

P

Title: Construction on County Road Allowances

Policy No: 4010

Approval: July 16, 2008

Effective Date: July 16, 2008



Mountain View
COUNTY

Supersedes Policy No: Section C(11)

O

Policy Statement: Mountain View County (the County) will establish the roles, responsibilities, approval process and construction standards for the development and construction of roads on undeveloped County road allowances, as requested by the land owner /applicant.

L

Purpose: The purpose of this policy is to establish an approval process and construction standards, for construction on undeveloped County road allowances to permit year round access to new residential construction.

Principles:

1. Mountain View County is committed to providing a clear understanding of the expectations and responsibilities of all parties involved in requesting to construct a road on undeveloped County road allowances.

I

End of Policy:

Approved: July 16, 2008

C

Y



Procedure Title: Construction on County Road Allowances

Procedure No.: 4010-01

Approval: CAO

Effective Date: December 16, 2008

Supersedes Procedure No.: Section C (11)

1. Definitions

- 1.1 "County" - means Mountain View County
- 1.2 "Applicant" - means the registered land owner or their agent.
- 1.3 "Permit" - means a Development or Location permit for the purpose of this policy means a permit issued for an occupied residential building.
- 1.4 "Undeveloped Road" - means designated by the County as unimproved

2. Guidelines

- 2.1 All applications for a Permit must propose physical and legal access.
- 2.2 This procedure will apply to developing County road allowances to County standards, as a result of an application for a Permit, which does not have physical access.
- 2.3 Undeveloped roads are not acceptable as safe year round public access, and therefore, must be developed to the approved County Road Standard, if being used to access an improvement requiring a Permit.
- 2.4 Roads will be designed by a qualified engineer and constructed as per the approved plans to the applicable County Road Standard, as per Policy # 4005, complete with proper drainage and drainage structures by a qualified construction company as approved by the County.
- 2.5 The County will assume maintenance of the road, after the agreed upon maintenance period has passed and construction is completed to the County's satisfaction.

3. Procedure

- 3.1 Upon application for a Permit, and at the request of the Applicant wishing to have access from an undeveloped road, a Road Construction Agreement (Schedule I, attached) will be required between the County and the Applicant. Included in this agreement is a \$5000.00 fee to cover the engineering. If at any time before signing the agreement, the applicant decides not to continue, \$2000.00 will be refunded.
- 3.2 All roads must be constructed to a minor farm access. (7 meter width.)
- 3.3 The County will be responsible for building the road.

- 3.4 The first applicant for a Development Permit on an undeveloped road must pay 50% of the total cost of the construction. The County will contribute 50% of the total cost of surveying and designing up to \$50,000.00. Anything over \$50,000.00 will be the responsibility of the applicant. The possible number of Development Permits on the above portion of road will be determined by the planning department. This number will also include the applicant's Development Permit. Once the road construction is completed and the total cost established, the County may enter into an Endeavour to Assist Agreement (Schedule II, attached). If there are any other Development Permits applications on the road, the application condition will include a payment of the established shared cost. At the time of other Development Permit Applications the original applicant may collect his portion back of the shared cost only. Mountain View County will act as the bank and collect all payments to be made by all Development Permit applications involved in this section of road.
Each lot's equal share of the construction costs of the road utilized would be collected at the time of aid, as a condition of the Permit.
- 3.5 The Applicant is responsible for meeting with adjacent land owners to inform them of proposed work and to mitigate any concerns, including fencing, trees and access issues. The Applicant is to provide to the County the completed Adjacent Land Owner form from each adjacent land owner prior to construction.
- 3.6 Mountain View County will coordinate and pay the cost for the initial survey of the Right of Way and engineered design, to meet the County standard. The County will contribute up to \$50,000.00 towards the project, as per 3.4 as the annual budget permits, to pay for the survey and engineering with the remainder to be allocated to construction.
- 3.7 Prior to construction the County will meet with the Applicant to review the scope of the work, construction schedule, and any potential impacts on the adjacent land owners.
- 3.8 The Applicant will submit a completed Road Construction Agreement and security in the form of a "Letter of Credit" or approved alternate prior to construction representing the applicant's portion as per clause 3.4 of estimated gross construction costs. The applicant may not proceed without written approval from the County.
- 3.9 The Applicant is responsible to obtain all required approvals and agreements from agencies and land owners affected by the road construction, including back sloping and permission to enter agreements, as required.

4 Construction

- 4.1 The Applicant shall be responsible for all costs associated with the road construction, except those items specifically referred to in this policy.
- 4.2 The applicant has the option of paying for their portion by
 - 4.2.1 - payment up front for all associated construction costs.
 - 4.2.2 - local improvement tax against the applicant lands.
- 4.3. Construction of a Forced Road under this policy shall require the approval of Council.

