specific municipality. These relationships are primarily based on formal links to legislation and are reflected in the delegated or required duties of the Development Officer and/or Development Authority. At the same time, more "informal" links can also exist between an individual Development Officer and the various planning authorities. These result from an obvious need by both junior and senior levels of authority to establish efficient lines of informal communication. This enables the authorities to more effectively implement planning regulations and deliver planning services.

4.2 Subdivision Authority

Section 623 of the *MGA* requires that all municipalities establish a Subdivision Authority to exercise subdivision duties and powers on behalf of the municipality. The Subdivision Authority is responsible for receiving, processing and making decisions on subdivision applications in accordance with the *MGA* and the *Subdivision and Development Regulations*.

The *MGA* provides guidance on who can be appointed as a Subdivision Authority. A Subdivision Authority is established by bylaw and may include one or more of the following:

- Any or all members of a Municipal Council;
- A Designated Officer;
- A Municipal Planning Commission;
- Any other person or organization.

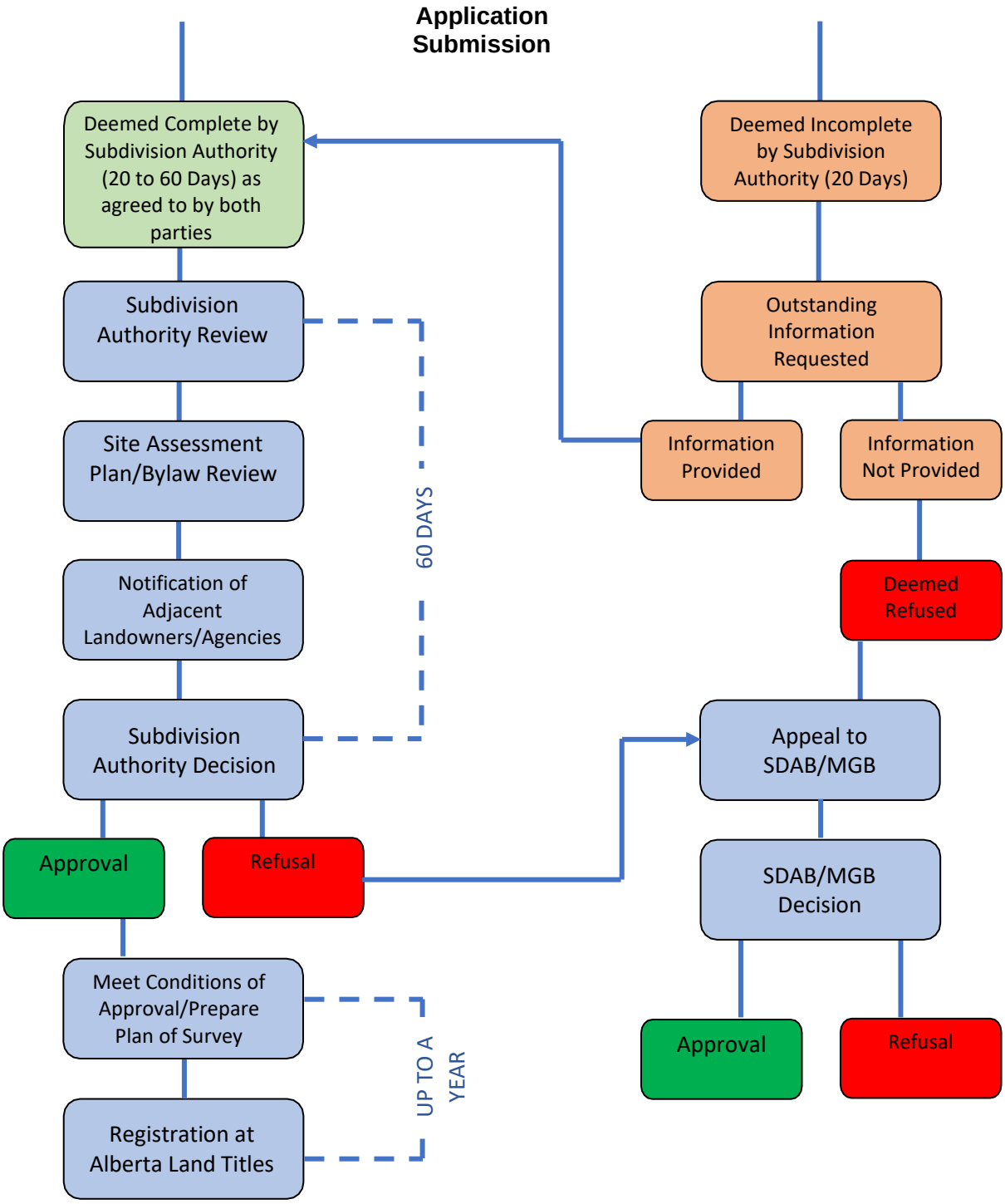
The above list of potential Subdivision Authorities suggests that a Subdivision Authority can be a municipal staff member, a Municipal Council, a committee of a Municipal Council, a designated agency or any combination of the entities listed above. Some municipalities have made the council or a committee of council the subdivision authority; however, many have a designated officer acting in this capacity. Some municipalities have contracted with a planning service agency or planning consultant to receive, process, review, and make recommendations on the application to the municipality's appointed authority. In some cases, municipal staff, the agency staff, or the consultant makes the decision.

Ordinarily, a person wishing to create one or more lots from a parcel of land must obtain subdivision approval from the municipal Subdivision Authority. A separate title may be obtained for certain parcels without subdivision approval, for example, when two quarter sections are shown on the same title.

Various conditions may be attached to a subdivision approval requiring the applicant to, among other things:

- Dedicate land, without compensation to the owner, for roads and public utilities, pursuant to Section 661 of the *Municipal Government Act* (pursuant to Section 662(2) of the *Municipal Government Act*, the total area of land provided for roads and public utilities cannot exceed 30% of the land to be subdivided, less any land taken as Environmental Reserve or as an Environmental Reserve Easement);
- Dedicate land for use as a Conservation Reserve, pursuant to Section 661.1 of the *Municipal Government Act*;
- Dedicate up to 10% of the total area of land to be subdivided for Municipal Reserve, School Reserve or Municipal and School Reserve, pursuant to Section 666 of the *Municipal Government Act* (additional reserves may be required pursuant to Section 668 of the *Municipal Government Act* and Section 17 of the *Subdivision and Development Regulation* when certain density requirements are met);
- Enter into a Development Agreement with the municipality, pursuant to Section 650 of the *Municipal Government Act*, to construct or pay for construction of roads, walkways, public utilities and off-street parking necessary to serve the subdivision;
- Pursuant to Section 648 of the *Municipal Government Act*, pay an Off-Site Levy to pay for all or part of the capital costs, and/or land required for, new or expanded facilities for water, sanitary sewage, drainage, roads, connections between municipal roads and provincial highways, recreation facilities, fire hall facilities, police station facilities and libraries (Off-Site Levies can only be collected once per parcel for each of the uses listed above);
- Ensure compliance with Part 17 of the *Municipal Government Act* or regulations under that Part, including the *Subdivision and Development Regulation*, Statutory Plans or Land Use Bylaw.

Figure 4: Subdivision Approval Process



4.3 Municipal Council

The *Municipal Government Act (MGA)* provides guidance for a Municipal Council to make day-to-day decisions regarding land use, zoning, subdivision and development within the municipality. The general purpose of a municipality is to provide good government, services and facilities that, in the opinion of Council, are necessary and desirable for the municipality to develop and maintain a safe and viable community.

Council may pass bylaws respecting the following matters:

- Safety, health and welfare of people;
- The protection of people and property;
- Activities and things in, on or near a public place or a place that is open to the public;
- Transport and transportation systems;
- Businesses, business activities and persons engaged in business;
- Services provided by or on behalf of the municipality;
- Public utilities;
- Wild and domestic animals and activities related to them; and
- Enforcement of bylaws made under the *MGA* or any other enactment.

Section 631 of the *MGA* states that two or more Councils of municipalities that have common boundaries **must** adopt an Intermunicipal Development Plan (IDP). Section 632 of the *MGA* states that a Council of a municipality **must** adopt a Municipal Development Plan (MDP), while Section 639 states that a Council of a municipality **must** adopt a Land Use Bylaw (LUB). Council, at its discretion, **may** also approve Area Structure Plans (ASPs) and Area Redevelopment Plans (ARPS).

Subdivision Authority

Council may exercise its power to act as a municipality's Subdivision Authority; however, it may also delegate these powers to a Municipal Planning Commission, a Designated Officer, Development Officer, or any other person or organization, including an Intermunicipal Planning Commission, that it deems appropriate.

Direct Control Districts

Where a Direct Control District is established by a municipality's LUB, pursuant to Section 641 of the *MGA*, Council may, subject to any applicable Statutory Plan, regulate and control the use or development of land or buildings within that District in any manner it considers necessary. In respect of a Direct Control District, the Council may decide on a Development Permit application or may delegate the decision to a Development Authority with directions that Council considers appropriate. No appeal lies on the part of either an applicant or another affected person for Development Permits granted in respect of a Direct Control District where the permit was granted by the Council or by the Development Authority, except on the grounds that the Development Authority failed to follow the directions of Council given in respect of the Direct Control District.

Off-Site and Redevelopment Levies

Pursuant to Section 648 of the *MGA*, a Council **may**, by bylaw, impose an Off-Site Levy on land in order to obtain funds to expand, build or reconstruct certain municipal services (see Section 4.2 above). With respect to Redevelopment Levies, they may only be charged if an ARP has been approved by Council pursuant to Section 634 of the *MGA.* A Redevelopment Levy collected pursuant to Section 634 and Section 647 of the *MGA* **must** be used to provide, in respect of the redevelopment area, land for a park or school buildings and/or land for expanded recreation facilities.

Collection of Off-Site and Redevelopment Levies allows a municipality to take a proactive approach to funding facilities and infrastructure, and acquiring lands required to service new development. The municipality is able to allocate the costs of providing these facilities and infrastructure in a way that forces the beneficiary of these services to pay for the services received.

Many municipalities have adopted a number of guiding principles to assist them in determining when and where Off-Site and Redevelopment Levies will be imposed in their municipality. Examples of these principles include:

- New development should pay the full costs to provide both on-site and off-site facilities and infrastructure required to serve new development;
- The costs for facility and infrastructure projects that benefit both existing and future development should be recovered proportionately, either by population or area served;
- The Off-Site and Redevelopment Levies will be based on net project costs, which are defined as the total project costs less any grants received; and
- Where a facility or infrastructure project provides a broader-based benefit to development in the municipality as a whole, Off-Site and Redevelopment Levies will be recovered on a municipal-wide basis.

Reserve Lands – Use and Disposition

Municipal Councils have considerable authority in regard to the use and disposition of lands designated as Reserve lands pursuant to the *MGA*. Council has the following authority and responsibility regarding Reserves:

- Determining the use of Municipal Reserves for public parks, public recreation areas, schools or buffer zones;
- Provision of Joint-Use Agreements with School Authorities; and
- Disposition of Reserves, including the transfer of Reserves to School Authorities.

Public Participation – Legislated Activities

Planning in Alberta contains a formalized citizen-engagement and public participation process, for LUBs and Statutory Plans (which include IDPs, MDPs, ASPs and ARPs,), the MGA requires a statutory public hearing. In addition, municipalities must adopt a public participation policy (s. 216.1) which may provide additional public participation but failure to follow the policy will not invalidate the passage of a bylaw adopting or amending a LUB or Statutory Plans. Statutory documents in Alberta typically involve the following process:

- **Step One** – The decision to prepare a document. A decision by Council is required to initiate the project.

- **Step Two** – Solicitation of concerns and community suggestions. Once Council has decided to prepare a plan or bylaw, there may be a consultation process. Recognizing that there will be diverse opinions in the community, the *MGA* requires that municipalities solicit citizen input. Consultation and engagement at this stage can be accomplished via a number of ways:
    - Public Hearings/meetings;
    - Surveys of municipal residents;
    - Focus groups that meet to discuss specific themes related to issues of concerns with the municipality; and
    - Open houses that allow citizens to view and discuss proposed plans.

- **Step Three** – Presentation of the draft plan/bylaw. Following the initial consultation period and based on the input received from citizens during this period, municipal staff will present a draft plan/bylaw to Council, at which time Council may choose to give the bylaw first reading and set a date for a Public Hearing. Alternatively, Council may direct administration to undertake additional consultation sessions before proceeding with the formal Public Hearing process that is outlined under Section 230 of the *MGA*. The *MGA* stipulates that a Public Hearing must be held prior to second and third reading of the proposed bylaw. At the time of the Public Hearing, citizens can make representations to Council requesting that:
    - The plan/bylaw be endorsed as proposed;
    - Suggest changes, additions and deletions; or
    - Council rejects the plan/bylaw and requests an alternative.

Council may then request that the plan/bylaw be redrafted, or Council may defeat the plan/bylaw or pass the plan/bylaw despite any objections from the public.

Public Participation – Legislated Activities

With respect to public participation, municipal Councils typically engage in a variety of means in an effort to engage its citizens. What follows is a sample of different public participation mechanisms:

- Individual Councilors can create debate and local interest on a particular project through a local media report;
- The Council can request that the municipality conduct polls and public meetings to understand community views on a particular project;
- Community forums and focus groups are held to enable direct participation with the public through two-way dialogue;
- Town hall meetings can be held for open discussion of relevant issues;
- Council can request that Administration prepare a report to Council, and citizens can comment on the draft copy of the report; and/or
- Councilors can host a meeting to discuss why certain decisions were made.

Municipalities are required to adopt a Public Participation Policy but the Public Participation Regulation is not specific about the types of participation a municipality must engage in; more municipalities are taking new and innovative means in an effort to ensure that the public has the opportunity to be heard with respect to different policy initiatives, with hopes of providing better service delivery to all municipal ratepayers.

4.4 Municipal Planning Commissions (MPC)

Pursuant to Section 626 of the *MGA*, a Municipal Council **may**, by bylaw, establish a Municipal Planning Commission (MPC), and **may**, by bylaw, authorize the municipality to enter into an agreement with one or more municipalities to establish an Intermunicipal Planning Commission. The authorizing bylaw or agreement establishing either Commission must:

- Provide for the applicable matters described in Section 145(b) of the *MGA* (administrative procedures concerning committee operations);
- Prescribe the functions and duties of the Commission, including but not limited to subdivision and development powers and duties;
- May state which types of subdivision and development applications the MPC can issue decisions on or be contained in the Land Use Bylaw;
- May state that the MPC may act as an advisor to Council on development and planning matters or may be contained in the Land Use Bylaw; and
- In the case of an Intermunicipal Planning Commission, provide for its dissolution.

4.5 Subdivision and Development Appeal Boards (SDAB)

Pursuant to Section 627 of the *MGA*, a Municipal Council **must**, by bylaw, establish a Subdivision and Development Appeal Board (SDAB), and **may**, by bylaw, authorize the municipality to enter into an agreement with one or more municipalities to establish an Intermunicipal Subdivision and Development Appeal Board, or institute both.

Unless an order of the Minister of Municipal Affairs authorizes otherwise, a panel of a Subdivision and Development Appeal Board or an Intermunicipal Subdivision and Development Appeal Board hearing an appeal must not have more than one councillor as a member. Furthermore, a municipal employee who carries out subdivision or development powers for the municipality **cannot** be a member of the SDAB, nor can a member of a Municipal Planning Commission or Intermunicipal Planning Commission be appointed as a SDAB Member (Section 627(4)).

Pursuant to Section 628(1) of the *MGA*, a bylaw establishing a SDAB, or an Intermunicipal Subdivision and Development Appeal Board **must**:

- Provide for administrative matters such as length of term and membership (Section 145(b)); and
- Prescribe the functions and duties of the Board.

Pursuant to Section 628(2) of the *MGA*, a bylaw establishing a Subdivision and Development Appeal Board, or an Intermunicipal Subdivision and Development Appeal Board **may**:

- Provide for SDAB Members to meet in panels;
- Provide for two or more panels to meet simultaneously;
- Provide that the panels have all of the powers, duties and responsibilities of the SDAB; and
- Provide that a decision of a panel is a decision of the SDAB.

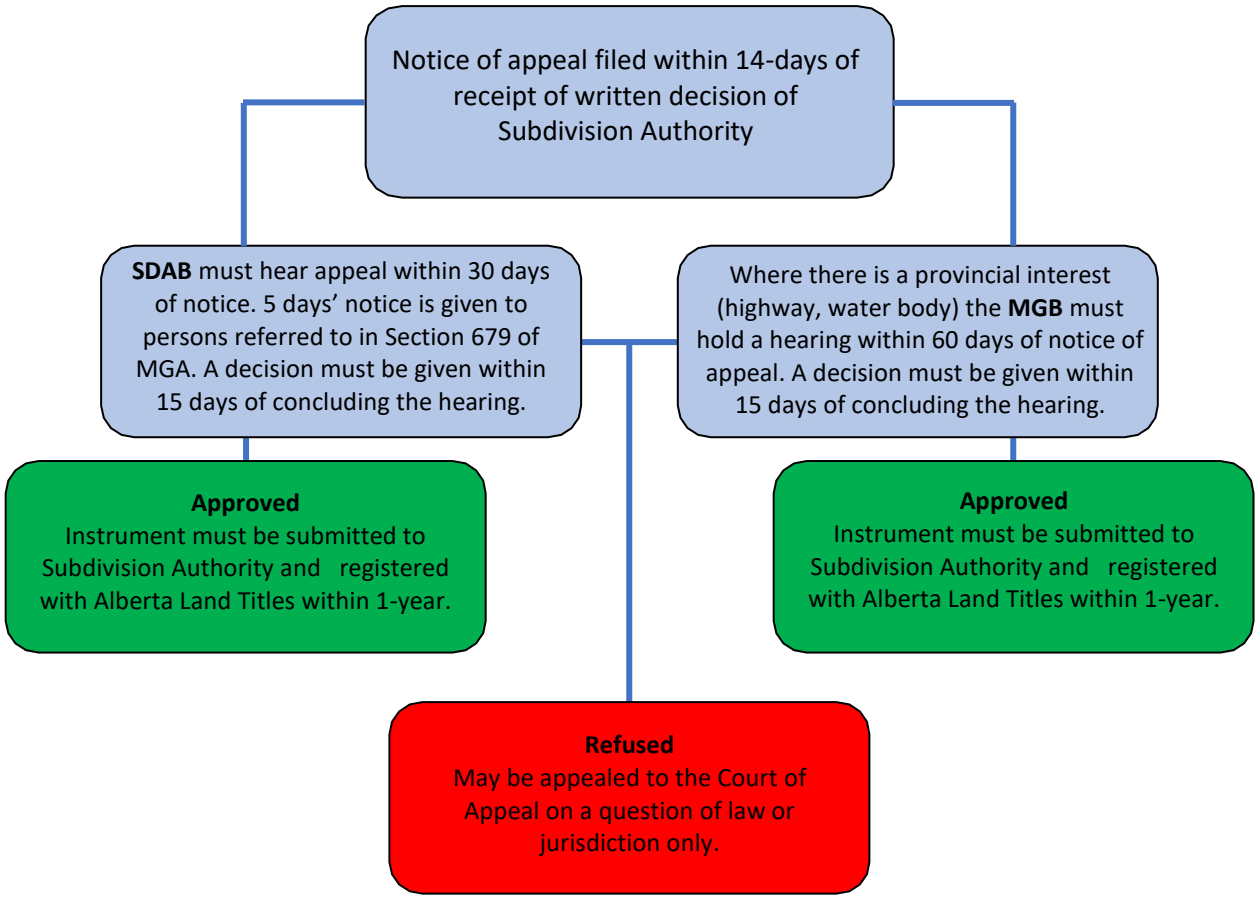
Subdivision Appeals

The procedures concerning subdivision appeals are described in detail in Sections 678 to 682 of the *MGA*. A Subdivision Authority's decision or deemed refusal may be appealed to the SDAB. An appeal may be launched by the applicant, a provincial government department that was referred the application by the Subdivision Authority, or by the Council of the municipality, if the Council, a Designated Officer of the municipality or the MPC of the municipality is not the Subdivision Authority, or by a School Authority. Adjacent landowners or any other party not listed above claiming to have an interest **cannot** appeal a decision of the Subdivision Authority, and therefore do not have standing to appeal a subdivision approval to the SDAB. However, adjacent landowners can still make submissions to the SDAB.

Pursuant to Section 678 of the *MGA*, notice of appeal must be filed in writing to the Clerk for the SDAB within **14 days** after receipt of the written decision of the Subdivision Authority **or** the deemed refusal of the Subdivision Authority in accordance with Section 681 of the *MGA.* The date of the written receipt is deemed to be **7 days** from the date that the decision is mailed.

If the notice of appeal is submitted to the Clerk for the SDAB within the legislatively-prescribed timeline noted above, the SDAB **must** hold the hearing on the appeal within **30 days** after having received the notice of appeal, and must give a written decision, together with the reasons for that decision, within **15 days** after concluding the hearing.

Figure 5: Subdivision Appeals



Development Permit Appeals

The procedures concerning development appeals are described in great depth in Sections 684 to 687 of the *MGA.* An appeal on a decision of a Development Authority may be launched by the applicant or other affected parties by filing notice of appeal with the SDAB within **21 days** after the date on which the decision is made under Section 642 of the *MGA*, **or**, if no decision is made with respect to the 40-day period, or within any extension of that period under Section 684, within **21 days** after the date the period or extension expires.

Where the proposed development is a Permitted Use under the LUB, decisions may be appealed only if the appellant believes that the provisions of the Bylaw were relaxed, varied, or misinterpreted by the Development Authority. As is the case for subdivision appeals, the SDAB must hold a hearing within **30 days** after having received the notice of appeal, and must give a written decision, together with the reasons for that decision, within **15 days** after concluding the hearing.

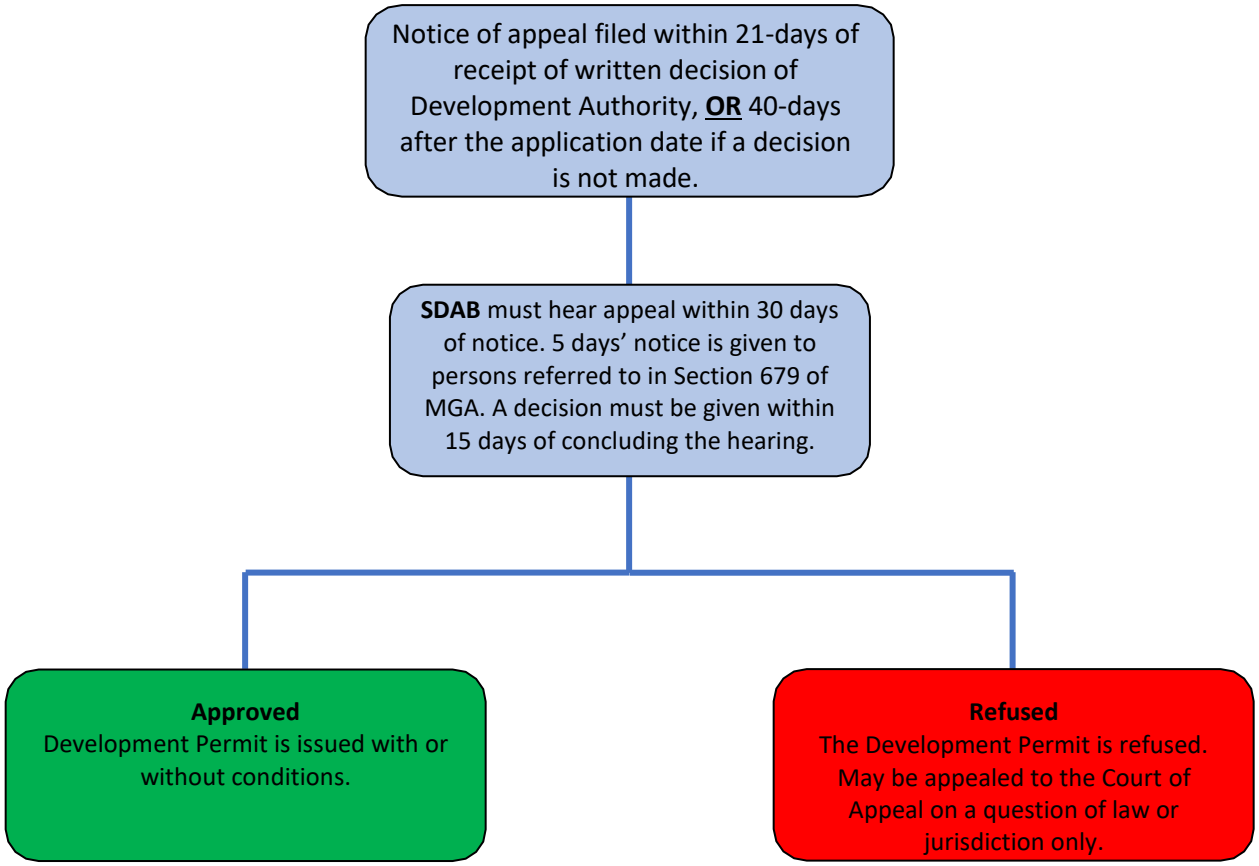
The MGA requires that an SDAB hearing be conducted within the 30-day time period. This provision suggests that the hearing and any adjournments must be held within the 30 days. However, in practice SDABs commence the hearing with the prescribed time frame and may adjourn proceedings beyond the 30-day period to accommodate one or the other parties. Therefore, provided that the hearing is commenced within the time expressed in the MGA, a Board has jurisdiction and may properly adjourn the hearing from time to time, even though such adjournments extend the conclusion of the hearing beyond the 30 days. As the SDAB may from time to time adjourn a hearing where there is good reason for so doing, the 15-day time within which to make a decision does not begin to run until the hearing is concluded. An SDAB is required to provide its written decision within 15 days from the conclusion of the hearing; however, a municipality can issue its written decision earlier than that.

The SDAB may accept any oral or written evidence that it considers proper, whether admissible in a court of law or not, is not bound by the laws of evidence applicable to judicial proceedings, and it must make and keep a record of its proceedings, which may be in the form of a summary of the evidence presented at a hearing. The SDAB must make available for public inspection before the hearing, all relevant documents and materials respecting the appeal, including the application for the Development Permit, the decision of the Development Authority and the notice of appeal.

Section 687(2) of the MGA requires a SDAB to give reasons for its decisions in all cases. Providing a rationale serves several purposes:

- it promotes better decision-making by reducing the chances of random decisions;
- it reinforces the public confidence in the decision-making process;
- it provides an opportunity to the parties to assess the question of appeal or judicial review; and in the case of questions of law or jurisdiction,
- it helps the court exercise its supervisory jurisdiction where judicial proceedings are taken.

Figure 6: Development Permit Appeals



Stop Orders

The SDAB also hears appeals of Section 645 Stop Orders (see Section 685(1)(c)). An appeal of a Stop Order can only be made by the person affected by the Stop Order. An appeal on the issuance of a Section 645 Stop Order may be launched by an affected party by filing notice of appeal with the SDAB within **21 days** after the date on which the Stop Order is issued pursuant to 645 of the *MGA*.

The same procedures and timing for issuance of a decision of the SDAB that apply to development appeals (see above) apply to appeals of a Section 645 Stop Order.

4.6 Municipal Government Board (MGB)

The Municipal Government Board (MGB) is an independent and impartial body that is tasked with making decision on certain appeals and disputes stemming from the provisions of the *MGA* and the *Subdivision and Development Regulations.*

The MGB exists to settle matters with respect to the following duties:

- Appeals concerning certain subdivisions (if the land subject to the subdivision application is within the Green Area, as classified by the Minister responsible for the *Public Lands Act*; or if the land subject to the subdivision application contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site, as set out in the *Subdivision and Development Regulations*;
- Disputes between municipalities; and
- Annexation matters.

4.7 Court of Appeal

Further appeals can be made to the Alberta Court of Appeal from a decision of a SDAB or from the MGB. An appeal from a SDAB may involve a subdivision appeal or development appeal. An appeal from the MGB may involve a dispute relating to a NRCB, ERCB, or AEUB authorization; an intermunicipal dispute; or a subdivision appeal.

Leave is necessary before the Court of Appeal will hear such an appeal. If the appeal is from the decision of a SDAB, the SDAB and the municipality involved must be given notice of the application. The application must be returnable within 30 days after the issue of the decision sought to be appealed. A decision of the MGB can also be appealed to the Court of Appeal in the manner described above. The MGB has the opportunity to be represented before the Court of Appeal.

The Justice may grant leave to appeal if he/she is of the opinion that the appeal involves a question of law or jurisdiction of sufficient importance to merit a further appeal and has a reasonable chance of success (Section 688(2) of the MGA). Also, a Court of Appeal must refer the decision back to the MGB or SDAB where it “cancels” a decision (Section 689(2)).

