

# THE COMMUNICATOR

Alberta Development Officers Association (ADOA)

June 2020

## Spring Issue

### In this Issue:

- Updates
- COVID-19
- Help Centre
- Resources
- Legal Corner
- Member Connect

If you have any **inquiries or topics** you would like for the Board to discuss/address, please email them to [admin@adoa.net](mailto:admin@adoa.net)

**Note: Due to a restructuring at the Town of Hinton, Dani Woodman had to resign from the ADOA Board and the Town of Hinton is no longer hosting the 2021 Conference.**

**The 2020 Conference has been canceled due to Covid-19.**

### Development Showcase

Multi-Plex in Blackfalds

Construction July 2020

Value \$24,600,000



## Conference Update

# HOST THE 2021 CONFERENCE!

2020 Conference has been cancelled due to COVID-19

If your municipality is interested in hosting the 2021 ADOA Conference, please contact Dianne Burtnick [admin@adoa.net](mailto:admin@adoa.net)



The ideal Conference Location will be:

- a collaboration between multiple municipalities
- Have a location that can handle 250-300 participants for both the conference and banquet
- Have accommodation services for all participants.
- Be willing to showcase what makes your municipalities unique!

ADOA LEGAL CORNER with:



**BROWNLEE LLP**  
*Barristers & Solicitors*

**Covid-19 has changed so much in the last few months as well as changing legislation and Ministerial Orders. Here we will repost all the Updates that Brownlee has issued in the last few months. Most of which is still relevant today however some advice may have changed.**

If you have questions about your Land Use Bylaw, the items discussed above or other general development issues, please contact a member of the **Brownlee LLP Municipal Team** on our Municipal Helpline at 1-800-661-9069 (Edmonton) or 1-877-232-8303 (Calgary).





**BROWNLEE LLP**  
*Barristers & Solicitors*

## COVID-19 Update: Streamlining Approval Processes and Meeting/Hearing Procedures Updated as of April 20, 2020 in light of COVID-19



Alifeyah Gulamhusein

*By Alifeyah Gulamhusein*

**IMPORTANT:** Please note that this article was originally drafted on April 3, 2020 and some information contained therein may no longer be accurate given that Ministerial Order 022/20 has been rescinded and replaced by Ministerial Order 036/20. We recommend you do not rely on the April 3, 2020 version of this article. Should you have any questions, please do not hesitate to contact our office.

**The COVID-19 situation is evolving rapidly, and changes to legislation are coming quickly. Please make sure to review any recent announcements from the Province.**

### (1) Background

On March 25, 2020, Ministerial Order 022/20 (“MO 022/20”) was issued by the Minister of Municipal Affairs pursuant to the Minister’s power to alter dates and time periods (*MGA*, s. 605). MO 022/20 extended a number of timelines in the *MGA*. MO 022/20 was re-issued on March 31, 2020 with the same impact on the *MGA* timelines.

On April 17, 2020, MO 022/20 was rescinded pursuant to Ministerial Order 036/20 (“MO 036/20”). MO 036/20 sets out transitional provisions which address the time period between the issuance of MO 022/20 (March 25, 2020) and MO 036/20 (April 17, 2020). Notably, there are no issues respecting the two MO 022/20 with different dates because MO 036/20 rescinds MO 022/20.

Also on March 25, 2020, the Lieutenant Governor in Council issued Order in Council 099/2020 which enacted the *Meeting Procedures (Covid-19 Suppression) Regulation* to allow for electronic meetings.

### (2) What does MO 036/20 do?

MO 036/20 rescinds MO 022/20. This means that most *MGA* timelines that were previously extended to October 1, 2020 as a result of MO 022/20 have reverted back to the normal timelines as set out in the *MGA*.

MO 036/20 also provides guidance for how to address any matters that arose in the transition period between March 25, 2020, when MO 022/20 was issued, and April 17, 2020, when MO 036/20 was issued (the “Transition Period”). It provides that the timeline for matters listed in the appendix to MO 036/20 that **began or ended** in the Transition Period is to be calculated as **starting** on April 17, 2020.

For example, if a development authority received a development permit application on April 15, 2020, the twenty days in which the development authority must determine whether the application is complete pursuant to section 683.1(1) of the *MGA* begins on April 17, 2020 because the application was received in the Transition Period. Or, as another example, if a subdivision appeal period ended on April 1, 2020, the 14 days to appeal the decision pursuant to section 678(2) of the *MGA* starts on April 17, 2020 because the expiry date is in the Transition Period.



### **(3) Streamlining Approvals**

Regardless of MO 022/20 being rescinded and MO 036/20 being enacted, municipalities may still want to consider ways to streamline subdivision and development decisions as a way to efficiently and effectively manage resources.

One way to streamline subdivision or development approvals is to review who has the authority to make subdivision and development approval decisions. For example, if the subdivision authority or development authority in your municipality is the Municipal Planning Commission (the “MPC”) or in the case of subdivision, Council, Council may want to consider delegating approval powers to a designated officer to facilitate more timely approvals (*MGA*, ss. 623 and 624). We suggest that if Council decides to delegate subdivision or development authority to a designated officer, the powers are best delegated to the CAO who can further subdelegate (*MGA*, s. 209). Practically speaking, delegating to the CAO will allow the CAO to further subdelegate on the basis of the CAO’s knowledge of administrative resources and availability.

If your subdivision authority or your development authority is established in the land use bylaw (the “LUB”), Council will need to have a public hearing to amend the LUB (*MGA*, s. 692); however the *Regulation* makes it possible for Council to conduct a public hearing electronically. If the subdivision authority or development authority is established in a separate bylaw, Council can simply amend the bylaw as required.

Another way to streamline approvals that are made by the MPC is to review your MPC’s procedures. Some MPCs have procedures akin to a hearing where the applicant and other members of the public are allowed to make submissions. However, there is no legislated right for the applicant or members of the public to make submissions to the MPC; therefore, it may be possible to limit submissions to only allow a report from the subdivision or development authority and these may be even further limited to email submissions.

Any changes Council makes to streamline approvals can be temporary or limited in response to the current pandemic. Ultimately, any changes will require a careful review of the MO, your municipality’s bylaws and your delegations in order to determine the best plan forward for your municipality. You may need to seek legal advice to ensure any proposed changes are consistent with the MO, the *MGA*, and the requirements of procedural fairness.

