

Introduction

A servicing agreement is a legal contract that a municipal council may require with a subdivision applicant under Section 172 of *The Planning and Development Act, 2007* (Act). Under it a municipality accepts long term responsibility for maintaining services in a new subdivision in exchange for the developer installing the services needed for the subdivision.

An agreement is meant to provide services and facilities that directly or indirectly serve the subdivision. It ensures a municipality will not incur all the costs of servicing a new subdivision and that new services are installed to municipal specifications and standards. An agreement should have performance guarantees, construction specifications, and time limits after which the municipality begins maintaining the services and the servicing agreement is terminated.

The Act does not provide for a developer to be responsible for the long term maintenance of the constructed services.

A servicing agreement may require the construction of the following on-site services:

- area grading and leveling of the land;
- graded, graveled or paved roads, streets and lanes in or connecting to the area being subdivided;
- sidewalks, boulevards, curbs, gutters, lighting;
- storm sewers, sanitary sewers, drains, water mains and laterals, service connections, and fire hydrants;
- street name plates and poles;
- landscaping of parks and boulevards;
- public recreation facilities; or
- any other public works that a council may require (e.g. power, gas, telecommunication lines).

An agreement may require the developer to pay fees to provide, alter, expand or upgrade, in whole or in part:

- sewer, water, drainage or other utility system;
- municipal streets and roads; or
- park and recreation space and facilities, which may be located within or outside, or which directly or indirectly, serve the area being subdivided.

These fees may be called servicing fees or off-site fees. Off-site fees could be based on the amount a municipality may eventually need for a new sewage lagoon. The total cost is then proportioned among existing and expected development that will use the lagoon. Developers can then

be required to pay a corresponding off-site fee for each proposed lot.

A municipality must post off-site fees, and accrued interest, in specific reserve or trust accounts. They cannot be used as general revenue. The funds may be withdrawn only for the specified construction project.

It is important to note that any municipality may collect a servicing fee for services required by the subdivision.

Interest Registration

A municipality may register an interest on the title to the land involved in a servicing agreement. An interest informs landowners of the commitments made in the agreement. A municipality must discharge the interest once the agreement terms and conditions are met.

Subdivision Approval

Subdivision applicants will not receive a certificate of approval from the approving authority if a servicing agreement is required by the municipality and the agreement has not been executed by all parties (s. 128).

Negotiation Time Limit

The Act provides for a 90 day negotiation period during which the municipality and subdivision applicant may enter into a servicing agreement. By mutual agreement, the negotiation period may be extended.

Appeals

After a negotiation deadline expires, the subdivision applicant has the right to appeal the need for an agreement, outstanding terms and conditions, or the application of or the calculation of certain fees. An appeal committee decision may be subsequently altered with the mutual consent of the municipality and applicant.

If the subdivision is located within a municipality that has been declared an approving authority pursuant to section 13 of the Act, a written notice of appeal and a the prescribed filing fee (no greater than \$50) is to be addressed to that municipality's local development appeals board.

Otherwise, written notice of appeal and a \$50 filing fee is to be addressed to the:

Planning Appeals Committee
Saskatchewan Municipal Board
2151 Scarth Street
Regina, Saskatchewan S4P 3V7

More Information

Sample servicing agreements are on line at www.municipal.gov.sk.ca. The municipal solicitor should draft an agreement and the municipal engineer should provide construction standards and inspection services. An agreement may apportion costs between the developer and the municipality.

Servicing Agreement Components

A **Preamble** that establishes:

- identities and addresses of the parties;
- how notice will be given to each party;
- purpose of the agreement with reference to the area being subdivided; and
- legal limitations and qualifications such as:
 - land being correctly zoned which may involve a public hearing and ministerial approval;
 - the developer obtaining other required permits (e.g. development and building permits); and
 - decision about the subdivision application from the Director of Community Planning.

General Provisions that:

- establish the municipality's construction standards with reference to a schedule of engineering specifications or drawings;
- set out what and when on-site services will be provided to the area being subdivided;
- allow construction to be phased, if needed;
- provide for municipal inspection of construction, timing and cost of the inspections;
- define how construction will be considered complete (may incorporate Certificates of Completion issued by the municipality or its inspectors);
- prescribe a warranty period against construction defects (usually two years) that must expire before the developer's obligations end;
- secure performance of the developer's obligations (by a performance bond, property escrow, or irrevocable standing letter of credit that the municipality may use to complete construction if the developer defaults);

- detail the conditions under which the developer can be found to be in default and the municipality's rights and duties if the developer defaults; permit the performance surety to be revised or reduced as construction progresses;
- give the developer the right to enter municipal property to complete its obligations;
- specify how the agreement may be cancelled or altered and how disputes are to be resolved (an arbitration process may be put in the agreement);
- clarify if legal action may sever any part of the agreement leaving the remainder in effect; and
- acknowledges the municipality will register a interest on the title to the affected land.

Developer Responsibilities:

- build or install the required services to the specified standards and times;
- indemnify the municipality or have liability insurance protecting its and maintaining the site safely during construction;
- pay the municipality servicing or off-site fees (which may be listed in a schedule) and other fees (e.g. inspection and legal costs);
- remove construction garbage when required;
- repair municipal facilities such as road surfaces and replace survey markers or other facilities damaged or destroyed during construction;
- keep all property taxes current; and
- transfer ownership and rights to all constructed works on acceptance by the municipality.

Municipal Responsibilities:

- provide information to developer to allow them to connect to existing services;
- arrange for timely construction inspections;
- issue completion letters or development and building permits as requirements are met; and
- accept responsibility for maintaining services once agreement conditions are met.

Other Party Provisions that deal with:

- whether the agreement may be transferred;
- performance assurances given by another party (i.e. a bonding or lending institution); and
- permits or easements as required by:
 - SaskPower, SaskTel & SaskEnergy;
 - Saskatchewan Highways and Infrastructure; or
 - Saskatchewan Water Security Agency or Ministry of Environment for work on shorelines, and on water, sewer and drainage systems.

Schedules add plans and details to an agreement. Examples of schedules to a servicing agreement may include:

Schedule A - Plan of Proposed Subdivision made by a Saskatchewan Land Surveyor or Community Planner.

Schedule B - Construction Specifications: engineering drawings and specifications illustrating how roads and other services will be built.

Schedule C - Off-site Service Fees: Of off-site services, the respective total costs, and the developer's share.

Contact Information

For more information contact the Community Planning Branch of Saskatchewan Ministry of Government Relations.

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