

Approved by Council – February 14, 2005

TOPIC:**PROCESSING AND ISSUANCE OF REQUESTS FOR LETTERS OF COMPLIANCE****BACKGROUND**

From time to time, the Town of Redcliff is requested to provide Letters of Compliance for various properties within the Town of Redcliff. These requests normally come from lawyers. The request for the Letter of Compliance is typically requested to confirm any or all of the following: Land Use Zoning, Building Setbacks and Site Coverage. Information provided is to be based on the Town of Redcliff Land Use Bylaw (LUB).

POLICY**A. Purpose of the letter**

1. Letters of Compliance (or what may at times be referred to as compliance certificates) may be issued, stating the zoning, confirmation of setbacks, and site coverage, as they relate to the current Land Use Bylaw (LUB). If requested, the letter of compliance may address any of these issues separately (i.e. “zoning” and/or “setbacks and/or site coverage”)
2. The letter of compliance provides a declaration, based on examination and evaluation of the information provided, and is to be based solely on the Real Property Report or Survey Certificate provided. The letter of compliance does not confirm the activity (occupancy) taking place on the development, with exception of the distinguishing of types of building that clearly create (in the opinion of the issuer) a situation of “noncompliance. (Example: A structure known or identified to be: a residence in a nonresidential zone, a commercial/industrial building in a residential zone, a 4plex in an R-1 zone). Attachments outlining the permitted and discretionary uses, as established in the LUB, may be provided as attachments to the letter of compliance.
3. If it is evident from the information provided, that development exists that has not been permitted by the Town of Redcliff, it may be noted in the compliance letter that such a condition does or may exist. However, the letter of compliance does not address the matter of infractions, repercussions or remedial action. The development/building officials would deal with those matters as a separate issue.
4. Letters of Compliance may be issued by the Development Officer or in his absence the Municipal Manager or Municipal Secretary.

B. Status of Real Property Report or Survey Certificate

1. Each request for a Letter of Compliance shall include, a current Real Property Report or Survey Certificate completed by an Alberta Land Surveyor, which indicates the legal description of said property, and the dimensions and distance of all buildings from adjacent property lines and site coverage.
 - a) If the Real Property Report or Survey Certificate is dated more than 90 days prior to being received at the Town of Redcliff, the request must also include a statutory declaration that there are no additions or alterations to the developments as outlined on the attached Real Property Report or Survey Certificate.
 - b) Altered Real Property Report or Survey Certificates shall not be accepted.
 - c) If there is any question regarding accuracy or any other aspect of a Real Property Report or Survey Certificate, the issuer may refuse to accept it.

C. Receipting and Billing

- 1.) Requests accompanying payment by cash or cheque.
 - a) The Confidential Secretary forwards the request and payment to the Municipal Treasurer.
 - b) The Municipal Treasurer forwards the request and payment to the Receptionist. The payment is processed and the request and receipt are forwarded to the Development Officer.
 - b) The Development Officer reviews the request and issues a letter of compliance. (See Section D. "Completion and issuance of the letter of compliance") The receipt is held on file unless requested by the applicant.
- 2.) Requests for a letter of compliance, with instructions for fees to be invoiced.
 - a) The Confidential Secretary forwards the request to the Development Officer.
 - b) The Development Officer reviews the request and issues a letter of compliance. (See Section D. "Completion and issuance of the letter of compliance")
 - c) The Development Officer adds the customer's name and the applicable charge to his Accounts Receivable Invoice Request.
 - d) The Accounts Receivable Clerk invoices the Customer at the end of the month.

Note: Fees for Letters of Compliance are established by Bylaw.

D. Completion and issuance of the letter of compliance

1. Request for letters of compliance are often initially received by fax, as a result, the fax copy is often of a poor quality. Therefore, prior to the issuance of the letters of compliance, ensure an original copy of the request and Real Property Report or Survey Certificate is received.
2. Verify that the Real Property Report or Survey Certificate submitted is current. If it is not, refer to Section B, "Status of Real Property Report or Survey Certificate." This section outlines the process for dealing with requests for letters of compliance, which include Real Property Report or Survey Certificates that are not current or suspect.
3. Retrieve the "Property File" from the filing system and examine the file for any previous letters of compliance that may be on record to see if it is evident that an approval relating to the particular issue of non-compliance is readily identifiable. If it is, then the issuer may consider a statement regarding the variance similar to what is outlined in Section F(4) of this policy.