### **(4) Holding MPC Meeting, Public Hearing or SDAB Hearing**

The *Meeting Procedures (Covid-19 Suppression) Regulation* (the “*Regulation*”) was enacted on March 25, 2020 to facilitate electronic meetings and hearings. Meetings are defined to include hearings. Some of the highlights of the *Regulation* are listed below:

- a. **Electronic Meeting** – Entire meetings and hearings may be held electronically, namely by teleconference or live streamed broadcast (*Regulation*, s. 3).
- b. **Submissions** – If members of the public were normally entitled to make a submissions, they should be able, before and during the meeting, to make submissions by email or any other method that Council or the board considers appropriate (*Regulation*, s. 3(1)(b)).
  - i. This means Council, the MPC and the SDAB may need to review their procedures and decide how and when they will accept submissions.
  - ii. There is no right for the public to participate in a Council meeting, a council committee meeting or an



MPC meeting; there is only a right to be present (*MGA*, s. 198). The *Regulation* echoes this provision and only provides that the public must be able to hear the meeting (*Regulation*, s. 3(1)(a)).

- iii. The right to participate in public hearings and SDAB hearings is unchanged so Council will have to facilitate participation as noted above.
  - iv. Again, changes made to accommodate electronic participation may require resolutions of Council or amendments to bylaws, depending on how things are established in your municipality, and these can be drafted so they are temporary.
- c. **Attendees** – For a meeting, the CAO or designated officer must attend electronically and for a hearing the chair or vice chair must attend electronically (*Regulation*, s. 3(1)(c)).
  - d. **Closed Meeting** – Electronic access to meetings or hearings can be restricted or suspended in order to close them to the public (*Regulation*, s. 3(3)(a)).
  - e. **Meeting Information** – If information has to be made available to the public or for public inspection, it can be made available electronically on the website where the information is likely to be easily found or if requested by a person, by sending it by email, mail or facsimile (*Regulation*, s. 4).
  - f. **Quorum** – Where quorum cannot be constituted due to members being in quarantine, quorum is constituted by the number of members not in quarantine, if that number is 2 or more (*Regulation*, s. 6). Quarantine includes any self-isolation and self-quarantine as a result of COVID-19 or recommendations of the Chief Medical Officer or the World Health Organization relating to COVID-19.
  - g. **Notice** – Notice of a meeting or hearing must still comply with notice requirements specified by Council (*MGA*, s. 196). If your Council has adopted an Electronic Advertising Bylaw (*MGA*, s. 606.1), you may have additional options for advertising. Notice must state the electronic means by which the meeting or hearing is to be held and give the information necessary for the public to access the meeting (*Regulation*, s. 3(2)).
  - h. **Public Hearing** – Council is deemed to have met its obligation to hear people (*MGA*, s. 230(4)) if the public hearing is held in accordance with the *Regulation* (s. 3(3)(d)). Council is also deemed to have met its obligation to consider representations (*MGA*, s. 230(5)) if Council allows submissions in accordance with the *Regulation* (s. 3(3)(e)).
  - i. **Public Hearing Notice** – The *Regulation* has made no change to the requirements to provide notice of a public hearing in accordance with *MGA* sections 606 and 230(2)(a).

With respect to electronic meetings or hearings, it is important to consider the limitations and challenges with technology (dropped call, inability to call in, data issues). If there are issues with technology that limit access or participation, it may be necessary to adjourn or postpone a meeting or a hearing in order to ensure procedural fairness and insulate your municipality from a challenge to the passage of a bylaw, resolution or decision on the grounds that the process was unfair.

#### **(5) Appeals to SDAB and Court of Appeal – No changes to the MGA**

As a result of MO 022/20 being rescinded, appeals of decisions of the development authority, subdivision authority and SDAB are no longer extended to October 1, 2020. Instead, all appeals have reverted back to timelines set out in the *MGA*, subject to the Transition Period outlined above.



**BROWNLEE LLP**  
*Barristers & Solicitors*

## Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information, please contact Alifeyah at:



Alifeyah Gulamhusein

780-497-4877

[agulamhusein@brownleelaw.com](mailto:agulamhusein@brownleelaw.com)

### **CALGARY**

7th Floor  
396 - 11th Avenue S.W.  
Calgary, AB T2R 0C5  
T: (403) 232-8300  
F: (403) 232-8408

Toll Free: 1-800-661-9069

### **EDMONTON**

2200 Commerce Place  
10155 - 102 Street  
Edmonton, AB T5J 4G8  
T: (780) 497-4800  
F: (780) 424-3254



**BROWNLEE LLP**  
*Barristers & Solicitors*

## **COVID-19 Update: The Impact of Draft Planning Documents and Some More Important Extensions to Deadlines Under the MGA**

*By Jeneane Grundberg and Keegan Rutherford*

**IMPORTANT:** Please note that this article was originally drafted on April 3, 2020 and some information contained therein may no longer be accurate given that Ministerial Order 022/20 has been rescinded and replaced by Ministerial Order 036/20. We recommend you do not rely on the April 3, 2020 version of this article. Should you have any questions, please do not hesitate to contact our office.

The COVID-19 situation is evolving rapidly, and changes to legislation are coming quickly. Please make sure to review any recent announcements from the Province.

### **A. Impact of Draft Planning Documents**

During these challenging times, we anticipate that adoption of various planning documents will be delayed past time frames contemplated by municipalities. For example, if a municipality is considering repealing and replacing its municipal development plan, Council may wish to wait until after the pandemic subsides to finalize the required three readings and the public hearing. Even though it could avail itself of the electronic public participation, Council may wish to defer a public hearing until the ordinary “in person” process can be followed.

Similarly, a Council may have proceeded with consultation and first reading of an Intermunicipal Development Plan, but not completed all readings and the public hearing at the time the declaration of emergency occurred.