End of Procedure

Approved: December 16, 2008
Amended: July 30, 2011

Schedule II

THIS AGREEMENT made as of the _____ day of _____ A.D. 20__.

BETWEEN:

MOUNTAIN VIEW COUNTY

A Municipal Corporation,
(hereinafter referred to as the "County")

OF THE FIRST PART

-and-

(hereinafter referred to as the "Developer")

ENDEAVOUR TO ASSIST AGREEMENT

WHEREAS the Developer is the registered owner as joint tenants of an estate in fee simple and legally described as follows:

That portion of the _____ Quarter of Section _____, Township _____, Range _____, West of the _____th Meridian which lies to the **Direction** of the _____ as shown on Plan _____ Containing _____ Hectares (_____ Acres).

AND WHEREAS the County has agreed to enter into an agreement to serve the above lands.

AND WHEREAS the parties hereto have entered into a further Agreement in the nature of a Caveat, which Agreement shall be registered against the title to the Lands and all subsequent titles, deriving therefrom and governing, more particularly, without restricting the generality of the foregoing, requirement for development Permit on individual lots, developable areas on individual lots, buildings commitments, and minimum building sizes.

AND THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions to be observed and performed by each of the parties hereto, the County agrees with the Developer and the Developer agrees with the County as follows:

I **INTERPRETATION**

1. "The Subdivision" shall mean the lands outlined in proposed plan of subdivision.
2. "Benefiting Lands" shall mean those lands identified in Schedule "E".
3. "The County Development Officer" shall mean the person appointed by the County Council from time to time as Development Officer for the County pursuant to any Land Use Bylaw in force within the County.
4. "The County's Director of Operational Services" shall mean the person appointed by the County to advise and control the work to be performed by the developer pursuant to this Agreement.
5. "External Local Improvement" shall mean that portion of Twp. Rd. ___ between NW ___ and SW ___ W_M (1/2 mile) and that portion of Rge. Rd. ___ between NE ___ and NW ___ W_M (1/2 mile). Example only - enter description
6. "Guarantee Period" with respect to the local improvement and any landscaping required to be done by the Developer, shall mean a period of on (1) year from the date on which the County notifies the Developer in writing that the County has accepted the local improvements and utilities, or any of them, as constructed and installed by the Developer.
7. "Local Improvements" shall mean the construction of roads, accesses, berms, embankments, landscaping, seeding, traffic signs and other requirements of this development agreement excluding utilities.
8. "Plans" shall mean and include all subdivision plans and all plans, specifications, design standards and material standard covering the design, construction and installation of local improvement in the Subdivision and the landscaping plan as required by the County's Development officer.
9. "Regulations" shall mean and refer to those portions of the County's Planning Bylaws and Regulations relating to subdivisions such as are in existence and/or in effect at any material time hereto.
10. "Prescribed Rate" shall mean the rate as defined in Article IX, paragraph 2.
11. "Interest Termination Date" shall mean December 31 of the year preceding the Agreement Termination Date.

II **ARBITRATION**

1. If any dispute or difference between the parties shall arise under this agreement, either party may give to the other notice of such dispute or difference and requiring that such dispute or difference be referred to arbitration.

2. The Developer and the County will each appoint one arbitrator and then the two arbitrators will appoint a third.
3. The County or the developer as the case may be shall appoint their arbitrator within fifteen (15) days of a notice from either party that arbitration is requested.
4. The two arbitrators will then appoint a third arbitrator within fifteen (15) days of their appointment.
5. Costs of the arbitration shall be born by the County and the Developer in accordance with the apportionment of fault as may be found by the arbitration panel.

III **COMPLIANCE WITH LAW**

1. The Developer shall at all times comply with all Provincial legislation and regulations together with regulations relating to the development of the Subdivision by the Developer.
2. Where anything provided for herein cannot lawfully be done without the approval or permission of any authority, person or board, the obligation to do it does not come into force until such approval or permission is obtained, PROVIDED the parties will do all things necessary by way of application or otherwise in an effort to obtain such approval or permission.
3. If any provision hereof is contrary to law, the same shall be served and the remainder of this Agreement shall be of full force and effect.

IV **LAWS OF ALBERTA APPLICABLE**

1. The validity and interpretation of this Agreement and of each clause and part hereof, shall be governed by the laws of the Province of Alberta.

V **FURTHER ASSURANCES**

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

VI **WAIVER**

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

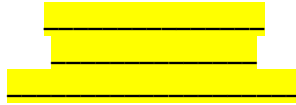
VII **NOTICES**

1. Whenever under the provisions of this Agreement any notice, demands or requests are required to be given by either party to the other, such notice, demand or request may (except where expressly otherwise herein provided) be given by delivery by hand to, or by registered mail sent to, the respective addresses hereinafter provided for, and if given by mail shall be deemed to have been served and given on the second business

day following the date of mailing registered mail, the respective addresses of the parties being:

MOUNTAIN VIEW COUNTY
Bag 100
DIDSBURY, AB TOM OWO

-and-



PROVIDED however, that such addresses may be changed upon five (5) days notice; and PROVIDED further that if in the event that notice is served by mail at a time when there is an interruption of mail service affecting the delivery of such mail, then notice shall not be deemed to have been served until one week after the date that normal service is restored.

