

Guardians of Growth: Additional Options for Enforcement of Development Agreements

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The Planning Act, C.C.S.M. P80 (the “Act”) provides the legal framework for municipalities to manage land use and development in a way that promotes orderly growth and sustainable communities. One of the critical components of The Planning Act is the ability of the municipality to request that the Developer enter into a development agreement with the municipality as a condition of subdivision (section 135), re-zoning (section 81), variance (section 98(1)) or conditional use (section 106(2)).



While various conditions can be included in the development agreement (see section 135 of the Act (subdivision) and section 150 of the Act (re-zoning, variance and conditional use)), the focus of this article is how to ensure your development agreement is enforceable and protects the interests of the municipality. How can the municipality enforce against a developer or subsequent landowner when the development agreement terms are not respected? How can the municipality best protect themselves, their ratepayers and the community?

Careful attention to the words used when drafting a development agreement is required to ensure that the development agreement runs with the land but also binds subsequent owners (and not just the initial developer). Development agreements often require the developer to provide security to ensure the performance of their obligations under the agreement; however, after the security is released or once a new owner takes possession of the property, if the terms of the development agreement have not been complied with, the municipality may need to consider alternative methods of enforcing a development agreement. This is where section 178(1) of The Planning Act can come to the rescue.

Under section 178(1) of The Planning Act, a municipality may be able to enforce the development agreement in the same manner it enforces its by-laws. Section 178(1)(b) of the Act provides that a Notice of Contravention and an Order to Remedy can be issued to a person who is found to be contravening “the terms or condition of a permit, approval or order made or issued under authority of [The Planning Act].” Since a development agreement can be entered into as a condition of a municipality’s approval of the development, Section

178(1)(b) allows a municipality to enforce the terms of the development agreement in the same manner it enforces its by-laws.

How the municipality's development agreement is drafted is crucial to how potential future enforcement may be undertaken by the municipality including requirements regarding the construction or maintenance of municipal works and use of the land. Appropriate wording in the development agreement may provide the municipality with additional protections regarding compliance and the ability to bring property into compliance (pursuant to the development agreement) at the expense of the landowner (and not just the developer).

As municipal development follows the principle of 'developer pay,' municipalities are encouraged to obtain independent legal advice, at the cost of the developer, to ensure the municipality is protected. Engaging a municipal lawyer will assist the municipality to promote sustainable and orderly growth while protecting municipal interests and assets.

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