



# TOWN POLICY

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**POLICY NUMBER:** 6606

**REFERENCE:**  
Council 204.05.08

**ADOPTED BY:**  
Town Council

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**PREPARED BY:** Planning & Development

**DATE:** 21 May 2008

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**TITLE:** **Deferred Servicing Agreement Policy**

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## **Policy Statement**

The Town of Strathmore will provide development and subdivision servicing agreements as the basis for approvals of development and subdivision of land.

### 1. **Definitions**

1.1 **Council** means the Council of the Town of Strathmore, in the Province of Alberta.

1.2 **Developer** means a landowner, or his agent, who intends the new or revised development of land by subdivision.

1.3 **Development** means the change in use or intensity of use of land.

1.4 **Deferred Servicing Agreement** means an agreement between a Developer and the Town.

1.5 Infrastructure means the systems under the control of the Town necessary for water, sanitary sewer, storm sewer and motorized vehicle transportation and all appurtenances thereto.

1.6 Subdivision means the division of a title or lot into two or more titles or lots.

1.7 CAO shall mean the Chief Administrative Officer of the Town or his designate as employed or retained by the Town.

## 2. **Responsibilities**

### 2.1. Council

2.1.1 To review proposed development and subdivision as required as an approving authority

2.1.2 To review and make changes to the Deferred Servicing Agreement as required.

### 2.2 CAO

2.2.1 To provide comment on all Deferred Servicing Agreements to the Development and Infrastructure Departments.

2.2.2 To be the signing authority for all Deferred Servicing Agreements where development or subdivision has been approved.

2.2.3 To sign all documents and contracts, and to authorize all payments or services provided for, by, or as a result of, the conditions of the development agreement.

### 2.3 Engineering and Operations Department

2.3.1 To provide comment on all development and subdivision referred to the Department by the CAO or the Development Department

## 2.4 Development Department

2.4.1 To prepare a Deferred Servicing Agreement based on this policy, negotiations with the Developer, direction by Council, the CAO and comments by the Engineering and Operations Department.

2.4.2 To submit the Deferred Servicing Agreement, where changes or a departure from the standard agreement is requested by the developer or recommended by Administration to Council for approval.

## 3. **Basis for Discussion**

3.1 This Policy shall form the basis for discussion with a developer and any or all of the requirements of the Deferred Servicing Agreement, and shall be applied to any development or subdivision that has a condition of approval that requires the developer to enter into a servicing agreement with the Town.

3.2 Where the Town considers that a development or subdivision is of a nature that requires special conditions or requirements in addition to those contained with in the agreement, those extra conditions or requirements shall form part of the agreement.

## 4. **Deferred Servicing Agreement**

4.1 The agreement attached as Schedule "A", dated May 21<sup>st</sup>, 2008 shall be the Deferred Servicing Agreement for the Town.

## 5. **End of Policy**

**DEFERRED SERVICING AGREEMENT**

**MEMORANDUM OF AGREEMENT** made this \_\_\_ day of \_\_\_\_\_ 2008.

**BETWEEN:** **The Town of Strathmore**, a municipal corporation, in the Province of Alberta,

(hereinafter referred to as the “Municipality”)

-and-

. a body corporate with offices in the Town of Strathmore, in the Province of Alberta,

(hereinafter referred to as the “Developer”)

**RECITALS:**

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

Plan

Block

Lot

Containing \_\_\_ ha ( \_\_\_ ac.) more or less

Excepting thereout all mines and minerals and the right to work the same

which constitutes the “Development Site” for the purpose of this Agreement (all as outlined on the plan attached as “Schedule A”);