VIII **NON-ASSIGNABILITY OF AGREEMENT**

1. This Agreement shall not be assignable by the Developer without the written approval of the County, which will not be unreasonably withheld.

IX **RECOVERY AND REPAYMENT OF FRONT ENDING COSTS**

1. The County shall at such time as other land benefited by the External Local Improvement is developed, enter into agreements with the developers of "Benefiting Lands" (the Other Developers) requiring the Other Developers to pay the County their proportionate share of the front ending cost of such External Local Improvement, such payments to be determined pursuant to Schedule "F" attached hereto. In calculating the amount to be paid to the County by the Other Developers, the County shall include interest at the rate prescribed in paragraph 2 hereof ("the Prescribed Rate") in the manner provided in paragraph 2 hereof. If, and at such time as, the County receives from the Other Developers the aforesaid payments, then upon fulfillment by the developer of the requirements described in this Agreement and provided that the Developer is not in default under this Agreement, the County agrees to pay to the Developer the amount the County receives from the Other developers within sixty (60) days of receipt by the County. Nothing in this Article shall obligate the County to pay to the developer any amount that the County is prevented by law from recovering from the Other Developers. The Developer acknowledges its agreement with and acceptance of the descriptions of the "Benefiting Lands" and the recoverable amount set out in Schedule "F".
2. For the purposes of this Article IX, the "Prescribed Rate" shall be equal to the prime rate charges by the main branch of the Royal Bank of Canada in Red Deer on January 1st of the year for which interest is to be

calculated and such rate shall be compounded annually. The said prime rate means reference rate determined by the said bank at its reference rate for demand commercial loans made in Canada in Canadian Dollars and published by the said bank and its prime rate. Interest at the "Prescribed Rate" shall be calculated on the Developer's unpaid front-ending cost from 20__ (the "Interest Start Date") to and including the "Interest Termination Date". Such interest shall be calculated annually on December 31st in each year from and after the Interest Start Date to and including the Interest Termination Date and shall be compounded annually on such dates for a term of **Ten (10)Years** . Interest calculated at the Prescribed Rate in the manner aforesaid shall be paid to the Developer by the County on all amounts paid to the County by Other Developer pursuant to paragraph 1 of the Article provided that the County shall only be responsible for such interest payment if and to the extent that the County has actually collected such interest from the Other Developers described in Schedule "F" hereto. Nothing in this article shall obligate The County to pay to the Developer any amount that The County is prevented by law from recovering from the Other developers or the owners of the Benefiting Lands.

IN WITNESS WHEREOF the parties hereto have caused these present to be duly executed, all as of the day and year first above written.

MOUNTAIN VIEW COUNTY

PER: _____

WITNESS: _____

PER: _____

PER: _____

WITNESS: _____

AGREEMENT START DATE: _____

AGREEMENT TERMINATION DATE: _____

Form 26

LAND TITLES ACT
(Section 130)

CAVEAT FORBIDDING REGISTRATION

Standing in the register in the name of:

[REDACTED]
[REDACTED]
[REDACTED]

And we forbid the registration of any person as transferee or owner of, or of any instrument affecting that estate or interest, unless the certificate of title is expressed to be subject to our claim.

I designate the following address as the place at which notices and proceedings relating hereto may be served at:

**MOUNTAIN VIEW COUNTY
Bag 100
Didsbury, AB TOM OWO**

In witness whereof I have hereunto subscribed my name this
_____ day of _____, 20____.

[REDACTED]

Director of Operational Services

Form 27

LAND TITLES ACT
(Section 131)

AFFIDAVIT IN SUPPORT OF CAVEAT

I, _____ make oath and say (or solemnly declare) as follows:

1. I am within named agent for the caveator.
2. I believe that the caveator has a good and valid claim of the land (mortgage or encumbrance) and say that this caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal with it.

Sworn before me at the)
Town of Didsbury in the)
Province of Alberta this) _____
____ day of _____, 20__)

A Commissioner for Oaths in and for the Province of Alberta.

Schedule E

Benefiting Lands

	W_M
	W_M
	W_M
	W_M

Schedule F

RECOVERY OF FRONT-ENDING COSTS FOR THE EXTERNAL LOCAL IMPROVEMENT

Recovery of the front-ending costs \$ _____ (50% of actual construction costs) shall be collected from the "Benefiting Lands".

Benefiting Lands:

_____ W_M		\$ _____
_____ W_M		\$ _____
_____ W_M		\$ _____
_____ W_M		\$ _____
	Total	\$ _____