Red Tape Reduction Recommendations

October 7, 2019

Contact:

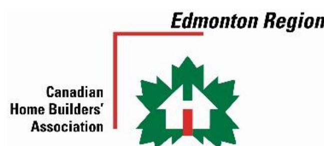
Scott Fash

Senior Director, Policy & Research

BILD Alberta

E: scott.fash@bildalberta.ca

P: (780) 424-5890 ext. 224



This document was prepared based on consultation with and input from:

- Alberta Enterprise Group
- NAIOP Calgary
- NAIOP Edmonton
- Prosperity Edmonton
- BILD Calgary Region
- BILD Central Alberta
- BILD Lakeland Region
- BILD Lethbridge Region
- BILD Wood Buffalo
- CHBA – Edmonton Region
- CHBA – Grande Prairie
- CHBA – Medicine Hat
- UDI Edmonton Region

Contents

1. Building Codes – Energy Step Codes and Net Zero Ready 2030 ... 2
2. Building Codes – Appeal of Local Interpretations ... 3
3. Building Codes – Reducing Mandatory Safety Codes Inspections ... 4
4. City Charters – Building Codes ... 5
5. City Charters – Inclusionary Housing ... 6
6. City Charters – Offsite Levies ... 7
7. City Charters – Statutory Plans ... 8
8. MGA – Offsite Levies (Transparency, Accountability and Fiscal Responsibility) ... 9
9. MGA – Offsite Levies (Facilities In-Scope) ... 11
10. MGA – Inclusionary Housing ... 12
11. MGA – Permit Timelines & Approvals ... 13
12. MGA – Municipal Reserve Allocation and Use ... 14
13. MGA – Approvals from Ministry of Transportation ... 15
14. MGA – Provincial Transportation Levy ... 16
15. MGA – Appeal Processes to Ensure Municipal Accountability ... 17
16. MGA – Taxation of Farmland Intended for Development ... 18
17. MGA – Development Proceeding While Appeals Take Place ... 19
18. MGA – Balancing Applicant Property Rights ... 20
19. MGA – Priority for Resource Development ... 21
20. OHS – Joint Worksite Health and Safety Committees ... 22
21. Environment – Water Act Approval Timelines ... 23
22. Environment – Review Process for Public Lands Act & Water Act Applications ... 24
23. Environment – Consistent Application of Wetland Policy ... 25
24. Environment – Water Reuse and Stormwater Use ... 26
25. Environment – Missing Directives Under the Alberta Wetland Policy ... 27
26. Condo Act – Building Assessment Reports ... 28
27. Condo Act – Build Time Specifications ... 29
28. Expropriations – Development During Expropriations ... 30
29. Mortgage Rules ... 31

1. Building Codes – Energy Step Codes and Net Zero Ready 2030

Ministry: Municipal Affairs

Legislation: Safety Codes Act

Issue

The Federal Government will be mandating Energy Step Codes as part of the National Building Code in 2020. This is viewed as a pathway to all new homes being built to a Net Zero Ready energy standard by 2030. Current models and policies have been largely directed by British Columbia with little consideration of Alberta's climate. Cost impacts will be in the tens of thousands of dollars per house if not properly mitigated.

Impact

- Energy Step Codes have largely been developed in British Columbia and have not undergone scrutiny or assessment for the cost implications of building these homes in Alberta's climate.
- Unless properly mitigated, Federally mandated Energy Step Codes will increase the cost of new homes while adding multiple layers of administrative burden for provincial and municipal staff.
- Delayed implementation of the Energy Step Codes will allow the Government of Alberta to evaluate the impacts in other provinces prior to determining an appropriate path for Alberta.
- Alberta builders are innovators with many already working on solutions to achieve greater energy efficiency while minimizing the cost impact on Albertans. BILD Alberta and its member companies are ready to work with the Government of Alberta in developing solutions to improve energy efficiency without adversely impacting businesses and housing affordability.

Recommendations

1. Maintain auto-adoption of the National Building Code but indefinitely delay the implementation of Energy Step Codes in Alberta through exemptions until proper evaluation can occur.
2. Monitor the impacts of Energy Step Codes on housing affordability in other jurisdictions.
3. Through working groups, work with the home building industry, municipalities and other stakeholders to determine cost-effective and strategic improvements to energy efficiency in new and existing homes while maintaining housing affordability. This could include determining which aspects of the new codes can be implemented immediately and which may require modification due to Alberta's market and climate.
4. Undertake an assessment of the viability of continuing with the auto-adoption of the National Building Code due to concerns of its standards being developed without appropriate consideration of Alberta's climate.

2. Building Codes – Appeal of Local Interpretations

Ministry: Municipal Affairs

Legislation: Safety Codes Act

Issue

Elements of the Building Code are often interpreted differently from one municipality to another. Standards, plans and construction methods may be approved in one municipality but then denied in the neighboring municipality or a different Building Codes Officer within the same municipality. This creates significant uncertainty, red tape and discourages builders from doing work across a region. The Safety Codes Council generally only reviews matters when they are provincial in scope leaving builders without recourse in many instances.

Impact

- Builders try to standardize their processes, plans and construction methods to maximize efficiencies and reduce costs. Having individual safety codes officers interpret the same requirement differently makes it difficult and often inefficient to build across a region. Ultimately the ease of the process is entirely dependent on the Safety Codes Officer assigned to the project.
- Unless a matter is provincial in scope, there is no method or procedure for builders to appeal a decision of the Safety Codes Officer and establish a common interpretation for all Safety Codes Officers in Alberta.
- If building code requirements are applied consistently across the province, the time to construct new units will decrease, benefiting businesses and home buyers.

Recommendations

1. Establish a process for builders to appeal Safety Codes Officers interpretations of the Building Code.
2. Publish decisions to allow for Safety Codes Officers from across the province to understand the correct interpretation and application of rules and standards.

