

Accountability in the City of Medicine Hat Land Development Business

- Issue(s): *There have been concerns raised regarding the City's involvement in land development related to:*
- a. *Proportion of market share*
 - b. *Transparency*
 - c. *Fair Competition with the private sector*

EXECUTIVE SUMMARY

The City's involvement in land development as it relates to transparency, equity and market share has been a topic of debate for many years. As a result the Medicine Hat & District Chamber of Commerce has researched and analyzed the issue. Following review, the Medicine Hat & District Chamber of Commerce is recommending that the Land and Properties department of the City is split into a property management function and a separate land development function. This would allow Land Development to operate under a separate governance model and be arms-length from the City with full transparency and accountability, operating as any other land developer. The City would retain all Corporate Asset Management functions, including long term land banking and economic incentive programs, separate from the land development business and could make all raw land available for purchase by bid to all developers including the land development business.

BACKGROUND

In August 2013, the Medicine Hat & District Chamber of Commerce researched the topic of municipal participation in land development as a result of concerns brought forward from the business community that the City's Land and Properties (L & P) Department receives preferential treatment in land development. One example consistently pointed out by private developers as demonstrating L & P's advantage in land development is that L & P's land pricing is typically much less than private developers pricing.

The release of the L & P Business Model in December 2013 caused the Chamber to review its research and modify its recommendations to address the Chamber's concerns with the proposed business model.

Additionally, the Chamber reviewed the practices of other comparable municipalities within Alberta including Lethbridge, Airdrie, Lloydminster, Fort McMurray, Strathcona County, Grande Prairie and St. Albert. Responses were received from all municipalities except Fort McMurray, with only the municipalities of Lethbridge and Lloydminster in the land development business. The percentage of land which the City of Lethbridge holds is unknown and Lloydminster is reported to be holding 30% of residential lands and 60% of non-residential. Land development in Lethbridge is run separately from municipal operations, while Lloydminster is not. Both municipalities subject their land development operation to taxes, offsite levies and both have stated that their operations run at a profit.

Outside of Alberta there were two examples of 'fast growth' communities, Saskatoon, SK and Waterloo, ON, who were both involved in land development. Specifically of interest was Saskatoon, who follows separate cost accounting with the program having no impact on the tax base/mill rate. The City pays the same taxes and levies paid by private developers with a profitable operation and the net proceeds are returned to City Council projects and programs that benefit the community.

L & P is the largest land developer in Medicine Hat, holding approximately 87% of the land inventory, and leads the industry in market share. The City of Medicine Hat also has an asset management role related to land: parks, civic buildings, green spaces, long term land banking for strategic growth, and industrial land for economic development.

POINTS OF AGREEMENT WITH THE L & P BUSINESS MODEL

The Chamber of Commerce is in agreement with the L & P business model on the following points:

1. Many municipalities participate in land development and each community is different in how they conduct business. There is general agreement that as long as there is fair competition with the private sector that municipalities can be involved in land development.
2. That L & P should operate as a business unit.
3. That L & P department currently has two primary functions:

- a. Steward of the City's land holdings not assigned to other portfolios
 - b. Real estate development.
4. Overall, the stated process for developing land within the L & P Business Model is logically laid out and the financial objectives seem to correspond to the private sector.

POINTS OF DISAGREEMENT WITH THE L & P BUSINESS MODEL

However, there are some concerns with L & P's business model:

