

SUBDIVISION AND DEVELOPMENT REGULATION

BILD Alberta Recommendations

September 22, 2017

1. OVERVIEW

The following provides recommendations from BILD Alberta as it relates to the Subdivision and Development Regulation. While we had previously proposed a number of other changes to strengthen lands subject to flooding and the conservation reserve process, the draft regulation makes it clear that those are not going to be addressed. This submission focusses on simple changes to help reduce and simplify approval timeframes.

2. CORE RECOMMENDATIONS

Distance from Highway – Subdivision Approvals

Proposed Policy: 14 Subject to section 16, a subdivision authority shall not in a municipality other than a city approve an application for subdivision if the land that is the subject of the application is within 0.8 kilometres of the centre line of a highway right of way unless (e) the land is contained within an area structure plan satisfactory to the Minister of Transportation **at the time of subdivision** and the proposed use of the land is permitted under that plan.

BILD Alberta Comments and Recommendations:

This appears to be an extremely time consuming and unnecessary process. The Ministry of Transportation already receives and is to provide comment / approval on all Area Structure Plans (ASP) in proximity to a highway. If a subdivision application does not conform to the Area Structure Plan then the ASP must be revised and approved by Council. This will automatically mean that the revised ASP must be considered by Transportation prior to approval. This seemingly minor change adds another step to the approval process and it is entirely unnecessary given an appropriate check and balance already exist. We recommend the words “at the time of subdivision” be removed from this policy.

Definition of Highway – Application Referrals

Proposed Policy: 5(5) On an application for subdivision being determined or deemed under section 653.1 of the Act to be complete, the subdivision authority must send a copy to (d) the Deputy Minister of the Minister responsible for administration of the Highways Development and Protection Act if the land that is the subject of the application is not in a city and

(i) is adjacent to a highway where the posted speed limit is less than 80 kilometres per hour, or

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The proposed change will create additional work for municipal staff, applicants and the Ministry of Transportation. Based on the existing definition for “highway” in other acts, referrals will be required to Alberta Transportation for every single subdivision application within numerous counties, towns and villages across the province. Referrals even now are often not responded to in a timely fashion, if at all, so we are concerned this modification could lead to even further delays. While we are not advocating the removal of the referral process, we recommend that the province clarify the definition of “highway” to help reduce the overall volume that could be required through this change.

Highway is presently not defined in the MGA so it is unclear which will be used to determine the application of this policy. According to the *Traffic Safety Act*:

“highway” means any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place or any part of any of them, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage or parking of vehicles and includes

- (i) a sidewalk, including a boulevard adjacent to the sidewalk,*
- (ii) if a ditch lies adjacent to and parallel with the roadway, the ditch, and*
- (iii) if a highway right of way is contained between fences or between a fence and one side of the roadway, all the land between the fences, or all the land between the fence and the edge of the roadway, as the case may be, but does not include a place declared by regulation not to be a highway;*

The *Highway Development and Protection Act* defines highway as:

“highway”, “road” or “street”, except in section 38.1, means land that is authorized by a highway authority to be used or surveyed for use as a public highway, road or street, and includes a bridge forming part of a public highway, road or street and any structure incidental to the public highway, road or street;

In either of the above cases new referrals would be required in a considerable number of municipalities which feature highways as part of their local street network. This will substantially increase the overall volume of application referrals to the Ministry of Transportation and work required from municipal administration. For additional clarity and to help reduce the overall volume of referrals we would recommend the regulation modify section 5(5)(d)(i) to state “is adjacent to a provincial highway as defined in the *Highway Development and Protection Act*”.