With these delays in mind, municipal planning and development personnel should be aware that draft planning documents are relevant planning considerations. Several court cases have recognized this, specifically in the case of draft statutory plans and non-statutory plans. Accordingly, if your municipality has a draft planning document, particularly if it has been given first reading by Council, it will be necessary for planning bodies to give consideration to that document in processing related approvals. Therefore, if personnel in the planning and development department are preparing a staff report for a planning body (Council, subdivision authority, development authority, subdivision and development appeal board or the Municipal Government Board) draft planning documents should be referenced and highlighted for consideration.

We provide the following additional comments for context:

- a. **Weight of draft planning documents** – Draft planning documents, because they have not been formally adopted, will not carry the same weight as planning documents that have been formally enacted.
- b. **Documents other than statutory plans and land use bylaws** – Where the planning document is something other than a draft statutory plan or a draft land use bylaw, such as a draft master transportation plan or draft engineering design standards, the same will hold true. They are relevant planning considerations, and must be considered subject to the following respecting publishing of planning policies. There is a requirement under section 638.2 of the *Municipal Government Act* (the “MGA”) for every municipality to compile, list, update and



publish planning policies either adopted by Council, delegated by Council (pursuant to s. 203) or delegated by the Chief Administrative Officer (pursuant to section 209). There is also a requirement that neither a planning body nor a court may rely on a planning policy unless it is properly published. Therefore, if your municipality wishes to rely on a planning policy, it will still need to be properly published as the Ministerial Orders issued do not vary this requirement or extend the legislated time frames.

## **B. Extensions on Planning and Development Time Frames**

Ministerial Order 022/20 (“MO 022/20”) has been rescinded by Ministerial Order 036/20 issued April 17, 2020 (“MO 036/20”).

Pursuant to MO 036/20, the timelines concerning those sections of the *MGA* **that are listed in the Appendix** to MO 036/20 have reverted back to the original timelines as set out in the *MGA* subject to a transition provision covering the period from March 25, 2020 to April 17, 2020 (the “Transition Period”). The Transition Period provides that any timeline **that started or ended** within the Transition Period is to **start again** on April 17, 2020.

It is important to note that in order for the Transition Period to apply to a timeline set out in a section in the *MGA*, it **must** be listed in the Appendix to MO 036/20. If a section that had been previously amended pursuant to MO 022/20 is not listed in the Appendix to MO 036/20, the normal *MGA* time lines are reverted back without the benefit of the Transition Period. See the comments below relating to section 690(1.1) as an example.

Please be sure to check out our other articles posted on the Brownlee LLP website, in particular “COVID-19 Update: Streamlining Approval Processes and Meeting/Hearing Procedures” by Alifeyah Gulamhusein.

### Municipal Plans and Frameworks

**Section 631(1)** – For municipalities that are required to have an Intermunicipal Development Plan (“IDP”) and have not come to an agreement with their neighboring municipality that an IDP is not required, the deadline for having an IDP in place has been extended from April 1, 2020 to April 1, 2021. This extension was provided for in MO 019/20 which has not been rescinded. Therefore, the extension to April 1, 2021 still applies.

**Section 708.28(1)** – For municipalities that are required to have an Inter-municipal Collaboration Framework (“ICF”) with each other (i.e. share common boundaries but are not members of the same growth board), the deadline for creating that ICF has been extended from April 1, 2020 to April 1, 2021. This extension was provided for in MO 019/20 which has not been rescinded. Therefore, the extension to April 1, 2021 still applies.

**Section 619(3)(a) and (6)** – Where a license, permit, approval or other authorization has been granted by the NRCB, ERCB, AER, AEUB or AUC and a municipality receives an application for a statutory plan amendment or a land use bylaw amendment that is consistent with such permit, approval or authorization, the statutory plan amendment or land use bylaw amendment must be granted within a certain time period. While MO 022/20 had extended the period for doing this to October 1, 2020 (instead of the 90 days after the application was made), that extension has been rescinded and these sections were not included in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period** (i.e. 90 days after an application is made).



### Intermunicipal Disputes

**Section 690(1.1) and (3)** – A municipality may appeal a statutory plan or a land use bylaw (or an amendment to either) adopted by an adjacent municipality to the Municipal Government Board if it is of the opinion that such document “has or may have a detrimental effect” on it. Previously, this appeal had to be brought within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw. There was also a requirement for the municipality whose bylaw was being appealed to file information with the Municipal Government Board within 30 days of the appeal being filed. Under MO 022/20, both of these timelines had been extended to either October 1, 2020 or the timeframes noted in the section, whichever was later. However, these extensions were rescinded and the noted sections were not included in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.

For example, in the event a bylaw was passed to amend a land use bylaw on April 1, 2020 and a municipality wanted to bring an appeal pursuant to section 690(1.1), the 30 days in which the appeal must be brought started on April 1, 2020 and the normal timelines are followed. Similarly, if that appeal period ended on April 1, 2020 then that appeal period has ended and there is no longer the right to appeal.

**Section 691(1)** – Upon receiving a notice of appeal under section 690, the Municipal Government Board is required to commence a hearing within 60 days and is required to give a written decision within 30 days of concluding its hearing. Under MO 022/20, these timelines were extended to either October 1, 2020 or the timeframes noted in the section, whichever was later. However, these extensions were rescinded and the section was not included in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.

### Deemed Expropriations

**Section 644(1)** – Where a municipality has passed a land use bylaw that designates certain lands, that are not owned by the municipality, for use or intended use as a municipal public building, school facility, park or recreation facility, the municipality is required to do one of the following within a set timeframe: (a) acquire the land or require the land to be provided as reserve land; (b) commence proceedings to acquire the land or to require the land to be provided as reserve land and then acquire that land within a reasonable time; or (c) amend the land use bylaw to designate the land for another use or intended use. Under section 644(1), the time frame is 6 months from the date that the land was designated. While MO 022/20 had extended that timeline to October 1, 2020, it has since been rescinded and the section is not included in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.

### Reserves

**Section 664.2(2)** – While a subdivision authority may require an owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel to the municipality as conservation reserve, the municipality is required to compensate the owner for those lands. Under section 664.2(2), the municipality is required to pay that compensation within 30 days after the Registrar had issued a new title for the conservation reserve. While MO 022/20 had extended that timeline to either October 1, 2020 or the timeframe noted in the section (whichever was later), this extension has been rescinded and section 664.2(2) is not listed in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.