1. The claim that the role of stewardship of the City's land holdings and its real estate development are complementary. We do not agree with this statement and see many opportunities for conflict inside the department because of these different roles.
2. L & P acknowledges that they provide services to, and receive services from, other City departments and it is undetermined as to whether these services are charged at fair market value; it is also undetermined as to what business advantage L & P gains over the private sector from these relationships.
3. There is currently no interest paid or earned on capital, which would be major aspects for private developers and it represents a potential unfair advantage for L & P.
4. The City service agreements require that private developers put up a security in the form of a Letter of Credit (LOC) to ensure that the development is constructed as per City standards and is completed by the developer. The value of an LOC is typically between 10% and 50% of the estimated construction costs and is required prior to the commencement of construction. LOC's typically cost the developer 1.5% per year of the value of the LOC. LOC's are held by the City until FAC's are given for the development. This process currently can take up to 4 years. The advantage to L&P is that it is not required to provide security and does not incur these costs in comparison to a private developer.
5. L & P lot prices are supposed to be "market driven" and optimize the return to the City of Medicine Hat. Currently the cost structure is not transparent. However the price should be set in function of "what the market will bear" and generally close to competitors' prices. If lot pricing is cost-driven, and the costs are not transparent or fairly derived, then lot pricing may not be "market driven".
6. L&P states they are required to sell its properties for market value as defined in the Municipal Government Act (Section 70). The exceptions listed in Section 70 of the MGA for under valued land are:
 - a. the land must be advertized for sale, or
 - b. for the public purpose, or
 - c. during a certain time period on land gained by the municipality through tax forfeiture.
7. Finally, the dictation of lot mix, adoption of sustainable development objectives, LEED, etc. are from an overall City perspective and are better addressed through the Land Use Bylaw, Area Structure Plans (which are adopted by bylaw) and other Council policies than by inclusion in the L & P business plan. If L & P wishes to be a leading "green" developer then that is part of their business model and the cost implications of such should be included in their presentations to their governance board for a business decision.

ANALYSIS

There is no evidence that municipalities should not be in land development. However to be involved in land development requires a municipality to demonstrate that it is either not in competition with the private sector or that its land development business practices are subject to the same rules, standards and cost structure as what is borne by private developers. To do this requires a level of transparency not normally observed in the land development business.

The processes proposed for a land development "business unit" by L&P are sound but confused by the other roles imposed on L&P by the City. There is a perception that the L&P business unit is merely a City of Medicine Hat department and benefits from many synergies that would not be available to the private sector. To the extent that L&P has a dominant land position in the city and due to cost advantages, undercuts private sector competition, there is not a level

playing field in land development, creating an environment whereby the City of Medicine Hat is competing unfairly with the private sector.

Additionally there is seemingly a lack of transparency at present, particularly within land pricing and fair market value. Concerns related to fair competition in that the City of Medicine Hat does not pay taxes, interest, security or the same overhead costs as private developers and can undercut private sector competition creates an unfair advantage and playing field that is not equitable to private sector development.

RECOMMENDATIONS

The Medicine Hat & District Chamber of Commerce recommends the City of Medicine Hat:

1. Implement the option considered in the Corporate Services Committee decision item to split the Lands and Properties Department and move the property management function to another City department to create greater transparency to the functions of the land development business.
2. Provide a separate governance model for the land development business unit to:
 - a. Act as an independent developer at arms-length from the City
 - b. Be separate from general City of Medicine Hat operations
 - c. Improve transparency, and
 - d. Provide accountability
3. Retain all Corporate Asset Management functions, including long term land banking, economic incentive programs, etc., within the City of Medicine Hat.
4. Remove the City's land development business unit from City Hall
5. Land development business unit capitalize fairly, service its debt and contract consulting (including legal and accounting) from outside suppliers.
6. Council should make use of current bylaws and legislation to govern and direct land development including the Municipal Development Plan, Land Use Bylaw and area structure plans. Council can further direct growth through council approved bylaws and plans and through decision of what raw land is released for sale to developers, including the City's land development business unit, from the City's land bank.

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RESOURCES:

City of Medicine Hat Land & Properties Business Model

Development cost charges:

http://www.cscd.gov.bc.ca/lgd/intergov_relations/library/DCC_Best_Practice_Guide_2005.pdf

Land Use Planning & Municipal Economic Development: A Municipalities Newfoundland and Labrador Community Development Project, Prepared by Dave Curran and Associates, with John Baird and Graham Letto, Municipal Consultant with Ryan Lane:

<http://www.municipalnl.ca/userfiles/files/Land%20Use.pdf>