3. Building Codes – Reducing Mandatory Safety Codes Inspections

Ministry: Municipal Affairs

Legislation: Safety Codes Act

Issue

Through the Safety Codes Act the Province of Alberta mandates when inspections conducted by the Authorities Having jurisdiction related to enforcement of Safety Codes are required. Due to several factors including increasingly tight budgets, fluctuations in the volume of permits and continually evolving Safety Codes some Authorities Having Jurisdiction are struggling to conduct all mandatory inspections in as timely a matter as possible. Delays in inspections can significantly disrupt construction schedules and result in increased costs while building or renovating a home. The development permitting process could be speed up by eliminating the need for mandatory safety codes inspections when the Authority Having Jurisdiction (AHJ) deems them to be redundant or can mitigate risk through other means such as the use of new technologies or risk mitigation techniques.

Impact

- Increased permit costs associated with the number of required inspections by the Authority Having Jurisdiction.
- Increased costs associated with delays in the construction schedule caused by delays associated with the Authority Having Jurisdiction not being able to complete the required inspections.
- Mandating when inspections are required stifles the use of new technology or risk mitigation techniques to determine when inspections are needed to ensure public safety and code compliance.

Recommendations

1. Modify legislation and regulations to reduce the number of mandatory building inspections that the Province requires of local Authorities Having Jurisdiction when new technologies and risk mitigation techniques are developed.

4. City Charters – Building Codes

Ministry: Municipal Affairs

Legislation: Municipal Government Act - City of Calgary Charter Regulation and City of Edmonton Charter Regulation

Issue

Different interpretations of one specific clause of the City Charters have the potential to lead to costly legal challenges and multiple building codes in Alberta.

Impact

- A policy added to City Charters is intended to support the construction of features such as green roofs. City of Edmonton staff have indicated they believe this policy provides more expansive powers and could allow them to make substantial modifications to the Alberta Building Code on matters related to Energy Efficiency, effectively leading to a situation where builders in Alberta must contend with multiple building codes.
- Despite multiple conversations between Municipal Affairs and the City of Edmonton, the city continues to assess the extent to which they can use this new power. This could potentially include the city accelerating Energy Step Codes or requiring Net Zero homes at great cost to home builders and home buyers.
- Builders construct homes in multiple jurisdictions and having to contend with multiple building codes is an untenable situation. This occurred in British Columbia and led to significant confusion and cost increases.
- Removing the proposed policy does not impact financial powers granted to the cities under other sections. The potential of the two cities modifying code also creates the potential for liability issues for Calgary and Edmonton.

Recommendation

1. Remove Section 7(2) from the City of Calgary Charter Regulation and City of Edmonton Charter Regulation.
2. Issues related to building code and energy efficiency standards should occur in the method recommended in Item 1 of this submission.

5. City Charters – Inclusionary Housing

Ministry: Municipal Affairs

Legislation: Municipal Government Act - City of Calgary Charter Regulation and City of Edmonton Charter Regulation

Issue

Broad and expansive inclusionary housing powers were provided to Calgary and Edmonton through City Charters. These policies shift the burden of social housing onto private industry and new home buyers. This effectively creates a new tax, while enabling a system of inefficient governance of the dollars and housing units collected. Inclusionary housing is a tax on housing, to pay for housing – this is an inherently backwards approach. This is not a tool that works and erodes affordability while increasing red tape.

Impact

- Allowing such broad powers through charters to determine and define Inclusionary Housing (without regulatory oversight by province) does not reduce red tape – rather it enables a municipality to increase it. This will add additional layer of red tape to developers and home builders who will now have to navigate through additional municipal requirements as part of their approval process.
- Even in its most limited scope, preliminary estimates are that inclusionary housing could increase the cost of market units by an average of $4,000 - $10,000. This prices more Albertans out of home ownership, puts more pressure on the rental market and could result in more people requiring government subsidized housing.
- The two cities have no limitation on the number of units they can take or amount of tax they can apply to new housing developments which creates uncertainty for investors both in the immediate and long term.
- There are limited requirements for the management, governance and use of the units and money collected. There is nothing ensuring the funds collected are used to build actual housing versus funding a new municipal department.
- There are no requirements for offsets, which could enable municipalities to expropriate value, land and units without compensation.

Recommendation

1. Remove the following sections from the City of Edmonton Charter Regulation and City of Calgary Charter Regulation:
   a) Section 31;
   b) Section 35(c);
   c) Section 35(d);
   d) Section 35.5;
   e) Section 36.1;
   f) Section 37.5; and
   g) Section 37.6.

6. City Charters – Offsite Levies

Ministry: Municipal Affairs

Legislation: Municipal Government Act - City of Calgary Charter Regulation and City of Edmonton Charter Regulation

Issue

The previous government rejected comprehensive and meaningful engagement on offsite levies with industry and municipal stakeholders by granting expansive powers to Calgary and Edmonton without prior discussion with industry. The powers provided allow the two cities to charge levies (taxes) for anything they deem to be a 'facility' or 'infrastructure' without demonstrating any benefit to the developer, builder and homeowner who will pay the tax.

Impact

- These powers were conferred in a rather 'sudden' manner by the previous government, not only without prior discussion with industry, but in a way that contravened recently-concluded discussions and agreements between Industry, municipalities and the Province.
- The uncertainty created by these policies has and will continue to lead to lost private sector investment and job creation if not addressed. While a current city council may use this taxation tool in an appropriate manner, there is nothing preventing future city councils from levying anything they would like.
- The Charters have removed the formal right of appeal for developers which is a critical process in ensuring the cities are transparent and accountable.
- The broad authority allows the cities to charge all new developments for infrastructure and facilities that are not within proximity and serve no benefit.
- Charter power increases variance (therefore reducing predictability and increasing administrative costs) on policy, fees and levies across the Province.
- Expanded levies are already permitted under the amended Offsite Levies Regulation which includes some safeguards intended to provide a level of certainty to industry. Providing limitless powers through the Charters hinders the predictability and potential viability of projects.

Recommendation

1. Remove the following sections from the City of Calgary Charter Regulation and City of Edmonton Charter Regulation.
    a) Section 35.1;
    b) Section 35.2;
    c) Section 35.4; and
    d) Section 39 – 5(3.1).