5. Land Use Bylaw

5.1 Introduction

The Land Use Bylaw (LUB) is the central regulatory planning document for a municipality. It is the "front-line" document that developers will use to guide business transactions, including the purchase of land, construction of certain types of buildings, and proposal of certain types of uses. It is the primary document for implementing the development policies expressed in the municipalities' Intermunicipal Development Plan (IDP), Municipal Development Plan (MDP), Area Structure Plan (ASP), Area Redevelopment Plan (ARP), and other non-statutory planning studies.

The Land Use Bylaw's administrative and technical elements are outlined in Sections 639 to 651 of the Municipal Government Act (MGA) and address four major items that must be contained in all LUBs, including:

- divide the municipality into districts and provide for permitted and discretionary uses in each district;
- provide for a method of making decisions on development permit applications including, amongst other matters, the types of conditions that may be attached and the discretion that a development authority may exercise;
- provide for how and to whom notice of the issuance of a development permit is given; and
- prescribe the number of dwelling units permitted on a lot.

As well, the LUB may provide for a wide variety of matters such as subdivision design standards, the area and location of buildings on a parcel, landscaping, fences, parking requirements, exterior appearance of buildings, excavation or filling of land, and signs, among other things.

The underlying principle behind the LUB is to organize compatible land uses together in the municipality. For example, residential areas are better located next to schools and parks than to industrial areas. In order to ensure that a suitable arrangement of land uses is achieved in a community, the MGA has identified a number of documents. Certain statutory plans, such as the MDP, which is approved by Council and forms the overall community planning goals and policies for the municipality, do not restrict individuals from using their land in a particular manner. The LUB, however, is identified in the MGA as one of the two mechanisms of implementing the municipality's land use planning strategy through the regulation of an individual's choice over what landowners can do with their piece of land with respect to development (the other is subdivision approval).

5.2 Land Use Districts

The LUB divides the community into districts and establishes prescribed permitted and/or discretionary land uses and standards of development for each district. A typical bylaw for an urban municipality might include a number of residential districts (single detached dwellings, multi- unit dwellings, manufactured housing sites), several commercial districts (highway, neighbourhood, and downtown), several industrial districts (light industrial, mixed commercial/industrial), urban reserve districts, and perhaps some direct control districts.

Rural municipal bylaws will have a more rural focus. A typical bylaw in a rural municipality, for example, might include a district for extensive agriculture which also allows a farm residence, a district for intensive livestock operations, a district for multi-lot country residential development, a district for hamlets which would allow for a mix of smaller lot residential, light commercial, highway commercial and industrial uses.

Key considerations in developing an LUB are deciding how many districts will be established; the uses for each district; and how discretionary authority may be exercised. The number of districts usually depends on the complexity of the municipality and the preferred approach to managing land use decisions. Normally, the greater the number of districts, the more specific the permitted and discretionary uses will be.

This approach allows a clearer and more specific relationship to plan policies but is less flexible. Too few districts may mean that anything goes and the ability to relate land use control to plan policies is diminished. There is no standard for the number or content of districts; however, in general, rural municipalities have fewer districts than urban municipalities.

Direct Control Districts are discussed in the MGA. Where Direct Control Districts are designated in the LUB, Council, regulates and control the use or development of land or buildings. Section 641(2) of the MGA makes Direct Control Districts subject to applicable statutory plans. Where a direct control development permit is issued by a municipal Council, there is no appeal that may be made to a SDAB. However, where a Development Authority makes the decision with respect to a development permit application, the appeal that may be made to a SDAB is limited to the question of whether or not that Development Authority followed the directions of Council.

Direct Control Districts provide for development that, due to its unique characteristics, unusual site conditions, or innovative design, requires specific regulations unavailable in other land use districts. Land uses within a Direct Control District shall be determined by Council and adopted through a bylaw and may apply to a specific development application on a single lot or to unspecified future development on more than one lot. Where Council deems that there are sufficient and appropriate regulations within a Direct Control Bylaw, authority to approve development within the Direct Control District may be delegated to the Development Authority.

An Overlay District can be defined as additional zoning requirements that are superimposed upon existing zoning in specified areas shown on a land use district map. Overlay Districts are commonly used when an area requires special protection or has a special problem. Overlay Districts can be used in conjunction with other Districts contained within a municipal LUB. Essentially an Overlay District covers a broad area, and, where a provision of the Overlay appears to conflict with a provision of the underlying District or another section of the LUB, the provisions of the Overlay shall take precedence and apply in addition to the provisions of the underlying district and other sections of the LUB.

5.3 Permitted and Discretionary Uses

Permitted uses are ones for which a land use district is designed to be used. That is, the use is considered suitable and compatible with the existing surrounding uses and/or proposed land use plans covering the area.

Section 640(2)(b) of the MGA states that unless the land use district is designated as Direct Control, a LUB must prescribe with respect to each district the one or more uses of land or buildings that are permitted in the district, with or without conditions. If a developer makes application for a permitted use or building, that application must be approved if the application satisfies all the specified conditions as stated in the LUB with respect to conformity.

Discretionary uses are ones which by their nature are generally acceptable in a particular land use district. However, there may be factors attached to the use which may not make them reasonably compatible with neighbouring properties. Therefore, it is necessary for the Development Authority to be able to exercise some discretion as to whether or not to allow the application, depending upon the specific circumstances of the proposal. The Development Authority is not required to issue a development permit when the use or building is listed as a discretionary use.

5.4 Non-Conforming Uses and Buildings

When a Council approves an LUB, it establishes land use rules and development regulations for the municipality based upon what it considers to be appropriate land use planning principles at the time.

A consequence of amending or changing a LUB may be that certain existing land uses and/or buildings do not satisfy the new requirements. If they have legal approvals which predate approval of the LUB, the MGA provides a mechanism for the municipality to treat these uses/buildings as legally non-conforming. This treatment will permit certain types of improvements but sets very specific limits on the scale and/or types of new development permitted in order not to compromise the new regulations. The intent behind the limitations placed upon the physical expansion of non-conforming uses or buildings is to bring about the eventual replacement with buildings and uses to become compatible with the area.

The use or building can remain indefinitely unless either the use is stopped for a period of six consecutive months or the building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation. If either situation occurs, an application must conform to the provisions of the new LUB. The status is not affected by any change in tenure (ownership).

In R. v. Klippert Ltd. (1993) the company owned 40 acres of land which was used for a sand and gravel pit operation. The use was non-conforming. Eventually, the operator removed trees and topsoil from about three acres that had previously been pristine. The court held that the expansion of an open pit mine to unexploited gravel and sand was not an extension of use since to so hold would force a stopping of the use, which was the opposite of what was contemplated under the legislation.

***Fred Laux,* Planning Law and Practice in Alberta**

Section 643 of the MGA regulates that a non-conforming building cannot be enlarged, rebuilt or structurally altered except to make the building conform to the LUB or as the Development Authority considers necessary for the routine maintenance of the building. Also, no additional

buildings can be erected on a lot which is also used for the non-conforming use. Similarly, the non-conforming use part of the lot cannot be extended or transferred to any other part of the lot while the non-conforming use continues.

There have been instances where owners of buildings have been able to lease their buildings for the uses that had existed at the time the buildings had been vacated for substantially longer than six months. In these situations, the owners have been successful in challenging the municipality's refusal to allow the non- conforming use.

5.5 Key Policies

The following list outlines a number of key policies and factors that must be acknowledged within a municipal LUB.

Provincial Exemptions

Section 618 of the MGA exempts certain activities from regulation. These activities include the construction of a highway or road, a well or battery, a pipeline, and land within the geographic area of a Metis Settlement or a designated area of Crown land in a municipal district or specialized municipality. These exemptions may be restated in the LUB or referred to for information purposes.

Exemption from Development Permit

Land Use Bylaws will ordinarily contain a provision that certain types of development will not require a development permit. The list may include:

- Minor structures, such as accessory structures (sheds) of a certain size, provided that the shed complies with all LUB requirements and is not on a utility right-of-way;
- Structures on municipally controlled lands or public utilities (may be required as part of the LUB;
- Works of maintenance on a structure if there are no external alterations and there is no change in use or density;
- The erections of fences of a certain height in rear and front yards, including side yards;
- Temporary signs for real estate purposes, garage sales, political campaigns, etc.;
- Erection of satellite dishes;
- Uncovered decks under two feet in height; and
- Farm buildings (typically a rural exemption).

Method of Notice

Section 683.1(5) of the MGA states that if a Development Authority deems an application for development as complete, they must issue the applicant an acknowledgement (in a form provided for in the LUB that the application is complete.

When a decision has been made on an application, the LUB must prescribe the method of notice for issuing development permits. Ordinarily, whether notice is given and how notice is made will depend upon whether the use is permitted or discretionary and whether there is a variance to the regulations of the LUB.

Section 642(3) of the MGA states that the decision of a Development Authority on an

application for development permit must be in writing and a copy of the decision, together with a written notice specifying the date on which the decision was made, must be given or sent to the applicant on the same date the decision is made.

If the Development Authority refuses an application for development permit, the decision must include the reasons for the refusal (MGA section 642(4)

The form of notice varies from municipality to municipality, and it often differs depending upon the nature of the development for which the permit has been issued. For discretionary uses or permitted uses where discretion has been exercised regarding a development standard and for developments in some direct control districts, many LUBs require that notice of issuance of the permit be mailed out to owners of property within a prescribed distance of the subject site and who are shown on the municipal tax roll. In addition, advertisement may be placed in the local paper.

Excluded from Land Use Bylaw

As an LUB (and amendments) must go through three readings and a public hearing, there are some things that may be included in the LUB; however, it is suggested that they not be included so as to not complicate an amendment to the LUB. Such provisions would be fees for development permit applications or subdivision approvals or provisions establishing the structure of subdivision and development authorities.

Application Information

Ordinarily, the LUB will indicate what information must accompany the development permit application. As this can be quite detailed, it is desirable to include a provision that the Development Authority may require additional or less detailed information, if the Development Authority determines that additional information is necessary to evaluate the development permit application.

Consent of Registered Owner

The LUB should make it clear whether the consent of the registered owner is required when processing either an amendment to the LUB or an application for development permit. By requiring this consent, the municipality will not be drawn into a dispute between either a purchaser of lands and a tenant on the one hand and a registered owner on the other.

Moratoriums for Development Permits, Applications and/or Amending Bylaws

In accordance with Section 640(5) of the MGA, the LUB may provide that when an application for a development permit, or change in land use designation is refused, another application with respect to the same lot may not be made for a specified time frame. Typically, there is a six (6) month waiting period.

Validity of Permits Respecting Commencement and Completion

Most LUBs contain a provision that a development permit is in effect for a certain period of time, such as twelve months. However, a common problem is when it does not clearly state when the development is to be completed. This lack of detail often leads to enforcement problems, where the developer has taken far longer than it should to complete the development. This problem would be corrected if the LUB clearly stated that the development is to commence by a certain date and to be completed by a certain date (such as commencement within twelve months and completion within eighteen months of issuance), unless otherwise specified in the development permit.

Validity of Permit Pending Appeal

The LUB should specify whether a permit is valid pending appeal to the SDAB, and further whether a permit, if confirmed by the SDAB, is valid pending a challenge in the Court of Appeal. It is quite common to see a provision that if there is a challenge before the SDAB, the permit will be suspended and not deemed issued unless and until confirmed by the SDAB, but if there is a challenge in the Courts relating to a development permit following a SDAB decision, the issuance of the permit is not affected, unless ordered by the Court.

Dwelling Units on a Parcel

The MGA states that an LUB must establish the number of dwelling units permitted on a parcel of land.

Discretion versus Duty

If there are any references in the LUB relating to enforcement by the Development Authority, those references should be worded carefully. There should be no obligation or duty placed on the Development Authority to enforce in all instances. Instead, the references should refer to an authority vested in the Development Authority to enforce.

Limit Permitted Uses

If an applicant for a development permit applies for a use that is a permitted use, and this use complies with the regulations of the LUB, the applicant is entitled to the permit. Permitted uses should be only those that the municipality would have no difficulty in issuing a development permit, provided that the development complies with the regulations. With discretionary uses, the Development Authority may deny the permit or impose appropriate conditions. A municipality cannot rely on a general condition clause to impose detailed, specific conditions. If in doubt, a municipality should refer to the use in a specific district as discretionary rather than permitted.

Similar Use Provisions

Many LUBs contain references to “such other similar uses as the Development Authority deems appropriate”. Similar use provisions are not desirable. If a Development Authority is relying on a similar use provision, undoubtedly there will be debate, discussion and possibly court action as to whether the proposed use is similar to the uses listed in a particular district.

Prohibited Uses

The MGA is silent with respect to a municipality's authority to prohibit certain land uses. Some municipalities list uses that are prohibited within areas of their municipalities.

Standard Conditions

An LUB must specify standard conditions. These conditions would include a requirement that a developer enter into a development agreement with the municipality, relating to infrastructure improvements (Sections 650 and 655 of the MGA). Other standard conditions could include requirement for payment of fees and levies, including off-site levies and road construction.

Accessory Uses and Buildings

There are two main alternatives for dealing with accessory buildings and uses. The first is to have all accessory buildings or uses treated as a discretionary use. The other alternative is to have accessory buildings/uses proposed for permitted uses treated as a permitted use, and those proposed for discretionary uses treated as discretionary uses. If the municipality is going to adopt a more liberal approach, then it is better to make the definition of accessory uses or buildings more stringent. The danger of a more liberal approach is that the Development Authority will have less control on attaching conditions to accessory uses/buildings.

Minimum Parcel Size Requirements

SDAB cannot waive enumerated uses.

SDAB can waive or vary regulations.

An LUB may include references to density, including minimum parcel size requirements. Provisions must be carefully drafted if the municipality wishes to ensure that minimum parcel size requirements are not waived by a SDAB. One option is to create a separate district, solely for that particular type of use.

For example, if the intent is to have country residential subdivisions within a district and that parcels should exceed three (3) acres, then a separate district should be established. If a district contains a shopping list of uses, as well as a minimum parcel size requirement, it is possible that the size requirements will be treated as regulations and waived.

Building Height/Grade

LUBs should have clear references to building height and grade. To limit height of buildings, it is appropriate to measure post-construction height from the boundaries of the parcel or the natural height from grade. Tightening up these provisions may prevent an innovative developer from building up a parcel to increase the effect of height or to ensure there are districts for innovative development with appropriate height provisions.

Sensitive Lands

The LUB should address sensitive lands, such as lands with a high water table, flood plain areas, top of bank areas, and contaminated lands. There are a variety of mechanisms to regulate sensitive lands, including direct control districts, overlays, regulations, and separate districts.

Parameters of District

It is recommended to have the parameters or purpose of a District stated within the reference to the District itself. This will assist Council in determining whether future amendments to the District to add particular uses are in keeping with the overall purpose of the District. This will also assist landowners in determining whether a particular District is appropriate for the proposed use of the lands.

In the past, architectural controls were dealt with primarily through restrictive covenants or building schemes registered against the certificates of title for the lands.

These were prepared by the original developer and enforced by subsequent owners of lands.

Particular Uses/Issues

- ***Architectural Controls –*** Some municipalities are developing and incorporating extensive architectural controls into their LUBs.

- ***Keeping of Animals –*** The municipality may, as part of its LUB, regulate the keeping of animals. The LUB should clearly state the number and type of animals that may be kept in certain districts.

- ***Railway Stations and Abandoned Rail Lines*** – A municipality cannot attempt to regulate operations of railway stations or abandoned rail lines in a manner that is contrary to the Federal *Railway Act*.
    - However, a municipality can regulate areas once railway stations or railway use of lines has ceased. The municipality may wish to create a district for lands that are actively within rail use and indicate that any other use will require redistricting.

- ***Telecommunications Towers*** – Telecommunications is considered to be a Federal jurisdiction.
    - Therefore, it is improper for a municipality to directly regulate in the area of telecommunications, except to the extent that signal reception is not obstructed. However, Federal approvals often require municipal participation.

- ***Granny Flats/Group Homes/Tourist Homes*** – Case law from other provinces has concluded that regulating users as opposed to use of land is contrary to human rights legislation. For this reason, provisions in LUBs that purport to distinguish between use by family members or non-family members must be drafted carefully. Further, there is no guarantee that these provisions will be valid.

- ***Airports –*** Aeronautics is a Federal jurisdiction; the Province and therefore the municipalities have jurisdiction over property civil rights as well as local matters. A municipality may regulate through its LUB property and civil rights where the regulation relates to property rights rather than the regulation of aeronautics. Any such regulation must have a clearly defined purpose of promoting beneficial land use.

- ***Signs*** – An LUB will ordinarily include regulations respecting permanent signage on lands. An LUB could also include regulation of temporary signage, such as portable signs.

- ***Site-Specific Zoning*** – Another form of development control that has been used by

municipalities is 'site-specific" zoning. The enabling provisions of an LUB utilizing this type of direct control provide that the district may be applied in those circumstances where, although the proposed development could be accommodated by applying a conventional district to the lands, the unusual nature of the project, site or neighbourhood is such that the use of a conventional district would be inappropriate or inadequate. In such a case, the redistricting bylaw sets out precise uses and development standards that will apply to the project that it accommodates. When the Development Officer receives a development permit application, he/she is to issue the permit on such conditions that reflect the terms imposed in the redistricting bylaw. A simple example showing the use of this type of direct control in practice is one where a developer wishes to construct a three-bay commercial building in an older residential neighbourhood to accommodate a convenience store, barber shop and video rental outlet. If the developer were to rezone the lands to a conventional neighbourhood commercial zone, there may be neighbourhood fear that a successor may apply to redevelop the site to a use inappropriate in a residential area. Therefore, the objectives of the developer and the concerns of the residents can be accommodated by a site-specific rezoning.

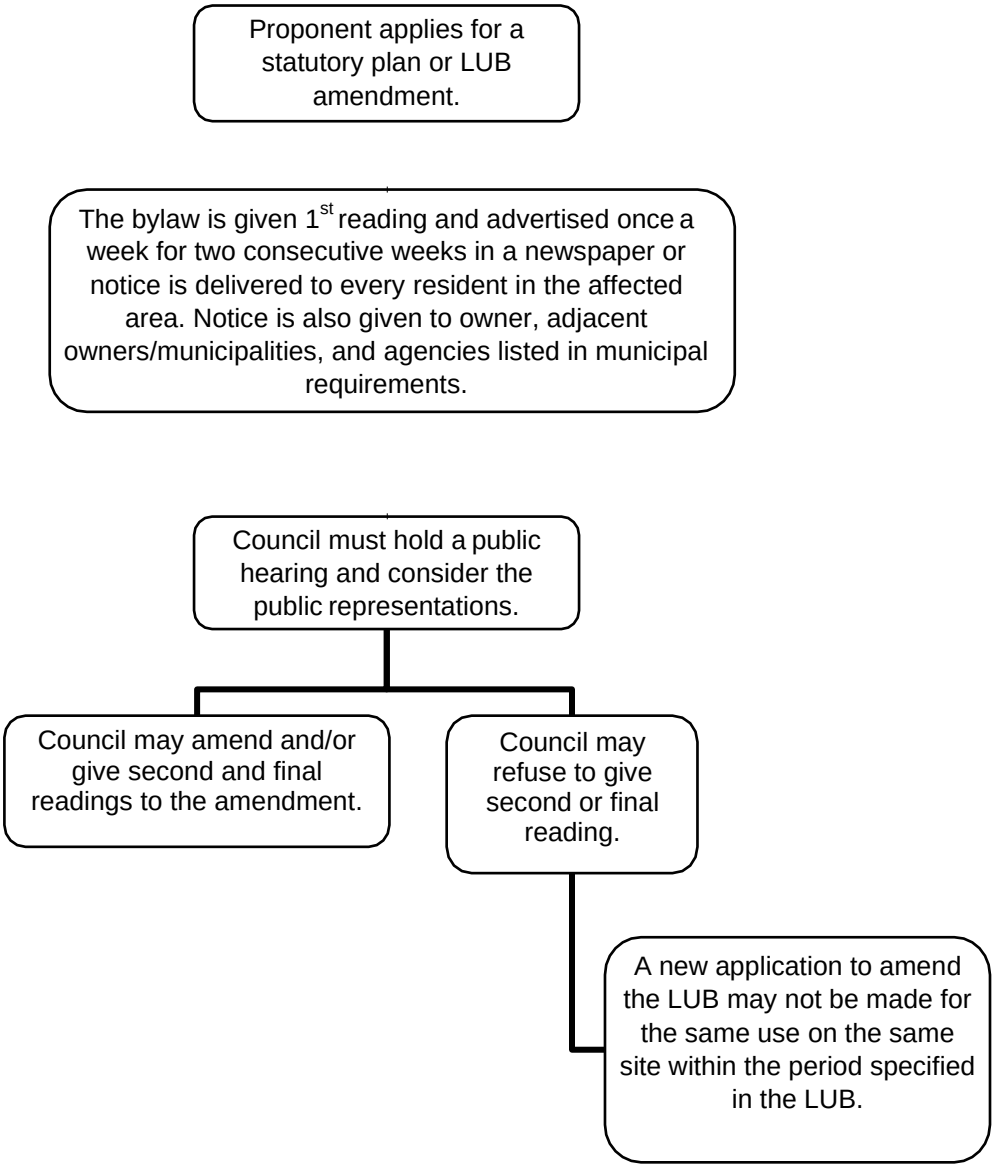
5.6 Amendments to the Land Use Bylaw

All development must comply with the LUB. Most development will require a development permit. In some cases, statutory plans and LUBs must be amended or subdivision applications approved, before a development permit can be issued.

If a development proposal cannot be approved because it does not conform to the LUB, a proponent may apply to the municipal Council to amend the LUB. A statutory plan amendment may also be necessary. Municipalities generally will coordinate these amendments, where required. A staff report and recommendation are usually prepared and forwarded to Council. Notice must be given of an application for both statutory plan and LUB amendments, and council must hold a public hearing before second reading is given (Section 692 of the MGA).

Council's decision on proposed amendments to the LUB or statutory plans is final. There is no legislated time frame within which Council must consider applications for amendment. Ordinarily, the minimum time frame is that required for at least two meetings of council, during which period notice must be given and the public hearing held. Depending upon the complexity of the amendment, additional time may be necessary to prepare more extensive staff reports and review.

Figure 7: Statutory Plan and Land Use Bylaw Amendment Process



6. LAND USE BYLAW ENFORCEMENT

6.1 Authority

The authority for LUB enforcement is found in Section 645 of the MGA. Specific enforcement mechanisms are discussed below. Before commencing enforcement under the LUB, a municipality should determine whether there is a more appropriate mechanism for enforcement. Depending upon the particular circumstances, the municipality may wish to consider enforcement pursuant to the following:

- *Environmental Protection and Enhancement Act* – although not a municipal enforcement tool, there are a variety of enforcement mechanisms governed by Alberta Environment and Parks or their designate, including releases of substances, contaminated sites, and disposal of waste and unsightly property. The telephone number for Environmental Protection Hotline Reports is 1- 800-222-6514.

- *Nuisance or Unsightly Premises Bylaw* – passed by the municipality pursuant to the Municipal Government Act, Part 2 Section 7.

- *Unsightly or Dangerous Premises Order* – passed without a bylaw pursuant to the Municipal Government Act, Section 546(0.1), and 546.1.
    - An order may be issued with respect to safety (i.e., structure, excavation or hole is dangerous to public safety) or a property because its unsightly condition is detrimental to the surrounding area;
    - "Detrimental to the surrounding area" and "unsightly condition" are defined;
    - The order must be issued by a "designated officer";
    - The municipality may register a caveat respecting the order;
    - The order may be reviewed by Council (Section 547) with a further possible appeal to the Court of Queen's Bench (Section 548).

- *Public Health Act* – although not a municipal enforcement tool, the Government of Alberta has available certain remedies pursuant to the *Public Health Act* for certain unsafe or harmful situations/environments.

- *Criminal Code* – although not a municipal enforcement tool, there are certain offences under the *Criminal Code* that might be applicable to land use enforcement; for example, the operation of a gambling facility without a license, common bawdy houses, illegal substances.

- *Safety Codes Act* – where a municipality is accredited pursuant to the *Safety Codes Act,* breaches of various requirements including building code infractions, fire code infractions, and plumbing and drainage code infractions.

6.2 Land Use Bylaw Enforcement Alternatives

With respect to LUB enforcement, there are a number of alternatives. These alternatives are not necessarily exclusive:

- Handling of Complaints;
- Issuing Warnings;

- Stop Order (including caveating a Stop Order against title);
- Enforcement without a Court Order;
- Injunction by way of Court Order;
- Issuance of violation tickets and Provincial Court prosecution.

Complaints

The handling of complaints may be a major function of a municipal Development Officer; however, some municipalities may have another designated person. Handling them in a quick and efficient manner is critical. All complaints should be handled within a reasonable time of receipt, subject to being able to locate all required documents and information to allow for effective inspection. All complainants should also be updated regularly about the status of the complaint and any action taken.

As a result of a complaint having been received, either by phone, e-mail, or letter, a complaint file should be created. A copy of a standard complaint form with the pertinent information should be created (this form is included in the templates section). The complaint file will contain the following information:

- The nature of the complaint;
- The complainant's information;
- Site information;
- Previous development permit numbers; and
- Previous complaints on the property.

Complaint Investigation Process

Begin the complaint process by reviewing the complaint file to determine the nature of the complaint and any additional information that may be contained in the file to assist you. It may be beneficial to the Development Officer to contact the complainant to clarify or get additional information about the complaint. It is up to the individual Development Officer to determine if there is enough information to visit the site and begin the investigation without contacting the complainant first either to confirm or to clarify the information.

After conducting background checks the Development Officer should inspect the property to determine the validity of the complaint. Notes, including recording the date and time of inspection, should be taken. It is also important to document the date and time that you received any additional information pertinent to the file.

Document any and all observations and conversations from each of your visits. This documentation includes notes made at the time and photographs, if applicable. It is important to maintain the complaint file in an orderly manner. Any entries into the complaint file should be initialed. Further, all photographs should be suitably labeled and entered into the file.

One of the most important components of a background check is to determine if there has ever been a previously investigated complaint of the same type for the same property owner.

The following is an example of an enforcement procedure your municipality may utilize:

First Complaint – Mailed Out Letter

The Development Officer (for a first-time complaint only) may generate a letter that will be mailed out after an investigation has taken place. The letter will advise the owner that the municipality has received a complaint, the nature of the complaint, and a date for the owner to discontinue the use. It will also have the Development Officer's name and contact information. The following list gives examples of reports: description of a particular LUB infraction (recreational vehicle in the front yard, overweight commercial vehicle, vehicle parked on the front lawn); and an expiring home occupation and advice that a new development permit is required or that the use must be discontinued by the indicated expiry date. A "first site inspection" is then required for follow-up.

First Complaint – First Inspection

The Development Officer will visit the property, view it and attempt to talk to any person on-site that may be associated with the situation. The Development Officer should attempt to determine if there is any validity to the complaint. The Development Officer must document any physical evidence on-site and take photographs, where applicable. It is not advisable to enter the property uninvited; conduct the site inspection from public property if possible or enter only on invitation.

If evidence can't be obtained from the site visit and no one is present on-site, a letter should be issued requesting an inspection on a date and time selected. The report may be left on-site for the owners/occupants and, if the owners do not live on-site, the Development Officer may provide a copy of the inspection report by other means. The Development Officer could attempt to deliver the findings of the site inspection to the property owners but, if that is not possible, mail it out. It is important to keep the owners informed of the investigation of the property as it is possible that eventually action will be taken against them to rectify the situation.

If, during the visit, the Development Officer has determined that there is enough evidence to substantiate the complaint, an Inspection Report should be issued to the persons in possession of the property, the persons responsible for the infraction, and the owners of the property. There is nothing in the MGA that prohibits a municipality from taking action against a number of different parties for the same offence. The Inspection Report would include a description of the infraction of the LUB, a date by which the corrective action is to be taken, and the corrective action to be taken. The time given to rectify an infraction is up to the Development Officer, with the determining factor being "is it a reasonable amount of time to complete the necessary work?"

The complainant should be then updated to what action is being taken, and the follow-up date of the next inspection so that he/she is kept informed. By doing this the complainant will feel that the matter is being handled.

First Complaint – Follow-Up Inspection

The investigation should result in an INVESTIGATION REPORT and this will form the basis of a WARNING LETTER or ORDER. If a WARNING LETTER or an ORDER is issued, the after the deadline for compliance, another inspection should be conducted which should generate another inspection report that will either confirm compliance or confirm noncompliance and the need for additional action.

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Not all allegations will be substantiated as they may be a vindictive complaint brought about by the complainant to cause the owner some unpleasantness.

If the infraction has been corrected the file can be closed. Ensure that all of the reasons (observations, photographs, etc.) have been listed stating why the filed has been closed.

It is important to have this information should the municipality be asked to explain the file and the actions taken by the Development Officer.

