

Memo

To: External Stakeholders

From: Planning & Development Services

Subject: Cross Lot Servicing & Court of Appeal Decision

Date: May 25, 2022

BACKGROUND

As an outcome of the Court of Appeal's Reasons for Decision in **Condo Corporation No 0410106 et al. v. City of Medicine Hat (City), 2019 ABCA 294 (often referred to as the "River Ridge Decision")**, the Court of Appeal has indicated:

- **Municipalities (and not just the City of Medicine Hat) have a statutory duty to operate and maintain "shared services" - those parts of the water, sewer, and stormwater systems that provide utility service to more than one parcel.**
- The duty does not extend to any part of the sanitary, potable water, and stormwater systems located within a parcel used solely for the purpose of supplying utility services to that parcel.
- The Court has made it clear that when speaking about a "parcel of land", that includes both the term as defined in the MGA as:
 - "parcel of land" refers to a "lot or block shown on a plan of subdivision" **and**
 - "parcel" under the Condominium Property Act: (t) "parcel" means the land comprised in a condominium plan.
 - This means that if infrastructure crosses from a fee simple title (a "parcel" under the MGA) to a condominium parcel – as part of the shared condominium property, this will trigger the duty under S. 34 of the MGA.
 - However, the unit of a condominium: section 1(1)(v) does not trigger the duty. Therefore, parts of the utility systems that serve more than one unit within a condominium (whether a traditional or bare land condominium) are not the responsibility of the municipality unless they also serve other parcels within the development.
- The decision was made despite the clear terms of the Service Agreement, this implies that Service Agreements cannot affect a municipality's duty.

IMPACTS ON DEVELOPMENT:

It is recognized that this Decision has implications for future development as well as the City. The below principles are intended to guide both future developers in designing servicing scenarios that can be approved by the Development Authority.

- Placement of services as part of a Development Permit or Subdivision design is very important, developers will need to consider what options can be utilized to service their site.

- Servicing scenarios should always consider the most direct service connection from City infrastructure to individual parcels.
- Each development scenario will have its unique challenges, it is encouraged that developers contact Planning & Development Services early in the project planning process to better understand the options and instruments outlined below and how they can be used.
- Large parcels of land where there is intent to potentially subdivide further in the future must take into consideration how to appropriately service the future subdivided parcels to ensure servicing is possible and that cost-effective solutions can be managed.

Further Definitions:

“Services” – underground water, sanitary, and storm infrastructure/utilities.

- Overland drainage must be managed through overland drainage easements if crossing multiple parcels.
- This does not typically apply to electric and gas servicing, as these are managed by the utility provider through singular servicing or Utility Right of Ways (UROWs).

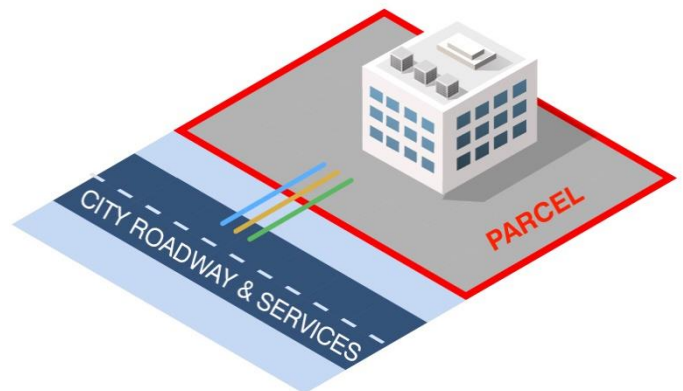
“Cross Lot Servicing” – scenarios in which services cross multiple parcel boundaries. The City may no longer approve designs with cross lot servicing without the use of proper instruments.

OPTIONS & INSTRUMENTS:

The City must manage scenarios where services cross multiple parcel boundaries i.e. cross lot servicing. The below options and instruments are available to do so, acceptance of these options and instruments are at the discretion of Planning & Development Service through formal approvals:

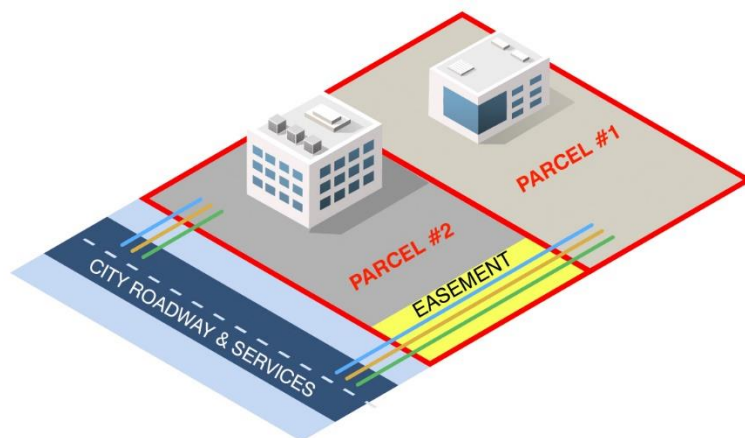
Options:

1. **Condominium Development** – for multi-phase developments, if the ownership of the development is to be maintained under **one** condominium corporation, private servicing between Bareland units can be managed without the use of UROWs, and easements, or other instruments. If ownership is under **more than one** condominium corporation, the instruments outlined below must be utilized.
2. **Singular Servicing** – individual (one set) services from a main (City-owned infrastructure) to one parcel can be made. These services cannot cross another parcel.
3. **Use of Instruments** – in the circumstance where a condominium development or singular servicing is not possible, the below instruments can be utilized to manage servicing to ensure cross lot servicing does not occur. Further information is provided below.