**BROWNLEE LLP**  
*Barristers & Solicitors*

**Section 667(1)(a)** – When a subdivision authority requires that an owner of a parcel of land that is the subject of a proposed subdivision provide money in place of municipal reserve, school reserves or municipal and school reserves, the applicant must provide a market value appraisal of the existing parcel of land within a set time frame. Under this section, that market value appraisal has to be provided within 35 days of the date on which the application for subdivision approval was made. While MO 022/20 had extended that timeframe to October 1, 2020 or the timeframe noted in the section (whichever was later), this extension has been rescinded and section 667(1)(a) is not listed in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.

## Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information, please contact the following members of the Brownlee LLP Municipal Team:



Jeneane Grundberg

780-497-4812

[jgrundberg@brownleelaw.com](mailto:jgrundberg@brownleelaw.com)



Keegan Rutherford

780-970-5734

[krutherford@brownleelaw.com](mailto:krutherford@brownleelaw.com)

### **CALGARY**

7th Floor  
396 - 11th Avenue S.W.  
Calgary, AB T2R 0C5  
T: (403) 232-8300  
F: (403) 232-8408

Toll Free: 1-800-661-9069

### **EDMONTON**

2200 Commerce Place  
10155 - 102 Street  
Edmonton, AB T5J 4G8  
T: (780) 497-4800  
F: (780) 424-3254



**BROWNLEE LLP**  
*Barristers & Solicitors*

## COVID-19 Update: Q & A for Municipal Planning Issues

*By Alifeyah Gulamhusein, Derek King, and Jeneane Grundberg*

**IMPORTANT:** Please note that this article was originally drafted on April 3, 2020 and some information contained therein may no longer be accurate given that Ministerial Order 022/20 has been rescinded and replaced by Ministerial Order 036/20. We recommend you do not rely on the April 3, 2020 version of this article. Should you have any questions, please do not hesitate to contact our office.

The COVID-19 situation is evolving rapidly, and changes to legislation are coming quickly. Please make sure to review any recent announcements from the Province.

### **1. What powers are granted to a municipality in regards to land use when a state of local emergency is called?**

Typically, other than in specific relation to the emergency and the response to it, a state of local emergency (“SOLE”) does not grant the municipality any broad powers to modify or suspend the planning regime or the requirements of the land use bylaw (“LUB”).

In the context of responding to the emergency, the Director of Emergency Management (“DEM”) can order that lands and structures be put to uses that are contrary to existing Development Permits, contrary to the LUB or which in other circumstances would require an application pursuant to sections 24(1)(b) and 19(1)(c), (d) and (g) of the *Emergency Management Act*.

### **2. Does a state of local emergency render local bylaws such as the land use bylaw null and void when a municipality makes decisions?**

The SOLE does not render local bylaws, including the LUB, null and void generally, but as described above, the DEM can issue orders that may be contrary to a bylaw, if done in good faith for the specific purpose of addressing the emergency and its impacts. More typically though, the DEM will seek an amendment of a bylaw by Council if required.

By way of example, the DEM can authorize the use of a structure for a purpose that may be contrary to the zoning or a development permit issued for that structure, if the use is connected to the emergency or the emergency response.

### **3. What latitude does a state of local emergency give a Development Officer when they are faced with issuing waivers or approving a use that is not allowed in a land use district?**

None. The Development Authority is not vested with any different authority with respect to waiving requirements (of the LUB or an Approval), or approving a use that is not allowed within a land use district. As noted above, the DEM can cause lands or structures to be put to uses that are not allowed in the district, but the DEM does not require development approval to do so.



**4. If a development permit or subdivision approval is granted now, does the municipality advise the developer that the appeal period is extended until October 1, 2020? Should the municipality be cautioning developers to not proceed under a development permit or subdivision approval, and they cannot commence construction or the use until that date (unless it is understood it would be done entirely at their own risk)?**

The extension to October 1, 2020 has been rescinded by Ministerial Order 036/20 (“MO 036/20”). This means that all the sections listed in the Appendix to Ministerial Order 022/20 (“MO 022/20”) have reverted from having an October 1, 2020 extension back to the normal timelines and deadlines outlined in the *MGA* unless specifically listed in the Appendix to MO 036/20. MO 036/20 provides a transition period from March 25, 2020 to April 17, 2020 (the “Transition Period”) for those sections specifically listed in the Appendix to MO 036/20 so that any timeline that **started or ended** within the Transition Period is to be calculated as **starting** on April 17, 2020.

For example, if a Development Permit was issued on March 30, 2020 then, as a result of the Transition Period, the appeal period is calculated to start on April 17, 2020 and run for 21 days.

If a Municipality issued a decision in the Transition Period, we would recommend contacting the recipient of the decision and any other notified parties to advise that the timeline of the decision begins on April 17, 2020 and is calculated in accordance with the *MGA*.

**5. Are you saying hold off on issuing Development Permits for Discretionary Uses or variances only? Not Permitted Uses though?**

In light of MO 022/20 being rescinded as discussed in the response above, development authorities (and subdivision authorities) are required to comply with the timelines in the *MGA*.

**6. Will a subdivision applicant be unable to finalize a recent or upcoming subdivision approval, and have the municipality/Subdivision Authority endorse it for registration at Land Titles prior to October 1, 2020, as the deadline to file a subdivision appeal would technically be open until October 1, 2020?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20.

**7. Recognizing that the timelines in Section 686 have been extended to October 1, 2020 are there process options, or recommendations with respect to the issuance of development decisions that involve discretionary use(s), and/or a variance?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20.

**8. Does the MO 022/20 extend the time for responding under s 653.1(1) (the section that says you have to determine if an application for subdivision approval is complete in 20 days)?**

As discussed above, since MO 022/20 has been rescinded, the time to determine whether an application is complete



has reverted back to the 20 days as set out in the *MGA*. Section 653.1(1) is included in the Appendix of MO 036/20. Therefore, if an application was received in the Transition Period (March 25, 2020 to April 17, 2020) the timeline to determine if the application is complete is 20 days but the timeline commences on April 17, 2020.