7. City Charters – Statutory Plans

Ministry: Municipal Affairs

Legislation: Municipal Government Act - City of Calgary Charter Regulation and City of Edmonton Charter Regulation

Issue

Calgary and Edmonton have been given the authority to designate any plan as a statutory plan. The only requirement will be that the cities must identify how these plans will interact with other statutory plans which could lead to substantial and unnecessary red tape for developers and home builders.

Impact

- This policy has the potential to add significant costs and red tape to projects. Anytime a new project is initially considered, planned and designed it requires a developer and consultants to review and work with the statutory plans to determine what is permitted, site design elements and other factors. While time consuming in its present form, there is a clear hierarchy for these standards. Calgary and Edmonton have numerous non-statutory plans that impact land development and the previous framework allows the cities to convert the policies from their non-statutory plans into policies within their statutory plans. This provides clarity to all applicants on the requirements for their projects.
- In Calgary, there are over 40 non-statutory plans. Through a relatively simple process those could all now be considered statutory documents. This would mean in preparing any development application you could be subject to reviewing and complying with over 40 statutory plans and obtaining Council approval of any amendments. Furthermore, there will likely be numerous inconsistencies between all these documents.
- This power creates new bureaucratic costs and red tape for municipalities as they prepare, maintain, coordinate and then reference all these plans at the local and Regional Board level. This extends to the review of applications which will likely have compared against multiple documents that may not align. This will just further increase red tape and delay approvals.
- Calgary and Edmonton already have the power to amend their statutory plans to include any policies from their non-statutory plans so this is an entirely unnecessary power that will lead to increased costs for applicants and the cities.

Recommendation

1. Remove Section (33) from the City of Calgary and City of Edmonton Charter Regulations.

8. MGA – Offsite Levies (Transparency, Accountability and Fiscal Responsibility)

Ministry: Municipal Affairs

Legislation: Municipal Government Act – Offsite Levies Regulation

Issue

Offsite levies are a major cost component of any new community with these costs eventually being paid for by Albertans. As an industry we support paying for cost-conscience infrastructure based on the degree of benefit but want to see additional measures of transparency, accountability and fiscal responsibility built into the existing regulation.

Impact

- There is nothing preventing municipalities from charging additional levies for the purposes of constructing gold-plated or excessive facilities. Municipalities often mandate public buildings to be built to LEED Silver and in some cases Net Zero Standard while including public art, retail space and expansions of playfield spaces. These features fall outside the core purpose of these facilities and limitations are required to ensure financial prudence. Businesses and residents should not be responsible for picking up the costs for unnecessary building designs or features that go beyond the core purpose of the facility.
- Municipalities can collect millions of dollars in levies, never actual build a facility and not be responsible for returning the funds to those who paid it. It is a fair expectation that municipalities build the facilities they are taxing for within a reasonable timeframe. If they are not built, the money should be returned to the parties who paid it. The return of levy funds (if not used) needs to occur in accordance with a joint, pre-established agreement with industry.
- There are limited requirements for transparency of levy calculations. If a municipality is requesting a developer to pay millions in levies, they should have the right to access all calculations, figures and background data used by the municipality.
- Appeal rights serve as a critical tool for the private sector to ensure municipalities are following legislation correctly. Presently, industry may only appeal to the Municipal Government Board on levies related to recreation centres, police stations, fire halls and libraries. This same appeal right should extend to levies associated with infrastructure related to water, stormwater, wastewater and roads. Any municipality in compliance with legislation will not have to worry about appeals or having bylaws overturned and thus should not fear a simpler legislated appeal process. If they are complying with legislation, a more efficient appeal system should be welcomed.

Recommendations

1. Under Section 1 (Definitions), add the following definition:
   a) “appurtenance” includes items such as parking lots but does not include retail space, daycares, public art, fire trucks or other rolling stock, computers, televisions, furniture, library catalogues additional lands for park space or other items that go beyond the core construction cost of the facility.
2. Under Section 3 (General Principles) of the Offsite Levies Regulation, add the following policies:
   a) Components of infrastructure or facilities that go beyond its core purpose or above standard energy efficiency requirements mandated by the Government of Alberta are not leviable. This would include items such as retail space, rentable space, public art or unnecessary building design / energy efficiency features.

b) Municipalities shall demonstrate that they will provide the facility or infrastructure for which a levy was collected within a reasonable timeframe or as stipulated by a specified trigger event based on consultation and collaboration with contributing parties.

c) Municipalities shall establish a method and procedure to refund any private entity who provides the front-end cost of infrastructure or facilities so that the entity does not pay more than the established degree of benefit.

3. Under Section 5 (Principles and Criteria for Determining Levy Costs) of the Offsite Levies Regulation, add the following policies:
   a) A levy shall be based on a formula that is clearly stated with the calculations and input data being easily reproducible and verifiable by outside parties. No information, including proprietary spreadsheets, shall be withheld.
   b) A levy bylaw shall include policies requiring any surplus or unused levy funds to be properly accounted for and either used to the benefit of those who funded the levy or returned to the contributing party in instances where the infrastructure or facility was not constructed or constructed to a lesser degree (size, scope or standard) from what was originally planned.
4. Under Section 10 (Levy Bylaw Appeals), expand appeal rights for all levies, not just recreation centres, fire halls, police stations and libraries. Appeals should also apply all infrastructure identified under Section 648(1) of the *Municipal Government Act*.
5. Under Section 11 (Appeal Period), modify the policy as follows:
   a) An appeal must be submitted to the Municipal Government Board within ~~30 days~~ 90 days of the day on which the bylaw imposing the levy was passed.

9. MGA – Offsite Levies (Facilities In-Scope)

Ministry: Municipal Affairs

Legislation: Municipal Government Act – Offsite Levies Regulation

Issue

Fire Halls are important to new communities as they ensure resident safety while facilitating orderly and timely development. The benefit of these facilities is directly to the new residents. The other facilities included through the Municipal Government Act Review (recreation centres, police stations and libraries) benefit the broader region / municipality and do not have the same direct benefit on the new community. In addition, these facilities are often not built for years or even decades after levies are collected so the residents who fund them often do not enjoy the benefit.

