

Subdivision of Land – A P3 Enterprise?

Prepared For: Legal Education Society of Alberta
Land Development

Presented by:
Dick Haldane QC (Edmonton only)
Dentons Canada LLP
Edmonton, Alberta

For Presentation In:
Edmonton – February 18, 2014
Calgary – February 25, 2014

SUBDIVISION OF LAND – A P3 ENTERPRISE?

Introduction

The purpose of this paper is to address issues of interest and concern to the development industry.

This is not intended to be a treatise on the development process but to highlight some of the issues that concern the development community. It represents opinions of the author, which may or may not be embraced by all or any members of the private sector of the development industry.

It is a fair statement that a development community does not seek to have the community in which development occurs subsidize its development. It also is of the mindset that it should not be called upon to subsidize the activities of the municipality. These two concepts come into conflict primarily when inevitably there will be costs associated with the public infrastructure necessary to support growth, and while growth stimulates a need for new and expanded facilities, it remains far more attractive alternative than negative growth. The development community accepts that it should bear the cost of new improvements required as a consequence of growth to the extent that it benefits, but acknowledges that they are not the sole beneficiary of growth. All beneficiaries of growth should bear the expenses associated with growth to the extent and in the degree to which growth benefits that community.

In prior years, the Provincial contribution to growth was significant. In recent years, that contribution has diminished. Greater reliance for the costs of growth is placed upon municipalities with nominal efforts made to enable municipalities to increase revenues. Offsite levies are invited to fill the gap. This conflict respecting who pays for growth arises primarily in the area of offsite levies which were initially intended to allocate some portion of the cost of regional facilities to all beneficiaries. The manner in which costs are allocated to the development sector is clear. There is, however, no clear mechanism for contribution to the costs of growth by beneficiaries other than through the general revenues of the municipality. Since the political system rewards keeping taxes and therefore general revenue at the lowest possible level, the shortfall continues to grow.

The subdivision process enables municipalities to impose conditions upon development and subdivision. It therefore provides a vehicle by which municipalities are able to recover their costs but also to recover additional revenues. The developers pass these costs along to the consumer and so will continue to do so long as the market permits.

One of the principle concerns is the sufficiency of the safeguards put in place to enable developers to protect themselves. Nowhere is this more evident than in the Principles and Criteria for Off-site Levies Regulation, Alta Reg 48/2004 (the “Regulations”), where no administrative mechanism exists to challenge the levy. Recourse is limited to the Courts and a challenge to the validity of the bylaw establishing the levies.