**9. The deadlines for filing appeals on development permits (s 686) was also extended to October 1. Doesn't that put any development permit issued from now until October 1 at risk of being appealed for months instead of the usual 21 days?**

As discussed above, since MO 022/20 has been rescinded, the appeal period has reverted back to the 21 days as stipulated in the *MGA*, subject to the Transition Period. Section 686 is included in the Appendix to MO 036/20. Therefore, if the appeal period **began or ended** within the Transition Period (March 25 and April 17) the 21 days would **begin** on April 17, 2020.

**10. Does anything in this Ministerial Order (or others) remove the responsibility for the municipality to advertise Public Hearings?**

No. Municipalities are still required to advertise public hearings but if the public hearing is going to be held pursuant to the *Meeting Procedures (Covid-19 Suppression) Regulation*, the notice must state the electronic means by which the meeting is to be held and give the information necessary for the public to access the meeting.

**11. Can a municipality choose a deadline (such as a deadline for appeals to the SDAB/MGB following issuance of a development permit or subdivision approval) that is different than the MGA?**

No. The Minister has the authority pursuant to section 605 of the *MGA* to issue an order altering dates and time periods; pursuant to that authority he has rescinded MO 022/20 so most timelines and deadlines revert back to the *MGA*, subject to the Transition Period.

That said, if a municipality is having difficulty meeting deadlines under the *MGA*, an option may be to request the Minister to pass a MO extending a deadline, even on a "one off" basis. But be cautious, here; it would be prudent to approach the Minister's office prior to the deadline expiring.

**12. During a public hearing will municipalities need to, as an example: make the call asking for members of the public to indicate if they are in favour of the bylaw, then allow time (15 minutes) for people to email comments; then make the call for those opposed, and allow time (15 minutes) for people to email comments; and then call for anyone else who would like to make comments, allow time for emails again. OR can we simply make the call for anyone who has comments in favour of, against, or otherwise affected to submit them at the start of the public hearing, provide them with 30 minutes, and then read them all in once the time is up?**

The *Meeting Procedures (Covid-19 Suppression) Regulation* does not mandate how Council conducts its public hearing. It allows Council to accept submissions by email or by any other method that the Council considers appropriate. Council may want to provide that any written submissions must be emailed to the municipality in advance of the public hearing so they can be posted and available for the public to view and limit the public hearing to telephone (oral) submissions. Additionally, Council may be able to ask participants to identify their desire to



participate and their position (for or against) in advance of the public hearing so Council can call upon participants in an orderly fashion. Council can determine the procedure and it may be impacted by the technology that is available.

**13. To ensure municipalities meet all legislative requirements, is it best to hold all SDAB appeals as close to October 1?**

As discussed above, since MO 022/20 has been rescinded, the normal process applies with respect to appeal periods subject to the Transition Period.

**14. Since s. 606(2) refers to notification for public hearings, does this mean that no public hearings may be held until after October 1?**

No, public hearings can be held in accordance with the *MGA* and may be held electronically in accordance with the *Meeting Procedures (Covid-19 Suppression) Regulation*. Notice requirements for public hearings are unchanged.

**15. Is there any direction on sending out adjacent letters?**

None of the Ministerial Orders issued to date have provided any direction in this regard, therefore the provisions of the *MGA* must be followed as normal.

**16. If an SDAB Hearing commenced before the amendments were passed, do these extended timelines apply or would the Board still be required to issue a written Decision within 15 days?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20.

**17. What if an Appeal Hearing is held and then a month later another appeal is filed?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20 and, as always, the SDAB should not schedule a hearing until the appeal period has expired.

**18. Does this mean that the time for responding under s. 653.1(1) (the section that says you have to determine if an application is complete in 20 days) from the time specified in the section to October 1?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20.



**BROWNLEE LLP**  
*Barristers & Solicitors*

## Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information, please contact the following members of the Brownlee LLP Municipal Team:



Alifeyah Gulamhusein

780-497-4877

[agulamhusein@brownleelaw.com](mailto:agulamhusein@brownleelaw.com)



Jeneane Grundberg

780-497-4812

[jgrundberg@brownleelaw.com](mailto:jgrundberg@brownleelaw.com)



Derek King

403-260-1472

[dking@brownleelaw.com](mailto:dking@brownleelaw.com)

### **CALGARY**

7th Floor  
396 - 11th Avenue S.W.  
Calgary, AB T2R 0C5  
T: (403) 232-8300  
F: (403) 232-8408

Toll Free: 1-800-661-9069

### **EDMONTON**

2200 Commerce Place  
10155 - 102 Street  
Edmonton, AB T5J 4G8  
T: (780) 497-4800  
F: (780) 424-3254



## **COVID-19 Update: Impacts on the Performance of Agreements - A Focus on Development Agreements**

*By Nicole Maynard and Jeneane Grundberg*

COVID-19 may result in governmentally imposed restrictions on what kind of work can be performed or on trade, which may make it difficult for a developer to obtain the necessary supplies/materials needed to satisfy its obligations. There may also be a shortage of work force given the current quarantine and isolation requirements, as well as the actual illness impacting so many people. These results, as well as others not contemplated above, may impact the performance of all agreements – including development agreements.

### **A. Recommendations on Development Agreement Enforcement During the Pandemic**

A municipality should take various steps to protect the interests of both the municipality and its ratepayers with respect to ongoing development agreements:

- a. **Inventory** – Pull copies of the development agreements and complete an inventory. Confirm outstanding obligations (past deadlines) and upcoming deadlines. Incorporate and maintain a scheduling or calendar program accessible to various team members.
- b. **Caveat** – consider caveating any development agreement against the certificate of title as this may assist in enforcement (*Municipal Government Act*, ss. 650 and 655).
- c. **Inspection** – perform inspections of the various projects in accordance with municipal policy (as possible in light of the guidelines respecting the public health emergency issued by the Province).

As with any inspections, we recommend preparing an inspection report including: (i) the name and position of the inspector and any other persons present at the time of the inspection; (ii) the date, time and place(s) of inspection; (iii) a written summary of any statements or comments made by the owner, Developer and/or occupier of the lands; and (iv) specific details related to the condition of the lands, the nature of the development and any other unauthorized uses.