Impact

- Recreation facilities, libraries and police stations do not have a clear service area or direct link to the benefit achieved by future residents. Municipalities should not be taxing a basic human "needs" (housing) to fund a "want" item like libraries or recreation centres. This will often result in new home buyers being charged twice for items like recreation facilities where their property taxes are paying off existing facilities while also being charged for facilities that have not yet been built.
- Levies, due to their impact on cost of basic human needs should be limited to basic need like water, sewer, roads and fire protection.
- If levied, these services must be available to the resident. There is far too great a chance that levies collected for matters like new recreation centers will not actually be there to serve the resident paying for them in their house price.

Recommendations

1. Remove all references to recreation centres, police stations and libraries from the *Municipal Government Act*.
2. Remove all references to recreation centres, police stations and libraries from the Offsite Levies Regulation.

10. MGA – Inclusionary Housing

Ministry: Municipal Affairs

Legislation: Municipal Government Act

Issue

Inclusionary housing is a flawed tool introduced through the *Municipal Government Act* Review process which involves municipalities taking a specified number of units from a builder / developer at a discounted rate. This results in increased costs for all the other units in the project. Under the previous government, consultation on this item occurred but a regulation was never brought forward.

Impact

- Inclusionary Housing serves as a tax on housing to pay for housing, driving up the cost of market units, potentially resulting in more Albertans having to rely on government subsidized housing.
- Investors, developers and builders remain concerned that this regulation could be introduced, conservatively adding between $4,000 - $10,000 dollars per housing unit.
- The increased costs would further reduce the number of Albertans that could access market housing while adding more red tape for industry in the form of approvals.
- Enabling this tool will create the need for additional municipal overhead in the form of new staff and in some cases entire departments.

Recommendations

1. Remove all references to Inclusionary Housing from the *Municipal Government Act*.

11. MGA – Permit Timelines & Approvals

Ministry: Municipal Affairs

Legislation: Municipal Government Act - Subdivision and Development Regulation

Issue

Under the Modernized *Municipal Government Act* legislated approval timelines for municipalities were removed which has added unpredictability and risks increasing costs for projects.

Impact

- The previous government removed critical measures of accountability for municipalities approving subdivision and development applications. This has resulted in a situation where municipalities have no legal requirement to process applications in a timely fashion.
- Delays in municipal approvals have major cost implications on projects. They result in additional financing costs and the uncertainty puts projects and jobs at risk.
- In addition to property taxes, developers and builders pay (often) considerable application fees to help fund municipal staff responsible for processing permits.
- All municipalities (regardless of size) should have legislatively mandated timelines to process applications. Municipalities should be encouraged or incentivized to be more efficient in their policy development and internal processes. This provides tremendous benefits to the local and provincial economy. When timelines cannot be met, applications should be considered approved.

Recommendations

1. Re-instate mandated approval timeframes to improve business predictability and encourage investment by:
    a) Deleting of Section 640.1 of the Municipal Government Act in its entirety.
    b) Deleting reference to Section 640.1 of the Municipal Government Act from Section 6 of the Subdivision and Development Regulation.
2. Include clarifying policies within the Subdivision and Development Regulation that applications not approved / denied within the legislated timeline are deemed approved.
3. Establish a clear and predictable process for extended timelines in cases involving complex applications.
4. Establish performance measures (i.e. a report card) for municipalities related to approval timelines that translate to capital grants from the province.

12. MGA – Municipal Reserve Allocation and Use

Ministry: Municipal Affairs and Transportation

Legislation: Municipal Government Act – Subdivision and Development Regulation

Issue

Outdated policies under the Municipal Government Act could allow municipalities to take additional land from private sector developers. Some municipalities continue to explore opportunities to use Municipal Reserve (MR) land for purposes beyond parks / open space.

Impact

- Under amendments to the Municipal Government Act in 1995, a policy was added that allows municipalities to take an additional 5% (above the already granted 10%) of a developer's land at no cost for use as a municipal, school or special reserve. When introduced it was believed that a municipality would get that land as a bonus for allowing additional density. Since 1995, new communities have changed dramatically, and developments are now required by municipalities to have upwards of 40 units / hectare. This often prevents developers and builders from providing the housing products that are in most demand. Additional density is no longer a privilege.
- Density should be determined by market demand but is now being dictated by local governments and regional boards. Developers and builders have learned to manage under these conditions but allowing municipalities the ability to take an additional 5% of land at no cost when they mandate the density is not reasonable.
- Municipalities are increasingly asking for more Municipal Reserve while also more options to use Municipal Reserve without going through a proper public disposition process. There is no guarantee that the addition 5% Municipal Reserve being taken with be used for open space or will be located within the denser community where it is implied it would be needed. Municipalities also struggle to maintain the Municipal Reserve spaces they already have. The Provincial Government should be challenging municipalities to make more effective use of the MR they are being provided rather than to increase development and housing costs by taking more land just because they have now mandated minimum densities.
- Unreasonable development policies and request for provision of land for items such as Municipal Reserve, schools and other reserves should be viewed as economic expropriation and remedied with reasonable compensation.

Recommendations

1. Remove Section 668(1) from the *Municipal Government Act*.
2. Remove Section 17(1) and 17(2) from the Subdivision and Development Regulation.
3. Limit the ability for municipalities to convert or sell MR lands taken from developers for non-park / open space uses.

13. MGA – Approvals from Ministry of Transportation

Ministry: Municipal Affairs and Transportation

Legislation: Municipal Government Act – Subdivision and Development Regulation

Issue

All development and construction projects are required to go through municipal approval processes. Often, applications must also go to Alberta Transportation. Whether it be a simple referral or a more in-depth review, the timelines for response from Alberta Transportation have become unpredictable and often time consuming. The Modernized Municipal Government Act further compounded this issue by doubling the referral radius for many applications.