If there is enough evidence gathered during this inspection to substantiate the complaint then the Development Officer should issue an Inspection Report, indicating the description of the infraction of the LUB, the date that the infraction must be corrected by and the corrective action to be taken.

First Complaint – Subsequent Follow-Ups

If a follow-up inspection has revealed that the offender has not complied with the Inspection Report, the next step is preparing a notice. The authority for this notice is the Stop Order.

Stop Order

The Stop Order is the central enforcement mechanism. Specific issues must be addressed in issuing a Stop Order, including the person entitled to make the Order, recipients of the Order, method of notice, time for compliance, work to be performed, and potential for appeal. The municipality's Development Officer can issue a Stop Order pursuant to Section 645 of the MGA. Issuance of a Stop Order is subject to the right of appeal to the SDAB.

Stop Order – Preparing a Notice

When issuing a Stop Order, a cover letter could be prepared as well as a notice. However, the Stop Order should contain all the pertinent information. The contents and the procedure to follow when issuing them are as follows:

The information contained in the covering letter should include:

- File number;
- Date;
- Address of property;
- Legal description of property;
- Development permit (if applicable);
- Description of contravention; and
- Development Officer's name and contact information.

The notice should contain the following:

- Name and address of the person receiving the notice. The person who is the recipient of a Stop Order will depend on the facts of the situation. Note that Section 645 of the MGA refers to a Stop Order being issued to the "owner, the person in possession of the land or building or the person responsible for the contravention or any or all of them". At a

minimum, the Stop Order should be issued to the person in possession of the land, namely the occupant and the person responsible for the contravention. If there is a bare legal owner, such that the registered owner does not occupy the lands and is not responsible for the contravention, then it is recommended that the owner either be named as a recipient of the Stop Order or be provided with a copy of the Stop Order. Practically speaking, even if the owner is not in possession of the land and has not created the contravention, he/she may be able to compel the contravener to comply with the Stop Order. It is important to give the owner early notice of a Stop Order because, if the municipality pursues enforcement in the courts, the costs could be put on the tax roll for the lands and the owner could be exposed to these costs;
- Legal description of the property;
- Land designation of the property;
- Description of the contravention, which may include the applicable provision(s) of the MGA or the LUB, , the development permit approval or condition of the development permit;
- Description of the remedial action required. The Stop Order must specify which work must be done in order to comply with the written Order. As much detail must be included as possible;
- The Order must specify a reasonable time period during which the property is to be brought into compliance. The length of time will depend on the circumstances. Generally, 14 to 30 days is appropriate;
- If the breach could be rectified through the granting of a development permit, the Stop Order could make a reference to this option. However, the notice should not use words to the effect that the Stop Order will be withdrawn if an application for a development permit is received;
- The written Order should also refer to the availability of an appeal to the SDAB.
- Date of signing by the Development Authority (please note that it is not appropriate for Council, by resolution, to issue a Stop Order).

Any costs and expenses associated with further enforcement may be added on the tax roll for the lands. Reference to *MGA* section 553(1) (h.1) may be of assistance in wording.

Some municipalities will also include an investigation fact sheet along with the Stop Order that includes:
- Address of property;
- Land use designation;
- Complaint number;
- Date complaint received; and
- Narrative portion including date/time and associated facts.

Serving a Stop Order

It is preferable that the Stop Order is either personally served or sent by registered mail.

Caveating a Stop Order

Section 646 of the MGA provides that a Stop Order can be caveated. The Caveat is a warning to a party dealing with the lands that there is a breach. The municipality also has the ability to Caveat a Stop Order against the Certificate of Title for the lands. This Caveat serves as an additional warning to a potential purchaser that the lands are not in compliance with the municipality's LUB.

Compliance Work by Municipality (No Court Order)

Under Section 646(2) of the MGA, the Municipality, after issuing a Stop Order that is not followed, may enter onto the lands and take "any action necessary to carry out the Order". On first reading, it appears that the Municipality may go onto the lands without a court order. However, entry without a court order exposes the municipality to risks, including:

- If the Developer refuses to allow or interferes with the municipality's entry onto the lands, the Municipality will be required to apply to the Court of Queen's Bench and obtain an Order allowing the entry (MGA Section 543);
- If municipal employees or contractors are enforcing the Stop Order and do not have a court order "in hand", the situation could become volatile. The employee or contractor could be exposed to a risk of harm;
- If the municipality's employees or contractors enter onto the land and there is a defect in the procedure or issuance of the Stop Order, then the municipality could be exposed to damages for trespass; and
- By obtaining a Court Order prior to entry onto the lands, the municipality will essentially obtain confirmation, up front, that the procedure followed is appropriate and that the municipality can enter onto the lands.

Injunction

The municipality has authority, where there is a continuing breach of a bylaw, to seek a permanent injunction. An injunction is an order requiring an individual to do something or refrain from doing something (Section 554 of the MGA). It is quite common for a Municipality pursuing LUB enforcement to commence with a court action requiring a Developer to comply with a Stop Order and/or otherwise comply with the municipality's LUB. Generally, a Municipality, before starting this court action, will issue a Stop Order. It is beneficial for the Municipality to issue a Stop Order before commencing a court action. If the Municipality has already dealt with the issue at the local level, through a Stop Order and perhaps through a SDAB decision, a judge may be slower to consider the merits of any defense that the Developer may raise. In the ordinary course, the court order that a municipality seeks includes the following provisions:

- A declaration that the Developer is in breach of the LUB and/or a Stop Order and/or the SDAB's decision relating to an appeal of the Stop Order;
- An injunction, ordering the Developer, within a certain period of time, to comply with the LUB;
- An order providing that, if on the expiry of the period given to the Developer for compliance, the lands do not comply, the municipality has the right to go onto the lands and take any steps reasonably necessary for compliance;
- An order that the legal costs and costs of compliance incurred by the municipality can be added to the tax roll for the lands; and
- A provision that the Order may be registered against the Certificate of Title for the lands and discharged only on full compliance.

Under some circumstances, however, it would be appropriate to proceed with a Queen's Bench injunction, without first issuing a Stop Order. However, these situations would be restricted to situations where it is absolutely clear that there is a breach of the LUB, and issuance of the Stop Order would be futile given that there would be no room for arguing that there is not a breach of the LUB.

Prosecution

A municipality can pursue enforcement of breaches of its LUB, as with any municipal bylaw, through a Provincial Court prosecution. In other words, the municipality would issue a Violation Ticket (the same form used for traffic tickets) and commence a prosecution in Provincial Court. A Provincial Court conviction will generally result in the Developer having to pay a fine. However, the Provincial Court prosecution has drawbacks, when compared to the Court of Queen's Bench injunction proceedings. The drawbacks include:

- Time frames – it often takes up to six months to get into Provincial Court for a trial;
- The onus of proof in Provincial Court, given that the Provincial Court prosecution is a "quasi-criminal" prosecution and requires proof beyond a reasonable doubt, is higher than in the Court of Queen's Bench;
- Lack of injunction – the Provincial Court Judges are generally inclined to order a fine. They seem to be reluctant to become involved in an injunction, which may require ongoing monitoring. That said, a municipality, as standard practice, pursues the Provincial Court route rather than the Queen's Bench route for enforcement. This may have a more favorable success rate; and
- No cost recovery – The Provincial Court can impose fines on a prosecution but cannot award the municipality its costs in running the prosecution; and

6.3 Site Inspections

A Designated Officer or a person delegated such authority by a Designated Officer has authority to go onto lands to perform a site inspection if the owner or occupier of land consents or if there is a court order authorizing the inspection.

Being a Development Officer is not enough to perform the site inspection. Inspection may only be performed by a Designated Officer or a person who has been delegated authority to inspect by a Designated Officer (assuming the person is an employee) or by Council (Section 542 of the MGA).

If the owner has not given express consent, it is unlikely that an on-site inspection can be performed without a court order. Consent is deemed to be given if inspection is a requirement of subdivision application (MGA Section 542, 654); however, the statute does not address development permit application situations.

A site inspection report should contain as much information as possible. This information should include:

- Person(s) who performed the inspection;
- Date, time and place of inspection;
- Who was on the land at time of inspection;
- Any comments made by the owner or occupier with respect to the unauthorized development or buildings;
- Specific details of the condition of the lands, including unauthorized uses. Detail is critical. Detail should include not only the authorized buildings/equipment/vehicles but also the unauthorized. If vehicles are involved, description should include make, model, color, and year;
- A site plan may be beneficial if the extent of the unauthorized development is great. The site plan could number specific areas, and the inspection report could refer to the unauthorized development within specific areas; and
- Photographs should be taken by the same person who is going to be swearing the

Affidavit. This person should be the Development Officer and, ideally, the same Development Officer that has issued or will be issuing the Stop Order.

6.4 SDAB Role Regarding an Appeal of the Stop Order

If there is an appeal on a Stop Order the SDAB's decision should be restricted to determining whether there is in fact a breach of the LUB or, in other words, whether the Stop Order was properly issued. It is not appropriate for the SDAB to unilaterally vary a Stop Order to allow, in effect, an unauthorized development to continue, where a permit would be required. For example:

- If a commercial development requires as a condition to a Development Permit ten parking stalls;
- The development as constructed only contains eight parking stalls; and
- The Development Officer issued a Stop Order requiring the Developer to construct two additional parking stalls.

It would not be appropriate for the SDAB, on appeal, to simply state that eight parking stalls is sufficient. Often, by the time that the SDAB hears the appeal the date for compliance has gone by or is approaching; the SDAB should specify a new date for compliance (if appropriate).

6.5 Problems Cause by Poorly Drafted Land Use Bylaws

In some situations, it is unclear whether a certain use is part of an authorized use, due to a lack of regulations. For example, is repair of motor vehicles part of an authorized residential use? What if there is repair of two or three vehicles per week on residential land? What if the Developer is repairing these vehicles but charging for same? By way of another example, is the storage of a number of personal vehicles on lands part of an authorized residential development? What if there are more than two vehicles per driveway on the lands? What about storage of a friend's vehicle? The LUB can clarify this situation by limiting the number of vehicles or whose vehicles can be stored on the lands. If the LUB refers to different uses but does not distinguish these uses through definitions, there could be problems. For example, when does an extensive livestock operation become an intensive livestock operation?

Lack of conditions for permitted uses can cause problems. Case law is clear that, if an application for a development permit relating to a permitted use is submitted, the Development Officer can only impose those conditions that are specifically stated in the LUB. The Development Officer cannot impose conditions, in these circumstances, by relying on a vague condition clause (e.g., "such conditions as the Development Officer deems appropriate"). Accordingly, the LUBs should ensure that no use is characterized as a permitted use unless all conditions relating to such a use are clearly stated in the LUB. If there is some concern, either conditions must be clarified, or the use changed to discretionary.

Many LUBs do not either specify a deadline for construction completion or allow a Development Officer to specify a deadline for construction completion as part of a development permit. This leaves the municipality in a vulnerable situation if a Developer takes the position that development construction is in progress but not completed. To minimize potential conflict, the LUB should define clear timelines and the process that must be undertaken if a developer does not complete the project within the specified time.

6.6 Neighbor's Role in LUB Enforcement

Due to limited resources, most municipalities enforce the LUB on a complaint basis. From the time of receipt of a complaint, the Development Officer should try to gather evidence through site inspections. In court, the judge will generally not admit "hearsay"; the judge will consider evidence that the Development Officer saw and heard something but not evidence that the Development Officer was told by the neighbour/public that the neighbour/public saw and heard something.

Complaints should be carefully documented. However, unless the complainant has agreed to have their name disclosed or is a witness in a prosecution, the name of the complainant should not be disclosed. Municipalities have responded to requests for the name of a complainant by:

- Determining if the complainant has any difficulty with having his/her name disclosed;
- Advising the complainant that, if a complaint is received, the municipality may be obliged to disclose his/her name; and
- Taking the position that the municipality will not disclose the name of a complainant without a court order to do so.

6.7 Development Officer's Practical Pointers

Solutions other than enforcement can be used. For example, in a case where an existing development is appropriate, but the Developer has not received a development permit for it, the Development Officer should be requesting that the Developer comply with the LUB by either submitting a development permit application and/or applying for redistricting.

Developers will often claim that the municipality is singling them out. As enforcement is discretionary, the municipality is not obliged to enforce against everyone. It is also not a valid defense that there has been a delay by the municipality in enforcing its LUB; practically speaking, the quicker the municipality responds to a complaint or a breach situation, the simpler the enforcement generally is.

The discretion to issue a Stop Order is vested in the Development Authority. However, a level of comfort must be developed between the Development Authority and the Development Authority's supervisor and/or Council. Ultimately, if the Developer does not comply with the Stop Order, it may be necessary for the municipality to commence litigation, and the decision to commence litigation will likely be made by someone other than the Development Authority. Senior administration and Council must back up the Development Authority's issuance of a Stop Order by pursuing litigation.

The level of control exercised by the Development Authority's supervisor and/or Council will depend on a number of factors, including:

- The experience of the Development Authority;
- The expertise of the Development Authority; and
- The willingness of the Chief Administrative Officer or Council to take a "hands-on" approach in dealing with LUB non-compliance.

6.8 Resources

A variety of searches including the following are available:

- The municipality can obtain a Certificate of Title for the lands. This C of T will indicate the registered owner of the lands, the legal description, and perhaps other parties who have an interest in the land, such as a lease. It will also indicate an address for service for the registered owner;
- The municipality can obtain search results as to all of the motor vehicles registered to a particular individual, including whether there are valid licenses relating to those motor vehicles. A motor vehicle search is also beneficial in determining the last registered address of an individual. Motor vehicle searches can also determine who is the owner of a particular vehicle, if a serial number of the vehicle or license plate number is provided;
- By performing a corporate registry search, one can determine the correct legal name of a corporation, if in fact there is a corporation registered. Information relating to the directors and address for service of a corporation can also be obtained; and
- Some of the searches need to be done by a lawyer. Further, in some situations, it might be necessary to have a certified copy of the search results in order for the search results to be relied upon in court.

There are also many different internet based resources that are useful to a Development Officer. These include the following:

Alberta Planners Institute - http://www.albertaplanners.com
Alberta Association of Architects - http://www.aaa.ab.ca
Alberta Association of Landscape Architects - http://www.aala.ab.ca/
Alberta Building Officials Association - http://www.aboa.ab.ca
Alberta Development Officers Association - http://www.adoa.net
Alberta Land Surveyors' Association - http://www.alsa.ab.ca
Alberta Infrastructure - www.alberta.ca/ministry-infrastructure
Alberta Transportation - www.alberta.ca/ministry-transportation Alberta Motor Vehicle Industry Council - http://www.amvic.org
Alberta Municipal Affairs - www.alberta.ca/ministry-municipal-affairs
Alberta Municipal Excellence Network - www.alberta.ca/ministers-awards-for-municipal-excellence
Alberta Society of Engineering Technologists - http://www.aset.ab.ca
Altalis (Digital Mapping) - http://www.altalis.com/
APPEGA - http://www.appega.ca
Canadian Association of Certified Planning Technicians - www.cacpt.org
Canadian Institute of Planners - http://www.cip-icu.ca
Community Planning Association of Alberta - http://www.cpaa.biz
Economic Developers Association of Alberta - http://www.edaalberta.com/
Land Titles - http://www.alberta.ca/land-titles-procedures-manual
Safety Codes Council - http://www.safetycodes.ab.ca
SPIN II (Land Titles) - https://alta.registries.gov.ab.ca/spinii/logon.aspx

7. LEVIES

7.1 Off-Site

As a condition of a subdivision approval or a development permit, an applicant may be required to pay an off-site levy for certain off-site infrastructure and facilities. In order to impose and collect an off-site levy, a municipality must pass an off-site levy bylaw pursuant to Section 648 of the *Municipal Government Act (MGA)* and the *Off-Site Levy Regulation.*

An off-site levy may be required to pay for the capital construction costs of new or expanded infrastructure relating to water supply, sanitary sewage, storm drainage, roads, or facilities such as community recreation facilities, police stations, fire stations and libraries, including the cost of acquiring land for such purposes.

A municipality has the flexibility to determine the methodology in which to base the calculation of a levy as long as that methodology includes; criteria such as area, density or intensity of use, recognition of variance of infrastructure, facility and transportation types, is constant across the municipality for that type of infrastructure, facility or transportation and is clear and reasonable. Such methodology and basis for an off-site levy must be included within or referenced in the bylaw. The off-site levy bylaw must also comply with the principles and criteria set out in the *Off-Site Levy Regulation.*

In addition to prescribing the amount of the levy to be charged in a given case or stating the method of its calculation, the bylaw must set out the "object of each levy" and indicate how the amount of levy has been determined. This requirement is a complicated factor that must be given careful consideration at the drafting stage of the bylaw to avoid the prospect of the bylaw being set aside by the Courts for non-compliance. An off-site levy bylaw must disclose, by way of an appendix or in the body of the bylaw, the total amount of money a municipality wishes to recover in respect of each leviable infrastructure or facility project. It must also disclose the benefiting area in the municipality against which the levy is to be imposed and how the benefiting area was determined. Any methodology must be shown in the bylaw.

If the municipality chooses to base the levy on an area assessment, it is then a simple matter of dividing the total amount to be collected by the total hectares of the area, yielding a per hectare assessment. When a development or subdivision is about to be approved, the total number of hectares in the project that are within a benefiting area can be multiplied by the per hectare levy assessment. The resulting figure will be the charge against the land that is the subject of the levy.

A municipality can also calculate the levy based on proposed densities of use in the project to be charged. In the case of residential projects, the calculations can be based on the number of dwelling units in the project and for industrial and commercial developments, on the total square footage of the buildings. Using a density calculation is more complex, since it is difficult to project total densities of projects in the areas to be assessed when the bylaw is drafted.

A levy imposed under an off-site levy bylaw as a condition of subdivision approval or a development permit may be collected through a development agreement pursuant to Sections 650 and 655 of the MGA.

7.2 Redevelopment

Redevelopment of older areas in a municipality may create the need for new reserve lands for parks and schools. For example, an older area which has previously been characterized by low density single detached development may be in the process of converting into higher density townhouse, walk-up apartment, and high-rise apartment uses. The increased population generated by this development may require more park and school land than existed.

Where an area of a municipality is or may be in the process of being redeveloped, a municipal Council may prepare and adopt an "ARP" for that area. The bylaw adopting the ARP may include provisions for the imposition and collection of a levy known as a "redevelopment levy". The amounts realized from such a levy can be used only for acquiring land for parks and recreational and school facilities to serve the redevelopment area.

There is no provision in the MGA to deal with the manner in which the amount of a levy is to be calculated. If the intent of the levy is to purchase new land for parks and recreation facilities, then population projections for the redeveloped area should be used to determine land requirements. Once the amount of land required is established, the cost of acquisition, using a mix of current and future market values, can be estimated. Having made these determinations, the municipality can calculate the rate to be charged against a particular development in order to raise that portion of the costs of the raw land that the municipality decides ought to be borne by redevelopment projects. Charges can be based on the foot frontage or acreage of the property being developed or on the density of redevelopment that will take place, or they can be determined by using other criteria that would be reasonably fair. The amount of money imposed may vary from one class of development to another. Thus, the rates may be higher for commercial and industrial developments than for residential projects, or vice versa.

Where a bylaw provides for a redevelopment levy, it may authorize that a development agreement be entered into with the person to be charged. Such an agreement falls under Sections 650 and 655 of the MGA, depending upon whether a development or subdivision is proposed.

7.3 Resources

Several legislative resources exist to help development officers write and interpret policy and bylaws revolving around levies.

Municipal Government Act - Sections 616, 648, 648.01, 648.1, 688(1)(b)(ii) and 694(4)- https://open.alberta.ca/publications/m26

Off-site Levies Regulation – This regulation establishes the principles and criteria a municipality must follow when negotiating, determining and calculating off-site levies for infrastructure requirements, as required under the Municipal Government Act. - http://www.qp.alberta.ca/570.cfm?frm_isbn=9780779803149&search_by=link

Offsite Levy Appeals – The process for a developer to appeal an offsite levy imposition - https://www.alberta.ca/off-site-levy-appeals.aspx

Off-Site Levies: A Municipality's Manual for Capital Cost Recovery Due to New Development, prepared by Brownlee LLP for the AUMA and RMA, dated May 2019 - https://auma.ca/sites/default/files/off-site_levies_manual_final.pdf

8. OTHER MATTERS

8.1 Development Agreements

An applicant requesting subdivision and development approval may be required to enter into an agreement for the construction of roads, public utilities, or off-street parking necessary to serve the subdivision or development pursuant to either Section 650 or 655 of the *MGA*

A development agreement may be requested when a property that is to be subdivided and/or developed requires certain municipal services and infrastructure to be constructed (to municipal standards) in order to service and access the new development. A development agreement may require that a developer:

- construct or pay for the construction of a road required to give access to the proposed development or subdivision;
- construct or pay for the construction of a pedestrian walkway system to service the development or subdivision, or pedestrian walkways to connect to pedestrian walkway system serving the development or subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent development or subdivision;
- install or pay for the installation of public utilities (such as water, sanitary sewer and storm water management) that is necessary to service the proposed development or subdivision, whether or not such public utilities are, or will be, located on the land subject to the proposed development or subdivision;
- construct or pay for the construction of off-street parking or other parking facilities, and loading and unloading areas.

A development agreement can also address the payment terms for an off-site levy or redevelopment levy and can require a developer to provide security to ensure that the terms of the development agreement are carried out.

Pursuant to Section 651 of the MGA, a municipality may require the developer to construct or pay for the oversizing of roads and public utilities for excess capacity that will service more than the proposed development and subdivision. This is referred to as oversized improvements. In requiring a developer to undertake the construction of oversized infrastructure, the municipality may also agree to provide for the reimbursement of cost incurred or payment made in respect to the oversized infrastructure. This is often referred to or structured as an endeavour to assist the developer in recovering the cost of these oversized infrastructure from subsequent benefiting developers. The obligation to construct or pay for oversized infrastructure and any terms and conditions regarding reimbursement of construction costs should be addressed within the development agreement.

While a municipality has the authority, due to the natural person powers granted to it under Section 6 of the MGA, to enter into a contract to provide for almost anything in an agreement, it does not have the power to make a developer sign a contract to do anything more than expressly set out in Sections 650, 651 and 655 of the MGA unless the developer and the municipality mutually agree to such terms. A municipality is also not able to impose conditions that either conflict with or are not contemplated in the subdivision approval or development permit. However, once a developer signs a contract containing requirements beyond those sections, the developer should be bound by the terms of the agreement, unless it can be proven

that the municipality had pressured or forced the developer into executing the agreement.

Although services internal to the subdivision may be constructed or installed by contractors hired by the developer and are at the developer's expense, the municipality will eventually take over ownership and subsequent maintenance of the infrastructure and facilities. Thus, development agreements usually prescribe a procedure that the developer and municipality must follow in respect of giving notice and access to the municipality for inspection and concerning the issuance of certificates of completion. Also, the development agreement usually contains a completion date for the construction of the municipal infrastructure and facilities, and a warranty period where the developer is responsible for fixing any deficiencies and repairs. A development agreement should also provide for the municipality to issue a final acceptance certificate upon the expiration of the warranty period and correction of any deficiencies, whereupon the municipality assumes ownership, operation and maintenance of the infrastructure.

The development agreement should clearly address any requirements for security, including the amount and type of security to be provided to secure the obligations of the development agreement. While it is arguable whether the municipality can require security for anything over and above municipal improvements to be transferred to the municipality (roads, water and sewer systems, etc.), provisions for security can be very beneficial to a municipality dealing with major developments or subdivisions. Security can come in various forms, but a security cash deposit or an irrevocable letter of credit that is automatically renewable is the preferred form of security for a municipality. There should also be a provision that the security shall not be revoked without prior notice to the municipality, and if not replaced with adequate replacement security, can be called upon by the municipality. In the event that the developer defaults on the development agreement, the security should be called upon and drawn down in accordance with the terms and conditions of the development agreement to complete the outstanding defaults or deficiencies of the developer.

8.2 Encroachment Agreements and Licenses of Occupation

An Encroachment Agreement is a form of license, whereby the encroaching party is granted the right to use a portion of the municipality's property or right-of-way. An Encroachment Agreement does not convey an interest in the land but merely provides for the right to do something on a parcel of land without either possessing or acquiring an interest in that land.

As common law, and as recognized by Section 72 of the *Land Titles Manual,* an encroachment agreement requires there to be two titled parcels of land, where one parcel is burdened by an encroaching structure (the servient tenement) and the other parcel is benefited and has a structure that encroaches upon the other parcel (the dominant tenement). In the case of a municipality, it may receive requests from private landowners to allow an encroachment from a private property onto municipally owned lands. Where the municipally owned land is reserve land, the municipality will need to consider the purpose of the reserve land and whether the encroachment will impede or contradict the municipal purpose.

In addition to encroachment onto titled land, a municipality may also receive requests to allow for an encroachment over a utility right of way or a municipally controlled road. Where it is an encroachment over a utility right of way, a municipality may enter into an agreement that will amend the terms of the utility right of way agreement and permit the encroachment. Where it is an encroachment over a road, Section 651.2 of the MGA permits a municipality to allow and enter into an encroachment agreement where there is only one titled parcel and the

encroachment is over lands under the control, direction and management of the municipality.

In any of these situations, it is recommended that a Real Property Report (RPR) prepared by an Alberta Land Surveyor be required to verify the encroachment and should accompany the encroachment agreement.

There are generally two common types of encroachments onto municipal property: fences and landscaping improvements, and structures. Any request for an encroachment should be reviewed by all municipal departments to determine if there are any issues. If approved, the necessary agreements will be prepared and registered at the Land Titles Office. If permission for an encroachment is denied, then a notice should be issued to the property owner for the immediate removal of the encroachment and the restoration of the encroached-upon land.

8.3 Real Property Report

A RPR is a survey document prepared by an Alberta Land Surveyor that shows the location of all buildings and other visible improvements, including their distance from the property boundaries, situated on a parcel of land. Any easements or rights-of-way registered against the title of the property at the date of the survey should also be shown. In preparing a RPR, the Surveyor is required to note any visible encroachments that extend onto the property or from the property onto other adjoining lands. It is a legal document that a municipality can rely on as an accurate representation of the development existing on a piece of land at the time/date of the survey.

8.4 Compliance Report

A Compliance Report is a document issued by the municipality to verify whether or not the existing buildings and/or other visible improvements normally shown on a RPR meet the setback requirements of the municipality's LUB and the appropriate Development Permits that have been issued.

It is common for a municipality to receive a request for a Compliance Report in connection with the purchase or sale of a property as the lender or buyer wants to know if the development on the property conforms to the municipal LUB. The Compliance Report will tell them everything is in order or that a compliance or other encroachment problem exists.

The municipality has no legal obligation to issue a Compliance Report and there are no legislative provisions in the MGA, the Land Titles Act or other legislation that addresses them. However, municipalities often issue Compliance Reports as a public service. A report will first establish the zoning of the property and then review the Real Property Report to determine if the buildings and other improvements shown meet the setback requirements of the LUB and any permits or conditions issued from the municipality. Where the property borders a highway, the report should advise that the setback distance requirements are established by Alberta Transportation, not the municipality (except where cities have jurisdiction over the highways running through them). The Compliance Report may direct that Alberta Transportation be contacted for further information regarding such setbacks.

If the development is not in compliance, the Compliance Report should advise what aspects of the development have not been built in compliance with the LUB or the issued development

permits that were in effect at the time of development approval. If aspects of the development meet the LUB and the development permits at the time of issuance but does not meet the current LUB requirements, the development will be considered a "legal non-conforming" development as it was legal in accordance with the rules at the time. A legal non-conforming building may remain at its present location but not have any structural alterations or additions without additional approval from the municipality. The same is applicable to a legal non-conforming use in that the use can remain but any change in use requires additional municipal approval. Section 643 of the MGA outlines the requirements for legal non-conforming buildings and uses.

If the building does not conform, the municipality may be requested to provide a statement that allows a building to remain "as is". If the building is not a legal non-conforming development, the municipality should advise that a variance or setback relaxation through a development permit must be obtained from the municipality. This matter is treated as a variance and is subject the approval of the Development Authority (which would include consideration of whether the Development Authority has the ability to issue such a variance). Like any other development permit for a variance, any approval is subject to appeal to the SDAB. Some municipalities do not require same; the compliance report merely states the facts and gives no guarantees. If the landowner, purchaser or lender wants assurances that the improvements can remain as-built on the lands, the onus is on them to apply for and obtain a new development permit. However, the municipality may not necessarily be able to approve the application for a development permit allowing the improvements to remain as-built.

In some cases, the municipality may require the applicant to remove any encroachments onto public property, such as reserve, roads or a right-of-way. Where the municipality is prepared to allow the encroachment to remain, the municipality should require the applicant to enter into an encroachment agreement with the municipality (if possible). This agreement will describe the terms and conditions under which the building or structure that encroaches may remain.