- d. **Check Security** – Confirm the status of security. Ensure that any letters of credit held by the municipality remain in effect and cover the cost of remedying any deficiencies. In the event the municipality does not have sufficient security upon review, consider issuance of a request for an increase in security if the terms of the Development Agreement allow for such a request.
- e. **Amending Agreements** – In the event extensions or other changes to the Development Agreement are requested and agreed to, document them in an amending agreement. Note that extensions may be required due to realities arising from legal principles of *force majeure* (discussed below).
- f. **Construction Completion** – Do not issue construction completion certificates or final acceptance certificates or release any security without following the steps required in the Development Agreement. Most Development Agreements require the Developer’s engineer to certify a request for issuance of a construction completion certificate or final acceptance certificate. As a result of the current pandemic, there may be delays in completing inspections



or getting certain information. Do not issue construction completion certificates or final acceptance certificates or release any security without following the procedure established by the Development Agreement simply because of the current conditions.

- g. Back Up** – during the time of the pandemic, anticipate that some municipal staff will be unable to perform their regular duties (due to illness or family requirements). Build in back up (tracking deadlines, doing inspections, issuing stop orders or notices of default etc.). Ensure that these checks and balances are in place before a staff member becomes unavailable.
- h. Promptly Enforce Where Appropriate** – act on defaults quickly through issuance of a Notice of Default under the Development Agreement and a s. 645 Stop Order under the *Municipal Government Act* (where appropriate). Delay in taking enforcement steps can prejudice a municipality’s ability to enforce:

  - i. the expiration of limitation periods may prevent municipalities from relying on certain enforcement tools such as commencing a statement of claim through the Courts;
  - ii. a Developer’s assets may continue to deplete, leaving fewer assets available for a municipality to enforce against;
  - iii. partially complete municipal improvements may begin to degrade if left incomplete and unmaintained, exacerbating both the extent of the deficiencies and cost of completion.
- i. Challenges with Delays** – If a municipality delays in commencing enforcement action, a Developer may become insolvent, in which case various processes may be triggered: the Developer’s bank may pursue foreclosure; the Developer may go into receivership with a court appointing a receiver to manage the Developer’s affairs; or the Developer may go into bankruptcy with a trustee in bankruptcy taking over management of the Developer’s affairs. On occasion, these insolvency processes may be advantageous as they may result in a new developer that is better able to complete the development to purchase the development. However, there are numerous possible disadvantages to municipalities, for instance:

  - i. the insolvency process is often very expensive and may result in significant delays;
  - ii. a municipality may be forced to deal with competing claims by other creditors against the Developer’s assets. The receiver or trustee often does not treat the municipality’s interests as importantly as the municipality would like;
  - iii. insolvency proceedings typically give rise to a ‘stay of proceedings’ which may impact a municipality’s ability to commence enforcement steps such as issuing a notice of default or a stop order; and
  - iv. an insolvency process may be generally disadvantageous for municipalities in that a municipality will have very little control over many aspects of the process and the municipality’s interests will not necessarily outweigh other issues that a court will be forced to consider throughout the insolvency process.
- j.** In relation to future subdivisions, consider granting approvals to discreet areas. For example, rather than approving a 200 lot subdivision, consider granting approval for 40 lots. Alternately, subdivision approval can be granted in a manner that contemplates phasing - for example, 40 lots could be subject to the first phase of a multi-phase



development agreement. A smaller number of lots will require lower infrastructure costs, which in turn will help ensure appropriate security can be taken by the municipality, without pressure from the Developer that the percentage security required should be reduced.

## **B. Looking at Remedies in the Development Agreement**

### Natural Remedies within the Agreement

When issues with respect to performance arise, it is worthwhile to start with a review of the agreement to determine exactly what is required as well as what the agreement allows for in the event there are concerns about performance. For example, there may be specific remedies included in the agreement such as mutual termination or the ability to extend timelines to complete certain obligations. A municipality and a developer can work together to examine and utilize any available remedies in an effort to avoid triggering default provisions with the ultimate goal of furthering the agreement.

### Force Majeure

In the event the natural remedies set out in the agreement do not seem appropriate or sufficient in a given situation, *force majeure* clauses may be of assistance.

In order for *force majeure* clauses to be helpful, the clauses must first be included in an agreement. Sometimes, an agreement is silent with respect to *force majeure* simply because it is not a requirement that this language be included in an agreement.

*Force majeure* clauses are intended to provide relief to a party if its performance is prevented or delayed due to events beyond its control. If a *force majeure* clause is triggered, a party is protected from being considered in default of its obligations. A *force majeure* clause may afford relief in the form of additional time to perform an obligation; it may terminate a specific obligation (if it would be practical to do so); or it may even terminate the agreement. It entirely depends on the specific wording of the clause within the agreement.

A *force majeure* clause may include conditions a party must first meet in order to be able to trigger the clause and benefit from whatever remedies may be contemplated therein. For instance, one party may have to provide notice to the other party within a certain amount of time after the event has occurred. Further, a party may have to exercise reasonable efforts in figuring out a way to meet the obligation notwithstanding the occurrence of the event. For example, if all or a majority of a developer's work force falls ill, a municipality could expect the developer to exercise reasonable efforts to obtain other work force rather than just simply throwing in the towel and claiming that it's been rendered totally unable to meet its obligations (assuming the requirement to make reasonable efforts is included in the *force majeure* clause in the first instance).

In the event the parties agree that it would be appropriate to utilize a *force majeure* clause, it is likely that the obligations within the agreement will be adjusted. For example, if a developer has had to obtain new work force, it may be reasonable to extend any related timelines the developer was originally required to meet to allow for and accommodate these efforts.

We strongly suggest that any adjustments to obligations in a development agreement are explicitly set out in a formal amending agreement. We do not recommend informally agreeing to any diversion from the terms of a development agreement. It is important that any changes with respect to the expectations, rights, and responsibilities of each party are clearly delineated in a binding agreement so there is no confusion or lack of clarity in the future when things eventually settle down.

In instances where a developer is not able to perform its obligations pursuant to the terms of the agreement, ideally the parties can come to a resolution through the natural remedies or a *force majeure* clause.



**BROWNLEE LLP**  
*Barristers & Solicitors*

### Frustration of Contract

As a last resort, the concept of frustration of contract is available.