Impact

- Delays associated with approvals add considerable costs to projects and can risk investment.
- Commitments from provincial departments to approval timelines in addition to some minor regulatory changes could reduce redundancies and delays currently experienced. This increases the predictability for private sector investment.
- Changes to the to the Subdivision & Development Act have created a situation where even minor boundary adjustments in many communities will require approval / comment from the Ministry of Transportation. This adds red tape for municipalities, provincial staff, residents and industry while duplicating some existing safeguards:
  - The massive increase in referral area has little practical value for most applications, uses significant resources and adds time to all application reviews.
  - 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 ASP, 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.

Recommendations

1. Implement a 60-day timeline on permits and regulatory approvals from Ministry of Transportation. Referrals on municipal applications should be responded to in 20-days. Appropriate timelines can be developed through consultation with industry and municipal stakeholders.
2. Under Section 14 of the Subdivision and Development Regulation, change the referral requirements back to 0.8 km from 1.6 km as currently contained within the regulation. 1.6 km from a highway means that almost every application (including small boundary adjustments) within small and medium-sized communities must be referred to Alberta Transportation.
3. Remove the words “at the time of subdivision” Section 14(e) of the Subdivision and Development Regulation.

14. MGA – Provincial Transportation Levy

Ministry: Municipal Affairs and Transportation

Legislation: Municipal Government Act – Offsite Levies Regulation

Issue

Funding and constructing highway improvements to facilitate private sector investment and development is a complex problem that requires thoughtful solutions. As part of the Municipal Government Act Review, a provincial transportation levy was introduced but the implementation does not appear possible based on the current policies and regulation.

Impact

- A clause added to the MGA and Offsite Levies Regulation related to off-site levies to pay for new or expanded provincial transportation infrastructure has created substantial confusion amongst industry and municipalities.
- The levy conflicts with Ministry of Transportation internal policy guidelines which makes the implementation of the levy almost impossible.
- The greatest challenge with this infrastructure is finding the upfront funding to facilitate development to fund the levy and generate tax revenue, the levy does nothing to address this.
- Until these issues have been addressed, the existing policies have the risk of adding significant delays and even risking projects across the province. Removing these policies until a functional solution is developed is important to reduce potential delays and uncertainty for projects.

Recommendations

1. Delete section 648(2)(c.2) from the *Municipal Government Act*.
2. Delete Section 5.1 from the Offsite Levy Regulation.
3. With stakeholders, undertake a substantial review of funding mechanisms and alternatives for highway infrastructure adjacent to new developments. This needs to include existing Ministry of Transportation internal policy documents and build off the previous work completed by the stakeholder group in 2018.

15. MGA – Appeal Processes to Ensure Municipal Accountability

Ministry: Municipal Affairs

Legislation: Municipal Government Act

Issue

Private sector appeals are an effective tool in ensuring and promoting municipal accountability. Presently, formal appeal processes vary, are often inadequate and occasionally non-existent. The consistent remedy often available is the Court of Queen's Bench which is a costly and time-consuming process for industry and municipalities.

Impact

- The lack of an appeal process other than the Court of Queen's Bench creates a situation where developers do not have the capacity to challenge a municipality as it means their development comes to a halt. Court processes are lengthy and impact financial and staff resources of both municipalities and developers. Developers will often acquiesce with actions that do not comply with provincial legislation to avoid additional delays.
- Creation of a more comprehensive and non-partial appeals process provincially would provide a timelier appeal mechanisms and tool that prevents costly legal challenges for all parties.
- The addition of industry appeals to help refine and improve the process; allowing it to be more adaptive and responsive over time. Allowing industry to appeal all matters of offsite levies and engineering standards would encourage a more thoughtful, transparent and inclusive policy development at the local level.

Recommendations

1. Increase the authority of the Municipal Government Board or create a provincial level appeal board, specifically for applicants, in order to provide a forum for challenging municipal accountability for items such as:
    a) Engineering standards and approvals;
    b) Offsite levies;
    c) Zoning decisions; and
    d) Permit decisions and timelines.

16. MGA – Taxation of Farmland Intended for Development

Ministry: Municipal Affairs

Legislation: Municipal Government Act – Matters Related to Assessment and Taxation Regulation

Issue

Under the current regulation, any time topsoil is removed from lands intended for future development, the municipality may tax that property at market value and at a residential tax rate. This policy discourages the continued use of lands for farming purposes, increases land costs and results in further financing charges that homeowners eventually pay.

Impact

- Stripping and grading practices are determined by industry in a manner that strives to maximize operational and cost efficiencies (keeping costs down for customers). This currently includes prudent management of the land resource, including maintaining and integrating agricultural uses. Introduction of a taxation scheme skews and creates a bias against efficient market behaviour that currently includes beneficial and practical agricultural uses.
- Development of large parcels of land takes years and it is a common practice to use top soil from part of the land in construction of the preliminary phases. This does not preclude the developer from continuing to lease this portion of the land for farming purposes (i.e. raising, production and sale of livestock). The current regulation assumes that land stripped of topsoil cannot be farmed, which is incorrect.
- Maintaining agricultural tax rates on unserviced, undeveloped lands incentivizes developers to preserve farming operations for as long as possible. Continued farming use should be encouraged in the regulation.
- Municipalities generally rezone substantial portions of future development lands to direct their use. Removing the farmland designation on portions that can still be farmed allows municipalities to not only tax the property at market rate, but for a use that currently does not exist and services that are not provided.

Recommendations

1. Delete the last paragraph from the definition of ‘farming operation’ Section 2(1)(f):

    ~~*but does not include any operation or activity on land that has been stripped for the purposes of, or in a manner that leaves the land more suitable for, future development;*~~

2. Add a clause that permits property to be taxed at a farmland rate so long as it is being actively used for a ‘farmland operation’.

17. MGA – Development Proceeding While Appeals Take Place

Ministry: Municipal Affairs

Legislation: Municipal Government Act

Issue

Appeals are a critical tool to ensure municipalities are accountable and following provincial legislation. There are often situations where a developer may appeal a municipality on matters related to levies of other development taxes. Municipalities will often prevent the development in question and occasionally all development within the area from proceeding until the appeal or court case concludes.