8.5 Restrictive Covenants

Development Officers should be aware, in addition to government regulation of land use, developments, including uses, can also be privately regulated through private contracts registered against the title to the lands as Restrictive Covenants. A valid restrictive covenant must meet four elements: (1) there must be a dominant (or benefiting parcel) tenement and a servient (or burdened parcel) tenement; (2) the restrictive must be negative in nature; (3) the restriction must relate to and concern the land (i.e. it provides value to the land); and (4) there must be an intention that the restrictive covenant bind and run with the land. A valid restrictive covenant that is registered against title will be binding upon the landowner and any subsequent purchaser. Further, only a landowner or a dominant tenement can enforce a restrictive covenant. This means that in order for a municipality to be able to enforce a restrictive covenant, the municipality must be a party to the restrictive covenant by being a registered landowner of a dominant tenement.

If the land restrictions agreed upon in a contract is not registered against the title, it will not be binding to third party successors due to the nature of Alberta's land titles system. It will only bind parties to the contract. Therefore, a buyer of a lot in an "architecturally controlled" development project who has complied with restrictions may find subsequent purchasers of undeveloped lots in the project cannot be made to comply with the architectural standards by neighbors because the controls were not put into the form of a restrictive covenant affecting all lots in the project.

Private and public land use restrictions can co-exist and are separately enforceable. However, where there is a conflict between a LUB and a Restrictive Covenant, the LUB will prevail. Therefore, when a conflict exists where covenant requirements exceed the requirements of the LUB, ***then the conflict must be resolved by the private parties, not the municipality.***

8.6 Freedom of Information and Protection of Privacy Act (FOIP)

The *Freedom of Information and Protection of Privacy Act* applies to public bodies and governs the manner in which a public can collect, use and disclose personal information. The *FOIP Act* also provides for a right of access to any information that a public body has in its custody or that is under its control, unless certain exceptions to disclosure apply to the information.

Given this, some provisions of the *FOIP Act* warrant an examination with relation to the availability of information to prospective appellants and other interested parties. The *FOIP Act* does not apply to a public body's use and disclosure of general information that it collects in relation to planning and development matters unless that information is personal information, or information that is about a specific individual. So, if the request for information to a development officer relates to personal information, he or she should consider whether it would be permitted to disclose such information in accordance with Section 40 of the *FOIP Act.* Section 40 provides for when a public body may disclose personal information, which includes where the individual consents to the disclosure, where the disclosure relates to the purpose for which the information was collected or a consistent use, or where another act or regulation requires or authorizes disclosure.

There are also provisions within the MGA that requires disclosure of information during certain planning and development processes. For example, Section 686(4) of the MGA compels a SDAB to make available for inspection by interested persons all material relevant to the appeal. Given that the subsection is not restricted to information in the SDAB's possession, the SDAB is obligated to obtain and make available for inspection any information that is relevant to the appeal.

There are instances where, prior to an appeal being launched, an interested party, such as an affected neighbor wanting to assess appeal prospects, would like to access information obtained by the municipality in processing a development permit or subdivision application, such as a water study filed in support of a development. Similarly, an interested person may wish to access certain material prior to a redistricting hearing by Council. In those instances, any person can file an access to information request pursuant to the *FOIP Act* for such records, which may be disclosed unless an exception to disclosure is applicable. Although there are a number of exceptions to disclosure under the *FOIP Act* when it comes to an access to information request, there are only two mandatory exceptions to disclosure. The first is Section 16(1) which provides that business information must be refused disclosure if the information is business information of a third party that was provided to the municipality in confidence and if disclosed could reasonably expect to cause harm to the third party. The second is Section 17(1) which provides that personal information must be refused disclosure if the disclosure of the personal information would be an unreasonable invasion of the third party's personal privacy. In the case of a development application, if the person has consented to the disclosure of the business information or personal information during the application process, then neither of these exceptions to disclosure would be applicable.

8.7 Common Setbacks Required by Provincial Legislation

Wastewater Treatment
(Section 12 of the *Subdivision and Development Regulation)*

Building sites for schools, hospitals, food establishments, and residential uses are not allowed within 300 metres of the working area of a wastewater treatment plant. The working area means those areas of a parcel of land that are currently being used or will be used for the processing of wastewater, not the parcel boundary. Similarly, a wastewater treatment plant cannot be built or expanded within 300 metres of the parcel boundary and the building site of an existing school, hospital, food establishment, or residential use. This setback may be waived by the Deputy Minister of Environment and Sustainable Resource Development.

Landfills & Hazardous Waste Management Facilities
(Section 13 of the *Subdivision and Development Regulation)*

Schools, hospitals, food establishments, and residential uses are not allowed within 300 metres of the operating or non-operating landfill disposal area or storage site, or 450 metres of the current or future working area of a landfill or an operating or non-operating hazardous waste management facility. Similarly, a landfill, storage site or hazardous waste management facility cannot be built or expanded within these distances or an existing school, hospital, food establishment, or residence.

Highways
(Section 14 of the *Subdivision and Development Regulation)*

Most subdivisions within 1.6km of a highway centerline require the approval of Alberta Transportation unless:

- it's within a city,
- it's for agricultural purposes and over 16 hectares,
- it's the first parcel out of an undivided quarter section for an existing residence,
- it's an undeveloped first parcel out of an undivided quarter section greater than 300metres from a centerline of a highway, or
- An ASP or Highway Vicinity Management Agreement is approved between Alberta Transportation and the municipality.

Airports (Transport Canada, *Land use in the Vicinity of Airports*, TP 1247E & *Aerodromes Standards and Recommended Practices* TP 312)

Unless other provisions apply such as Airport Vicinity Protection Areas for the Edmonton & Calgary International Airports or an agreement made under MGA section 615.2 Agreements Under the Aeronautics Act, the municipality's LUB may include provisions for allowing land use in the vicinity of airports which could include that no structures are allowed higher than a surface rising at a gradient of 1:7 from the sides of the basic strip, or 1:40 from the ends of a basic strip.. For airports owned or operated by a municipality, TP 312 includes setback regulations that should be followed when designating subdivisions or lease areas. Land uses which may affect flight operations due to smoke, glare, electromagnetic emissions, or the attraction of birds may also be regulated by federal agencies.

Flood Risk (Section 693.1 MGA)

Currently it is standard practice not to allow buildings on land which has a 1% per year

probability of flooding. It should be noted that although Section 693.1 is in the MGA, there have been no regulations passed in this regard to controlling, regulating or prohibiting any use or development within a flood plain area. While municipalities may allow such buildings, it is difficult for the owners to get insurance or Canada Mortgage and Housing Corporation funding.

Sour Gas (Section 10 of the *Subdivision and Development Regulation)*

Application for subdivision or development within 1.5 kilometers of a sour gas facility must be referred to the Alberta Energy Regulator and must not be approved unless it conforms to Alberta Energy Regulator setback requirements.

Other Oil and Gas (Section 11 and Section 11.1 of the *Subdivision and Development Regulation)*

Section 11 provides that no subdivision application or development application shall be approved if it would result in a permanent dwelling, public facility or unrestrictive country residential development being located within 100 metres of an oil or gas well without the approval of the Alberta Energy Regulator. The Alberta Energy Regulator may approve in writing a lesser distance from an oil or gas well.

Section 11.1 indicates an applicant with a proposed building or addition or alteration over 47m^2 must submit information on abandoned wells on the parcel provided by the Alberta Energy Regulator.

Abandoned Wells (Section 11.2 of the *Subdivision and Development Regulation)*

Subdivision, excepting lot line adjustments, or development of a building or addition over 47m^2 must follow the setback requirements in AER Directive 079 Subdivision or Development, which is five metres of most abandoned wells.

8.8 Accredited Municipality Building Permit Process

The following are notes about building permits issued pursuant to the Safety Codes Act:

A permit is not generally required for construction under $5,000, if it does not affect structural changes and if the work is a replacement with a similar type, per Sections 6(3), 8(2), 12(2), 14(2), and 16(2) of the Permit Regulation.

***Many accredited municipalities have entered into agreements with private sector firms to administer the various disciplines of the* Safety Codes Act.**

The applicant must complete all permit applications including the applicable forms completed with legal land location, a mailing address, phone number, fax number (if available), signature(s), and date of application. The permit issuer must sign/approve, date and put its designation number on that application and ensure that the permit fee is paid, before it becomes a valid permit. The issuer must retain a copy of the signed permit for its records and give the applicant a copy of the approved permit, signed by the permit issuer with a permit number affixed to it. As permits are non-transferable, if a new contractor is now going to do the work, the old permit must be cancelled, and the contractor must take out a new one for the work to be done.

Under the *Permit Regulations*:

Building permits are to be issued to the owner or a person holding the appropriate certification as required by the *Alberta Apprenticeship and Industry Training Act*.

- Electrical permits are to be issued to only an owner, a master electrician, a restricted master electrician, sign installation technician, operator under section 23 or for construction of a power system under the Alberta Electrical Utility Code or a rural wireman;
- Gas permits are to be issued to only an owner, or a gasfitter, a certified person for liquified petroleum tanks, a certified person for secondary natural gas lines, owner or operator under section 23 of the regulation, or a journeyman sheet metal worker for furnace in a single family residential dwelling;
- Plumbing permits are only to be issued to an owner, a plumber, an operator under section 23 of this regulation, or a private sewage installer for work outside a building and required for delivery of wastewater to a municipal system; and
- Private Sewage permits are to be issued to only an owner or a private sewage installer or restricted private sewage installer.

The *Permit Regulation* (Section 22 & 25) contains a number of conditions relating to permits, including:

- The term of the permit is set by the permit issuer and may be extended.
- The permit expires if the work to which it applies is not commenced within 90 days of the issue of the permit;
- is suspended or abandoned for a period of 120 days; and,
- if it is in respect to a seasonal residence, suspended or abandoned for a period of 240 days after the work is commenced.

Requests for extensions should be referred to the "discipline specific" to Safety Codes Officers that are performing the work in the municipality and everything should be made in writing. In the case of an expired permit, a new permit must be taken out to continue or complete the work. At the time applicants apply for permits, the permit issuers should advise them and contractors of the length of time that a permit is valid, the work commencement period, and the conditions for an extension.

Many municipalities believe that by becoming accredited, they have improved the service level to their citizens.

To provide better service to everyone involved, municipalities (if accredited or contracted to an accredited agency) must ensure that the permit applications are complete.

8.9 Resources

Several legislative resources exist to help development officers write and interpret policy and bylaws revolving around other matters.

- Municipal Government Act - https://open.alberta.ca/publications/m26
- Land Titles Act and Procedures Manual – Manual that Land Titles staff use to address document examination procedures - https://www.alberta.ca/land-titles-procedures-manual.aspx
- AER Directive 079, Surface Development in Proximity to Abandoned Wells - https://www.aer.ca/regulating-development/rules-and-directives/directives/directive-079
- Permits Regulation - https://open.alberta.ca/publications/s01

- Alberta Land Surveyors' Association - https://www.alsa.ab.ca/Public-Information/Real-Property-Reports
- Freedom of Information and Protection of Privacy (FOIP) Act - https://open.alberta.ca/publications/foip-the-right-to-information-and-the-right-to-privacy
- Service Alberta's Frequently Asked Questions for Municipalities: https://www.servicealberta.ca/foip/documents/faq-municipalities.pdf
- Transport Canada
    - Land Use in the Vicinity of Aerodromes - TP 1247 E - http://www.tc.gc.ca/eng/civilaviation/publications/tp1247-menu-1418.htm
    - Airport zoning regulations - https://www.tc.gc.ca/en/services/aviation/operating-airports-aerodromes/land-use-near-airports-aerodromes/airport-zoning-regulations.html
    - Aerodromes Standards and Recommended Practices – TP 312 - http://www.tc.gc.ca/eng/civilaviation/publications/tp312-menu-4765.htm

9. TEMPLATES

*The following templates contained in this Manual are meant for **information purposes only**. They are not meant to be an authoritative guide, and they will not in any circumstance override **any legal advice obtained from municipal solicitors**. The Alberta Development Officers Association (ADOA) is providing the information contained in these templates without warranty, guarantee or further obligation. Thank you to the Town of Blackfalds for revisions and new templates*

The ADOA is not liable for any consequences or damages that may occur as a result of misrepresented, misquoted or mistaken information.

It is suggested by the ADOA Executive that members and the Development Authorities contact other municipalities for copies of their documents, providing that they have the authority to "share" those documents.

9.1 Agreements

9.1.1 Development Agreement
9.1.2 Deferred Servicing Agreement
9.1.3 Development Agreement Caveat
9.1.4 Encroachment Agreement
9.1.5 Road Use Agreement

9.2 Checklists

9.2.1 Development Permit – Industrial and Commercial Application Checklist
9.2.2 Development Permit – Residential Application Checklist

9.3 Compliance Report

9.3.1 Approval Samples
9.3.2 Non-Compliance Samples

9.4 Enforcement

9.4.1 Complaint Form
9.4.2 Complaint and Notice Letters – Samples
9.4.3 Injunction Documents Checklist
9.4.4 Investigation Fact Sheet
9.4.5 Stop Order

9.1 AGREEMENTS

9.1.1 Development Agreement

DEVELOPMENT AGREEMENT

DATED this _____day of _____.

Between:

THE TOWN OF (_____)
(the **Town**)

- and -

[*NAME OF DEVELOPER CORPORATION, PARTNERSHIP, OR INDIVIDUAL***]**
(the **Developer**)

Background

A. The Developer is or is entitled to be the registered and equitable owner of those lands situated in the Town of _____, in the Province of Alberta, being:

[*Legal description per Alberta Land Titles Registry*]

(the **Development Lands**)

B. This Agreement is required because the Subdivision Authority for the Town has approved an application by the Developer for a Plan of Subdivision of the Development Lands, with the intention that such Plan be registered in the Land Titles Office, subject to the Developer entering into this Agreement.

C. The Town and the Developer wish to enter into this Agreement to provide for the construction and installation of the Municipal Improvements and all matters and things incidental thereto and all other matters or things relating to the development of the Development Lands.

In consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

PART ONE - INTERPRETATION

1. This Agreement shall be interpreted in accordance with the rules of interpretation and the Definitions set out in **Schedule A**.

PART TWO- COVENANTS OF THE DEVELOPER

Construct Municipal Improvements

2.1 The Developer shall, subject to the terms and conditions hereinafter contained, construct and complete the installation of all Municipal Improvements as set out in the Construction Drawings and Construction Specifications within 2 years of the date of this Agreement.

Construction Schedule and Notices

2.2.1 Prior to the commencement of construction, the Developer shall submit a construction schedule showing estimated commencement and completion dates for each Municipal Improvement to be constructed.

2.2.2 If any change occurs to the construction schedule as submitted, the Developer shall immediately give notice of the change to the Engineer and shall submit revised copies of the amended construction schedule to the Town and all other concerned parties (including shallow utility companies).

2.2.3 If the Developer anticipates that all Municipal Improvements will not be completed on or before the date given in the construction schedule, the Developer may apply in writing to the Town for approval of an extension of time, provided that the written application is received by the Town not less than 3 months before the completion date(s) given in the construction schedule. The Town may, in its sole discretion, grant or refuse a requested time extension, with or without conditions.

2.2.4 The Developer shall give the Engineer not less than 2 days notice prior to commencing construction of any Municipal Improvement.

2.2.5 The Developer shall give the Engineer a minimum of 2 weeks notice when requesting the Town commence any work identified by the Engineer as required to be completed by the Town and relating to service and road connections specified herein and in the Developer’s construction schedule. The Town will endeavor to commence construction in accordance with the Developer's notice and construction schedule, subject to adverse weather conditions and the availability of manpower, equipment, and materials. No compensation will be given to the Developer for any delay in the commencement or completion of Town work.

Design Guidelines

2.3.1 The Developer covenants and acknowledges that he is familiar with the Town's Design Guidelines and General Construction Specifications (Design Guidelines) and agrees that all Municipal Improvements to be constructed under this Agreement, including materials and workmanship shall conform to those standards.

Construction Drawings and Construction Specifications

2.3.2 The Developer shall submit for approval by the Engineer, a complete set of Construction Drawings and Construction Specifications for all Municipal Improvements covered under this Agreement.

2.3.3 Approval by the Town or the Engineer of Construction Drawings and Construction Specifications does not relieve the Developer of his obligation to comply with the Design Guidelines and good engineering practice.

2.3.4 Approved and attached Construction Drawings and Construction Specifications form an integral part of this Agreement. If the Developer wishes to make changes to approved Construction Drawings or Construction Specifications, the Consulting Engineer shall submit a change order for approval by the Engineer as described in the Design Guidelines. No change order is effective until approved by the Engineer.

2.3.5 The Developer acknowledges and agrees that approval of the Construction Drawings and Construction Specifications is in no way a warranty, representation or guarantee by the Town or the Engineer respecting the content of the Construction Drawings and Construction Specifications, including, without restricting the generality of the foregoing:

(a) whether the Construction Drawings and Construction Specifications are suitable for the intended purpose;

(b) whether the Construction Drawings and Construction Specifications comply with any required federal, provincial or municipal legislation or regulation;

(c) whether the Construction Drawings and Construction Specifications comply with the Design Standards; and

(d) whether the Construction Drawings and Construction Specifications are in accordance with good engineering practice.

Supervision by Consulting Engineer

2.4 The Developer shall responsibly attend to the completion of all construction and installation of Municipal Improvements, and shall have all works and improvements

competently designed and the construction of same supervised by the Consulting Engineer.

Materials Testing

2.5.1 The Developer shall, at his expense, appoint an accredited materials testing firm to act on behalf of the Consulting Engineer and to supply such information on construction materials and procedures as required by the Consulting Engineer and as specified in the Design Guidelines and the general construction specifications herein and attached.

2.5.2 The Developer shall supply to the Town's Engineer, copies of the following results completed by the testing firm:

(a) leakage tests on all pressure water mains;

(b) bacteriological tests of water samples, including standard plate count;

(c) asphalt mix design, concrete mix design, control tests during construction, and core test results for curbs, sidewalk, pavement, lanes, swales, trails and utility trench construction; and

(d) soil analysis and compaction results for excavated areas.

2.5.3 The Developer shall submit for approval by the Engineer, samples of any material not currently approved by the Town but proposed to be used in any Municipal Improvements to be constructed under this Agreement.

2.5.4 If the soils report supplied by the Developer indicates that alkali-resistant materials must be used for concrete basements and foundations, the Developer shall notify all Contractors and lot purchasers of such report.

Construction Inspection

2.6 The Developer shall grant to the Town and its agents, free and uninterrupted access to all parts of the Development Lands for the purposes of inspection of construction procedures and the sampling of materials used in construction. If the design, installation, and/or materials do not conform to the minimum standards as laid out in the Design Guidelines, Construction Drawings or Construction Specifications, the Engineer may refuse to accept the Municipal Improvements in question and may reject an application for a Construction Completion Certificate, and the Town may withhold Building Permits in the area intended to be served by the Municipal Improvements.

2.6.1 The Town will not grant any extension of time to complete construction due to any delay resulting from any inspection or due to the time needed to correct deficiencies

revealed by an inspection, nor shall the Town be liable for any damages or claims by the Developer as a result of such delays. The acceptance of, or lack of comment by, the Engineer respecting any construction of the Municipal Improvements:

(a) shall not relieve the Developer of responsibility for completing the work in accordance with this Agreement, the Design Guidelines, the Construction Drawings, and the Construction Specifications; and

(b) shall not be deemed an acceptance by the Town or the Engineer of responsibility for, or acceptance of the work done by the Developer.

Field Inspector

2.7 The Developer acknowledges and agrees that the Town may appoint a field inspector to act on behalf of the Town and to work in conjunction with the Engineer to inspect and assess construction pursuant to this Agreement. The field inspector shall have the same rights of access and notice provided to the Engineer under this Agreement.

Additional Work Beyond Scope

2.8 The Developer agrees that before engaging in any work beyond the scope of work anticipated by this Agreement, or before engaging in any work or obtaining any materials for which the Town is required to pay, either in whole or in part, the Developer shall obtain written authorization from the Engineer to commence the work or obtain the materials. The price for said work or materials shall be mutually agreed upon by both parties before the work is commenced or materials obtained.

Utility Rights of Way

2.9 The Developer shall obtain the approvals listed in **Schedule** K and shall:

(a) grant to the Town such utility rights of way (easements) as are required to install, replace, maintain, and repair Municipal Improvements within the Development Lands;

(b) arrange and pay for the installation of all services to be provided by utility companies, and necessary to serve the subdivision lots as contemplated in the approved Construction Drawings;

(c) obtain all necessary easements or utility rights of way necessary to accommodate services to be required to lots within the Development Lands (the Subdivision Lots), including electric power, street lighting, natural gas, telephone, cable TV and other services; and

(c) have executed and delivered to the Town, signed, all utility right of way agreements and duplicate copies of the registered Utility Right of Way Plan in substantial compliance with the forms set forth in **Schedule C**.

Plans

2.10 Prior to the signing of this Agreement, the Developer shall have an appropriate land use designation bylaw for the Development Lands and shall provide the following plans and information to the Town:

(a) proposed Plan of Subdivision approved by the Subdivision Authority;
(b) Engineer approved:
  (i) Utility Right of Way Plan;
  (ii) Construction Drawings and Construction Specifications for all Municipal Improvements;
  (iii) plan of the street lighting and power transformers for each phase in the Development Lands; and
  (iv) estimated construction costs of all Municipal Improvements proposed to be constructed in connection with the Development Lands.

Access and Maintenance

2.11.1 Until the Construction Completion Certificate for Surface Improvements is issued, the Developer shall provide and maintain adequate access to the Development Lands, and any occupied premises within, for construction, garbage removal, police, ambulance, fire protection, etc.

2.11.2 The Developer shall adequately maintain designated access roads to the Development Lands until the Construction Completion Certificate for Surface Improvements has been issued, and before being released from this requirement for maintenance, the Developer shall, if required by the Engineer, rebuild or reinstate said access roads to a condition satisfactory to the Engineer.

2.11.3 During the period between construction of roads and lanes and their paving, the Developer shall maintain the roads and lanes in a state of good repair. Prior to commencing paving, the Developer shall reshape roads and lanes to design grades and slopes, gravel where considered necessary by the Engineer, and repair and adjust manholes, hydrants and all valves, catch basins and catch basin leads.

Control of Dust and Noise

2.12.1 Until the Final Acceptance Certificate for Surface Improvements is issued, the Developer shall take effective means to control dust, dirt, noise or any other annoyance related to the work proposed in this Agreement, such as site preparation or construction work originating within the Development Lands, and including those annoyances relating to the condition of any access roads to the Development Lands.

Effective remedial measures must be taken within 48 hours of notification from the Town of complaints in this regard.

2.12.2 If the Developer fails to take effective remedial action within the time provided, the Town may perform these obligations on behalf of the Developer and may recover the costs thereof from the Developer.

Connections to Town Utilities

2.13.1 The Developer shall make arrangements with the Town to connect the storm, sanitary, and water mains within the Development Lands to Trunk Mains, and to extend Town roadways to the Development Lands and shall pay to the Town the costs incurred for completing said connections or extending Town roadways. The Developer may not make connections to Trunk Mains or Town roadways without prior written consent of the Engineer. Alternately, the Town may require the Developer to extend the Municipal Improvements within the Development Lands to the existing Town Municipal Improvements, as part of the construction of the Municipal Improvements, all as more specifically detailed in the Construction Drawings and Construction Specifications.

2.13.2 When the Town grants approval for the Developer to make connections to Trunk Mains in rights of way at the boundary of the Development Lands, the Town grants the Developer the right to excavate in the said rights of way in order for the Developer to make the connections. The Developer agrees to restore the rights of way to the reasonable satisfaction of the Town (i.e. gravel lane, paved roadway, etc.). Following completion of the connections, including repairs of the surface, the Developer shall submit a Construction Completion Certificate certifying completion of the repairs within the rights of way.

2.13.3 Where the final grades of roads, sidewalks, and lanes as constructed by the Developer vary from the grades initially approved on the plans or as approved by the Engineer, the Developer shall be responsible for any cost incurred by the Town in adjusting the elevation of any utility facility to correspond to the final, as-constructed, grades.

Survey Control Network

2.14 The Developer shall pay to the Town a fee for extension into the Development Lands of the survey control network. Pursuant to the *Surveys Act*, R.S.A. 2000, c.S-26, the Town undertakes to have the necessary plans and approvals prepared and arrange to undertake the field work to extend the network into the Development Lands. The Developer agrees to protect all survey monuments and to pay for their reinstatement if destroyed or altered in any way.

Notice of Applicable Standards

2.15 The Town and the Developer agree that the standards set out in the Design Guidelines, Construction Drawings, and Construction Specifications attached to this Agreement shall be applicable to the development of lots and the construction of housing and other development within the Development Lands and the Developer covenants and agrees that all proposed purchasers of any of the lots within the Development Lands shall be advised of such standards and requirements.

Fill Greater than 1 Meter

2.16 Where the Developer has pre-graded and filled a site with material to a depth of greater than 1 meter above the original ground level, the Developer shall:

(a) inform all purchasers of lots in that area of the location and depth of fill on such lots;

(b) ensure that all fill areas in excess of 1 meter are compacted and shall provide the Town with certified test results evidencing satisfactory compaction; and

(c) provide the Town a lot plan showing all fill areas in excess of the said 1 meter.

Building Grade Information

2.17 The Developer shall provide to the purchaser of each lot the relevant building grade information, including but not be limited to, sanitary and storm invert elevations at property/easement line, lot corner elevations, and depth of fill if greater than 1 metre.

Building Grade Certificates

2.18 Before the Final Acceptance Certificate is issued, building grade certificates for all lots within the Development Lands shall be delivered by the Developer to the Engineer in form and substance satisfactory to the Engineer.

Excavation, stripping or grading

2.19.1 Prior to doing any excavation, stripping and/or grading of land, the Developer shall provide the Development Authority with copies of the appropriate plans and information about the placement of any soil, as reasonably required by the Development Authority. No such work may be done before a Development Permit for the work (e.g. grading) is issued.

2.19.2 The Developer shall ensure that all mechanized excavation, stripping or grading within the Development Lands complies with the following:

(a) a temporary fence shall be erected around all excavations which in the opinion of the Development Authority may be hazardous to the public;

(b) where finished ground elevations are established, all grading shall comply with approved plans; and

(c) all topsoil shall be retained on the parcel, except where it must be removed for building purposes.

Lot Drainage

2.20.1 The Developer acknowledges that before the Town will issue any Construction Completion Certificate for any of the Municipal Improvements to be constructed and installed within the Development Lands, the Developer must undertake and complete to the satisfaction of the Town such grading work as may be necessary to ensure that all lots within the Development Lands have positive drainage and that there will not be any ponding of water within any of the lots within the Development Lands.

2.20.2 For each stage of the development of the Lands, the Developer will be responsible to resolve all sump pump discharge and lot grading responsibilities until 2 years after the subdivision is 95% built out (that is, 95% of the homes have been completed) or until the last Final Acceptance Certificate has been issued, whichever occurs later and subject to the Town's approval. The Developer acknowledges that installation of connections to the Trunk Storm Main may be required.

Fibre Optic Cable

2.21 The Developer shall make arrangements for and ensure the installation of fibre optic cable as specified by the Town.

Building Permits

2.22.1 The Developer acknowledges and agrees that no Building Permits will be issued by the Town until:

(a) this Agreement has been duly executed by all parties, and all money and securities due to the Town under this Agreement have been provided;

(b) hydrants have been installed and water, sanitary sewer mains and storm sewer mains and services have been constructed to each subdivision lot and all are operational in accordance with the Construction Drawings and Construction Specifications and for the purposes of fire protection;

(c) all shallow utilities have been installed and rendered operative in any part of the Development Lands, except as otherwise permitted in writing by the Town;

(d) the required water leakage test and certified negative bacteria test have been performed for the water distribution system, including service connections to property line;

(e) an approved subdivision entrance sign is installed as required;

(f) vehicular access is provided to the satisfaction of the Town (confirmed in writing);

(g) street and walkway lighting, electrical power, gas distribution and telephone systems have been constructed or installed within the Development Lands; and

(h) the Plan of Subdivision and Utility Right of Way Plan as set out in **Schedule C** attached hereto and easement agreements as required in this Agreement have been released by the Town for registration.

2.22.2 Notwithstanding paragraph 2.22.1, a Building Permit may be issued for the construction of a sales centre and of a model home on satisfaction of paragraph 2.22.1 (a), (b) and (c).

Hydrants

2.23 When the water distribution system within the Development Lands, or any portion thereof, is pressurized and is being used for domestic or other purposes, the Developer shall not, without the consent of the Engineer, activate or deactivate the water supply to any mains or fire hydrants.

Driveway Crossings

2.24 In addition to the work included in the Construction Drawings, the Developer is responsible for construction, when approved by the Town, of all driveway crossings. All driveway crossings require a development permit and shall be constructed in accordance with the requirements of the Town and Engineer, at no cost to the Town.