“provincial highway” means

- (i) a highway or proposed highway designated as a provincial highway under this Act, and*
- (ii) a highway that has been designated as a primary highway under a former Act if the designation is subsisting on the coming into force of this Act.*

3. ADDITIONAL RECOMMENDATIONS AND MATTERS FOR CLARIFICATION

The following outlines policy items where we recommend some additional changes or require clarification:

| Existing Policy | Comment / Proposed Change |
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| <p>1 (c) “food establishment” means food establishment as defined in the <i>Food Regulation</i> (AR31/2006) but does not include a food establishment to which that Regulation does not apply pursuant to section 2(2) of that Regulation</p> | <p>Please clarify the intent of this change. As the Regulation is currently written, it would appear that uses that contained a staff lunchroom where employees brought their own lunches to work would be unable to be located within the setbacks required by the Regulations. This would severely limit the uses that could be located within the setback parameters.</p> |
| <p>Application</p> <p>4(4) The applicant must submit</p> <p>(g) information provided by the AER identifying the location of any active wells, batteries, processing plants or pipelines within the proposed subdivision.</p> | <p>In the past, it has been difficult to obtain this information from the AER, particularly with regard to sour gas facilities. If this is going to be a new application requirement, it will be incumbent on AER that their registry of oil and gas wells is currently up to date and that they will be able to respond in a timely fashion.</p> |
| <p>12 (2) Subject to subsection (5), a subdivision authority shall not approve an application for subdivision for school, hospital, food establishment or residential use unless</p> <p>(a) The property line of the proposed lot for the school, hospital, food establishment or residential use is 300 metres or more from the working area of an operating wastewater treatment plant, or</p> <p>(b) On considering matters referred to in section 7, each proposed lot includes a suitable building site for school, hospital, food establishment or residential use that is 300 metres or more from the working area of an operating wastewater treatment plant.</p> | <p>It would appear that (a) would apply in every instance and therefore (b) is redundant. If this is the case, then our comments are similar to item 13 (2). Previously, the setback was for a building site instead of property line and allowed for the non-occupied uses of a site to be within the setback area. This means that a school, hospital, food establishment or residential use cannot have its open space or parking lots within 300 metres of an operating wastewater treatment plant. This is a concern for the transition of projects that are currently in the Tentative Plan stage adjacent to wastewater treatment plants as this may mean that a plan will have to be substantially revised to accommodate this setback requirement.</p> <p>This is also a concern for the planning of future projects as the Regulation will actually encourage residential uses adjacent to wastewater treatment plants as the setbacks to the building sites are typically 7.5 metres which means that it will be more efficient to locate homes adjacent to wastewater treatment plants, instead of parking lots or open space.</p> |
| <p>12(5) The requirements contained in subsections (2) to (4) may be varied by a subdivision authority or a development authority with the written consent of the Deputy Minister of Environment and Sustainable Resource Development.</p> | <p>The regulation should be updated to note that all wastewater treatment systems are not the same. This Regulation appears to be written for sewage lagoon systems and not for modern self-contained treatment plants which do not provide any nuisance factor.</p> |

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| <p>12(6) A consent under subsection (5) may refer to applications for subdivision or development generally or to a specific application.</p> | |
| <p>13(2) Subject to subsection (5), a subdivision authority shall not approve an application for subdivision for school, hospital, food establishment or residential use if the application would result in a <u>property line</u> of a lot created by subdivision for any of those uses being located</p> <ul style="list-style-type: none"> (a) within 450 metres of the working area of an operating landfill, (b) within 300 metres of the disposal area of an operating or non-operating landfill, (c) within 450 metres of the working area or disposal area of a non-operating hazardous waste management facility, (c.1) within 450 metres of the working area or disposal area of an operating hazardous waste management facility, or (d) within 300 metres of the working area of an operating storage site. | <p>This is a major change. Previously, it was for a building site instead of property line and allowed for the non-occupied uses of a site to be within the setback area. This means that a school, hospital, food establishment or residential use cannot have its open space or parking lots within 450 metres of and operating landfill or within 300 metres of the disposal area. This will restrict the uses that are intended to be adjacent to a landfill in current plans and will be problematic for a transition. It is also a concern regarding future planning of projects adjacent to landfills as this will actually encourage residential uses adjacent to landfills as the setbacks to the building sites are typically 7.5 metres which means that it will be more efficient to locate homes adjacent to landfills, instead of parking lots or open space.</p> |
| <p>Form 1 (section 4) Application for Subdivision 4. LOCATION OF LAND TO BE SUBDIVIDED d. Does the proposed parcel contain or is it adjacent to a river, stream, lake or other body of water or by a drainage ditch or canal?</p> | <p>The form should be updated to be consistent with changes made to the MGA as it relates to simply using “body of water”.</p> |