Impact

- Due to interest payments and lost opportunity costs, developers will often pay the fee (legal or not) to avoid the even more costly delay rather than ensure municipalities are following legislation.
- When matters of appeal strictly relate to fees and/or levies, these funds can be held in trust until the matter is resolved. This will allow projects and investment to proceed while enabling industry to challenge municipalities when they may not be following legislation.

Recommendations

1. Within the MGA, provide for the ability for development to proceed while appeals take place on matters related to fees, offsite levies, taking of land and other matters.
2. Require that any fees and/or offsite levies are held in trust until the resolution of the appeal process.

18. MGA – Balancing Applicant Property Rights

Ministry: Municipal Affairs

Legislation: Municipal Government Act

Issue

Municipally elected officials are often forced to make difficult development decisions based on the views of a vocal minority instead of established policy, science and best practices.

Impact

- Municipal governments often establish policy through a political process, but then applications are not fully supported through that same political process. For example, policy requirements in a Municipal Development Plan may speak to the need for increased density, but then council refuses applications meeting the municipality's intent, due to opposition by an existing neighbourhood.
- Administration and elected officials often proceed cautiously and slowly due to pressure from a vocal minority. This can result in delays and new requirements for developers to undertake rigorous, costly and extensive public engagement for infill or redevelopment projects to 'bring the community onside', despite the project being consistent with established municipal policy.
- Denials are often easier for a council to issue, despite the impact to the investor's property rights, the impact to Alberta's economy, the broader community interests and the intent of their own municipal polices and standards.
- Years of planning and thousands or millions of dollars in investment can be derailed due to the concerns of a few. This adds uncertainty and red tape to every single project, even if the applicant is proposing something that is largely compliant with the plans and policies of a municipality.

Recommendation

1. Incorporate a framework to balance applicant's property rights with community interests:
    a) Differentiate development uses between temporary nuisances versus permanent nuisances, requiring different mitigations for each;
    b) Remove restrictions which are applied based on activity or industry. Instead require restrictions based on community impact, so there are consistent standards between industries; and
    c) Require that development can only be denied based on unmitigable concerns which are cited to be likely outcomes of the development.

19. MGA – Priority for Resource Development

Ministry: Municipal Affairs

Legislation: Municipal Government Act

Issue

The *Municipal Government Act* lacks standards to assure a property owner's right to fully develop surface resources, such as sand and gravel. As a result, much of the resource base has been sterilized by municipal policy including mandatory setbacks, implementation of mandatory rezoning processes which cannot be appealed, and land use planning which clearly details the inability to extract resources.

Impact

- Resources are non-renewable, non-relocatable and incredibly rare. Aggregates are a great example:
  - Public consumption accounts for over 50% of their use with provincial and municipal comprising the rest. All developments require sustainably affordable and accessible sources of the resource.
  - Albertans consume more aggregate than any other commodity. Consumption is more than all forms of energy combined, and 25 times more than food. It is consumed locally.
  - In the Edmonton region, aggregate resources occur on less than 1% of land area.
- Municipal policy does not always consider and provide weight to the broad interests of all Albertans. Provincial policy does not provide protection for a property owner's right to fully develop the resource, instead much of the resource base is now sterilized by municipal policy. This has resulted in:
  - Municipal revenues valued at $0.40/tonne CAP levy are often sacrificed by councils in favor of appeasing residents' concerns related to extracting these non-relocatable resources.
  - A property owner's development rights are effectively subordinated to those of their neighbors or community, instead of being mitigated as they would be for other forms of development in the very same location or proximity to the adjacent resident or community.
  - Some municipalities have knowingly or unknowingly effectively enacted a "ban on resources".

Recommendations

1. Amend the *Municipal Government Act* to expressly prevent municipalities from unreasonably sterilizing any aggregates or resources, by either physical sterilizations or by economic sterilizations:
   a) Municipalities must be required to create reasonable development conditions which enable extraction within "setbacks" from adjacent residents.
   b) Reasonable setbacks from residents should be incorporated for processing resources but should not exist for excavation/extraction.
2. Enact legislative amendments to include all surface resource development under Natural Resource Conservation Board jurisdiction together with consistent and defined standards, including operating conditions (such as hours of work) when near neighbors or communities.

20. OHS – Joint Worksite Health and Safety Committees

Ministry: Labour

Legislation: *Occupational Health and Safety Act*

Issue

Joint Worksite Health and Safety Committees are designed to operate in a single work site environment and do not function effectively in residential construction where companies operate on multiple temporary work sites. The reliance on rigid committee structures and cumbersome procedures has created significant administrative burden and increased costs for industry while providing no measurable improvements to job site safety outcomes.

Impact

- Employers need to contend with multiple committees, representatives or both, creating significant overlap, administrative burden and duplicate costs.
- Most sub-contractors are self-employed persons, are on each site for only a fraction of a project's length and often at differing times which makes participating in all committees or as representatives for the duration of temporary projects extremely burdensome.
- Committees and Representatives are responsible for duties that may be best handled by qualified designates who are better equipped to quickly deal with safety challenges on site.
- Employers have indicated they are not seeing any measurable improvement in safety outcomes onsite since the creation of Joint Work Site Health and Safety Committees or Representatives.

Recommendation

1. Alberta Labour and Immigration to continue working with BILD Alberta on comprehensive changes to Joint Worksite Health and Safety Committees for residential construction.
2. Working with industry stakeholders, undertake a review of the *Occupational Health and Safety Act* to ensure it is focused on health and safety outcomes.
3. Update Part 3 of the *Occupational Health and Safety Act* to eliminate the reliance on rigid structural requirements that do not improve safety on worksites.
4. Allow industry the flexibility to ensure that their health and safety practices meet the unique nature and challenges of their workforce and job sites.
5. Enable trained safety professionals to take leadership to in establishing and implementing health and safety programs.