Dead-Ends

2.25 In addition to the work included in the Construction Drawings and Construction Specifications, if a road or laneway constructed in the Development Lands or any phase thereof is a dead-end road or laneway, the Developer shall construct, when required by the Town and as approved by the Town, turn-around areas for such roads and laneways, notwithstanding that such turn-around locations may be outside the Gross Area of the Development Lands. The turn-around areas shall be constructed by the Developer at its own cost in accordance with Town requirements, and shall be maintained by the Developer during the maintenance period. The Developer shall ensure that lot purchasers are aware of this Paragraph and shall obtain their agreement, where necessary, to grant to the Town easements for ultimate road or laneway maintenance by the Town, and the Developer shall ensure the provision and delivery of any required related easement in form and substance satisfactory to the Town prior to the earlier of:

(a) the Town providing its consent and approval of release for registration at the Land Titles Office of any Plan or Plans of Subdivision; or

(b) the issuance of any Building Permit for the Development Lands,

and in any event prior to the issuance of the Construction Completion Certificate for Surface Improvements.

Landscaping Obligations

2.26 The Developer shall provide landscaping plans and construct landscaping for all Public Property not designated as municipal reserve (MR), in accordance with **Schedule J** and as follows:

(a) Level One and Level Two Landscaping in accordance with the Design Guidelines in all medians, boulevards, public utility lots, public reserves, and buffer areas within the Development Lands, which shall include trees in areas designated by the Town, unless otherwise provided for under **Schedule J; and**

(b) the Developer shall prepare grading plans for all landscaping areas and is responsible
for all Level One, Two and Three Landscaping requirements as set out in **Schedule J** and this Agreement.

Municipal and School Reserve Landscaping

2.27 The Developer agrees that the Town will prepare all landscape plans and construct the required landscaping in accordance with the Design Guidelines on all municipal/school reserve lands, at the expense of the Developer, excepting thereout any lands identified under **Schedule J**. The Developer shall pay to the Town the estimate costs of such Municipal Improvements as determined by the Town and set forth within **Schedule D**. If the actual costs incurred by the Town in constructing and installing the said landscaping Municipal Improvements exceed the amount required to be paid by the Developer, the Town shall be responsible for such excess costs.

Topsoil Stripping and Stockpiling

2.28.1 The Developer shall strip and stockpile all topsoil within the Development Lands in a location previously approved by the Engineer, but such stockpile may remain in place for no more than 2 years from issuance of the last Final Acceptance Certificate, unless otherwise agreed in writing by the Town. No stockpiles of any material will be permitted on public property or on any lands other than the Development Lands unless approved by the Engineer.

2.28.2 All topsoil that is surplus to the requirements of the Development Lands as determined by the Engineer shall be disposed of and removed by the Developer and

until this is done, the Town shall not be obliged to issue the last Final Acceptance Certificate.

Ground Water Table Testing

2.29 The Developer shall conduct adequate ground water table testing to satisfy the Town with respect to the need for a building foundation drainage collection and disposal system and if the ground water table level is within 2 meters of the finished grade, the Developer shall design and construct, at its sole expense, to the satisfaction of the Town a collection and disposal system which shall form part of the Municipal Improvements.

Completion of Construction

2.30 If the Developer has failed to complete construction and installation of the Municipal Improvements within 2 years of commence of construction under this Agreement, unless prior extensions have been granted by the Town Administration in writing, the Developer covenants and agrees that it shall, within 30 days of being directed by the Town to do so, complete construction and installation of the Municipal Improvements, failing which the Town may, in its discretion, construct and install such Municipal Improvements and the Developer shall forthwith pay to the Town all costs incurred by the Town in connection with the construction and installation of such Municipal Improvements.

Legal Costs

2.31 The Developer shall indemnify and save harmless the Town from and against all losses, costs, claims, suits or demands of any nature (including all legal costs and disbursements on a full indemnity solicitor and his own client basis) which may arise by reason of the performance or non-performance of work by the Developer its employees, agents and Contractor.

Insurance Obligation of the Developer

2.32 The Developer shall provide and keep in force during the term of this Agreement and until the date of issuance of the last Final Acceptance Certificate, insurance policies in form and substance acceptable to and approved by the Town, and shall submit to the Town all signed original certificate(s) of insurance thereof, which insurance policies shall at minimum:

(a) include protection for the Developer's contingent liability with respect to the activities of anyone involved with subdivision, construction and development activities related to this Agreement, including the Contractor and subcontractors, and anything done pursuant to this Agreement;

(b) be in an amount of not less than $2,000,000 per occurrence for coverage for general liability for bodily injury, death, and damage to property (including the loss of use thereof), and including but not limited to the use of owned or non-owned vehicles and equipment of the Developer in connection with this Agreement;

(c) name the Town as an additional insured;

(d) name the Town as a certificate holder, requiring that the Town be provided with 30 days written notice of cancellation or material change applicable to the coverage provided in the noted policies; and

(e) along with the certificate(s) of insurance, show evidence of satisfactory insurance coverage between the Developer and the Contractor. The certificate(s) of insurance shall name the Developer, Contractor, and the Town as additional insured with respect to this Agreement. The minimum insurance requirements for the Contractor are identified in the Design Guidelines.

Legal Compliance

2.33 The Developer shall comply with all applicable statutes and regulations and in particular, with the requirements to maintain coverage under the *Workers' Compensation Act*, R.S.A. 2000, c.W-15 and to operate safely as required under the *Occupational Health and Safety Act,* R.S.A. 2000, c.O-2.

Development Levies, Charges and Costs

2.34 The Developer shall pay to the Town all levies, charges, and costs as set forth in this Agreement and Schedule D attached hereto.

Outstanding Property Taxes

2.35 The Developer shall pay to the Town any outstanding property taxes due and owing to the Town for lands within the Development Lands prior to execution of this Agreement.

Signage

2.36.1 The Developer shall be responsible to provide and install all signage required for the Development Lands, including but not limited to all street signage showing street names or numbers, and all traffic control signage. Provision and installation of all signage shall be as established by the Town.

2.36.2 Prior to commencement of construction, the Developer shall erect a sign at the entrance of the subdivision, illustrating the proposed Plan of Subdivision and stating:

"**The public may obtain current information related to existing and proposed subdivision development in this area from the following sources:**

Town Planning and Development - Land Use and Transportation Network–(XXX) XXX-XXXX

Town Community Services - Parks and Playgrounds – (XXX) XXX-XXXX

(Name of School) Division – (XXX) XXX-XXXX

[Developer's Corporate Name, Phone Number] - Subdivision Servicing and Lot Sales"

As-Constructed Drawings

2.37 Prior to requesting a Construction Completion Certificate, the Developer shall provide to the Town a set of construction drawings showing the as-constructed information as actually measured in place after construction. The as-constructed information may be transcribed onto a set of construction drawings or may be a revised set of construction drawings. This information is to be submitted to the satisfaction of the Engineer using the standard engineering symbols and format in accordance with the procedure outlined in the Design Guidelines, and shall be submitted both in hard copy (paper) and in an electronic format which is readable by the Town, such as PDF format (portable document format) or in a another electronic form acceptable to the Town, acting reasonably.

PART THREE - COVENANTS OF THE TOWN

Regulation and Bylaws

3.1 The Town shall establish building regulations and land uses for the Development Lands, and subject to the provisions of Paragraph 2.22.1 and the provisions of the Land Use By-law and other by-laws of the Town, issue Building Permits for development upon the subdivision lots.

Municipal Service

3.2 Upon issuance of a Construction Completion Certificate for the Municipal Improvements, the Town will, subject to the Developer's obligation to perform maintenance during the maintenance period set forth in this Agreement, endeavor to provide municipal service within the Development Lands to the same standard, in the same manner, and subject to the same terms and conditions as the Town is able to provide to similar lands within the Town.

Maintenance by the Town

3.3 Upon issuance of a Final Acceptance Certificate for the Municipal Improvements installed by the Developer, the Town shall maintain such Municipal Improvements in the same manner and to the same standard of maintenance as it provides to all other Municipal Improvements within the Town.

Oversize Improvements

3.4 The Town will determine the requirement for Oversize Improvements within or in the vicinity of the Development Lands, review the Construction Drawings and Construction Specifications submitted by the Developer, and approve or advise what amendments are required for approval of same. The details of the required Oversize Improvements are set out in Schedule E.

Oversize Improvements Constructed by the Developer

3.5 Where the Developer is required to construct Oversize Improvements to benefit future development lands as well as this Development, the Developer shall provide cost estimates for those Oversize Improvements to the Engineer who will determine the Oversize Improvement Cost. The Town will Endeavour to Assist the Developer in the recovery of a proportionate share of the Oversize Improvement Cost from future benefitting developers by requiring payment of the same as a condition of the approval of any development applications. The Oversize Improvement Costs will be subject to interest accumulation at the rate of prime plus ½% for a maximum period of 5 years. The obligation of the Town to Endeavour to Assist will continue for a period of 10 years.

PART FOUR - LEVIES, CHARGES, AND COSTS

Schedule D Levies, Charges and Costs

4.1 The Developer shall pay in full to the Town on or before execution of this Agreement all levies, charges and costs set out in attached **Schedule D**, including but not limited to the following:

(a) administration fee of 1.5 % based on estimated construction cost of all Municipal Improvements to be installed by the Developer, which in no case shall be less than $750.00;

(b) water, storm, sanitary sewer, and transportation charges or levies, as calculated in **Schedule D**;

(c) Recreational Contribution based on $1,150.00 per dwelling unit;

(d) Signalization Contribution based on $600.00 per dwelling unit; and

(e) survey control network fee of $113.30 per acre of the Gross Area.

4.2 Where the Developer will benefit from Municipal Improvements (Area, Boundary, and/or Oversize Improvements) previously constructed by others, the Developer agrees to pay for its share of those costs as set out in **Schedule D**.

Charge for Increased Costs

4.3 Where, as a result of a delay by the Developer, the Town is required to construct services at a time other than the time for which work was originally scheduled, and such work is done, or expected to be done, under frozen ground conditions, or the delay is longer than 3 months, then the Town, with prior notice to and approval of the Developer, shall be entitled to charge, and the Developer shall pay to the Town, on demand, any increased costs incurred or estimated to be incurred by the Town, to complete such construction.

No Refund

4.4 The Town and the Developer agree that once the Plan of Subdivision has been released for registration in the Land Titles Office, there will be no refund of monies paid to the Town by the Developer, should the Developer fail to proceed with the approved Development, and such funds retained by the Town shall be deemed to be liquidated damages, and shall not be considered as penalty or forfeiture.

Legal Costs

4.5 In addition to the foregoing, the Developer shall be responsible for and shall forthwith upon presentation of an account pay to the Town all legal costs, fees, expenses and disbursements incurred by the Town through its solicitor in the negotiation for, in the preparation of, in the execution of and during the performance of this Agreement, including the preparation and registration of caveats and the discharges, thereof. The charges by the Town's solicitor may be taxed on a solicitor and his own client full indemnity basis.

Levies, Charges, Costs Acknowledged

4.6 The Developer acknowledges and agrees that the Town and the Developer are properly and legally entitled to make provision in this Agreement for the payment by the Developer to the Town of the various sums prescribed in this Agreement, and further:

(a) the Developer agrees that the Town is fully entitled in law to recover from the Developer the sums specified in this Agreement;

(b) the Developer hereby waives for itself and its successors assigns any and all rights, defenses, actions, causes of action, claims, demands, suits and proceedings of any nature or kind whatsoever, which the Developer has, or hereafter may have, against the Town in respect to the Developer's refusal to pay the sums specified in this Agreement; and

(c) the Developer for itself and its successors and assigns hereby releases and forever discharges the Town from all actions, claims, demands, suits and proceedings of any nature or kind whatsoever which the Developer has, or may hereinafter have, if any, against the Town in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the Town pursuant to this Agreement.

PART FIVE - SECURITY REQUIREMENTS

Irrevocable Letter of Credit

5.1 To ensure performance of its covenants and obligations under this Agreement and payment of any sum payable to the Town, the Developer shall supply to the Town on or before the date of this Agreement, security in the form of an irrevocable letter of credit, or other security satisfactory to the Town's solicitor. The irrevocable letter of credit shall be effective for a period of 1\ year and shall automatically renew for additional, successive 1-year periods until the Town authorizes its lapse in writing. In the event that automatic renewal is not available, subject to the Town's acceptance of a 1 year term irrevocable letter of credit the terms shall provide that the Town shall be entitled to draw upon the full amount of the irrevocable letter of credit (or a portion thereof) in the event that a replacement or renewal has not been provided to the Town at least 30 days prior to the expiration of the term. Such security shall be maintained and remain in effect until such time as the last Final Acceptance Certificate has been issued by the Town pursuant to this Agreement.

Amount of Security

5.2 The amount of security provided shall be 25% of the estimated construction cost of all Municipal Improvements to be installed by the Developer as per the estimate provided under Paragraph 2.12(e), but in no case shall said security be less than $100,000.00. The Town may, in its absolute discretion, agree to reduce the amount of the security, as noted below, in three (3) stages as construction is completed; but in no case shall the value of security be reduced below $50,000.00 total for the phase of construction.

(a) upon issuance by the Town of Construction Completion Certificates for all Underground Improvements, including water mains, sanitary sewers, storm sewers, and lot service connections, the security may be reduced to 15% of the estimated cost of these services, plus 25% of the estimated cost of the remaining Municipal Improvements;

(b) upon issuance by the Town of Construction Completion Certificates for all Surface Improvements including sidewalks, curbs, gravel, lanes, gutters, catch basins, paved roads and road turn-arounds if any, the security may be reduced to 15% of the estimated cost of the Surface Improvements completed, plus 25% of the estimated cost of the remaining Surface Improvements;

(c) after issuance of all applicable Construction Completion Certificates and upon issuance of the last Construction Completion Certificate, the security may be reduced to an amount equal to 15% of the estimated cost of all of the Municipal Improvements constructed under this Agreement. The reduced security amount shall remain in effect until such time as the Final Acceptance

Certificate has been issued by the Town pursuant to this Agreement for each of the following: Underground Improvements, Surface Improvements, paving, and landscaping;

(d) however, if the Town still feels strongly about reducing security only when all the Municipal Improvements are complete, it may still proceed in that manner. The Town will have absolute discretion in deciding the issue of reducing security within its Agreement.

5.3 The Developer shall provide evidence to the Town that each Contractor(s) retained by him has provided performance bonding and labour and materials payment bonding each in the amount of 25% of the cost to construct that portion of the Municipal Improvements contemplated by their respective contracts with the Developer. Construction shall not commence under a subcontractor agreement until said evidence is provided for that subcontractor's agreement. Additionally the Developer shall ensure that all Contractors and subcontractors have a valid business license to operate within the Town.

5.4 In addition to any other remedy the Town may have available, the Town may realize upon the security provided to it by the Developer:

(a) at any time during which the Developer is in default of the terms, conditions, and covenants herein contained for the purposes of completing the construction and installation of all Municipal Improvements not then complete;

(b) for the purposes of repairing, replacing or maintaining such Municipal Improvements as are herein required to be repaired, replaced or maintained by the Developer;

(c) for payment of any amount on any account owing to the Town; and

(d) for damages and extra costs incurred by the Town.

5.5 Any security required to be deposited by the Developer may be required to be increased or decreased by the Town upon written notice to the Developer at any time during the currency of this Agreement if it shall appear to the Town in its discretion that the security deposit is excessive or insufficient in relation to the costs or protection to the Town for which the security has been provided.

5.6 If the Town has negotiated or called upon the security to be deposited by the Developer with the Town, the Town may, at its option and discretion, use any funds thereby obtained in any manner that the Town deems fit to discharge the obligations of the Developer pursuant to this Agreement.

5.7 The Town and the Developer agree that any amounts of money presently or hereafter owing by the Developer to the Town pursuant to the provisions of this Agreement, whether by way of a liquidated or unliquidated claim, and howsoever arising, shall be a charge and encumbrance against the Development Lands, the Developer does hereby mortgage, charge and encumber the said lands as security for the payment or performance of the Developer's obligations within this Agreement, and further, that the Town shall be entitled to recover any such monies owing, together with all costs on a solicitor and client basis, by enforcing the charge and encumbrance against the Development Lands.

PART SIX - ACCEPTANCE AND MAINTENANCE

Construction Completion Certificate

6.1 The Developer shall submit the following to the Engineer:

(a) triplicate copies of the Construction Completion Certificate, duly signed by the Consulting Engineer for the Municipal Improvements completed;

(b) applications shall be made for a group of Municipal Improvements whether Underground Improvements, Surface Improvements, paving, or landscaping;

(c) the proposed Certificate must be on a copy of the form provided in **Schedule M** of this Agreement; and

(d) the Developer shall apply for a separate Construction Completion Certificate for paving (asphalt) work after the first lift of asphalt is completed.

Construction Completion Inspection

6.2.1 Weather conditions permitting, the Engineer shall make an inspection within 30 days from the date of receipt by the Town of a Construction Completion Certificate application.

6.2.2 Should weather conditions prevent a proper inspection within 30 days, the Engineer shall complete the inspection as soon thereafter as weather permits.

Construction Completion

6.3.1 In addition to confirming that the Municipal Improvements have been constructed in accordance with the provisions of this Agreement including the Construction Drawings and the Construction Specifications, the Municipal Improvements shall not be considered complete until the following conditions are also met:

(a) Sanitary Sewer Mains and service connections -- all pipes are of proper specification and size, are laid to approved grades, are undamaged, and are free from obstructions and foreign matter, and all manholes are completed with properly formed inverts and rims, and covers set to the approved design grade of the lane or road in which they are installed;

(b) Storm Sewer Mains and service connections -- all pipes are of proper specification and size, are laid to approved grades, are undamaged, and are free from obstructions and foreign matter, and all manholes are completed with properly formed inverts and rims, and covers set to the approved design grade of the lane or road in which they are installed;

(c) Water Mains and service connections -- the water mains and service lines, as specified, have been laid to the approved grades, tested, inspected, and sterilized to the satisfaction of the Engineer, and are ready for the supply of water to the public, and all the main and service valves, fire hydrants, and other appurtenances are operable and undamaged and at elevations which are satisfactory to the Engineer, and all fire hydrants have been pumped to remove water from the barrels;

(d) Graveled Lanes -- all lanes within the Development Lands, if any, have been constructed to the proper cross-section and grades in accordance with the Construction Drawings and Construction Specifications, appurtenances have been adjusted, and drainage has been properly accommodated, and all Municipal Improvements proposed for construction within the lanes, if any, as a part of the Development Lands, have been installed;

(e) Sidewalks, curbs and gutters and catch basins -- all sidewalk, curbs, gutters, and catch basins have been constructed to the approved design grades and sections in accordance with the Construction Drawings and Construction Specifications, and are free of damage;

(f) Paved roads, lanes & paved walkways -- a Construction Completion Certificate for Surface Improvements will be issued for Surface Improvements, and a Construction Completion Certificate will be issued for paving when:

(i) the first lift of asphalt is completed;

(ii) all paved roads, lanes, and walkways have been constructed to the proper cross-section and grade in accordance with the Construction Drawings and Construction Specifications;

(iii) all appurtenances have been adjusted to the proper grades and drainage has been properly accommodated; and

(iv) all Municipal Improvements proposed for construction within the roads, lanes, and walkways rights of ways, including turn around locations at the terminus of a dead-end road in the Development Lands or any stage thereof, if any, all forming part of this Development have been installed;

(g) Storm water management -- all site design and grading has been properly completed, and all specifications for storm water ponds have been met to the satisfaction of the Engineer; and

(h) Parks, boulevards and fencing -- all public utility lots, boulevards, parks, playgrounds, school grounds, and recreational improvements shall have been

properly constructed and/or properly graded, topsoiled, seeded, fenced, and planted; including but not limited to all levels of landscaping so designated in the Design Guidelines and all forming, machinery, and stockpiles of surplus materials are removed and the site is in a tidy clean condition.

6.3.2 The Developer is not required to apply for or obtain a Construction Completion Certificate for landscaping works required to be completed by the Town under this Agreement.

Defects or Deficiencies

6.4.1 If construction defects or deficiencies are apparent at the time of the Engineer's inspection, the Construction Completion Certificate application will be returned to the Developer unsigned, with a report respecting the defects and deficiencies. The Developer shall then resubmit the Certificate application in accordance with the above, once all defects and deficiencies have been corrected. The date of the Certificate shall be the last date of application submission or re-submission by the Developer.

6.4.2 If the number or extent of defects or deficiencies found requires more than one inspection by the Town or its Engineer to confirm that all items have been rectified to the satisfaction of the Town, the Developer shall promptly reimburse the Town for the additional expenses so incurred.

Maintenance Period

6.5.1 If there are no construction defects or deficiencies apparent at the time of the Engineer's inspection, the Engineer on behalf of the Town shall approve and return the Construction Completion Certificate and advise the Developer of the maintenance period.

6.5.2 After the issuance of the Construction Completion Certificate, the Developer shall be responsible for any and all repairs and replacements to any Municipal Improvements which may become necessary from any cause whatsoever, up to the end of the maintenance period stated in the said Construction Completion Certificate or up to the date of issuance of the Final Acceptance Certificate, whichever occurs last.

6.5.3 If, during the maintenance period, any defects become apparent in any of the Municipal Improvements installed or constructed under this Agreement, and the Engineer requires repairs or replacements to be done, the Developer shall, within a reasonable time after notice, cause such repairs and/or replacements to be done.

6.5.4 If the Developer fails to maintain any Municipal Improvements, or remedy or repair any deficiency or defect when given notice by the Town within the time specified in

the notice, the Town, by its own forces or by the services of an independent contractor, may effect such maintenance or repairs at the expense of the Developer, and the Developer shall make payment of all such costs to the Town on demand.

6.5.5 Maintenance (without limiting the generality of the term) for which the Developer shall be responsible, includes failure of or damage to underground utilities resulting from defective materials or improper installation; settlement of ditches; grading, graveling, repairs, and/or replacement of road and lane surfaces, sidewalks, curbs and gutters, catch basins and leads; road surfaces, including designated access roads; adjustment and repairs to water mains, main valves, water hydrants, hydrant valves, service lines, and valves and valve operating mechanisms, including the casings enclosing these mechanisms; repairs, replacements, and adjustments to sewer mains, sewer services, manholes, manhole frames and covers.

Flushing Lines

6.6 The Town will, from the date of the Construction Completion Certificate, flush and clean out the sanitary sewers and keep hydrants pumped as required in ordinary maintenance procedures. The cost of removing obstructions caused by gravel, rocks, or silt; which is other than that deposited from sewage; may be charged to the Developer and shall be paid upon demand.

Debris and Snow Removal

6.7 The Town will, from the date of the Construction Completion Certificate, undertake to carry out normal snow removal and street sweeping operations pursuant to the current Town policy. The Developer shall remove all dirt and debris from the streets and sidewalks upon 48 hours notice in advance of normal street sweeping operations.

Adjustments

6.8.1 The Developer shall be responsible for adjusting all hydrants, valve boxes, manholes, and catch basins to the final grades during and after construction of roads, sidewalks, and lanes, and maintaining the valves and appurtenances in an operating condition until such time as the Final Acceptance Certificate has been issued.

6.8.2 The Developer shall be responsible for the cost incurred by the Town in adjusting the elevation of any electrical facility to correspond to the final grades that the roads, sidewalks, and lanes, if any, are constructed to, where the final grades vary from the grades initially approved on the plans, until such time as the last Final Acceptance Certificate has been issued.

Turf and Grass Maintenance

6.9 Throughout the maintenance period, the Developer is responsible to ensure that turf is well established, receives a minimum of three grass cuttings, and maintains grass height between 50 mm and 100 mm.

Reshaping after Second Thaw

6.10 After the second spring thaw following the issuance of the Construction Completion Certificate, which include gravel lanes, the Developer shall reshape the gravel lanes to design grades and slopes, place additional gravel where considered necessary by the Engineer, repair and adjust manholes, hydrants and all valves, catch basins and catch basin leads. The Developer may then present the Final Acceptance Certificate to the Engineer for approval.

Maintenance Period Duration

6.11.1 The maintenance periods provided for in a Construction Completion Certificate shall be the following periods from the date of issue a Construction Certificate, subject to these periods being extended as hereinafter provided.

MUNICIPAL IMPROVEMENT	MAINTENANCE PERIOD
Level One Landscaping	1 year
Level Two Landscaping	2 years
Level Three Landscaping	2 years
Underground Improvements	2 years
gravel stage of a road system and lanes	2 years
concrete work	2 years
Paving	1 year

6.11.2 For the purposes of Paragraph 6.11.1:

(a) “concrete work” includes sidewalks, curbs, gutters, and catch basins, and includes adjustment and repair of manhole frames and covers, catch basins, catch basin leads, and valve boxes, and maintaining access to valve operating mechanisms; and

(b) “paving” includes the paving of paved roads, lanes, paved walkways. Where staged pavement construction is employed, the maintenance period for all stages of the paving, is calculated as 1 year after the date of completion of the final lift.

6.11.3 There is no Developer maintenance period for landscaping works required to be completed by the Town under this Agreement.

Maintenance Period Expiry Inspection

6.12 At least 2 months before the expiration of the maintenance period for each of the Municipal Improvements or earlier if weather conditions dictate; the Developer shall conduct a complete inspection of the Municipal Improvements.

As-Constructed Plans

6.13 As-Constructed Plans submitted in the form outlined in the Design Guidelines - Section One, satisfactory to the Engineer shall be submitted prior to the date of the Final Acceptance Certificates approved by the Engineer.

Final Acceptance Certificate

6.14 The Developer shall submit to the Town triplicate copies of the Final Acceptance Certificate for the Municipal Improvements duly signed and stamped by the Consulting Engineer. The Certificate must be on a copy of the form provided in **Schedule N** of this Agreement.

Final Acceptance Certificate Inspection

6.15.1 Within 1 month after receipt of the Final Acceptance Certificate, the Engineer shall make an inspection, provided weather conditions permit. Should weather conditions prevent a proper inspection within 30 days, the Engineer shall complete the inspection as soon thereafter as weather permits.

6.15.2 If the inspection shows, to the satisfaction of the Engineer, that the Municipal Improvements are acceptable, the Engineer shall approve the Final Acceptance Certificate. If, however, defects or deficiencies are apparent to the Engineer in the Municipal Improvements, the Final Acceptance Certificate will be returned unsigned to the Developer with a report of the defects and deficiencies listed. Following correction of the deficiencies by the Developer and inspection by the Consulting Engineer, the Final Acceptance Certificate shall again be presented to the Town. Following a further inspection and approval by the Engineer in accordance with the above, the Engineer shall issue the Final Acceptance Certificate.

6.15.3 If the number or extent of defects or deficiencies found requires more than one inspection by the Town or its Engineer to confirm that all items have been rectified to the satisfaction of the Town, the Developer shall promptly reimburse the Town for the additional expenses incurred.

Continued Maintenance and Warranty

6.16.1 The date of the Final Acceptance Certificate shall be the date that the certificate is submitted or resubmitted to the Town for approval as the case may be. The Developer agrees that the maintenance period will extend beyond the periods outlined in Paragraph 6.11.1 until the Final Acceptance Certificate is approved by the Engineer.

6.16.2 After approval of the Final Acceptance Certificate has been given the Developer shall have no further interest in the Municipal Improvements, which together with the easements referred to in Paragraph 2.9 and 2.10, shall become the property of the Town and/or the relevant utility company without additional expense to the Town.

6.16.3 The Developer agrees that, notwithstanding the issuance of a Final Acceptance Certificate, the Developer shall be responsible for a period of 2 years following the issuance of any Final Acceptance Certificate, to repair or replace any of the Municipal Improvements where there were any hidden or latent defects in any of the Municipal Improvements which were not discovered prior to the issuance of the Final Acceptance Certificate.

PART SEVEN - DEFAULT BY THE DEVELOPER

Notice of Default

7.1.1 In the event that the Town claims that the Developer is in default in the observance and performance of any of the terms, covenants or conditions of this Agreement, the Town may give the Developer 30 days notice in writing of such claimed default and require the Developer to rectify same within the said period of 30 days.

7.1.2 If the Developer denies that there is a default as claimed in such notice, the Developer shall within 10 days of receipt of such notice request a reference to arbitration in the manner set out in the general arbitration provisions of this Agreement.

7.1.3 The Developer agrees that in the event that the Town has given the Developer written notice of default and the Developer does not, within 10 days of receipt of the written notice, dispute that it is in default, then the Developer shall conclusively be deemed to have acknowledged the default.

7.1.4 An arbitration decision obtained in accordance with this Agreement respecting a claimed default on the part of the Developer shall be final and binding upon the Town and the Developer and if such arbitration decision confirms that the Developer is in default in the observance and performance of its obligations under this Agreement:

(a) the Developer shall have a period of 30 days from the receipt of the arbitration decision within which to rectify such default, or

(b) if the Town by its notice of claimed default has elected to rectify the default at the Developer's cost and expense (which the Town shall have the right to do), the Town shall proceed to rectify the default at the Developer's cost and expense.