Frustration of contract results in the legal termination of an agreement. It is very rarely relied upon. The concept is a blunt and inflexible approach which automatically ends an agreement discharging the parties from further responsibility and liability. Frustration applies to any agreement. Unlike *force majeure* clauses, frustration does not have to be explicitly referenced in an agreement in order for it to be an available remedy. While frustration can be mutually agreed upon between the parties to an agreement, a court order is usually required because whether or not the agreement has truly been frustrated is often disputed.

The termination of an agreement may result in financial implications and responsibilities of each party. *The Frustrated Contracts Act* addressed this with the intention being to ensure that no one party bears the full burden of a frustrated agreement.

### No "One Size Fits All Approach"

Unfortunately, there is no "one size fits all" approach. Each and every agreement as well as the specific facts surrounding the situation will require careful review and consideration. There are different approaches and avenues available in the event the performance of an agreement is interrupted. We are here to assist you in determining what approach is most appropriate in your circumstances.

## Questions?

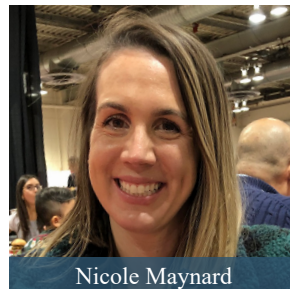
Should you have any questions with respect to this bulletin, or if you would like more detailed information, please contact the following members of the Brownlee LLP Municipal Team:



Jeneane Grundberg

780-497-4812

[jgrundberg@brownleelaw.com](mailto:jgrundberg@brownleelaw.com)



Nicole Maynard

403-260-5315

[nmaynard@brownleelaw.com](mailto:nmaynard@brownleelaw.com)

#### **CALGARY**

7th Floor  
396 - 11th Avenue S.W.  
Calgary, AB T2R 0C5  
T: (403) 232-8300  
F: (403) 232-8408

Toll Free: 1-800-661-9069

#### **EDMONTON**

2200 Commerce Place  
10155 - 102 Street  
Edmonton, AB T5J 4G8  
T: (780) 497-4800  
F: (780) 424-3254

# Resources

## Development Authority Manual

Its HERE, The Development Authority Manual has been updated, reviewed, legal reviewed and now published.

Take a look at the website ([www.adoa.net](http://www.adoa.net)) and hopefully the manual is the first place to get you on a path to any difficult concept or to help transition a new DO into the role.

## Member Forum Connect (<https://forum.adoa.net/>)

### What is it?

The Member Forum is an online discussion place to ask questions, make comments and connect online with the ADOA Community throughout the year instead of just at the annual conference!

In this section we will highlight some of the topics or threads that may be of interest for the greater ADOA Community in the hopes of getting more discussion and a larger knowledgebase on the forum.

Please contact Diane at [admin@adoa.ca](mailto:admin@adoa.ca) if you are having access issues.

### Highlighted (New) Threads

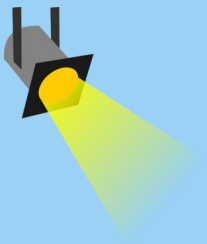
- Municipal Address Signs
- Compliance – Measurements
- Resource Extraction
- Urban Chickens
- Older Compliance Certificates
- Application from a corporation
- Downtown commercial with residential
- Utilities in Road Allowance
- Covid-19 Layoffs?
- GRADING CERTIFICATES
- Planning & Development Department Structure
- Covid-19, Development Strategies in this crisis
- Privacy Issues – Photos, Pictures, Drones
- Compliance Letters
- Airbnb
- Safety Codes Agency Revenue Sharing

## Have you subscribed to [Municipal Information Network \(MIN\)](#)?

Signing up for MIN's e-newsletters will give you up-to-date insight into what municipalities in Canada are tackling today, including local press releases, Council clippings, news stories, etc.

An organization can sign up for a [membership](#) to receive unlimited articles, or you can sign up for free issues of their [Perspectives e-magazine](#).





## Spotlight

The Town of Athabasca is excited to announce the appointment of our new Chief Administrative Officer, Rachel Ramey.

The Town of Athabasca was founded in 1911, Rachel will be the first female CAO.

Rachel has been a resident of Athabasca for the past 25 years. She began working with the Town of Athabasca in 2005 as the Municipal Information Services Officer and has continued to work her way up.

After completing her Applied Land Use Planning Certificate in 2012 she took on the role of Development Officer in 2013 and the Assistant CAO role in 2017. She has continued with her education in Municipal Government and is currently in the processes of completing her National Advanced Certificate in Local Authority Administration; all while being an active mother of three daughters, two who are now grown and one who is still living at home.



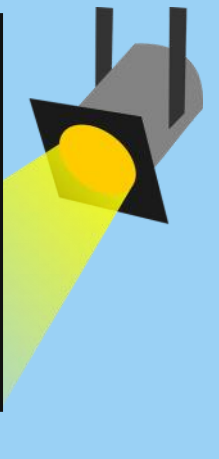
At the Town of Athabasca, we all enjoy team building events and open communication. At our paint ball event a couple summers ago my BOSS (Rachel) was on the opposing team, and as I carefully looked over a hill terrified. She shot me right between the eyes. Apparently, communication is also encouraged in the nonverbal forms.

Rachel is a dedicated, mother, daughter, wife, friend and colleague. When not at the Town Office she can be found at the arena all winter long cheering on her youngest playing hockey (all crazy hockey mom stereo types apply) In the summer months she is with her family camping and enjoying the outdoors.



**Nominate a Development Officer  
for a position in the spotlight!**

Know a co-worker who has done something cool?  
Someone who is retiring and we should recognize them?  
Or someone with an interesting hobby such as photography?  
Please contact [admin@adoa.net](mailto:admin@adoa.net) and we will feature them in the ADOA  
spotlight!



## \* Reminders \*

**If you are leaving your job or Alberta, please let us know...**

This way we can keep our membership current.

Thank you for your cooperation!