E. Distribution and filing process

1. The original request for the compliance letter, with the original copy of the Real Property Report or Survey Certificate, including the receipt if applicable, shall be filed in the Property File system, which has been created for each legal parcel.
2. The original of the letters of compliance with all attachments shall be faxed to the person making the request, unless directed otherwise. The original letters of compliance, with all attachments, shall be mailed by regular mail, unless otherwise directed by the person requesting the letters of compliance letter.
3. A copy of the letter of compliance, with all with all attachments, is to be filed in the Property File system.

F. Development in Compliance vs. Conforming.**In compliance/noncompliance**

- 1.) Note that the issue of the Letter of Compliance deals with the matters outlined in Section A. "Purpose of the Letter."
- 2.) Note that "Compliance" refers to meeting specified aspects of development as outlined in the current Land Use Bylaw. (The LUB in effect at the time the Letter of Compliance is issued.)
- 3.) Variances that have been approved, even though they produce the potential result of "approved development," do not change the fact that the development may not "comply" with the current Land Use Bylaw. If the development on the property in question does not meet the established criteria as written in the current Land Use Bylaw, it does not comply. The only way an issue could "comply" would be by a future modification to the Land Use Bylaw, that would have the development fall within those modified tolerances.

- 4.) If it is “clearly evident” that the issue relating to the matter that creates the non-compliance was at one time approved, then the issuer “may” make a written statement to the effect that “However, it is noted that the issue of _____ was approved by the _____ on the _____ day of _____ .

However Note:

The Town of Redcliff will not conduct investigations as to whether or not approvals for various issues that create non-compliance have been granted in the past. Individuals or Legal Firms requiring this type of information will be afforded the opportunity to examine municipal records, where authorized under “FOIPP,” and copies of requested information can be provided, at the fees established by policy.

- 5.) A letter of compliance is only a statement of how the property relates to specified aspect of the current Land Use Bylaw (LUB). “Not in compliance” would signal to the recipient that development on the property would be restricted. The following will provide some indication of the most likely situations regarding non-compliant development, and each section will indicate a means for resolution, or the process for resolution:

A) Removal

The development may have been constructed without permits, or have been improperly/incorrectly located on the site. In this case, the owner may wish to initiate the permitting process through consultation with the Development Officer and the applicable Safety Codes Officer/Building inspector. Where the development is deemed unacceptable it may be subject to correction or removal.

B) Variance Permit

There may be development that is improperly/incorrectly located on the site, and the resolution of the issue may need to be considered through the development application process as a variance, within the authority of the Development Authority (ie. The Development Officer or the Municipal Planning Commission).

In certain situations, the issue that creates the non-compliance may be so significant that it is outside any allowance that is provided for in the LUB that the Development Authorities have. In such situations only the S&DAB could rule on such an application, and then only if the development that is proposed, fits in the applicable zone as a permitted or discretionary use, and falls within their legislated authority.

C) Permit to Stay

The Development Officer may grant “Permission to Stay” on development which pre-exists the current Land Use Bylaw and for which there is no evidence of a prior development approval, so long as there are no encroachments. For development constructed subsequent to the current Land Use Bylaw and for which there is evidence of a prior development approval, the Development Officer may grant “Permission to Stay” so long as the development does not exceed a 10% variance.

Conforming & non-conforming

- 1.) The issue of “conforming” is clarified in the definition section of the MGA. It relates to the concept of whether development on the property met the established zoning or development restrictions at the time of development on the property was done.
- 2.) The Town of Redcliff will not conduct investigations as to whether or not development on property is either a “conforming building” or a “conforming zone.” (See definitions section of MGA for “conforming building” or a “conforming zone.”) As this refers to the concept of whether at the time of construction, the development met the Land Use Bylaw/Development regulations current at that time. Individuals or Legal Firms requiring this type of information will be afforded the opportunity to examine municipal records, where authorized under “FOIPP,” and copies will be provided for fees established by policy.