2. The Municipal Government Act, R.S.A. 2000, c.M-26, as amended, (the “Act”) provides that the Subdivision Authority may require the applicant for subdivision to enter into an agreement with the Municipality respecting the construction or payment for construction of roadways required to give access to the subdivision, a pedestrian walkway system to serve the subdivision, installation of utilities that are necessary to serve the subdivision, off-street or other parking areas, loading and unloading areas, and an off site levy.
3. The Subdivision Authority has imposed such a condition.
4. The Municipality and the Developer wish to provide for the orderly and mutually beneficial servicing of the Development Site.
5. The Municipality and Developer acknowledge that the Developer proposes to subdivide the land outlined on Schedule “A” as the first phase of development of the Development Site and the Municipality has therefore agreed that the construction of roads and utilities to service the Development Site will be phased and in part postponed, until such time as the Development Site or any portion thereof is the subject of:
  - a. the approval and registration of a further subdivision or subdivisions; or
  - b. an application or applications and approval of such applications for:
    - i. a development permit or permits; or
    - ii. a building permit or permits;

for developments to be located within the Development Site; or

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

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

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

## **ARTICLE 1 – DEFINITIONS**

### **Definition of Words and Phrases**

For definition of words use in this Agreement reference shall be made to the Act and then to the Town of Strathmore Land Use Bylaw, and words that are not therein defined reference shall be made to The Oxford Reference Dictionary.

## **ARTICLE II – CONSTRUCTION OF LOCAL IMPROVEMENTS**

### **Requirement to Construct Roads and Utilities**

1. If the Development site is the subject of a Triggering Event initiated by the Developer or any successor in title to the Development Site, then the Developer or such successor shall:
  - a. enter into a Subdivision Servicing Agreement or a Development Agreement with the Municipality substantially in the form of the agreements then may be approved by the municipal council for general use, pursuant to sections 650, 651(1) or 655 of the Act, or any parallel or successor legislation (and

in the event the municipal council has not approved such agreement then in the form then commonly used by the Municipality for such purposes), and

- b. pay or make arrangements satisfactory to the Municipality to pay in order of the Municipality the then applicable Off Site Levy imposed by the municipal council of the Municipality from time to time or at any time pursuant to the Act or any successor or parallel legislation; and
- c. pay or commute, or make arrangements satisfactory to the Municipality for the payment or commutation of all outstanding property taxes on the land proposed to be subdivided, or
- d. at the sole option of the Municipality, enter into a further Deferred Servicing Agreement with the Municipality substantially in the form of this agreement; or
- e. any combination of the foregoing as may be required by the circumstances;

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

2. Notwithstanding clause 1(a), where a Triggering Event relates not to the Development Site as a whole but to a further Subdivision Area, being as portion of the Development Site or a phase of the development thereof, then the obligations of the Developer to the Municipality, as set forth in clause 1(a), shall be in respect only of such further Subdivision Area and not to the Development Site as a whole.

If the Developer or any successor in title to the Development Site and the Municipality are unable to agree upon the terms of the Subdivision Servicing Agreement or Development Agreement or, if applicable, a Deferred Servicing Agreement substantially in the form of this agreement, then either party may refer such matters as are in dispute to arbitration by a sole arbitrator in accordance with *Arbitration Act*, 1980 R.S.A., A-43.1. The arbitrator shall resolve such dispute in

accordance with the legislated purpose of section 617 of Part 17 of the Act and the provisions of sections 650, 651(1) and 655 of the Act.

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

### **ARTICLE III – REQUIREMENT TO RETAIN OBLIGATIONS**

1. Prior to any sale of the Development Site, as may be applicable and whether in whole or in part, the Developer shall require any purchaser or purchasers to assume the obligations of the Developer under this agreement in respect of that portion(s) of the Development Site that the purchaser is acquiring. Upon effective assumption of those obligations by the purchaser or purchasers, the Developer's obligations pursuant to the applicable portion of the Development Site, as may be applicable, shall be terminated and at an end.
2. The Developer acknowledges that the Municipality has entered into this agreement based upon the Developer's request and representations to the Municipality that the Developer will do all things necessary to ensure that all lots and developments within the Development Site are fully and properly serviced at the expense of the Developer or any subsequent owner of any portion of the Development Site for which a development, as defined in the Act, is proposed.

### **ARTICLE 1V – GENERAL**

1. **Waiver**



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

**2. Further Documents**

Both parties shall execute and deliver all further documents and assurances reasonably necessary to give effect to this Agreement and to discharge the respective obligations of the parties.