21. Environment – Water Act Approval Timelines

Ministry: Environment

Legislation: Internal Policies and Procedures

Issue

Delays in *Water Act* approvals can add millions in financing charges, impact jobs and risk private sector investment.

Impact

- Applications for wetland disturbance under the *Water Act* take, on average, between 12-18 months for review and decision. There is also a high degree of variance in timelines and decision-making outcomes between regions of the Province.
- Longer approval timelines add increased financing charges which impact the viability of projects and cost of the eventual homes constructed. A one-year delay results in approximately $1,000,000 in financing charges per quarter section of land. This is money that goes to banks and does not flow back into communities. If the end users (home buyers) cannot absorb these additional interest charges, it reduces the return-on-investment and impacts the ability to receive financing on future projects.
- Adding predictability to this process through mandated approval timelines would increase investor confidence, reduce costs on the end consumer and create more jobs through faster construction.
- Approvals have somewhat improved almost immediately following the provincial election which is something that should be built on.

Recommendations

1. Mandate an 8-week decision timeline on *Water Act* applications.

22. Environment – Review Process for Public Lands Act & Water Act Applications

Ministry: Environment

Legislation: Internal Policies and Procedures

Issue

A lack of integration in review of *Public Lands Act* and *Water Act* applications have added, in many cases, a year or more worth of delays for projects.

Impact

- When an impact is proposed to a Crown-owned wetland, an application must be made, reviewed, and approved under the *Public Lands Act* prior to submission and review under the *Water Act*. Current processes separate the provincial review under two different acts, which creates an incomplete view of a project or wetland impact. This can lead to misinformed rejection or denial of applications, and costly and time-consuming appeals processes.
- *Public Lands Act* applications take, on average, between 12-36 months for review and decision. Some projects have exceeded that timeline.
- When reviewing applications for disturbance of Crown-owned wetlands, an incomplete picture of the project is presented in the application (focused on the "land" portion of the wetland). Missing components of the "wet" are presented in the *Water Act* application, which is only submitted once a decision is rendered under the *Public Lands Act*.
- An incomplete view of a proposed project, and the opportunities and constraints of a site, can lead to a misinformed decision – either for approval or rejection of an application.
- In addition to provincial red tape on these issues, municipalities often have their own requirements or make their own interpretations on wetland policies. A lack of clarity of roles and jurisdiction often results in increased delays, costs and duplication of reports provided to the two levels of government.

Recommendations

1. Introduce a mandated 8-week review timeline for Public Lands dispositions applications and renewals.
2. Establish a concurrent submission and review process for *Public Lands Act* and *Water Act* applications, when applicable.
3. Integrate teams at Alberta Environment and Parks so that applications can be reviewed holistically.
4. Ministry of Environment to provide clarity on the roles and jurisdictional powers related to *Public Lands Act* and *Water Act* applications to reduce delays and duplication.

23. Environment – Consistent Application of Wetland Policy

Ministry: Environment

Legislation: Internal Policies and Procedures

Issue

Developers are witnessing substantial variations in approval timelines and the application of policy from region to region, despite being subject to the same legislation and policy.

Impact

- BILD Alberta (and its legacy organizations) were highly engaged throughout the development of the Alberta Wetland Policy and advocated for a framework that would be consistently applied by provincial departments throughout Alberta, resulting in a "level playing field" for development across municipalities.
- Application of policy, including timelines and requirements for approvals, remain widely varied across the Province:
  - Some offices will not meet with applicants as part of the pre-application and approval process.
  - Variation of municipal wetland policy objectives, and roles of municipal staff versus provincial staff are inconsistent across the Province.
- The above has resulted in a perceived advantage of developing in one region of the Province compared to another.

Recommendations

1. Introduce a mandated 8-week review timeline for wetland and Water Act approvals.
2. Align implementation of existing policy across the Province to make it easy and cost effective for proponents to "do the right thing". This includes working with municipalities on removing barriers to wetland retention within urban settings.
3. Establish consistent processes for staff across the Province to ensure consistency in review times and comments on applications.
4. Provide applicants opportunity to meet with Alberta Environment and Parks staff to discuss projects prior to application to ensure that all components are included to allow for a fulsome and thorough review upon submission.

24. Environment – Water Reuse and Stormwater Use

Ministry: Environment

Legislation: Internal Policies and Procedures

Issue

Existing legislation often prevents the reuse of treated stormwater which benefits the environment, municipalities and industry.

Impact

- Water is a precious and finite resource in Alberta. Existing legislation, including the South Saskatchewan Basin Closure Order, often prevents the reuse of treated stormwater for irrigation, wetland conservation, or other valuable uses. Alberta Environment & Parks has worked to develop the draft Alberta Water Reuse and Stormwater Use Guidebook, which was circulated on January 21, 2019 for stakeholder discussion purposes, but has not yet finalized the Guidebook for application by industry.
- Conflicting legislation, and lack of guidelines, is preventing the reuse of captured water and treated stormwater within Alberta. This results in a higher than necessary use of potable water, leading to concerns with existing municipal water licenses, potential future drought conditions, and lack of water supply for future population growth.
- Potable water is being used for industrial activities (such as hydraulic fracturing and industrial / commercial processing, natural resource extraction, fire control, etc.) due to lack of guidelines, when there is opportunity to reuse water or use stormwater for the same activity.

Recommendations

1. Convene a working group involving industry, the province, municipalities and regional boards to streamline the approach to stormwater, wetlands and water reuse.
2. Finalize the Alberta Water Reuse and Stormwater Use Guidebook and allow for implementation across the Province on a pilot basis.
3. Engage with user groups to review the results of the pilot after 12 months implementation and determine if modifications to the Guidebook are necessary.
4. Provide industry a mechanism to communicate valuable information, technology and learnings to staff on an ongoing basis.

25. Environment – Missing Directives Under the Alberta Wetland Policy

Ministry: Environment

Legislation: Internal Policies and Procedures

Issue

An enhanced Alberta Wetland Policy will provide more opportunities for wetland banking and mitigation which benefits the environment and encourages private sector investment.