Further..

Whereas considerable investigation is required to verify dates of construction for principle buildings, accessory buildings, and additions to them.

And whereas this may involve locating and interviewing previous owners and contractors, examination of: historic photography, minutes of the municipality, records of the provincial government, and/or regional development authorities etc.

The Town of Redcliff will not provide written opinions regarding “conforming” or “nonconforming” development. Legal firms/lawyers are more qualified to express that opinion based on their investigation of the history of the property, and may at their discretion decide whether or not to provide their clients with a legal opinion regarding the conformity of any particular property.

<DATE>

<Sample 1 (In Compliance)>

<To>

Via FAX _____

Attention: <name>

Dear _____:

Re: Letter of Compliance – Lot __, Block __, Plan _____.

Upon receipt of your letter dated <date>, I have had an opportunity to review the current Land Use Bylaw of the Town of Redcliff for the present zoning of the property in question, and further examined the Real Property Report or Survey Certificate dated <date>, from <supplier of report>. The current Land Use Bylaw of the Town of Redcliff, places this property in an <R-1 Single-Family Residential> land use district. The permitted and discretionary uses are indicated in Section <69>, with accessory buildings outlined in section <54 (5)>. Excerpts of these sections are attached for your reference.

The Real Property Report or Survey Certificate that has been provided indicates that the setbacks, lot size, and site coverage of building comply with the Land Use Bylaw. Therefore, the zoning, setbacks and site coverage relating to development on this particular property is deemed in compliance with our current Land Use Bylaw.

This letter is subject to the following qualifications:

1. The Town of Redcliff is relying entirely on the Real Property Report or Survey Certificate supplied by or on behalf of the applicant with respect to the location of buildings within the property, and the Town of Redcliff makes no representation as to the actual location of buildings.
2. The Town of Redcliff has not conducted an inspection of the property, and makes no representation as to the use of the property.
3. The Town of Redcliff assumes no responsibility or liability for any inaccuracy, mistake or error of law or fact set forth in this letter of compliance which arises from the information supplied by or on behalf of the applicant.
4. This letter of compliance relates only to the requirements of the Town of Redcliff's Land Use Bylaw, and does not relate to the requirement of any federal, provincial or other municipal legislation nor to the terms of conditions of any easement, covenant, building scheme, agreement, or other document affecting the building(s) or land.

Yours truly,

<Name>

Development Officer

Encl.

<DATE> <Sample 2 (not in compliance)>

<To>

Via FAX _____

Attention: <name>

Dear _____:

Re: Letter of Compliance letter – Lot __, Block __, Plan _____.

Upon receipt of your letter dated <date>, I have had an opportunity to review the zoning of the property in question, and further examined the Real Property Report or Survey Certificate dated <date>, from <Focus Intec.> The current Land Use Bylaw of the Town of Redcliff, place this property in an <R-1 "Designated Single Family Residential"> land use district. The permitted and discretionary uses are indicated in <Section 69>, with accessory buildings outlined in <section 54 (5).> Excerpts of these sections are attached for your reference. The Real Property Report or Survey Certificate indicates that the lot size, and site coverage of building comply with the current Land Use Bylaw. However, there is concern over the < provide detail of issue here> In regard to the issue of the setback on the <accessory building>, the required setback of <1 meter> is not met.

Therefore, the development on this particular property is deemed not in compliance with our Land Use Bylaw.