**3. Force Majure**

Neither of the parties shall be deemed to be in default in respect of non-performance of its obligations under this Agreement if and so long as the non-performance is due to strikes, lockouts, fire, tempest, acts of God, or the Queen's enemies beyond its control, and all time periods shall be extended by one day for each day of delay; however, delay from lack of finances shall in no event be deemed to be cause beyond a party's control.

**4. Non-Assignment of Agreement**

This Agreement shall not be assignable by the Developer without the prior written approval of the Municipality which approval shall not be unreasonably withheld. It shall, however, be a condition of the Municipality granting the approval that the proposed assignee provide the Municipality with evidence satisfactory to the Municipality that the proposed assignee has complied or can comply with the provisions of this Agreement. An assignment shall be deemed to be required if the Developer is a "body corporate" as defined in the *Business Corporations Act*, S.A. 1981, B-15, as amended, or any successor or parallel legislation and sufficient shares are issued or transferred to change effective control of the Developer or if the Developer is a joint venture, partnership or limited partnership and there is change in the members of the Developer.

**5. Developer's Covenant**

- a. The Developer covenants, undertakes and agrees that the conditions, terms and provisions of the Agreement shall be deemed to be:

- i.) Covenants running with the land contained in the Development Site;
- ii.) Conditions authorizing the development and subdivision of the lands;

and shall be binding upon the Developer and its successors-in-title. Prior to and after the execution of the agreement for the Subdivision Area and Development Site, the Developer shall obtain the same covenants as are herein contained from any person to whom it may in any way convey the Subdivision Area or Development Site or any undivided interest.

- b. The Municipality shall be entitled to file and maintain a Caveat against the interest of the Developer in any and all portions of the Subdivision Area or Development Site, evidencing this Agreement. The Municipality shall from time to time, upon the request of the Developer, execute and deliver to the Developer for registration in the appropriate Land Titles office, registrable postponements of the Caveat, postponing the said Caveat in favour of any encumbrance or encumbrances to be registered against the whole or any portion of the Subdivision Area or Development Site, as may be applicable to secure advances made for interim and long term financing (or either of them) of roadways or utilities to service the Subdivision Area or the Development Site, provided that the secured party under the terms of such encumbrances covenants and agrees with each other as follows:

- i.) the secured party will assume all the obligations of the Developer under this Agreement in the event that the secured party shall foreclose or otherwise take possession of the Subdivision Area or Development Site pursuant to its encumbrance if and so long as such possession is taken and retained by such secure party; and
- ii.) the Municipality agrees that if it shall require the secured party to assume all the obligations of the Developer under this Agreement then it shall not foreclose any caveat protecting this Agreement from any title to land within the Subdivision Area or Development Site.

## 6. Notice

Any notice, communication or request to be given to either party shall be in writing by registered mail, postage prepaid, or by personal delivery or by facsimile addressed to such party at the address set below:

Town of Strathmore:           Town of Strathmore  
680 Westchester Road  
Strathmore, AB T1P 1J1

Attention: Director of Development &  
Building

The Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as either party may from time to time advise the other by notice in writing. Any such notice shall be deemed to have been received on the fifth (5<sup>th</sup>) business day next following the date it is so mailed or, if by facsimile, twelve (12) hours after transmission' provided that if normal mail or facsimile service is interrupted by strikes, slow down or other causes,

than any of the said services which have not been so interrupted shall be utilized or as in alternative the notice, communication or request shall be personally delivered to ensure prompt receipt.

**7. Enurement**

This Agreement shall be binding upon and shall enure to the benefit of the respective parties and their successors-in-title and assigns.

**8. Gender**

This Agreement is to be read with all changes of gender and number as is required by its context.

**IN WITNESS WHEREOF** the parties hereto have signed and affixed their respective  
Corporate seal by their duly authorized officers this            day of            ,  
200\_\_\_\_ .

**THE TOWN OF STRATHMORE**

\_\_\_\_\_

(seal)

**DEVELOPER**

\_\_\_\_\_

(seal)