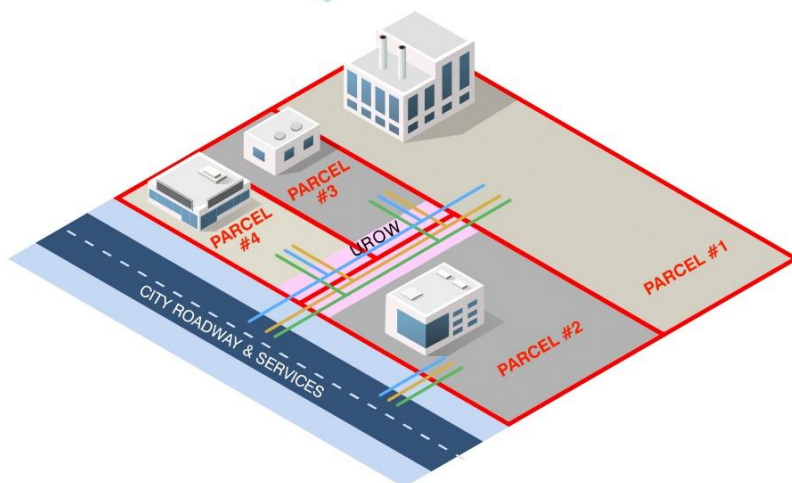


Instruments:

- a) **Easement** – individual (one set) services from a main (City-owned infrastructure) to one parcel can be made, however, can cross another parcel through a private easement registered between the two parties (owner of the lot being crossed, and the owner of the parcel being serviced). In some circumstances, the City may also be a party to these agreements.



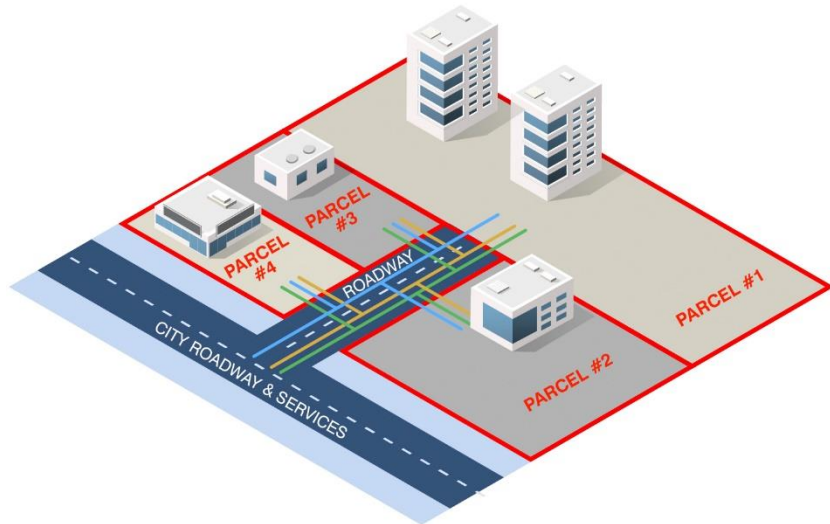
- b) **UROW** – service main extension across private property. The main extension is built to a City Standard and meets the Municipal Servicing Standards Manual (MSSM). The service main extension will go through the Construction Completion Certificate (CCC) and Final Acceptance Certificate (FAC) process and will be taken over by the City. Individual services (one-set) to one parcel can be made off the main extension.



Requirements for UROWs include:

- For water and sanitary services, a 9.0 m UROW is typically required to permit adequate space for all utilities.
- Permanent structures are not permitted above a UROW, and options for landscaping materials and fencing are limited.
- The length of the UROW must align with the MSSM requirements, 130 m is the maximum length of a water line until a looped water system is required.
- Boundaries of the UROW do not necessarily represent ownership. Ownership is typically defined within a UROW agreement. Typically, the City is responsible for operating and maintaining the main service extension located within a UROW. Individual services connected to the main service extension are to be privately operated and maintained. Delineation of ownership is often at the location of a valve or manhole, dependent on the infrastructure type.

- c) **City Roadway:** a roadway and service main extension is completed to extend services into a parcel. This is not a preferred option but may be utilized on a case-by-case basis. The roadway and service main extension must be built to a City Standard and meet the MSSM. The roadway and service main extension will go through the CCC and FAC process and be taken over by the City. Individual services (one-set) to one parcel can be made.



MOVE FORWARD:

Until such time that the province introduces legislation to clarify or provide further guidance on a Municipalities statutory duty to operate and maintain shared services, the City cannot assume the risk of cross lot servicing and will work with future developments to ensure this does not occur and can be managed through utilization of the above options and instruments.