This letter is subject to the following qualifications:

1. The Town of Redcliff is relying entirely on the Real Property Report or Survey Certificate supplied by or on behalf of the applicant with respect to the location of buildings within the property, and the Town of Redcliff makes no representation as to the actual location of buildings.
2. The Town of Redcliff has not conducted an inspection of the property, and makes no representation as to the use of the property.
3. The Town of Redcliff assumes no responsibility or liability for any inaccuracy, mistake or error of law or fact set forth in this letter of compliance which arises from the information supplied by or on behalf of the applicant.
4. This letter of compliance relates only to the requirements of the Town of Redcliff's Land Use Bylaw, and does not relate to the requirement of any federal, provincial or other municipal legislation nor to the terms of conditions of any easement, covenant, building scheme, agreement, or other document affecting the building(s) or land.

Yours truly,

<Name>
Development Officer

Encl.

<DATE> <Sample 3 (not in compliance but issue approved)>

<To>

Via FAX _____

Attention: <name>

Dear _____:

Re: Letter of Compliance letter – Lot __, Block __, Plan _____.

Upon receipt of your letter dated <date>, I have had an opportunity to review the zoning of the property in question, and further examined the Real Property Report or Survey Certificate dated <date>, from <Focus Intec.> The current Land Use Bylaw of the Town of Redcliff, place this property in an <R-1 "Designated Single Family Residential"> land use district. The permitted and discretionary uses are indicated in <Section 69>, with accessory buildings outlined in <section 54 (5).> Excerpts of these sections are attached for your reference. The Real Property Report or Survey Certificate indicates that the lot size, and site coverage of building comply with the current Land Use Bylaw. However, there is concern over the < provide detail of issue here> In regard to the issue of the setback on the <accessory building>, the required setback of <1 meter> is not met.

Therefore, the development on this particular property is deemed not in compliance with our Land Use Bylaw. However, it is noted that the issue of <the setback on the ???> was approved by the ??? on the ??? day of ???.

This letter is subject to the following qualifications:

1. The Town of Redcliff is relying entirely on the Real Property Report or Survey Certificate supplied by or on behalf of the applicant with respect to the location of buildings within the property, and the Town of Redcliff makes no representation as to the actual location of buildings.
2. The Town of Redcliff has not conducted an inspection of the property, and makes no representation as to the use of the property.
3. The Town of Redcliff assumes no responsibility or liability for any inaccuracy, mistake or error of law or fact set forth in this letter of compliance which arises from the information supplied by or on behalf of the applicant.
4. This letter of compliance relates only to the requirements of the Town of Redcliff's Land Use Bylaw, and does not relate to the requirement of any federal, provincial or other

municipal legislation nor to the terms of conditions of any easement, covenant, building scheme, agreement, or other document affecting the building(s) or land.

Yours truly,

<Name>

Development Officer

Encl.

Attachment 1.**MUNICIPAL GOVERNMENT ACT
Chapter M-26**

Part 17
Planning and Development

Definitions

616 In this Part,

- (a) **“agricultural operation”** means an agricultural operation as defined in the *Agricultural Operation Practices Act*;
- (a.1) **“building”** includes anything constructed or placed on, in, over or under land, but does not include a highway or road or a bridge that forms part of a highway or road;
- (b) **“development” means**
 - (i) an excavation or stockpile and the creation of either of them,
 - (ii) a building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land,
 - (iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or
 - (iv) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building;

(q) **“non-conforming building” means a building**

- (i) that is lawfully constructed or lawfully under construction at the date a land use bylaw affecting the building or the land on which the building is situated becomes effective, and
- (ii) that on the date the land use bylaw becomes effective does not, or when constructed will not, comply with the land use bylaw;

(r) **“non-conforming use” means a lawful specific use**

- (i) being made of land or a building or intended to be made of a building lawfully under construction at the date a land use bylaw affecting the land or building becomes effective, and
- (ii) that on the date the land use bylaw becomes effective does not, or in the case of a building under construction will not, comply with the land use bylaw;

Attachment 2.**MUNICIPAL GOVERNMENT ACT
Chapter M-26**

Part 17
Planning and Development

NON-CONFORMING USE AND NON-CONFORMING BUILDINGS

643(1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- (a) to make it a conforming building,
- (b) for routine maintenance of the building, if the development authority considers it necessary, or
- (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.