

MUNICIPAL LAW BULLETIN

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B R O W N L E E
L L P
B a r r i s t e r s S o l i c i t o r s

UNANSWERED BEAR PIT QUESTIONS

We would like to thank everyone who attended this year's *Emerging Trends in Municipal Law* seminars in Calgary and Edmonton. Your attendance and continued support has made our *Emerging Trends* seminars a huge success. We are already working on the event for next year and we look forward to seeing both new and returning faces.

Based on your feedback from the previous year, we extended the time allotted to our Bear Pit Session. We were given a number of interesting and challenging questions which we were able to answer but, because of time, some questions were left unanswered. With that in mind, we have responded to some of those unanswered questions below.

- (1) Can a municipality be held liable for issuing a building permit where there are deficiencies?
- (2) Can a municipality deny a development permit due to previous incomplete projects or unfulfilled obligations of a developer?
- (3) Can a municipality deny the issuance of a Compliance Certificate?
- (4) If a municipality invites a number of contractors to submit bids on a project, is the municipality still required to advertise?

(1) Can a municipality be held liable for issuing a building permit where there are deficiencies?

Not all municipalities are accredited in the building discipline under the *Safety Codes Act*. If a municipality is not accredited, it is not liable because building permits are issued by the province. If a municipality is accredited and it uses an accredited agency to issue building permits, the municipality is not liable for any negligence or nuisance of the accredited agency. If a municipality is accredited and administers the *Safety Codes Act* on its own behalf, then the municipality is only liable if it acts in bad faith. Otherwise, pursuant to s. 12(2) of the *Safety Codes Act*, an accredited municipality acting in good faith is not liable for any damage caused by a decision related to its system of inspections, examinations, evaluations, and investigations.

It is important to remember that most building permits are issued on the basis of plans prepared by a qualified professional. If there is a deficiency in the plan prepared by the qualified

professional such that the plan would not conform to the building code, s. 12(2) of the *Safety Codes Act* would still provide an accredited municipality issuing a building permit with protection as long as the municipality did not act in bad faith.

(2) Can a municipality deny a development permit due to previous incomplete projects or unfulfilled obligations of a developer?

No, a development permit cannot generally be denied for previous incomplete projects or unfulfilled obligations by a developer. If a use is a permitted use, a municipality has very few options to deny a development permit. Generally, a developer who applies for a development permit for a permitted use that complies with the Land Use Bylaw standards is entitled to a permit as of right. If the use is a discretionary use, the municipality may deny a development permit for valid planning purposes. If the incomplete work is related to the development permit (or the application is for an amendment), it might be possible for a municipality to impose conditions to correct on the current development permit. For example, if the incomplete obligations related to servicing a subdivision and an application was made for a development permit relating to the development of a single lot, a municipality might be able to impose a condition that the servicing of the subdivision must be completed as part of the issuance of the development permit.

(3) Can a municipality deny the issuance of a Compliance Certificate?

A municipality has no obligation to issue a Compliance Certificate. If a municipality issues a Compliance Certificate stating that a development is in compliance with the Land Use Bylaw and a person relies on that Certificate, the municipality may attract liability if the Certificate is incorrect. It is important that a municipality does not issue a Certificate saying that a building is compliant if it is not compliant.

(4) If a municipality invites a number of contractors to submit bids on a project, is the municipality still required to advertise?

Inviting contractors to submit a bid is a supplement to, rather than a substitution of, the advertising requirement for municipal procurement. If the value of a procurement is over a specified financial threshold, municipalities are obliged to advertise the procurement. By contrast, if the procurement is below the specified financial threshold, then there is no requirement to advertise. The applicable financial thresholds which trigger the requirement to advertise are: **Agreement on Internal Trade** - \$100,000 for goods/services; \$250,000 for construction; **New West Partnership Trade Agreement** - \$75,000 goods/services; \$200,000 for construction. Although a municipality can advertise in a variety of ways, using the Alberta Purchasing Connection (<http://www.purchasingconnection.ca/>) ensures a municipality meets its obligations to give notice to both local and national firms. The Alberta Purchasing Connection is free, easy to use, and guarantees that a municipality has properly advertised its procurement.

For questions regarding building permits and Safety Codes issues, contact one of the following members of our Safety Codes Team: Thomas D. Marriot, Derek J. King, or Michael S. Solowan.

For questions regarding planning and development, contact one of the following members of our Planning and Development Team: Jeneane S. Grundberg, Barry A. Sjølie, Q.C., Kristjana E. Kellgren, Kelley Fiske-Nielsen, Alifeyah Gulamhusein, or Paul S. Taylor.

For questions regarding construction and procurement, contact one of the following members of our Construction and Procurement Team: Paul V. Stocco, Daniel R. Peskett, Michael T. Coombs, Christopher M. Young or Mark W. Henderson

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