



The Communicator

Featured in this issue:

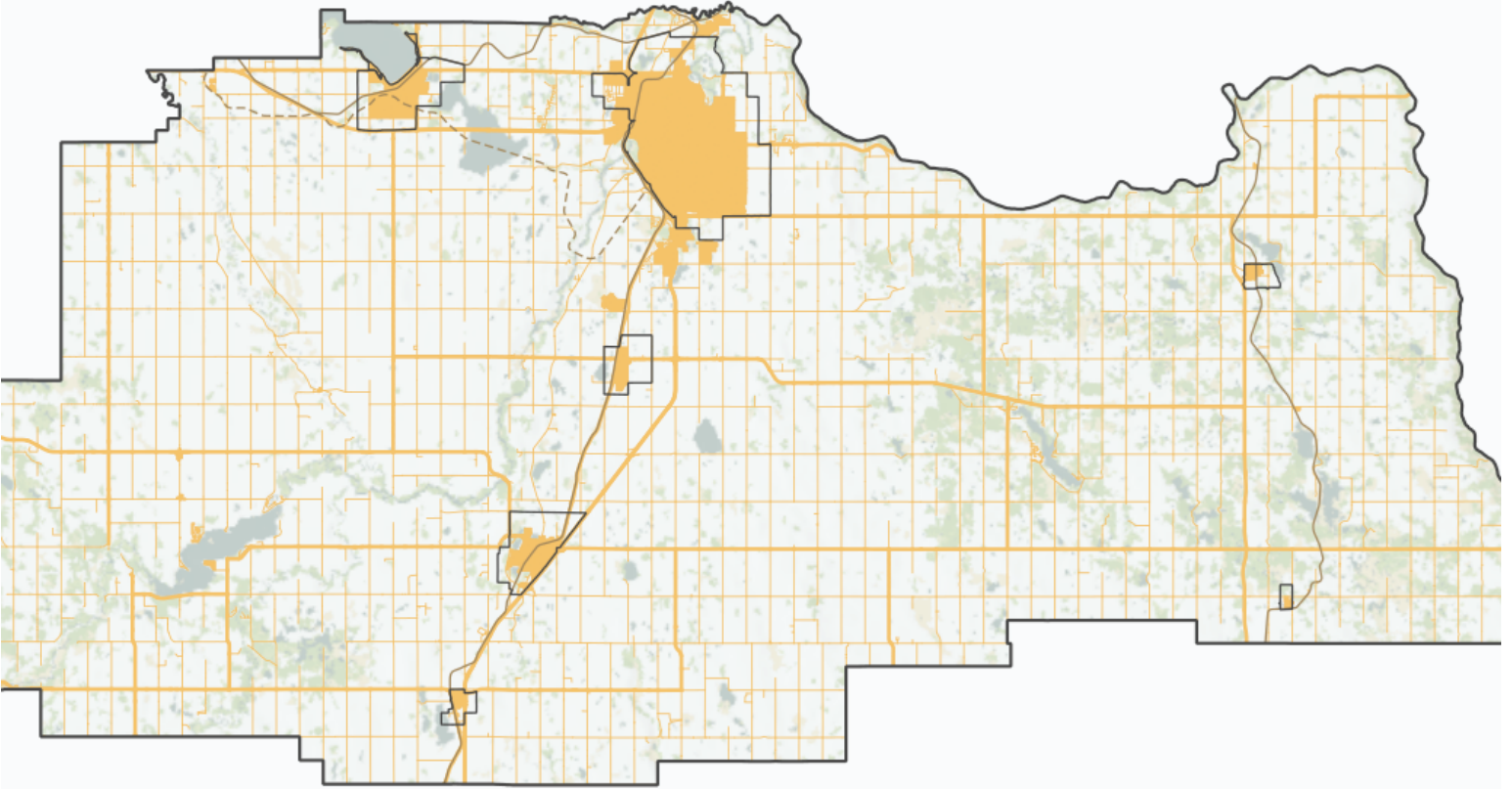
2021 Conference Update | ADOA Legal Corner |
Executive Meeting Highlights (16 October 2020) | Resources and Reminders



Photo courtesy of T. Topolnitsky

The first Habitat for Humanities construction in Blackfalds. Right hand end unit is specifically designed to be disability accessible and the other 3 are regular units.

The Aftermath and Beyond...