Remedies of the Town on Default

7.2.1 Any rights and remedies available to the Town upon default of the Developer, whether specified in this Agreement or otherwise available at law, are cumulative and not alternative and the Town shall be entitled to enforce any right or remedy in any manner it deems appropriate in its discretion without prejudicing or waiving any other right or remedy otherwise available.

7.2.2 Notwithstanding anything to the contrary herein, in the event that the Engineer, in its absolute discretion acting reasonably, considers it necessary to undertake any immediate work for the repair of (or completion of) any of the Municipal Improvements in a situation which the Town considers to be an emergency, the Engineer shall immediately notify the Developer of such situation and shall be entitled to then cause such work to be done; provided that upon completion of emergency work the Town

shall give notice in writing to the Developer. If the Town claims that such repair work was made necessary by reason of a default on the part of the Developer in the observance or performance of the terms, covenants and conditions of this Agreement, and if the Developer denies the claimed default, it shall within 10 days request a reference to arbitration in the manner set out in the general arbitration provisions of this Agreement.

7.2.3 If the Developer has not completed its responsibilities pursuant to this Agreement within 2 years of the date of this Agreement, the Town at its sole discretion may consider the Developer to be in default.

7.2.4 The Developer agrees that the Town shall, for purposes of undertaking any emergency work, have free and uninterrupted access to all portions of the Development Lands and any other areas under the control of the Developer and that the Town shall not be hindered nor restricted in any manner whatsoever in obtaining or exercising such right of access.

7.2.5 The Town may, in addition to any other rights or remedies it may have, make demands as obligee under any performance bonds, maintenance bonds, or as payee under any irrevocable letter of credit or access any security monies held by the Town pursuant to this Agreement, in the event of any of the following:

(a) a confirmed default by the Developer has not been rectified by the Developer in accordance with the foregoing provision;

(b) a confirmed default by the Developer has been rectified by the Town in accordance with the foregoing provisions and the Developer fails to pay the cost and expense of such rectification within 30 days after receipt from the Town of an account therefore;

(c) emergency repair work has been done to the Municipal Improvements by the Town in accordance with the foregoing provisions and a default of the part of the Developer has been confirmed as rendering such repair work necessary, and if the Developer fails to pay the cost and expenses of such repair work within 30 days after receipt from the Town of an account therefore; and

(d) a claimed default which the Developer has not denied has not been rectified by the Developer or has been rectified by the Town in accordance with its notice and the Developer fails to pay the cost and expense of such rectification within 30 days after receipt from the Town of and account therefore.

7.2.6 If there is a default and a failure to pay or a failure to rectify by the Developer as referred to in the preceding paragraph, the Town is entitled to terminate this Agreement, and further, the Developer agrees:

(a) that the termination of this Agreement shall be effective upon the Town serving written notice of termination on the Developer;

(b) that in the event that this Agreement is terminated in whole or in part as provided in this paragraph, then the Developer shall not be entitled to commence (or recommence) construction of the Municipal Improvements for the Development Lands unless and until a further written Agreement is entered into between the Developer and the Town; and

(c) that despite termination, the provisions of this Agreement which by their context are meant to survive the expiry or earlier termination of this Agreement (including the Developer's obligation to indemnify the Town) shall so survive for the benefit of the party relying upon the same. Without restricting the foregoing, any obligations of the Developer which are in default, all financial obligations of the Developer, and all provisions respecting the security held by the Town, shall survive any such termination.

PART EIGHT - ARBITRATION

Matters in Dispute

8.1 Any matter in dispute relating to whether the Municipal Improvements, as constructed, meet the required specifications may be submitted to arbitration at the request of either party.

Arbitration Process

8.2.1 A single arbitrator will be selected by mutual agreement between the parties hereto, and in the event that the parties cannot agree, each party shall appoint an arbitrator, and each such arbitrator so appointed shall appoint a third arbitrator within fourteen (14) days thereafter, and such persons so appointed shall constitute the board of arbitration, and the last person appointed shall act as chair thereof.

8.2.2 No one shall be nominated or act as arbitrator who is in any way financially interested in the conduct of the work or in the business affairs of either party.

8.2.3 All arbitration proceedings shall be governed by the *Arbitration Act*, R.S.A. 2000, c.A-43.

Final and Binding

8.3 The decision of the single arbitrator or the majority decision of the board of arbitration shall be final and binding upon the parties. Agreement to submit to arbitration is to be construed as an integral part of this Agreement.

PART NINE - GENERAL

Caveat

9.1 The Town shall be entitled to file a Caveat respecting this agreement with the Land Titles Office pursuant to the provisions of the Municipal Government Act.

Schedules

9.2 All Schedules annexed hereto are incorporated into and deemed to be part of this Agreement and without restricting the generality of the foregoing, the Developer shall, subject to the terms and conditions herein contained, construct and complete any works specified in **Schedule J** and otherwise perform and meet the requirements of all conditions thereof.

Conflict

9.3 If the Construction Drawings and Construction Specifications are inconsistent or in conflict with the Design Guidelines, the Design Guidelines shall prevail unless the approval of the Construction Drawings and Construction Specifications expressly states that they are to prevail over the Design Guidelines.

Delivery of Notice

9.4 Any notice under this Agreement shall be delivered or sent by prepaid registered mail:

Addressed to the Town at:

Name of Town
Street Address
Town, Province
Postal Code

Addressed to the Developer at:

[Insert Developer mailing address]

Amendment

9.5 This Agreement may be amended only by memorandum in writing, duly executed by both parties hereto.

Time

9.6 Time shall be of the essence in matters relating to this Agreement.

Not A Permit

9.7 This Agreement does not constitute a development permit or any other permit of the Town.

Assignment

9.8 The Developer shall not assign its rights, duties, or obligations under this Agreement without the written consent of the Town first having been obtained.

Covenants Running With the Land

9.9 It is further agreed between the parties hereto that all herein specified standards, requirements and any unfulfilled obligations due and owing to the Town by the Developer, are hereby declared and agreed by the parties hereto to be and constitute covenants running with the land and binding upon any subsequent owners of any lots within the Development Lands.

Applicable Laws and Effect

9.10.1 This Agreement shall be interpreted pursuant to the laws of the Province of Alberta.

9.10.2 The Developer hereby acknowledges that it is executing this Agreement having been given the full opportunity to review the same and seek proper and independent legal advice and that the Developer is executing this Agreement freely and voluntarily and of its own accord without any duress or coercion whatsoever and that the Developer is fully aware of the terms, conditions and covenants contained herein and the legal effects thereof.

PART 10 - EXECUTION

IN WITNESS WHEREOF, the Developer and the Town hereto have caused to be affixed their respective seals attested by the signatures of their respective duly authorized signing officers, as of the day and year first above written.

THE TOWN OF _____ **DEVELOPER**

Per: _____ Per: _____
Mayor

Per: _____(c/s) Per: _____(c/s)
Chief Administrative Officer

PART ELEVEN - SCHEDULES

1. SUBMISSIONS

2. APPENDIX 1 - DEVELOPMENT LOCATION PLAN (1:5000)
   APPENDIX 2 - APPROVED LAND USE PLAN

3. APPENDIX 1 - APPROVED PROPOSED SUBDIVISION PLAN
   APPENDIX 2 - APPROVED UTILITY RIGHT OF WAY PLAN

4. INTERPRETATION

5. DEVELOPER'S COSTS

6. CALCULATION OF COSTS TO BE RECOVERED FROM FUTURE DEVELOPERS

7. SECURITY REQUIREMENTS

8. ADMINISTRATION FEE

9. CONTRACTOR'S BONDING

10. DEVELOPMENT SCHEDULE

11. SPECIAL CONDITIONS

12. SHALLOW UTILITY ALIGNMENT APPROVAL

13. MISCELLANEOUS APPROVALS AND PERMITS

14. SAMPLE CONSTRUCTION COMPLETION CERTIFICATE

15. SAMPLE FINAL ACCEPTANCE CERTIFICATE

16. DESIGN GUIDELINES

SCHEDULE A - INTERPRETATION

1 Whenever the singular and masculine are used throughout this Agreement, it shall be construed to mean the plural and feminine where the context, or the party or parties hereto so required, and the rest of the sentence shall be construed as if the necessary grammatical changes thereby rendered necessary had been made.

2 In this Agreement, the following expressions or words shall have the meanings shown:

Area Improvement Charge means a charge payable by the Developer for the recovery of the cost of designated Area Improvements constructed or to be constructed by another Developer, as determined by the Engineer, based on the actual or estimated cost, and the proportion of the benefiting area within the Development Lands, divided by the total area benefiting from the Area Improvements.

Area Improvements means those Municipal Improvements which have been constructed or will be constructed in the Service Area, and which will directly benefit the Development Lands.

As-Constructed Plans means a set of plans utilizing the Town's engineering symbols and format and showing (as determined by field measurement post-construction) for all Surface Improvements, paving, Underground Improvements, and landscaping: actual location, length, size, material, classification of material, gradient, and year of construction.

Boundary Improvement Charge means a charge payable by the Developer for the recovery of the costs of Boundary Improvements constructed or to be constructed by another Developer, as determined by the Engineer, based on the actual or estimated cost, and the proportion of benefiting length of the Development Lands frontage divided by the total frontage benefiting from the Boundary Improvements.

Boundary Improvements means those Municipal Improvements which have been constructed or will be constructed along the boundary of the Development Lands, and which will directly benefit the Development Lands.

Building Permit means either a development permit issued pursuant to Part 17 of the Municipal Government Act, or a building permit issued pursuant to the *Safety Codes Act*, R.S.A. 2000, c. S-1, as the context may require.

Construction Completion Certificate (or CCC) means a certificate in the form attached as **Schedule M** of this Agreement, certifying construction completion of Underground Improvements, Surface Improvements, landscaping, or paving.

Construction Drawings means those engineering plans and profiles prepared by the Consulting Engineer, showing the details of the installation of the Municipal

Improvements within and adjacent to the Development Lands using standard engineering symbols and forms, and conforming to the Design Guidelines.

Construction Specifications means the documents prepared by the Consulting Engineer specifying the legal, administrative, and technical aspects of the Municipal Improvements, all of which shall conform to the minimum requirements set forth in the Design Guidelines.

Consulting Engineer means a licensed member of the Association of Professional Engineers, Geologists, and Geophysicists of Alberta, who is an authorized officer of a consulting engineering firm retained by the Developer, who has designed the Municipal Improvements and has or will supervise the installation of the same within the Development Lands according to the approved Construction Drawings and Construction Specifications.

Contractor is a person, firm, or corporation retained by the Developer to construct the Municipal Improvements in accordance with this Agreement and the approved Construction Specifications and Construction Drawings.

Design Guidelines means the Town's Design Guidelines and General Construction Specifications (Design Guidelines) as approved by the Town from time to time.

Director of Community Services and **Director of Engineering Services** mean the persons appointed to hold those positions in the Town of _____.

Endeavour to Assist means the efforts of the Town to recover from future developers and for the benefit of the Developer the designated portion of the costs of various Municipal Improvements paid for by the Developer which benefit lands other than the Developer's lands.

Engineer means the Town's Director of Engineering Services or the person authorized by the Town to perform that function from time to time.

Final Acceptance Certificate (**FAC**) means a certificate in the form attached as **Schedule N** to this Agreement.

Gross Area means the area of the Development Lands as shown on the plan of survey for the Development Lands, including any area which may be dedicated for roads, lanes, walkways, parks, reserves, schools, or any other public use.

Lateral Water/Sewer/Storm Mains mean that portion of the water, storm sewer and sanitary sewer system extending from the Trunk Sanitary, Trunk Storm, or Trunk Water Main, including all service connections.

Level One Landscaping means the site grading, placing and leveling of topsoil to the final approved design grades, site seeding to grass, and the establishment of turf and soil composition, all in accordance with the Design Guidelines and approved landscape drawings.

Level Two Landscaping means the planting of shrubs, trees, associated materials including bed and well construction in areas designated by the Town and as specified in **Schedule J,** all in accordance with the Design Guidelines and approved landscape drawings.

Level Three Landscaping means the supply and installation of various park facilities and/or amenities (e.g. trails, signage, playground equipment, bollards, fencing, site furnishing, etc.) in areas designated by the Director of Community Services and as specified in Schedule J, all in accordance with the Design Guidelines and approved landscape drawings.

Municipal Improvements means any and all improvements for the benefit of the public to be located within the Development Lands and all work to be done by the Developer pursuant to any applicable planning authority approval, including but not restricted to the following:

(a) paved roadways (excluding Public Roadways);

(b) sidewalk, curb and gutter;

(c) paved or gravel lanes and walkways;

(d) water, sanitary, and storm sewer mains (excluding Trunk Main);

(e) water, sanitary, or storm service connections;

(f) shallow utilities including electrical distribution (excluding service leads), street lighting, natural gas, telecommunications, cable television, fibre optic cable;

(g) landscaped boulevards, medians, municipal reserves, and public utility lots; and

(h) traffic control signs, street name identifier signs, subdivision information signs, subdivision entrance sign.

Net Area means the area of the Development Lands remaining after deletion of areas required for public arterial roadway from the Gross Area.

Off-Site Levy Charges means those off-site levies imposed under the *Town of _____ Off-Site Levy By-Law*.

Oversize Improvements means a larger size Municipal Improvement, not designated by the Town as Trunk Main, which provides additional capacity required to service other lands within the Service Area not owned or under the control of the Developer.

Oversize Improvement Cost means a charge payable by the Developer for the recovery of the cost of designated Oversize Improvements constructed by the Town or by another Developer, as determined by the Engineer, based on the actual or estimated Oversize Cost, plus Carrying Costs and the proportion of the benefiting area within the Development, divided by the total area benefiting from the Oversize Improvement.

Plan or Plans of Subdivision means the plan or plans required to subdivide the Development Lands as may be approved by the Town in accordance with this Agreement, as may be tentatively shown within **Schedule C**.

Public Roadway means a major arterial roadway (including the land for right of way, storm drainage, traffic signals, and street lighting) existing or proposed, that has been designated an arterial roadway by the Town.

Public Property may be defined as including all properties within and adjacent to the Development Lands to be owned or administered by the Town, including utility rights of way, following the registration of the Plan or Plans of Subdivision for the Development Lands.

Recreational Contribution means a charge payable to the Town by the Developer for the costs of developing standard recreational amenities within neighbourhood park site(s) as identified in the approved landscape plan.

Signalization Contribution means a contribution towards light signalization of Highway 2A and Highway 597 as determined by the Town.

Service Area means an area, consisting of a number of developments, served by a common system of collector and/or local roadways, Lateral Water Mains, Lateral Sanitary Mains, and/or Lateral Storm Mains; the boundaries of which are determined by the Engineer.

Subdivision Authority means a subdivision authority established under Part 17, Division 3, of the Municipal Government Act.

Surface Improvements means those Improvements listed in subsections (a), (b) and (c) of the definition of Municipal Improvements.

Trunk Main includes Trunk Sanitary Sewer, Trunk Storm Sewer, and Trunk Water Main.

Trunk Sanitary Sewer means an existing or proposed sanitary sewer, generally having an internal diameter of 375 mm or greater, complete with related pumping facilities, that has been designated by the Town as a Trunk Main.

Trunk Storm Sewer means an existing or proposed storm sewer; generally defined as having an internal diameter of 1200 mm or greater, complete with related storage facilities; that has been designated by the Town as a Trunk Main.

Trunk Water Main means an existing or proposed water main; generally having an internal diameter of 350 mm or greater, complete with related pumping and storage facilities; that has been designated by the Town as a Trunk Main.

Underground Improvements means those improvements listed in subsections (d) and (e) of the definition of Municipal Improvements.

Utility Right of Way Plan means the plan or plans showing the utility rights of way (easements) to be registered with the Land Titles Office and necessary for the provision of municipal utility services to the Development Lands and subdivision lots as may be approved by the Town in accordance with this Agreement, as may be tentatively shown within **Schedule C.**

SCHEDULE B - SUBMISSIONS

ITEM	DATE
PLANS AND PROFILES	_____
CONSTRUCTION SPECIFICATIONS	_____
GEOTECHNICAL REPORT	_____
PERMIT TO CONSTRUCT RECEIVED FROM ALBERTA ENVIRONMENT	_____
LINE ASSIGNMENTS:	
5.1 ATCO GAS	_____
5.2 TELUS COMMUNICATIONS INC.	_____
5.3 SHAW CABLE SYSTEMS LTD.	_____
5.4 FORTIS ALBERTA INC.	_____
5.5 FIBREOPTIC CABLE, IF APPLICABLE	_____
FIRE DEPARTMENT APPROVAL	_____
PARKS APPROVAL OF LANDSCAPE PLANS (TO BE CONSTRUCTED BY THE DEVELOPER)	_____
LANDSCAPE PLANS AND COST ESTIMATES (TO BE CONSTRUCTED BY THE TOWN ON BEHALF OF THE DEVELOPER)	_____
CONSTRUCTION SCHEDULE	_____
COST ESTIMATES:	
10.1 DEVELOPER'S COSTS FOR MUNICIPAL IMPROVEMENTS TO DETERMINE SECURITY REQUIREMENTS	_____
10.2 ADMINISTRATION FEE	_____

10.3 CONDITIONS OF SUBDIVISION _____

PLANS:

11.1 APPROVED LAND USE PLAN _____

11.2 APPROVED TENTATIVE PLAN OF SUBDIVISION _____

11.3 UTILITY RIGHT OF WAY PLAN _____

_____

12. CONTRACTOR'S BONDING _____

SCHEDULE C

Attached, as part of Schedule B, are the following:

Appendix 1 - Development Location Plan

Appendix 2 - Approved Land Use Plan

SCHEDULE D

Attached, as part of Schedule C, are the following:

Appendix 1 - Approved Proposed Subdivision Plan

Appendix 2 - Utility Right of Way Plan

SCHEDULE E - SUMMARY OF LEVIES, CHARGES AND COSTS

1. GENERAL

The Developer shall pay to the Town the following sums arrived at by the calculations attached to this Schedule.

2. DEVELOPMENT LANDS

Gross Area ha

3. OFF-SITE LEVY CHARGES

Water per hectare $ x hectares = $ _____

Sanitary per hectare $ x hectares = $ _____

Total Off-Site Levy Charges $ _____

3. TRANSPORTATION CHARGES

_____hectares @ $ _____per hectare

Total transportation charges $ _____

4. BOUNDARY IMPROVEMENT CHARGE (see Schedule D, Appendix 2)

Roadways and Lanes $ _____

Water $ _____

Sanitary $ _____

Storm $ _____

Other $ _____

Total Boundary Improvement Charge $_____

5. AREA IMPROVEMENT CHARGE (see Schedule D, Appendix 3)

Roads	$ _____
Water	$ _____
Sanitary	$ _____
Storm	$ _____
Other	$ _____

Total Area Improvement Charge $_____

6. LANDSCAPING to be constructed by the Town on behalf of the Developer and /or by the developer. $_____

7. MONEY IN LIEU OF RESERVE DEDICATION (see Schedule D, Appendix 4) $_____

8. OVERSIZE IMPROVEMENT COST $_____

9. RECREATIONAL CONTRIBUTION

_____ lots @ $1150.00 per dwelling unit $_____

9. SURVEY CONTROL NETWORK FEE
$113.30/gross acre x acre (ha) = $_____

10. SIGNALIZATION CONTRIBUTION

lots @ $ 600.00 per lot = $_____

TOTAL DEVELOPER CHARGES $ _____

SCHEDULE E - SUMMARY OF DEVELOPER'S COSTS

APPENDIX 1

GROSS AREA
(as per Plan of Subdivision)

SCHEDULE E - SUMMARY OF DEVELOPER'S COSTS

APPENDIX 2

BOUNDARY IMPROVEMENT CHARGE CALCULATIONS

SCHEDULE E - SUMMARY OF DEVELOPER'S COSTS

APPENDIX 3

AREA IMPROVEMENT CHARGE CALCULATIONS

SCHEDULE E - SUMMARY OF DEVELOPER'S COSTS

APPENDIX 4

CONDITIONS OF SUBDIVISION

Attached, as part of this Schedule, is a letter from the Subdivision Authority outlining the conditions of subdivision.

SCHEDULE F Error! Bookmark not defined.

CALCULATION OF COSTS TO BE RECOVERED FROM FUTURE DEVELOPERS

1. Construction of adjacent Collector and/or Arterial Roadway to the Subdivision and extension of services including underground services to be constructed as part of the subdivision development to facilitate access and proper engineering of services, with portion of the cost of construction recoverable from future adjacent developments.

SCHEDULE G - SECURITY REQUIREMENTS

1.1 SECURITY REQUIREMENTS FOR MUNICIPAL IMPROVEMENTS CONSTRUCTED BY DEVELOPER

Estimated Cost of Construction Pursuant to Paragraph 2.12 e.:

ITEM	ESTIMATED COST
Water within the subdivision	$ _____
To the subdivision	
Sanitary within the subdivision	$ _____
-to the subdivision	
Storm – within the subdivision	$ _____
To the subdivision	
Services (Shallow services)	$ _____
Roadways (gravel)	$ _____
(paved)	$ _____
Boundary Road Improvements	$ _____
Sidewalks	$ _____
Lanes	$ _____
Landscaping to be undertaken by the Developer And/or the Town	$ _____
Other (Specify)	$ _____
Total Cost	$ _____
Grand total cost	$ _____

Security Requirements Pursuant to Paragraphs 5.1.1 and 5.1.2:

25% of Total Cost noted above (minimum $100,000) $ _____

2.0 **TOTAL SECURITY REQUIRED** **$ _____**

SCHEDULE H – ADMINISTRATION FEE

1.1 Total cost of Municipal Improvements as outlined in Schedule F $ _____

x 1.5% $_____

1.2 **TOTAL ADMINISTRATION FEE REQUIRED** **$_____**

SCHEDULE I - CONTRACTOR'S BONDING

APPENDIX 1
CONTRACTOR'S BONDING

Attached, as part of this Schedule, are copies of the following:

1. Contract Performance Bond

2. Labour and Material Bond

SCHEDULE J - DEVELOPMENT SCHEDULE

Construction Start Date — See attached Schedule submitted by Developer

SCHEDULE K - SPECIAL CONDITIONS

The following are specific terms and conditions of this Agreement:

SCHEDULE L - SHALLOW UTILITY ALIGNMENT APPROVALS

Attached, as part of Schedule "K", are letters for the following shallow utilities:

1. Atco Gas
2. Telus Communications Inc.
3. Fortis Alberta Inc.
4. Shaw Cable Systems Ltd.
5. Fiberoptic Conduit

SCHEDULE M - MISCELLANEOUS APPROVALS AND PERMITS

SCHEDULE N - CONSTRUCTION COMPLETION CERTIFICATE

THE TOWN OF _____
PRIVATE DEVELOPMENT AGREEMENT
CONSTRUCTION COMPLETION CERTIFICATE

Subdivision Name: _____ Developer:
Development Agreement Dated: _____ Contractor:
Municipal Improvements: _____
_____
_____
_____

Date of Application: _____

I, _____ of the Firm
_____ "Consulting Engineer", hereby certify that the Municipal Improvements noted herein are complete as defined by the Development Agreement, and constructed as far as can be practically ascertained according to the Town of _____ Design Guidelines and the Construction Drawings and Construction Specifications.

I hereby recommend The Town of _____ accept the Municipal Improvements noted herein and issue this Construction Completion Certificate.

STAMP _____ Date _____
Consulting Engineer

_____ Date _____
Engineer

Date Maintenance Period to Start: _____

Date Maintenance Period to Expire: _____

Approved/Rejected: _____ Date: _____
Director of Engineering Services
Remarks: _____
_____
_____
_____

SCHEDULE O - FINAL ACCEPTANCE CERTIFICATE

THE TOWN OF _____
PRIVATE DEVELOPMENT AGREEMENT
FINAL ACCEPTANCE CERTIFICATE

Subdivision Name:_____Developer:_____

Development Agreement Dated:_____Contractor:_____

Municipal Improvements: _____

_____

Date of Application: _____

I, _____ of the Firm _____
"Consulting Engineer", hereby certify that as of the above date, the Municipal Improvements noted herein meet all of the requirements for final acceptance as specified by The Town of _____ Development Agreement, and I hereby recommend these Municipal Improvements for final acceptance by The Town of _____.

_____ Date: _____
STAMP Consulting Engineer

_____ Date: _____
Signing Officer, Consulting Engineer

_____ Date: _____
STAMP Engineer

Approved/Rejected _____ Date: _____
Director of Engineering Services

NOTE: The Consulting Engineer is to submit a new Final Acceptance Certificate when cause(s) for rejection have been corrected. See attached report for causes(s) for rejection.

I hereby certify that all items listed as reasons for rejection have been corrected.

_____ Date: _____
Consulting Engineer

SCHEDULE P - DESIGN GUIDELINES

Appended are:

1. Design Guidelines
2. Landscaping and Street Lighting Requirements

9.1.2 Deferred Servicing Agreement

MEMORANDUM OF AGREEMENT made this___day of_____, 20___.

BETWEEN:

(Municipal Name, a municipal corporation, in the Province of Alberta, (hereinafter referred to as the "Municipality")
-and-
, a body corporate with offices in

, in the Province of Alberta,
(hereinafter referred to as the "Developer")

DEFERRED SERVICING AGREEMENT

RECITALS:

1. The Developer is the registered owner of all that land within the Municipality legally described as:

   Plan
   Block Lot
   Containing_____hectares (acres) more or less
   Excepting thereout all mines and minerals and the right to work the same

   That constitutes the "Development Site" for the purpose of this Agreement (all as outlined on the plan attached as "Plan 1");

2. The *Municipal Government Act*, R.S.A. 2000, c. M-26, as amended, (the "Act") provides that the Subdivision Authority may require the applicant for subdivision to enter into an agreement with Council of the Municipality respecting the construction or payment for construction of roadways required to give access to the subdivision, a pedestrian walkway system to serve the subdivision, installation of utilities that are necessary to serve the subdivision, off-street or other parking areas, loading and unloading areas, and an off site levy.

3. The Subdivision Authority has imposed such a condition.

4. The Municipality and the Developer wish to provide for the orderly and mutually beneficial servicing of the Development Site.

5. The Municipality and Developer acknowledge that the Developer proposes to subdivide the land outlined on Plan 1 as the first phase of development of the Development Site and the Municipality has therefore agreed that the construction of roads and utilities to service the Development Site will be phased and in part postponed, until such time as the Development Site or any portion thereof is the subject of:
   a. the approval and registration of a further subdivision or subdivisions; or

b. an application or applications and approval of such applications for: a development permit or permits or a building permit or permits; for developments to be located within the Development Site; or
c. an application for and connection to existing or future utilities constructed or caused to be constructed by the Municipality within or adjacent to the Development Site; or
d. of a sale, transfer or other disposition to another person or entity of all or any portion of the Development Site; or
e. an application for and approval of a land use redesignation affecting all or part of the Development Site;

the occurrence of any one or more of the foregoing being hereinafter referred to as a "Triggering Event".

NOW THEREFORE in consideration of the mutual covenants and undertakings herein provided, the Municipality and the Developer agree as follows:

ARTICLE I - DEFINITIONS

Definition of Words and Phrases

For definition of words used in this Agreement reference shall be made to the Act and then to the **(Name of Municipality)** Land Use Bylaw, and for words that are not therein defined reference shall be made to The Oxford Reference Dictionary.

ARTICLE II - CONSTRUCTION OF LOCAL IMPROVEMENTS

Requirement to Construct Roads and Utilities

1. If the Development Site is the subject of a Triggering Event initiated by the Developer or any successor in title to the Development Site, then the Developer or such successor shall:

   a. enter into a Subdivision Servicing Agreement or a Development Agreement with the Municipality substantially in the form of the agreement as then may be approved by the municipal council for general use, pursuant to sections 650, 651(1) or 655 of the Act, or any parallel or successor legislation (and in the event the municipal council has not approved such agreement then in the form then commonly used by the Municipality for such purposes), and

   b. pay or make arrangements satisfactory to the Municipality to pay in order of the Municipality the then applicable Off-Site Levy imposed by the municipal council of the Municipality from time to time or at any time pursuant to the Act or any successor or parallel legislation; and

   c. pay or commute, or make arrangements satisfactory to the Municipality for the payment or commutation of all outstanding property taxes on the land proposed to be subdivided, or

d. at the sole option of the Municipality, enter into a further deferred servicing agreement with the Municipality substantially in the form of this agreement; or

e. any combination of the foregoing as may be required by the circumstances;

and failing such agreement and payment or commutation of the Off Site Levy and property taxes, or arrangements for payment or commutation, the Municipality shall not be obligated to issue any development permit or building permit nor permit connection to any utility constructed or caused to be constructed by the Municipality for any development located, either in whole or in part, within the Development Site nor shall the Municipality be required to execute any plan of subdivision of any part of the Development Site.