Impact

- The Alberta Wetland Policy references numerous directives, including two (wetland enhancement and wetland banking) that have yet to be developed. When the policy was released in 2013, it was anticipated that the finalization of all directives would be completed in 5 years. Wetland enhancement and wetland banking are two mitigation options that the land development industry would like to implement within urban centres to replace lost wetland functions and provide natural amenities for residents.
- The policy states that an applicant can commit to onsite reclamation, but this is not consistently applied or made available to applicants.
- Without a directive in place, opportunities for wetland banking and enhancement are being lost.
- Opportunities for wetland mitigation in urban areas is currently limited to wetland construction. The requirements under the Wetland Restoration Directive severely limit application in urban areas.
- The missing directives do not allow for a fulsome suite of wetland mitigation opportunities in Alberta.

Recommendations

1. Task Alberta Environment & Parks with development of directives for wetland banking and wetland enhancement.
2. Engage with industry on opportunities to implement wetland banking and wetland mitigation directives within urban settings. Some alternatives include development of a program that allows applicants to:
    a) Use the “banked wetlands” to reduce wetland restoration requirements or compensation amounts; and
    b) Post a security in the amount of any remaining areas of wetlands to be disturbed. When the applicant restores the wetlands, then they can apply to have portions or all of the posted security amounts refunded.

26. Condo Act – Building Assessment Reports

Ministry: Service Alberta

Legislation: New Home Buyer Protection (General) Regulation

Issue

Existing legislation and regulations require that a building assessment be completed for the common property and common facilities of a condominium building. The requirements are very specific and are not related to building type (i.e. they also apply to semi-detached and row houses). All these units are previously inspected by Authorities Having Jurisdictions and covered under the Mandatory Warranty Program, so these reports duplicate existing safeguards.

Impact

- These reports must be completed by a qualified person (usually understood to be an architect or engineer) despite many condominiums not being built with professional involvement (duplex, semidetached, row housing). This increases the cost (approximately $2,000 per door) because a professional is now involved in every part of construction.
- The process leads to conflict between the builder and the condominium corporation especially if there was no architect / engineer involvement in the project. The builder hires a “qualified person” to assess the building(s) and if there is a disagreement then the only way to resolve that claim is through warranty or litigation. Often there is not a warranty claim in this process, so the only option is litigation.
- Many builders are avoiding building condo products due to the cost, red tape and risk associated with them. Removing this requirement will bring a level of certainty back to this marketplace and help to reduce costs on condo buyers.

Recommendations

1. Repeal the requirements to have a building assessment report completed by deleting the following sections from the New Home Buyer Protection (General) Regulation:
   a) Section 4;
   b) Section 5; and
   c) Section 6
2. Delete Section 16.1(1)(f) from the *Condominium Property Act*.

27. Condo Act – Build Time Specifications

Ministry: Service Alberta

Legislation: Condominium Property Act – Condominium Property Act Regulation

Issue

Pre-selling condominium units is generally required for the builder / developer to receive the financing needed to construct the building. Under changes to the Condominium Property Act Regulation, when a builder or developer pre-sells a condo they need to provide three dates – earliest possession, likely possession and latest possible possession. Exact and often even approximate construction timelines are extremely difficult to predict and is discouraging the construction of these products.

Impact

- The construction of many condominium projects in Alberta is subject to financing from banks or other lending institutions. In many cases, receiving the required financing is subject to a specific amount of pre-sold units. Without the presales, financing is not available.
- The time it takes to finalize construction is entirely dependent on the current state of the market, municipal approvals and procuring the necessary pre-sales needed to receive financing to move forward with construction.
- This adds a tremendous amount of risk to each project which could discourage their construction moving forward.

Recommendations

1. Remove requirements for build time specifications from Section 20 of the Condominium Property Act Regulation.

28. Expropriations – Development During Expropriations

Ministry: Municipal Affairs

Legislation: Expropriations Act

Issue

When developing large communities, expropriation of lands is often required to facilitate new roads and other infrastructure. As expropriations move through the legislated process, they often get delayed when determining land valuation and compensation. This is an extra step of red tape that delays projects from moving forward when the matter in question simply relates to compensation to the landowner.

Impact

- Delays over the compensation aspect of expropriations can lead to multiple months of delays which results in considerable interest charges for industry when the matters going through the process simply relate to compensation, not the design of the project.
- Development proceeding as this process plays out still provides the affected landowners with fair compensation and maintains the ability to challenge the expropriation at previous stages. Once the process moves to the compensation stage, money will still be paid, debate and process is simply focused on the amount of compensation.

Recommendations

1. Through the *Expropriation Act* and other relevant legislation and regulations, allow development to proceed once the expropriation process moves to the step of valuation and compensation.

29. Mortgage Rules

Ministry: Finance and Treasury

Issue

Federally imposed mortgage rules were designed for Vancouver and Toronto have been negatively impacting Albertan's seeking affordable market housing along with builders and developers. ATB and Credit Unions are not required to follow the federal rules.

Impact

- The Federal Mortgage Rules are designed to address issues in housing markets within British Columbia and Ontario. The same affordability issues that plague Toronto and Vancouver are not prevalent in Alberta.
- The federal mortgage rules prevent an additional 150,805 Alberta households from qualifying for an average priced home. This has led to historic numbers of housing inventories across Alberta which are risking the viability of companies and employment for skilled trades.
- The mortgage rules impact the ability for some Albertans to explore moving their mortgages to different lending institutions and receive more competitive rates.
- Inventory levels are at historic highs in Alberta and putting more Albertans into homes they can afford will reduce stresses on rental housing.

Recommendation

1. Government of Alberta to work with ATB and other Alberta-regulated financial institutions in developing modified rules in Alberta such as:
   a) Removal of stress test requirements for 3 to 5-year fixed rate mortgages;
   b) Re-instate 30-year mortgages; and
   c) Assess opportunities to expand the eligibility of the Federal Government's first-time home buyer's incentive.