Red Deer County has been busy working on the upcoming 2021 conference. Be sure to mark down September 22-24, 2021 in your calendars!! All COVID-19 regulations and protocols are taken into consideration and may affect the final outcome of the upcoming conference.

The conference venue will be Gasoline Alley Holiday Inn and Suites, with rooms available there for members as well as at the Hampton Inn and Suites by Hilton and Microtel.

Registration forms will be out in the new year, the one change members will notice is that there will be no additional costs associated with tours as it will all be included in the registration fees. The only exception would be extra costs for the planned

golfing event. As per previous years, members can purchase additional banquet tickets if they wish to bring a companion. The Committee is looking at the following tours for the upcoming conference: the indoor farmer's market, beer commonwealth, the cannabis production facility and retail store as well as bubble soccer (and yes, they are licensed as well).

The proceeds to this year's Silent Auction will be split 50/50 between the Mustard Seed and Medicine River Wildlife. Please consider donating items so we can bid on and help the Conference Committee with their charity! Food and money donations will also be accepted.

This year's conference will once again be using the SOCIO app, so don't forget to upload it, or in some cases...remember your log in and passwords!

Who are the Mustard Seed Organization and Medicine River Wildlife?



The Mustard Seed has been serving individuals experiencing poverty and homelessness for over 35 years and has become a haven for those in need.

They have been an agent of change for more than three decades, thanks to their donors, volunteers, and support from the community. Their vision is to eliminate homelessness and reduce poverty where they serve

<https://theseed.ca/>

They conduct research in fostering wild families and share their findings both locally and internationally.

They support the public in wildlife conflict issues, teaching strategies to live in harmony. They encourage a replacement of frustration and hatred with understanding and tolerance.

Their goal, through all their programs, is to connect people with nature and instil a sense of respect and appreciations.



Medicine River
WILDLIFE CENTRE

<https://www.medicineriverwildlifecentre.ca/>



BROWNLEE LLP
Barristers & Solicitors

2019-2020 Case Law Update

A number of decisions by Alberta Courts over the past 18 months have provided guidance to municipalities and their development authority with respect to interpreting the *Municipal Government Act* (“MGA”). Specifically, important court directions have been issued on a municipality’s duty to provide utility services, municipal authority to ban roadside trailer signs, and the grounds for challenging a bylaw. Below is an overview of what you need to know.

Condo Corporation No. 0410106 v Medicine Hat (City), 2019 ABCA 294 – A developer and the City of Medicine Hat (the “City”) entered into development agreements in which the developer retained ownership and responsibility for the ongoing operation and maintenance of water, sanitary sewer, and storm sewer infrastructure within the development area. These affected lands were then subdivided and separate condominium corporations were formed. As a result, the noted infrastructure owned by the developer (the “Disputed Infrastructure”) provided utility services to more than one parcel of land, from one private parcel to another. Three impacted condominium corporations claimed that the City was responsible for maintaining and operating the Disputed Infrastructure. Despite sections 35 and 37, the Court held that it was inconsistent with the MGA to require the owner of one parcel to be responsible for the utility service provided to another parcel (and to expect an owner to rely on another owner for utility services). The Disputed Infrastructure was found to be both functionally and legally a “main line” and a responsibility of the City. Those parts of the utility systems that branched off to supply service within an individual parcel were considered to be service connections and not the responsibility of the City. As a combined result of section 34 and 45 of the MGA, a municipality may only contract out of the duty to operate a public utility where the contract has been subject to public scrutiny and regulatory oversight by the Alberta Utilities Commission. The Court found that the City had a statutory duty to operate and maintain the Disputed Infrastructure, even though it was privately owned.

Takeaways:

- Municipalities should be ready for similar rulings with respect to any utility infrastructure (not roads) that service multiple parcels, or in any situation where a municipal connection to a parcel is indirect, and anticipate taking ownership/responsibility of the same (or plan to have a franchise agreement under MGA, s. 45). As a result, municipalities should require all future utility facilities servicing more than one parcel to be constructed to standards that the municipality is comfortable taking-over.
- Caution and legal review are recommended in any scenario proposing private servicing arrangements involving multiple parcels.