2. Notwithstanding clause 1(a), where a Triggering Event relates not to the Development Site as a whole but to a further Subdivision Area, being a portion of the Development Site or a phase of the development thereof, then the obligations of the Developer to the Municipality, as set forth in clause 1(a), shall be in respect only of such further Subdivision Area and not to the Development Site as a whole. If the Developer or any successor in title to the Development Site and the Municipality are unable to agree upon the terms of the Subdivision Servicing Agreement or Development Agreement or, if applicable, a deferred servicing agreement substantially in the form of this agreement, then either party may refer such matters as are in dispute to arbitration by a sole arbitrator in accordance with *Arbitration Act*, 1980 R.S.A., A-43.1. The arbitrator shall resolve such dispute in accordance with the legislated purpose of section 617 of Part 17 of the Act and the provisions of sections 650, 651(1) and 655 of the Act.

3. The Developer and Municipality agree that in the event the Development Site is further subdivided, then the Municipality shall allocate the remaining portion of any local improvement tax as against the lots or parcels to be subdivided from the Development Site and the balance of the Development Site in a fair and equitable manner pursuant to section 402 of the Act.

4. The Developer and the Municipality agree that in the event the Development Site is further subdivided then the Developer shall do all such things as are reasonably required to assist the Municipality to ensure that any local improvement tax is equitable apportioned against the Development Site pursuant to section 402 of the Act.

ARTICLE III - REQUIREMENT TO RETAIN OBLIGATIONS

1. Prior to any sale of the Development Site, as may be applicable and whether in whole or in part, the Developer shall require any purchaser or purchasers to assume the obligations of the Developer under this agreement in respect of that portion(s) of the Development Site that the purchaser is acquiring. Upon effective assumption of those obligations by the purchaser or purchasers, the Developer's obligations pursuant to the applicable portion of

the Development Site, as may be applicable, shall be terminated and at an end.

2. The Developer acknowledges that the Municipality has entered into this agreement based upon the Developer's request and representations to the Municipality that the Developer will do all things necessary to ensure that all lots and developments within the Development Site are fully and properly serviced at the expense of the Developer or any subsequent owner of any portion of the Development Site for which a development, as defined in the Act, is proposed.

ARTICLE IV - GENERAL

1. Waiver

A waiver by either party hereto of the strict performance by the other of any covenant or provision of this Agreement shall not of itself constitute a waiver of any subsequent breach of such covenant or provision, or of any other covenant, provision or term of this Agreement.

2. Further Documents

Both parties shall execute and deliver all further documents and assurances reasonably necessary to give effect to this Agreement and to discharge the respective obligations of the parties.

3. Force Majeure

Neither of the parties shall be deemed to be in default in respect of non-performance of its obligations under this Agreement if and so long as the non-performance is due to strikes, lockouts, fire, tempest, acts of God, or the Queen's enemies beyond its control, and all time periods shall be extended by one day for each day of delay; however, delay from lack of finances shall in no event be deemed to be cause beyond a party's control.

4. Non-Assignment of Agreement

This Agreement shall not be assignable by the Developer without the prior written approval of the Municipality which approval shall not be unreasonably withheld. It shall, however, be a condition of the Municipality granting the approval that the proposed assignee provide the Municipality with evidence satisfactory to the Municipality that the proposed assignee has complied or can comply with the provisions of this Agreement. An assignment shall be deemed to be required if the Developer is a "body corporate" as defined in the *Business Corporations Act*, S.A. 1981, B-15, as amended, or any successor or parallel legislation and sufficient shares are issued or transferred to change effective control of the Developer or if the Developer is a joint venture, partnership or limited partnership and there is a change in the members of the Developer.

5. Developer's Covenant

a. The Developer covenants, undertakes and agrees that the conditions, terms and provisions of the Agreement shall be deemed to be: covenants running with the land contained in the Development Site; conditions authorizing the development and subdivision of the lands; and shall be binding upon the Developer and its successors-in-title. Prior to and after the execution of this agreement for the Subdivision Area and Development Site, the Developer shall obtain the same covenants as are herein contained from any person to whom it may in any way convey the Subdivision Area or Development Site or any undivided interest.

b. The Municipality shall be entitled to file and maintain a Caveat against the interest of the Developer in any and all portions of the Subdivision Area or Development Site, evidencing this Agreement. The Municipality shall from time to time, upon the request of the Developer, execute and deliver to the Developer for registration in the appropriate Land Titles office, registerable postponements of the Caveat, postponing the said Caveat in favour of any encumbrance or encumbrances to be registered against the whole or any portion of the Subdivision Area or Development Site, as may be applicable, to secure advances made for interim and long term financing (or either of them) of roadways or utilities to service the Subdivision Area or the Development Site, provided that the secured party under the terms of such encumbrance covenants and agrees with each other as follows:

    i. the secured party will assume all the obligations of the Developer under this Agreement in the event that the secured party shall foreclose or otherwise take possession of the Subdivision Area or Development Site pursuant to its encumbrance if and so long as such possession is taken and retained by such secure party; and

    ii. the Municipality agrees that if it shall require the secured party to assume all the obligations of the Developer under this Agreement then it shall not foreclose any caveat protecting this Agreement from any title to land within the Subdivision Area or Development Site.

6. <u>Notice</u>

Any notice, communication or request to be given to either party shall be in writing by registered mail, postage prepaid, or by personal delivery or by facsimile addressed to such party at the address set below:

Municipality: (Municipal Address)
(Contact Name)

The Developer:

or at such other address as either party may from time to time advise the other by notice in writing. Any such notice shall be deemed to have been received on the fifth (5th) business day next following the date it is so mailed or, if by facsimile, twelve (12) hours after transmission; provided that if normal mail or facsimile service is interrupted by strikes, slow

down or other causes, than any of the said services which have not been so interrupted shall be utilized or as in alternative the notice, communication or request shall be personally delivered to ensure prompt receipt.

7. Endurement

This Agreement shall be binding upon and shall endure to the benefit of the respective parties and their successors-in-title and assigns.

8. Gender

This Agreement is to be read with all changes of gender and number as is required by its context.

IN WITNESS WHEREOF the parties hereto have signed and affixed their respective corporate seal by their duly authorized officers this__day of_____, 20__.

MUNICIPALITY

_____

(seal)

"owner"

_____

_____

(seal)

9.1.3 Development Agreement Caveat

CAVEAT

TO THE REGISTRAR OF «LTO**» ALBERTA LAND REGISTRATION DISTRICT**

TAKE NOTICE that **«**Municipality**»**, of «Municipal Address», in the Province of Alberta, claim an interest under and by virtue of a Subdivision Development Agreement dated the _____day of _____, «Year», between «Municipal Name» and «FirstName1» «LastName1» «FirstName2»
«LastName2» «CompanyName» of «LandOwnerAdd1» «LandOwnerAdd2», «LandOwnerCityProvPC» in respect to *Section 655(1)(b)(1)(b) of the Municipal Government Act* and amendments thereto, in:

Lot(s)«Lots» Block
«Block» Plan
«Plan»
BEING PART OF «Quarter» «Section»-«Twp»-«Rge»-W«Meridian»
EXCEPTING THEREOUT ALL MINES AND MINERALS

being lands standing in the register in the name of «FirstName1» «LastName1» «FirstName2» «LastName2» «CompanyName» and I forbid the registration of any person as transferee or owner of, or of any instrument affecting the said estate or interest, unless the instrument or Certificate of Title, as the case may be, is expressed to be subject to my claim.

The nature of the said interest and the grounds upon which same is founded, are as

follows: Pursuant to a Development Agreement made in writing and dated the__day of _____ «YEAR», and entered into between **«Municipal Name»** and **«OWNER1» and «OWNER2»,** a copy of which Agreement is attached hereto, and which Agreement is pursuant to a condition of Development approval granted by the Caveator and pursuant to Section 655(1)(b)(1)(b) of the *Municipal Government Act and amendments thereto.*

I APPOINT «Municipal Name» at, **«Municipal Street Address»** in the Province of Alberta, **«Municipal Postal Code»** as the place at which notices and proceeding relating hereto may be served.

DATED this_____day of_____, A.D. «Year».

«Municipal Name»

(Seal)

_____

«Development Officer Name», Development Officer
Agent for the Caveator

9.1.4 Encroachment Agreement

ENCROACHMENT AGREEMENT

This Agreement dated this_____day of_____, 200__

BETWEEN:

(MUNICIPALITY)
(hereinafter called "the Municipality") OF THE FIRST PART

-AND-

(OWNER NAME)
(hereinafter called "the Owner") OF THE SECOND PART

WHEREAS the Owner is the registered owners of the lands (hereinafter called "the Lands") municipally known as (Municipal Address if Applicable) , being (Legal Land Description), (Municipality);

AND WHEREAS the owner has requested the Municipality to permit the encroachment of (describe the encroachment) encroaching upon the Municipality owned lands which constitute the (describe what is being encroached upon), which encroachment is shown on a sketch attached hereto as Schedule "A";

NOW WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set out, the parties agree as follows:

1. Subject to the provision hereinafter set out, the Municipality hereby permits the Owner to construct the Encroachment and have the Encroachment remain for a term of three years (hereinafter referred to as the Term), commencing on the_____day of_, 20 (hereinafter referred to as the "Commencement Date").

2. The Owner agrees and covenants that it will bear all maintenance costs associated with the Encroachment and maintain plant heights that do not obstruct vehicular or pedestrian sight lines.

3. The Owner agrees to indemnify and save harmless in full the Municipality of and from all liabilities, fines, damages, suits, claims, demands, actions, and cost for such actions for which the Municipality may become liable or suffer by reason of the Encroachment, including their use and removal. Without restricting the generality of the foregoing, the Owner shall indemnify and save harmless in full the Municipality of and from all damages to persons or properties as a result of such Encroachment. This provision shall apply and survive the termination of this Agreement with respect to any act or omission which occurred during the term of this Agreement.

1. The Owner agrees not to hold the Municipality responsible in any way for any loss,

accident, or damage or injury to person or persons on the property resulting from the Encroachment. This provision shall survive the termination of this Agreement with respect to any act or omission which occurred during the term of this Agreement.

2. Nothing in the Agreement shall be construed to mean that the Municipality by virtue of this Agreement has assumed the responsibility of compliance with any municipal by-laws. The Owner covenants to fully comply with any by-law, order or direction of any lawful authority, including the municipal, provincial, or federal governments or their respective agents.
3. The Owner agrees that there shall not be any addition, vertically or horizontally to the Encroachment, without first receiving the Municipality's consent.
4. That the rights conferred by this Agreement shall not be assignable without the Municipality's written consent.
5. Any notice which either party is required to give pursuant to this Agreement may, if intended for the Owner, be given at:

   (Address)

   and if intended for the Municipality, at:

   (Municipal Address)

6. The Owner hereby consents to the registration of this Agreement on the title to the Owner's lands and shall execute any or all such documents for such purposes.

IN WITNESS WHEREOF both parties have hereunto set their hand and seal at ___ this _____ day of _____, 200___.

MUNICIPALITY

Seal _____

Per

OWNER

Seal _____

Per

9.1.5 Road Use Agreement

MEMORANDUM OF AGREEMENT entered into this day of , A.D. 20_____.

BETWEEN:

(MUNICIPALITY)
(hereinafter called "the Municipality") OF THE FIRST PART

-AND-

(OWNER NAME)
(hereinafter called "the Hauler") OF THE SECOND PART

WHEREAS the Municipality by statute is responsible for the control and management of certain public highways, roads, streets, lanes, alleys and bridges (hereinafter referred as "the Municipality Roadways") within the Municipality and the Hauler has applied to the Municipality for permission to haul certain goods and materials on the Municipality Roadways; and

WHEREAS the Municipality is prepared to permit the Hauler to haul the goods and materials requested by the Hauler on the Municipality Roadways, subject to the Hauler undertaking to repair any damage caused to the Municipality Roadways, all on the terms and subject to the conditions hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual covenants and agreements hereinafter set forth and in consideration of the Municipality permitting the Hauler to haul certain goods and materials, as specified on Schedule "A" hereto attached, over the Municipality Roadways during the period of time specified on Schedule "A" hereto attached, Municipality and the Hauler agree as follows:

1. Forthwith upon the execution of this Agreement by the Hauler and the Municipality, the Hauler shall supply the Municipality with security in the amount as may be specified on Schedule "A" hereto attached to ensure compliance by the Hauler with each of the terms, covenants and conditions of this Agreement to be performed or carried out by the Hauler. The security to be provided by the Hauler to the Municipality pursuant to this Agreement shall consist of cash, certified cheque or a Letter or Letters of Credit issued by a chartered bank or the Treasury Branch in favour of the Municipality in such form as may be required by the Municipality.

2. The Hauler shall not haul any goods or materials on the Municipality Roadways until such time as the following conditions shall have been met:

    a. this Agreement shall have been executed by the Hauler and by the Municipality;

    b. the Manager of Transportation for the Municipality (hereinafter referred to as the Transportation Manager") shall have acknowledged receipt of the specified security and authorized the Hauler in writing to proceed with the haulage.

    c. the Hauler shall have paid to the Municipality any permit or administration fee required by the Municipality for the entering into of this Agreement and the granting of approval to the Hauler to haul the goods and materials specified on the Municipality Roadways.

3. The Hauler, while operating within the Municipality, shall at all times comply with all relevant statutes, regulations by-laws and resolutions, including, without restricting the generality of the

    foregoing, all permits, licenses and approvals issued by the Municipality and the directions from time to time of the Transportation Manager for the Municipality.

4. The Hauler shall at all times ensure that all servants, employees, agents, licensees and independent contractors hired or contracted by the Hauler abide by and comply with the terms and conditions of this Agreement and in the event that any of the Hauler's servants, employees, agents, licensees and independent contractors shall fail to abide

by the terms and conditions of this agreement, Sturgeon shall be entitled to any of the remedies hereinafter contained. The Hauler acknowledges that he is responsible for and shall indemnify the Municipality and save the Municipality harmless from any and all liability or damages that result from any failure of any servant, employee, agent, licensee or independent contractor of the Hauler to abide by the terms and conditions of this Agreement. Without restricting the generality of the foregoing, the Hauler shall be responsible for ensuring that any customer of the Hauler or any third party who hauls any goods or materials on the Municipality Roadways with the express or implied consent of the Hauler abides by and complies with all of the terms and conditions set out in this Agreement and the Hauler shall indemnify and save harmless the Municipality from any and all liability or damage that results from any failure of any such customer or third party to abide by the terms and conditions of this Agreement.

5. The Hauler shall ensure that the goods and materials to be hauled by the Hauler are hauled only on those Municipality Roadways which are designated in Schedule "A" hereto attached and the Hauler, at the sole cost and expense of the Hauler, shall ensure that the Municipality Roadways designated in Schedule "A" hereto attached are at all times maintained and repaired by the Hauler in the manner set out in Schedule "A" hereto attached.

6. The Hauler shall ensure that all vehicles used to haul the goods and materials on the designated Municipality Roadways do not exceed the speed limit or speed limits set out in Schedule "A" hereto attached.

7. In the event that the Hauler shall fail to perform or carry out one or more of the obligations and undertakings to be performed or carried out by the Hauler pursuant to this Agreement the Transportation Manager or any other municipal official shall be at liberty to issue a notice of deficiency to the Hauler advising the Hauler of his failure to perform or carry out one or more of his obligations or undertakings pursuant to this Agreement and the Hauler shall immediately undertake to perform or carry out such works or actions as might be stated in the notice of deficiency. In the further event that the Hauler fails to commence to perform or carry out the works or actions stated in the notice of deficiency to the satisfaction of the Municipality within a period of forty eight (48) hours from the receipt of such notice of deficiency by the Hauler, or within such other period of time which might be agreeable to the Municipality, the Municipality shall be at liberty, but not obligated, to perform and to carry out the obligations and undertakings and every cost and expense incurred by the Municipality in carrying out the said obligations and undertakings shall be paid by the Hauler to the Municipality.

8. In the event that the Hauler shall fail to perform or to carry out any of the obligations or undertakings to be performed or carried out by the Hauler pursuant to this Agreement, the Hauler shall pay on demand to the Municipality every cost and expense incurred by the Municipality in enforcing or in attempting to enforce, or both, the terms and conditions contained in this Agreement, including, without restricting the generality of the foregoing, all legal fees and disbursements incurred by the Municipality on a solicitor and client basis.

9. Notwithstanding any other provision contained in this Agreement to the contrary, in the event that the Director, Infrastructure Services or any other municipal official shall certify in writing that an emergency exists as a result of the failure of the Hauler to perform or carry out one or more of it obligations and undertakings under this Agreement, the Municipality shall be at liberty, but not obligated, to immediately perform or carry out the

obligations or undertakings which the Hauler has failed to perform or carry out without notice to the Hauler, and the Hauler shall pay on demand to the Municipality every cost and expense incurred by the Municipality in performing or carrying out any obligation or undertaking which the Hauler has failed to perform or carry out.

10. In the event that the Municipality produces one or more certificates from the Transportation Manager or any other municipal official certifying that the Municipality, or any person claiming from or through the Municipality, is entitled to payment from the security provided by the Hauler for the sum or sums so certified, and where applicable, the Hauler undertakes jointly and/or separately with the financial institution providing the security pursuant to paragraph 1 of this Agreement that the said sum or sums will be so paid immediately on demand without deduction, holdback or further proof and that the Hauler will not say or do anything to impede the prompt payment of such sum or sums by the said financial institution, whether or not the Hauler believes in the accuracy of such certificate. No such certificate shall be invalidated by want of from or error in working and such certificates may be amended from time to time.

11. Any certificates above-described shall be sufficient and conclusive proof as between the parties hereto that the Municipality, or any person claiming from or through the Municipality, is entitled to payment of any sum or sums under any of the clauses of this Agreement notwithstanding the fact that any bank Letter of Credit may have expired, or not have been granted, or that payment of any amount (including damages) due from the Hauler to the Municipality may not be covered by the amount (or terms accepted by the Municipality) of the security provided pursuant to paragraph 1 of this Agreement.

12. Upon the completion of the haul, the Municipality Roadways used by the Hauler shall forthwith be restored by the Hauler to a condition which is satisfactory to the Transportation Manager.

13. In the event that the Hauler shall fail to comply with any of the terms or conditions of this Agreement to be performed or carried out by the Hauler pursuant to this agreement, the Municipality shall be at liberty to serve a notice upon the Hauler requiring the Hauler to quit hauling and upon the service of such a notice by the Municipality on the Hauler, the Hauler shall stop all hauling activities within the Municipality and the Hauler's rights under any permit or license issued by the Municipality to haul goods or materials within the Municipality on Municipality Roadways shall be suspended until such time as the suspension shall be lifted by the Municipality.

14. This Agreement shall not be transferred or assigned by the Hauler without the consent in writing of the Municipality.

15. All notices hereunder shall be valid and effective if personally delivered to or given by mail by registered letter, postage prepaid (unless at the time of or within forty-eight (48) hours thereof there shall be a general disruption in the postal service, in which case, service shall be by delivery only) addressed:

    a. In the case of the Municipality, to:

b. In the case of the Hauler, to:

_____
_____

and if mailed, shall be deemed to have been effectively given three (3) days after mailing and, if delivered, shall be deemed to have been given on the date on which it was delivered. Any party may change its address for receipt of notice by giving notice of its new address to the other party as herein contemplated.

IN WITNESS WHEREOF the Municipality and the Hauler have executed this Agreement as of the day and year first above written.

MUNICIPALITY

Per:_____
Director, Infrastructure Services

SIGNED, SEALED AND DELIVERED)
In the presence of:)
)
) _____
) (haulers name)
_____)
WITNESS as to the signature of

SCHEDULE "A"

1. Goods and materials to be hauled:

2. Proposed period of haulage:

3. Designated haul route:

4. Maximum speed for haulage vehicles (except where lower limits are posted): .

5. Permitted variations from legal or posted axle weight restrictions: .

6. Security provided in the amount of:

7. Road maintenance requirements during haulage:

    a. Gravel surface road;

        i. Road to be maintained with a grader during haulage.

        ii. Dust to be controlled at all times. Oil, Water, Calcium Chloride or other similar approved products may be used for dust control.

        iii. Soft spots and holes that develop shall be filled with gravel immediately.

        iv. Water truck to be on site for dust control purposes as and when required.

    b. Oil surface road;

        i. Holes to be repaired using material approved by the Municipality.

    c. All road damage to be repaired as it develops. All repair materials subject to Municipality approval.

    d. Truck Haul In Progress signs to be installed at the following locations:

8. Hauler to notify all residents along haul route prior to start of haulage.

9. Hauler to supply company contact and phone number to residents as part of notification process.

10. Hauler to notify the Municipality Transportation Manager prior to start of haul.

11. All gravel trucks to be identified with signage on three separate sides of the truck including the rear tailgate area. The signage will consist of lettering not less than 6" in height and will include the name of the hauler and a truck number.

12. A complete listing of trucks used on the haul complete with names and identifying numbers to be provided to the Municipality prior to start of haul.

13. Hours of operation for the truck haul shall be between the hours of and from Monday through .

14. If truck haul is discontinued for two or more days, Truck Haul In Progress signs are to be covered until such time as haul is resumed.

15. Each time haul is resumed after a break in operations residents and the Municipal Coordinator must be notified of the resumed hauling operation.

16. Road restoration requirements upon completion of the haul;

    a. Restore oil surface breaks and damage, restore any failures and rutting in gravel surfaces, blading and re-gravel where required.

    b. Restore dust-controlled areas to pre-haul condition.

    c. Re-shape shoulders and or road slopes that have been pushed out or damaged as a result of the haul.

17. Road must be left in a condition which, in the opinion of the Municipality, is equal to or better than the condition prior to the commencement of the haul.

18. The Municipality will not tolerate non-compliance of any of the above conditions. The Municipality will immediately suspend the truck haul operation if any of the conditions are breached.

ACCEPTED this day of , A.D. 20

MUNICIPALITY

SEAL

Per:
Director, Infrastructure Services

I have read and agree to the terms of this Road Use

Agreement. Per:
Hauler

9.2 CHECKLISTS

9.2.1 Development Permit – Industrial and Commercial Application and Checklist

DEVELOPMENT PERMIT APPLICATION
COMMERCIAL / INDUSTRIAL / INSTITUTIONAL

Development Permit #:_____ **Application Date:**_____

To Be Completed By Applicant:

Do you have a Business License with the Town of _____? ☐ Yes ☐ No

Permit Being Applied for By: ☐ Land Owner ☐ Applicant/Contractor

Landowner Name(s): _____

Mailing Address: _____

City: _____ Prov: _____ Postal Code: _____

Phone: _____ Alt Phone: _____

Email Address: _____

☐ (Same as Landowner)

Applicant/Contractor Name(s): _____

Mailing Address: _____

City: _____ Prov: _____ Postal Code: _____

Phone: _____ Alt Phone: _____

Email Address: _____

PROJECT INFORMATION

Proposed Land Use:

Civic Address of Property to be Developed: _____

Lot: _____ Block: _____ Plan: _____ Land Use District: _____

☐ New Construction ☐ Addition ☐ Second Floor Development

☐ Demolition ☐ Renovation ☐ Accessory Building

☐ Temporary Building (Duration Required): _____

☐ Other: _____

Proposed Use (Description): _____

Existing Land Use: ☐ Vacant ☐ Shop ☐ Storage Sheds ☐ Other: _____

Hazardous Materials on Site (specify): _____

☐ Outdoor Storage Height (avg. from ground level to peak): _____

Total Parcel Coverage: _____ %(must include structures & hard surfacing) Lot Area: _____

Landscaped Area: _____ ☐ sq. meters ☐ sq. feet Number of parking stalls provided: _____

Water Meter Size: ☐ ¾" ☐ 1" ☐ 1.5" ☐ 2" ☐ Other (please specify size): _____

Temporary Water Connection Needed ☐ Yes ☐ No ☐ Other: _____

Overall Area of Building or Addition: _____ ☐ sq. meters ☐ sq. feet

Office: _____ ☐ sq. meters ☐ sq. feet Upper Level: _____ ☐ sq. meters ☐ sq. feet

Number of Bays: _____ Overall Height to Peak from grade: _____ ☐ sq. meters ☐ sq. feet

Structure Type: _____ Exterior Finish: _____ Colors: _____ Roofing Materials: _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

Approximate Value of Development: $_____
(Building Materials and Labour)

☐ **Variance Required:** Reason for variance: _____

PLEASE TURN OVER

The personal information provided as part of this application is collected in accordance with the Alberta Municipal Government Act (MGA), the Freedom of Information and Privacy Act (FOIP), (Name of Municipality) Land Use Bylaw (#) and the Alberta Safety Codes Act (SCA) and will be used by the Town for issuing permits, safety codes compliance verification and monitoring and property assessment purposes. The (Name of Municipality) is authorized to collect this personal information under Section 23 of FOIP and by Section 3 of the MGA. The applicant's name and the nature of the permit will be publicly available, in accordance with the FOIP Act. Collected personal information is protected from unauthorized access, collection, use and disclosure in accordance with the FOIP Act, and can be reviewed and corrected upon request. Should you have any questions or concerns regarding the collection of this information, please contact the FOIP Coordinator at (email address) *or XXX-XXX-XXXX.*

Detailed description of work and/or intended use or occupancy of the building (include extra paper if needed):

_____

_____

_____

_____

NOTES:

1. This Application constitutes part of the permit.
2. Every Development Application shall be completed and submitted in accordance with Section (#) of the (Name of Municipality) Land Use Bylaw (#).
3. Failure to comply with this form fully and lack of the required information and plans may cause delays in processing this Development Application.
4. An Application for a Development Permit shall, at the option of the applicant, be deemed to be refused when the decision of the Development Authority is not made within forty (40) days of receipt of the Application.
5. Any questions related to the collection and use of this permit information should be referred to the Planning and Development Department at XXX-XXX-XXXX.

A DEVELOPMENT PERMIT COMES INTO EFFECT:

a. if it is issued by the Development Authority, twenty-one (21) days after the date of decision.
b. if it is issued by Town Council with respect to a development in a Direct Control District, upon the date of its issue, or
c. if an appeal is made, on the date that the appeal is finally determined.

A development permit remains in effect for twelve (12) months from the date of its issue and thereafter is null and void unless an extension has been requested and approved. A time extension request must be received a minimum of one (1) month prior to expiry.

I hereby make aplication for a Development Permit under the provisions of the (Name of Municipality) Land Use Bylaw (#) in accordance with the plans and supporting information submitted herewith and which form part of this application and will abide by all conditons of approval. By submitting this application I hereby allow right of entry for inspection purposes.

Permit Applicant Name(s): _____

Permit Applicant Signature(s): _____

Landowner Name(s): _____

Landowner Signature(s): _____

FOR OFFICE USE ONLY

Lot: _____ Block: _____ Plan: _____ Land Use District: _____ Tax Roll #: _____

Variance Requested (if applicable): ☐ MPC ☐ Development Officer

IF DEMOLITION PERMIT – COPIES SENT TO: ☐ Utility Department ☐ Tax Department

Development Permit Fee:	$	MPC Date: _____
TOTAL:	$	SDAB Date: _____ Notification Date: _____

Receipt #: _____ Date Application Deemed Complete: _____

The personal information provided as part of this application is collected in accordance with the Alberta Municipal Government Act (MGA), the Freedom of Information and Privacy Act (FOIP), (Name of Municipality) Land Use Bylaw (#) and the Alberta Safety Codes Act (SCA) and will be used by the Town for issuing permits, safety codes compliance verification and monitoring and property assessment purposes. The (Name of Municipality) is authorized to collect this personal information under Section 23 of FOIP and by Section 3 of the MGA. The applicant's name and the nature of the permit will be publicly available, in accordance with the FOIP Act. Collected personal information is protected from unauthorized access, collection, use and disclosure in accordance with the FOIP Act, and can be reviewed and corrected upon request. Should you have any questions or concerns regarding the collection of this information, please contact the FOIP Coordinator at (email address) or XXX-XXX-XXXX.