- *Remember your membership is to you the Individual if you leave your job for whatever reason your membership stays with you for the rest of the year.*

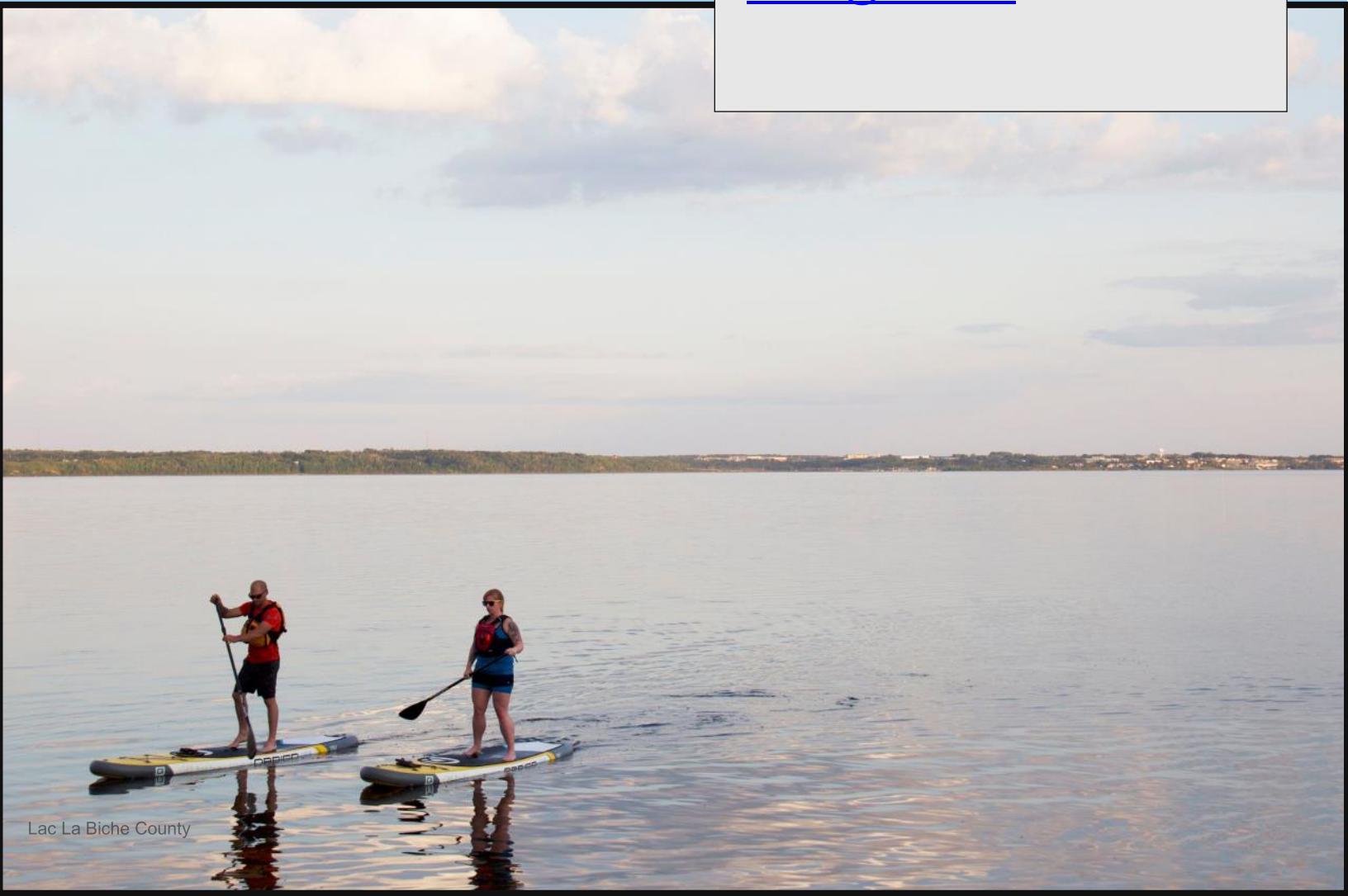
### **ADOA Fees & Education Subsidy**

Membership fees include a subsidy program for education to advance your knowledge. If you have any educational needs related to being a Development Officer please contact [admin@adoa.net](mailto:admin@adoa.net) to apply.

## **Contributions Wanted**

- Perfect snapshot?
- Topics of concern?
- Spotlight a Interesting or unique development?
- Have an original article you'd like to have published?
- Nominate a Development Officer for the spotlight?

Please make a submission at [admin@adoa.net](mailto:admin@adoa.net)



## 2019 - 2020 Board of Directors

Board Member	Role	Municipality	Contact
<b>Terry Topolnitsky</b>	President Education Chair Bylaw and Policy (Co-Chair)	Town of Blackfalds	<b>terry@blackfalds.com</b> (403) 885-6237
<b>Jordan Ruegg</b>	Vice President Education (Co-Chair)	Smoky Lake County	<b>jruegg@smokylakecounty.ab.ca</b> (780) 656-3730
<b>Cheryl Callihoo</b>	Past President Bylaw and Policy Chair	Town of Barrhead	<b>ccallihoo@barrhead.ca</b> (780) 674-3301
<b>Natacha Entz</b>	Secretary	City of Brooks	<b>nentz@brooks.ca</b> (403) 794-2251
<b>Diane Cloutier</b>	Treasurer Chair Conference Committee Liaison	Lac La Biche County	<b>diane.cloutier@laclabichedcounty.com</b> (780) 623-6732
<b>Tyler McNab</b>	Communications Chair	Town of Morinville	<b>tyler.mcnab@morinville.ca</b> (780) 777-7097
<b>Dani Woodman</b>	Communication (Co-Chair)	Town of Hinton	<b>Resigned</b>
<b>Roger Garnett</b>	Membership Chair	County of Vermilion River	<b>rgarnett@county24.com</b> (780) 846-2244

<b>Diane Burtnick</b>	<b>Executive Assistant</b>	<b><a href="mailto:admin@adoa.ca">admin@adoa.ca</a></b> <b>(780) 913- 4214</b>
-----------------------	----------------------------	---

### Contact Us

Send us an e-mail or give us a call for more information about our membership and our non-profit group.

**Phone:** (780) 913-4214

**E-mail:** [admin@adoa.net](mailto:admin@adoa.net)

### ADOA Office

Diane Burtnick  
Box 164  
Sangudo, AB  
T0G 2A0

Visit us on the web at [www.adoa.net](http://www.adoa.net)