Top v Municipal District of Foothills No. 31, 2020 ABQB 521 – The Land Use Bylaw (the “Bylaw”) of the Municipal District of Foothills (the “County”) was challenged on the grounds that prohibiting “vehicle signs” along portions of road breached freedom of expression rights under the *Canadian Charter of Rights and Freedoms* (The “Charter”). The Court weighed freedom of expression rights against the County’s authority to protect the vibrant rural aesthetics of the community under Part 17 of the MGA. In coming to its decision, the Court noted that not all forms of expression or *Charter* infringements are created equal, and decided in favour of the County’s ability to control visual pollution and protect the visual environment. The Court upheld the Bylaw, and determined that the Bylaw:

- was rationally connected to a pressing and substantive objective (preserving the community’s visual environment);
- minimally impaired the right to freedom of expression (multiple meaningful advertisement alternatives were available); and
- resulted in a benefit to the community that as a whole outweighed the adverse effects to a relatively small number of individuals impacted by the Bylaw.

While there was no explicit ban on vehicles without signs, the Court held that there was a differentiation between the signed and non-signed vehicles and that the legislative gap did not make the Bylaw arbitrary. Signed vehicles were designed to “catch the eye”, while the enforcement of non-signed vehicles causing blight may be enforced under the County’s Community Standards Bylaw. Furthermore, there was no evidence to suggest that vehicles without signs proliferated in scenic roadside locations.

Takeaways:

- Protecting visual vistas is a legitimate regulatory purpose for a land use bylaw provision. To defend it as such, the purpose should be demonstrated in the land use bylaw and other planning documents of a municipality.
- Infringement on protected rights should be targeted. Alternative advertisement mechanisms were an important feature in the finding of minimal infringement on the freedom of expression. Blanket bans on any form of expression are likely not proportionate or justifiable, absent special circumstances.
- Municipalities should apply consistent logic when implementing prohibitions. The Court held that the County’s Bylaw did not have an ulterior motive to limit expression. However, it cautioned that an inconsistency (ex: the treatment of signed vs. unsigned vehicles) may make a bylaw vulnerable to such a suggestion.

Bergman v Innisfree (Village), 2020 ABQB 661 – a resident challenged a property tax bylaw (the “Bylaw”) adopted by the Village of Innisfree (the “Village”) for being of impermissible form and for having taxes set too high. In interpreting section 539 of the MGA, the Court clarified that a municipal bylaw or resolution may not be reviewed on the ground that it is unreasonable. However, a council decision or bylaw may be judicially reviewed and declared invalid for two types of errors: procedur-

al and substantive.

1. **Procedural Error:** This occurs if a municipality fails to abide by the procedures set out in the legislative scheme governing the municipality (ex: the MGA or bylaws).
2. **Substantive Error:** This occurs if the bylaw is illegal or discriminates, was passed in bad faith, or falls outside of the jurisdiction of the municipality.

The Court upheld the bylaw, stating that Village Council made its decision on the Bylaw following the appropriate legal process set out in the MGA. Further, through the authority provided by the legislative scheme, the actions of Council were not in bad faith, discriminatory, or outside of its jurisdiction.

Takeaways:

- Following the proper procedures for decision-making remains important. Bylaws and other municipal decisions, including those with respect to development can still be found to be invalid if the proper procedure is not followed with respect to the same.
- The Court of Queen's Bench held that challenging a bylaw on the ground that it is unreasonable is prohibited by the MGA. However, Brownlee LLP expects a similar issue to be considered at the Alberta Court of Appeal in a hearing scheduled for February, 2021. The decision by the Court of Appeal will supersede any decision from the Court of Queen's Bench.

If you have questions about 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).



Photo Courtesy of Pixabay | Jörg Vieli: Jasper National Park

Executive Meeting - At a Glance

16 October 2020

Red Deer County Conference Committee –

- Municipalities should focus on rural/urban municipalities.
- Diane C. and Diane B. are the liaisons for the conference and should be included in all communication.
- Alternative resources if COVID-19 affect the AGM Conference:
 - Utilize the I.T. department for a video conference option for members and guest speakers,
 - Social distancing/ masks and/or,
 - Utilize the SOCIO App.
- Extra banquet ticket will be an extra expense.

Executive Assistant Report –

- The Board will continue with the AB Web provider

Education Committee Report –

- Five (5) applications were submitted, and five (5) applicants qualified based on the Education Grants Policy.

Membership Report –

- 33 new memberships, and currently 326 members.

To access the entirety of these minutes and others, go to <https://adoa.net/documents/#content> for more information

Resources and 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 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

Reports and Statements

If you are looking for more information, the AGM reports and the financial statement will be on our website, www.adoa.net.



Board of Directors

Board Member	Position	Municipality	Contact
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Vacant			

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Contact Us

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Alberta Development Officers Association

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