Commercial / Industrial
Permit Submission Checklist

Date	Applicant Initials	Staff Initials	Requirements
			1. Pre-application meeting held with Planning & Development Staff: ☐ Yes Date: _____ ☐ No
			2. A letter of Authorization from the registered owner of the land, their agent, or other persons having legal or equitable interest in the site. o Where the applicant is an agent for the owner, a letter from the owner must be provided verifying the agent's authority to make the application. o The registered owner of the land needs to be notified that they may be required to enter into an Agreement of the Town. The Agreement will include a security deposit and insurance.
			3. Declaration of Developers agents for this project and their scope of work which may include: o Alberta Land Surveyor o Architect o Municipal Engineer o Transportation Engineer o Lawyer
			4. Signed Application Form(s) (one permit application per lot/title)
			5. Application Fee (see Fee Schedule): Receipt No.: _____
			6. Off-Site Levy Fees (if applicable): Receipt No.: _____
			7. Complete Site Contamination Statement (Phase 1 Environmental Report), as required.
			8. Three (3) paper copies and one (1) electronic / PDF copy of the site plans showing: o General Information: o Municipal address; o Legal Description (Lot, Block, Plan); o North Arrow; o Property lines and dimensions labelled; o Utility rights-of-ways and easements labelled; o Copy of any restrictive covenants, utility rights-of-ways, easements or Town caveats registered on the Title(s) (no older than three (3) months). o Outline of all proposed buildings and / or structures on the site.

			○ Setbacks form proposed buildings and / or structures dimensioned to all property lines, labelled in accordance with the current Land Use Bylaw in effect. ○ Elevations of the proposed buildings and / or structures. ○ Adjacent Town streets, including existing and proposed: ○ Sidewalks, curb & gutters measured from property lines and including sidewalk width; ○ Curb cuts, driveway(s) entrance(s) measured from property line; **CONTINUED ON NEXT PAGE**

Date	Applicant Initials	Staff Initials	Requirements
			○ Medians and / or breaks in medians on public streets adjacent to the site; ○ Existing pedestrian crosswalks adjacent to the site; ○ Corner cuts on corner sites; ○ Road dimensions of any on site circulation roads (indicate one ways). ○ Note that fire lanes are at least 6m wide with a minimum 12m center line radius. ○ Layout of parking areas showing: ○ Dimensioned depth, width, angle and number of parking stalls; ○ Handicapped accessible stalls, access ramps, drop curbs for wheelchair accessibility and indication of how the stalls are to be marked; ○ Loading stalls with indication of how they will be marked; ○ Aisle dimensions; ○ Location of any proposed wheel stops and speed bumps; ○ Sidewalk width; ○ Geodetic grades of the parking area including any driveway grades and parkade access ramps; ○ Where the stall is between columns (parking structures). ○ Surface treatment for all areas including parking, sidewalks and landscaping. ○ Location, size and type of all exterior doors. ○ Location of bicycle racks and the number of bikes accommodated. ○ Location of any drive-thru facilities, stacking spaces for vehicles, location of drive-thru signage (e.g. entrance, exit, customer courtesy and menu board signs), if applicable. ○ Bus zones and bus shelters adjacent to the site. ○ Location and height of all existing and proposed fencing and retaining walls. ○ Location of garbage collection facilities and loading areas. ○ Provide elevation drawings of garbage collection facilities, indicating colors, materials and dimensions.
			9. Three (3) paper copies and one (1) electronic / PDF copy of Utility Plans, Site Stormwater Management Plans and Site Grading Plans showing: ○ <u>Utility Plan</u>: ○ Location of all proposed and / or existing shallow and deep utilities (e.g. water, sanitary sewer, storm sewer, gas, electrical, cable, telephone, either underground or overhead. ○ Provide the original utility locates with the submission. ○ Location of all lighting and light standards, catch basins,

			utility poles, hydrants and utility fixtures, on or adjacent to the site. ○ Stormwater Management Plan: ○ Plans must clearly show the location and details of sanitary sampling manholes and stormwater pre-treatment devices as required. ○ Site drainage calculations, including: ○ Allowable release rate; ○ Drainage areas and associated runoff coefficients; ○ Storage requirements; ○ Runoff control structure release calculations. **CONTINUED ON NEXT PAGE**

Date	Applicant Initials	Staff Initials	Requirements
			○ Grading Plan: ○ Existing and proposed geodetic grades, contours and any special topographical features or on site conditions (e.g. escarpments, break-of-slope, and any unstable areas).
			10. Three (3) paper copies and one (1) electronic / PDF copy of Landscaping Plans (all drawings should be fully dimensions, accurately figured, explicit, and complete, metric scale not less thank 1:100) showing: ○ Trees, shrubs and significant vegetation and indication of what is to be added, removed and retained. ○ Please include the following information: ○ Number and location of all trees and / or shrubs; ○ Type (deciduous, coniferous or ornamental) and species (common and botanical name); ○ Size (caliper for deciduous, height for coniferous). ○ Surface treatment of all soft landscaped areas (e.g. grass, shrubs, mulch) and hard landscaped areas (e.g. decorative pavers, brick, stamped concrete), including boulevards. ○ Method of irrigation for all soft landscaped areas. ○ Total landscaped area (square meters). ○ Curb details to separate landscaping.
			11. Three (3) paper copies and one (1) electronic / PDF copy of the floor plans (all drawings should be fully dimensioned, accurately figured, explicit and complete (metric scale not less than 1:100) showing: ○ Layout of all exterior and interior walls, include the floor plan of the proposed building (identifying all spaces inside the building); ○ Total gross floor area, and gross floor area of each of the individual spaces; ○ Location of exterior and internal doors and windows; ○ Loading and internal garbage storage areas. ○ If an eating and / or drinking establishment is proposed, include a detailed layout of the floor plan. ○ Include a seating plan which clearly indicates the area in which the public will have access from the consumption of food and / or beverages.
			12. 9.36 Project Summary Energy Information Sheet (Energy Design / Information Sheet) – *Building Permit Submission

The Development Authority may require additional material considered necessary to properly evaluate the proposed development.

FOR OFFICE USE ONLY

Reviewed By:	Date:
Comments:	

9.2.2 Development Permit – Residential Application Checklist

DEVELOPMENT PERMIT APPLICATION
RESIDENTIAL

Development Permit #:_____ **Application Date:**_____

To Be Completed By Applicant:

Do you have a Business License with the Town of _____? ☐ Yes ☐ No

Permit Being Applied for By: ☐ Landowner ☐ Applicant/Contractor

Landowner Name(s): _____

Mailing Address: _____

City: _____ Prov: _____ Postal Code: _____

Phone: _____ Alt Phone: _____

Email Address: _____

☐ (Same as Landowner)

Applicant/Contractor Name(s): _____

Mailing Address: _____

City: _____ Prov: _____ Postal Code: _____

Phone: _____ Alt Phone: _____

Email Address: _____

PROJECT INFORMATION

Proposed Land Use (*please note that one (1) Development Permit Application is required **per** lot / title)*:*

☐ SFD ☐ Deck (covered/uncovered) ☐ Addition ☐ Accessory Suite ☐ Accessory Building (garage/shed)

☐ Duplex ☐ Four Plex ☐ Manufactured/Modular Home ☐ Demolition ☐ Moved in Building

☐ Other: _____

Approximate Value of Development: $_____
(Building Materials and Labour)

Civic Address of Property to be Developed: _____

Lot: _____ Block: _____ Plan: _____ Land Use District: _____

Existing Land Use: _____

Number of Storeys: _____ Height (avg. from ground level to peak): _____

Lot Area: _____ Uncovered Deck Construction Included: If yes, size: _____ ☐ sq m ☐ sq ft

Total Parcel Coverage: _____ % (include any deck(s), garage(s) – attached or detached, accessory building(s), verandahs, etc.)

Yard Setbacks - Front Yard: _____ Left Side Yard: _____

Right Side Yard: _____ Rear Yard: _____

Number of off street parking stalls: _____ (location and size must be shown in the site/plot plan)

Primary Building: ☐ sq. meters ☐ sq. feet

Main Floor: _____ Upper Floor: _____ Basement: _____ Attached Garage: _____

Accessory Building(s): ☐ sq. meters ☐ sq. feet

Shed: _____ Detached Garage: _____

Accessory Suite Information (if applicable): ☐ Existing Suite ☐ New Suite

Accessory Suite Total Floor Area: ☐ sq. meters ☐ sq. feet

Basement Floor (Accessory Suite): _____

☐ **Variance Required:** Reason for variance: _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

Detailed description of work and/or intended use or occupancy of the building (include extra paper if needed):

_____

_____

_____

_____

_____

NOTES:

6. This Application constitutes part of the permit.
7. Every Development Application shall be completed and submitted in accordance with Section 3.4 of the **(Name of Municipality)** Land Use Bylaw **(#)**.
8. Failure to comply with this form fully and lack of the required information and plans may cause delays in processing this Development Application.

9. An Application for a Development Permit shall, at the option of the applicant, be deemed to be refused when the decision of the Development Authority is not made within forty (40) days of receipt of the Application.
10. Any questions related to the collection and use of this permit information should be referred to the Planning and Development Department at **XXX-XXX-XXXX**.

A DEVELOPMENT PERMIT COMES INTO EFFECT:

d. if it is issued by the Development Authority, twenty one (21) days after the date of decision.
e. if it is issued by Town Council with respect to a development in a Direct Control District, upon the date of its issue, or
f. if an appeal is made, on the date that the appeal is finally determined.

A development permit remains in effect for twelve (12) months from the date of its issue and thereafter is null and void unless an extension has been requested and approved. A time extension request must be received a minimum of one (1) month prior to expiry.

I hereby make aplication for a Development Permit under the provisions of the Town of _____ Land Use Bylaw #1198/16 in accordance with the plans and supporting information submitted herewith and which form part of this application and will abide by all conditons of approval. By submitting this application I hereby allow right of entry for inspection purposes.

Permit Applicant Name(s): _____

Permit Applicant Signature(s): _____

Landowner Name(s): _____

Landowner Signature(s): _____

FOR OFFICE USE ONLY

Lot: _____ Block: _____ Plan: _____ Land Use District: _____ Tax Roll #: _____

Variance Requested (if applicable): ☐ MPC ☐ Development Officer

IF DEMOLITION PERMIT – COPIES SENT TO: ☐ Utility Department ☐ Tax Department

Development Permit Fee:	$	MPC Date: _____
TOTAL:	$	SDAB Date: _____ Notification Date: _____

Receipt #: _____ Date Application Deemed Complete: _____

Residential Permit Submission Checklist
Single Detached, Duplex, Triplex, Fourplex

Date	Applicant Initials	Staff Initials	Requirements
			1. Signed Application Form(s) (one permit application per lot/title)
			2. Owner Authorization, if required (if the applicant is not the owner)
			3. Application Fee(s): Receipt No.:_____
			4. Off-Site Levies (if applicable): Receipt No.:_____
			5. Building Grade Certificate(s)
			6. Alberta New Home Warranty – *NHBPA* (Effective February 1, 2014)
			7. Builder Licensing Approval – *NHBPA* (Effective December 1, 2017)
			8. Truss Plans
			9. Uncovered Deck Construction Sheet (if applicable)
			10. 9.36 Project Summary Energy Information Sheet (Energy Design / Information Sheet)
			11. Engineering Schedule A & B (if required) *Required for any multi family dwellings greater than 4 units*
			12. Three (3) Site / Plot Plans showing: o North Arrow; o Civic / Municipal Address; o Legal Description (Lot, Block, Plan); o Land Use District; o Property Lines; o Total site / lot coverage (%); o Front, side and rear setbacks from property lines; o Easements and utility rights-of-ways; o Foundation outline of the dwelling and the outline of eaves and any other projections; o Outline and location of any accessory buildings (garage, shed, etc.);

			○ Outline and location of any deck (uncovered or covered); ○ Driveway, grade and length to property line (if no sidewalk, back of curb); ○ Off street parking areas including width and length of all stalls, driveways, etc.; ○ Retaining walls (existing and proposed); ○ Adjacent Town streets, sidewalks, curbs and proposed and existing curb cuts; ○ Location of existing or proposed services lines, and electric and gas meters; ○ Any utility poles, transformer boxes, hydrants, light standards, on or adjacent to the site. **CONTINUED ON NEXT PAGE**

Date	Applicant Initials	Staff Initials	Requirements
			○ Distance from the building(s) to the property lines, roads or streets and other building(s) on the property.
			13. Three (3) sets of blueprints/plans (one copy stamped with the red architectural controls stamp and signature from the developer) of each face of the building showing: ○ Elevation: drawings of each face of the proposed building, including size and position of all windows, doors, projections, decks, chimneys/furnace vent, etc. and the finished ground level; ○ Cross Section: describing, with dimensions, every part of the building that appears in the cross section (the foundation must be included in the cross section); ○ Exterior finishing materials, roofing materials, and chimney flues/furnace vent; ○ Lot grades, building grades, and grade line plotted on each of the building elevations, extending to property line (consistent with Site / Plot Plan); ○ Dimensioned height from grade on each elevation, corners and highest point, to top of roof; ○ Layout of all exterior and interior walls and identification of all rooms (e.g. kitchen, bathroom, internal stairways, etc.); ○ Elevation of any fence or retaining wall(s) on the site; ○ Location of all doors and windows; ○ Dimensions of buildings (length & width), include cantilevers and other projections; ○ Electrical Information: that shows the position of every light switch and electrical receptacle; ○ Mechanical Information: that describes the heating and ventilating systems in the building

			14. Professional involvement for construction methods that ***differ*** from what is prescribed in Part 9 (House and Small Buildings) of the Alberta Building Code must be designed by a professional engineer license to practice in Alberta. Some examples that require professional involvement are: ○ Shallow foundations (foundations less than 1.2m below grade or less that frost penetration requires the seal and signature of an engineer on the plans); ○ Pile and grade beam foundations (seal and signature of an engineer on the plans); ○ Pile foundations (seal and signature of an engineer on the plans); ○ Preserved wood foundations (seal and signature of an engineer or architect on the plans); ○ Hydronic radiant floor heating systems (seal and signature of the engineer on the pre-engineered or custom engineered package); ○ Timber framing, post and beam and archrib constructions (seal and signature of an engineer or architect on the plans).

The Development Authority may require additional material considered necessary to properly evaluate the proposed development.

FOR OFFICE USE ONLY

Reviewed By:	Date:

9.3. COMPLIANCE REPORT

9.3.1 Compliance Report - Non-Compliance Sample

CERTIFICATE OF COMPLIANCE

PROPERTY DESCRIPTION: LOT # BLOCK # PLAN #
Civic Address, Town Province

A. SUBJECT TO THE QUALIFICATIONS STATED BELOW, IT IS HEREBY CERTIFIED THAT:

1. The property is located within the Residential Medium Lot District (R-1M) of the **(Municipality)** as defined in the Land Use By-Law **(#)**.

2. The permitted and discretionary uses for the district include:

Permitted Uses
- Accessory residential buildings
- Detached dwellings
- Home based business, Minor

Discretionary Uses
- Accessory suites
- Bed and breakfast establishment
- Home based business, Major
- Manufactured homes on a permanent foundation
- Modular homes on a permanent foundation
- Mother in law suite
- Parks and playgrounds
- Public and quasi-public uses
- Public utility buildings
- Signs (excluding billboards)
- Social care residence

3. The location of the dwelling within the property is not in conformance with the side yard setbacks of Land Use Bylaw **(#)** given:

    - the dwelling is to maintain a minimum 1.50 m side yard setback (1.35 m shown).

    However, the dwelling within the property has been brought into conformance by the Development Officer and in accordance with Part 3.8(1) *"Variances*" of Land Use By-Law **(#)**.

B. THIS CERTIFICATE IS SUBJECT TO THE FOLLOWING QUALIFICATIONS:

1. The Town of _____ is relying entirely on the real property report, provided by **(Survey Company)** and dated **(Date of Survey)** (copy attached) supplied by or on behalf of the applicant with respect to the location of buildings within the property and the Town makes no representations as to the actual location of the buildings.

2. The Town has not conducted an inspection of the property.

3. The Town assumes no responsibility or liability for any inaccuracy, mistake or error of law or fact set forth in Part A of this Certificate which arises from the information supplied by or on behalf of the applicant.

4. This certificate of compliance relates only to the requirements of the **(Municipality)** Land Use By-law, and does not relate to the requirements of any federal, provincial or other municipal legislation nor to the terms or condition of any easement, covenant, building scheme, agreement or other document affecting the building(s) or land.

DATED at the **(Municipality)**, **(Date)**

_____

Development Officer
Development Officer I

9.3.2 Compliance Report - Non-Conforming Sample

CERTIFICATE OF COMPLIANCE

PROPERTY DESCRIPTION: LOT #, BLOCK #, PLAN #
Civic Address, Town, Province

B. SUBJECT TO THE QUALIFICATIONS STATED BELOW, IT IS HEREBY CERTIFIED THAT:

3. The property is located within the Residential Medium Lot District (R-1M) of the **(Municipality)** s as defined in the Land Use By-Law **(#)**.

4. The permitted and discretionary uses for the district include:

Permitted Uses

- Accessory Buildings and Accessory Uses
- Detached dwellings
- Home based business, Minor

Discretionary Uses

- Accessory Uses
- Accessory Suites
- Bed and Breakfast Establishment
- Home based business, Major
- Manufactured homes on a permanent foundation
- Modular homes on a permanent foundation
- Mother in law suite
- Parks and playgrounds
- Public and quasi-public uses
- Public utility buildings
- Signs (excluding billboards)
- Social care residence
- Kennel

5. The location of the detached dwelling with veranda and deck, as shown on the Survey provided by **(Survey Company)**. and dated **(Date)** is not in conformance with the Town of _____ Land Use By-Law **(#)** given:

   - Front veranda with step and eave encroaches a maximum of 0.81 m into Utility Right of Way **(#)** which is not permitted. Pursuant to Part 12.8.1 states:

     "No building shall be closer than 0.5 m (1.64 ft) to a registered Easement or Right of Way on any property…"

     However, the Development Authority did, on November 2, 2012 issue Development Permit **(#)** in accordance with Part 13.8 pertaining to "Variance" permitting the step to be located within the 0.5 m required setback. (0.5 m setback required; 0.00 m shown on the approved plot plan (copy attached).

[insert Variance section]

With respect to the veranda with step and eave encroachment of 0.81 m, the Town has referred the survey outlining the encroachments to all interests affecting Utility Right of Way Plan **(#)**. Responses have been received from Telus and Fortis Alberta citing no concerns. (copy attached).

Accordingly and in accordance with Part 5.1.1 (b) pertaining to Projection Over Yard permits this encroachment to remain as constructed.

Accessory Building ("Garage")

- The garage as shown on the survey is in accordance with the Towns Land Use Bylaw **(#)**.

THEREFORE the location of the dwelling, veranda and step, can remain indefinitely AND ARE subject to s643 of the *Municipal Government Act*, referencing "*Non–Conforming Use and Non-Conforming Buildings*", which states:

643(1) If a development permit has been issued on or before the day on which a land use bylaw or land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

a) to make it a conforming building,
b) for routine maintenance of the building, if the development authority considers it necessary, or
c) in accordance with land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

(6) *If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with land use bylaw.*

(7) *The land use or the use of a building is not affected by a change of ownership or tenancy of land or building.*

B. THIS CERTIFICATE IS SUBJECT TO THE FOLLOWING QUALIFICATIONS:

2. The **(Municipality)** is relying entirely on the real property report (copy attached) supplied by or on behalf of the applicant with respect to the location of buildings within the property and the Town makes no representations as to the actual location of the buildings.

5. The Town assumes no responsibly or liability for any damages that may occur to the veranda, step and eave through any construction or maintenance that may occur affecting Utility Right of Way **(#)**.

6. The Town assumes no responsibility or liability for any inaccuracy, mistake or error of law or fact set forth in Part A of this Certificate which arises from the information supplied by or on behalf of the applicant.

7. This certificate of compliance relates only to the requirements of the **(Municipality)** Land Use By-law **(#)** and does not relate to the requirements of any Federal, Provincial or other Municipal legislation nor to the terms or condition of any easement, covenant, building scheme, agreement or other document affecting the building(s) or land.

DATED at the **(Municipality)**, **(Date)**.

_____

Development Officer
Development Officer II

Attachments: Schedules "A", "B" and "C"

Development Permit and Plot Plan
Fortis Telus

9.4. ENFORCEMENT

9.4.1 Enforcement – Complaint Form

Date: (yy/mm/dd)_____ CST. Name:_____

Complainant Information:
Name:_____ Address: _____

Daytime Phone #:_____Alternate Phone#:_____E-Mail Address: _____

ADDRESS OF COMPLAINT: _____
(Ensure this is correct site

address) Nature of

Complaint:

Illegal Dwelling Units_____ Up_____ Down _____
Illegal Home Occupation Class 1 _
Class 2_____What type of business is it? _____
What is the name of the business?_____
_____
Are there vehicles, associated with the business, parked on or near the property?__

Dilapidated Vehicles_____Where is the vehicle parked? _____
RVs in front yard_____Is the R.V. a tent trailer, travel trailer, motor home or boat and
trailer?_____
Is the R.V. parked in the front driveway or front lawn? _____
How long has the R.V. been there? _____
Is the property a corner lot? _____

Over height fence_____Front yard___Side yard____Rear yard ____

Car on front lawn_____Is the property on a corner lot?_____

Outdoor storage_____What type of material? _____

Sign – No Permit_____Wording on the sign? _____

Commercial Vehicle over 4,000 kg (GVW) What kind of vehicle is it?_____
Does the vehicle have a company name on it? _____
Is the vehicle parked on the street or private property?_____
Does the vehicle have dual rear wheels?__

Illegal use – Lodgers/Borders _____

Other use not listed _____

Related Details:

_____

_____

_____

Has this been referred to other Bylaw Departments? (Put an **X** if so)

Building Inspections	Building without Permit
Engineering Bylaw	Parking Authority

Is there more than one complaint infraction listed above? YES/NO

*** Note: Inform complainants that an inspector will be in contact with them.**

9.4.2 Enforcement – Complaint and Notice Letters – Samples
Development Permit Non-Compliance

File: _____

Name & Address:

Dear _____

RE: Address_____
Legal Description: Plan_____, Block_____, Lots(s)_____
Development Permit #:_____

As a result of a complaint, our investigation of your property located at_____ revealed that the development permit on the property has not been completed in accordance with the plans and conditions of Development Permit_____.

Therefore, the attached Notice has been issued. If you fail to comply with the Notice, legal action will be taken against you as the registered owner(s) of the property.

Should you wish to appeal this Notice, you must register an appeal with the Secretary of the Subdivision and Development Appeal Board within 21 days of receipt of this Notice. Effective _____date___, a fee of_____$amount must accompany an appeal.

NOTE: When hearing the appeal the Subdivision and Development Appeal Board can only consider is the Order has been correctly issued. The Subdivision and Development Appeal Board cannot grant an approval through this appeal. Only through a development permit application can this development or use be reviewed for a decision.

Should you require additional information concerning this matter, you may contact name at phone.

Yours truly,

Signed_____

NOTICE

_____
_____
_____

A check with the Land Titles Office discloses that you are the registered owner(s) of property located at

_____
_____,_____, legally described as Plan_____, Block ____, Lot(s)_____.

This property is designated_____. The development on the property has not been completed in accordance with the approved plans and conditions of Development Permit_____. The following deficiencies exist:

_____
_____
_____
_____

This is contrary to the_____Land Use Bylaw #_____.

You are hereby ordered, pursuant to Section 645(1) of the Municipal Government Act R.S.A. 2000, c. M-26, as amended, to complete the development on the property in accordance with the approved plans and conditions of Development Permit____before _____and not recommence such use at anytime thereafter.

Date: _____

Development
Authority
Municipality

9.4.2 Enforcement – Complaint and Notice Letters – Samples General

File: _____

Name & Address:

_____
_____
_____

Dear __

RE: Address_____

Legal Description: Plan___, Block_____, Lots(s)_____
Development Permit #:_____

As a result of a complaint, our investigation of your property located at_____, revealed that _____
_____
_____
_____
_____

Therefore, the attached Notice has been issued. If you fail to comply with the Notice, legal action will be taken against you as the registered owner(s) of the property.

Should you wish to appeal this Notice, you must register an appeal with the Secretary of the Subdivision and Development Appeal Board within fourteen (14) days of receipt of this Notice. Effective date_____, a fee of_____$amount must accompany an appeal.

NOTE: When hearing the appeal the Subdivision and Development Appeal Board can only consider is the Order has been correctly issued. The Subdivision and Development Appeal Board cannot grant an approval through this appeal. Only through a development permit application can this development or use be reviewed for a decision.

Should you require additional information concerning this matter, you may contact name at phone.

Yours truly,

Signed

NOTICE

_____
_____
_____

A check with the Land Titles Office discloses that you are the registered owner(s) of property located at

_____
_____, _____, legally described as Plan _____,
Block _____, Lot(s) _____.

This property is designated _____. The property is being used
_____
_____.

A Development Permit has not been issued for this use. This is contrary to the _____ Land Use Bylaw # .

You are hereby ordered, pursuant to Section 645(1) of the Municipal Government Act R.S.A. 2000, c. M-26, as amended, to discontinue, demolish, remove, stop work, restore this use before
_____ and not recommence such use at anytime thereafter.

Date: _____

Development
Authority
Municipality

9.4.3 Enforcement – Inunction Documents Checklist

CLIENT'S CHECKLIST – INJUNCTION DOCUMENTS

The legal firm representing your municipality will ask that you review all of the files and provide them with copies of all documentation relevant to the injunction. Specifically, they will ask to be provided with the following (to the extent that this documentation exists):

1. Complete copy of the Municipality's Land Use Bylaw if one has not already been provided to our offices, and any other bylaws that may relate to this matter.
2. Documents relating to any complaints received regarding the use of the Lands or development on the lands.
3. All correspondence to and from the registered owners and occupants of the Lands.
4. If any correspondence or stop orders have been sent to the registered owners and the occupants of the Lands by registered mail, please provide us with copies of the registered mail receipts.
5. A copy of any written or typewritten notes in the possession of anyone with the Municipality relating to meetings or contact with the registered owners and the occupants of the Lands.
6. A copy of any telephone message or notes of any telephone calls with the registered owners and occupants of the Lands.
7. A copy of any Minutes or Resolutions of Council that may reflect discussions about or dealings with this matter.
8. All applications for development permits (including all plans submitted) and subsequent decisions of the development officer.
9. All letters from the Respondent appealing any decisions of the development officer.
10. Notices of appeal hearing sent to both the neighbouring landowners and the registered owners and occupants.
11. Complete copy of the Subdivision and Development Appeal Board.
12. All decisions of the Subdivision and Development Appeal Board.
13. Copies of all Stop Orders.
14. All documentation or reports regarding any site inspections performed on the lands, to include the date of the inspection and the name of the person who performed the inspection. Items should be specified in detail. If vehicles, include make, model, color and year and also the serial number.
15. All original photographs of any site inspections in quadruplicate. Be sure to indicate as to the individual who took the photographs, and the date of the photographs.
16. Any additional documentation which is in the possession of the Municipality, and which you feel is in any way relevant to this matter.

Also confirm if applicable:

1) whether any development permits have been issued in relation to the Lands;
2) whether the development permits and stop orders have or have not been appealed;
3) what district the lands are within.

While you may not be in possession of many of the above noted documents, however, they will ask that you review your files in order to determine which of the documents exist. Please provide originals whenever possible. Once you have gathered this documentation together, please forward the same to their office and we will attend to reviewing the same and drafting the appropriate pleadings.

9.4.4 Enforcement – Stop Order

STOP ORDER

(Insert Date Stop Order Mailed/Delivered)
(Insert name and address of registered owner(s), tenants and any other individual in possession as appropriate)

Dear Sir/Madam:

RE: (Insert legal description of lands) ("the Lands")

In my capacity of Development Authority, I am hereby issuing a Stop Order pursuant to Section 645 of the Municipal Government Act, with respect to the aforementioned lands. The Municipality's Land Use Bylaw states:

(INSERT SECTION) (INSERT DESCRIPTION – WORDING MAY VARY DEPENDING ON BYLAW)

(1) No development other than that identified in Section 10, shall be undertaken within the municipality unless an application for it has been approved and a development permit has been issued.

(Insert other relevant references from Land Use Bylaw such as the districting and definitions)

Further, Part 17 of the Municipal Government Act and Part 4, Section 1 of the Municipality's Land Use Bylaw allows a Development Office to issue a Stop Order where a development or use of land or buildings does not comply with the Municipal Government Act, the Land Use Bylaw, or a development permit or subdivision approval.

At present, the Lands do not comply with the Municipality's Land Use Bylaw given:

1. (insert reasons here)

Accordingly, you are hereby ordered to stop the unauthorized development and use of the aforementioned lands and the buildings thereon and comply with the Land Use Bylaw by

(insert steps to rectify the matter here)

Within fourteen (14) days of the date of this letter.

You are hereby advised that you have the right to appeal this Order to the Subdivision and Development Appeal Board. If you wish to exercise this right, then written notice of appeal, your municipality has prescribed an appeal fee (insert "together with the applicable fee of *"), must be received by the Secretary of the Subdivision and Development Appeal Board within 21 days of the receipt of this letter.

Please be advised that the Municipality has the authority to put the costs and expenses for carrying out this Stop Order on the tax roll for the Lands (Municipal Government Act s. 553 (1)(h.1)).

YOURS TRULY,
(INSERT NAME OF MUNICIPALITY)
Per:
(INSERT NAME), Development Officer