

Items discussed, resolved and outstanding, based on the meeting between Telecommunication Proponents, Edmonton Federation of Community Leagues and Administration

1. Global statements (purpose, Development Officer discretion)

No Consensus reached

Issue

Edmonton Federation of Community Leagues wants to see a global limit put on the discretion of the Development Officer. This is to provide guidance to the Development Officer on how to use his/her discretion, as well as address the perception that the Development Officer decisions do not meet the test of “reasonableness” as well as the perception that the Development Officer is not accountable to the public for their decisions.

Ensuing discussion

During the discussion, references to the Constitution Act of 1867, the Rule of Law, as well as Alberta and Supreme Court decisions were made by Edmonton Federation of Community Leagues representatives. In addition, the desire for the Development Officer discretion to focus on “land use impacts” comes from the fact that the residents at large have no avenue for appeal, and that a focus on land use impacts would provide assurance that their needs are going to be met.

Result

Administration examined these claims with the Law Branch, and found no basis to change the document. The Development Officer is accountable to the public through a delegation of authority from City Council to the Administration. Overall, there are 28 instances of “may”, 15 instances of “appropriate”, 4 instances of “discretion” and 2 instances of “opinion”. Many of these instances are used in direct quotations from Industry Canada Client Procedures Circular, or are used to verify compliance with a requirement in the policy. Other instances, the general term provides broad interpretation to protect the public interest, and in some cases these words are from direct feedback received from Edmonton Federation of Community Leagues, such as “The analysis is expected to be prepared by an appropriate professional who is qualified to give an opinion”. Each site is different in nature, context and communities, and so discretion is required to include situations that have not been encountered previously. At the end of this process, the Development Officer is to write a letter of concurrence or non-concurrence to Industry Canada, outlining the reasons for that decision, as well as the facts that support that reasoning.

In relation to the purpose statement:

Issue

The Edmonton Federation of Community Leagues stated that they wanted the purpose statement to provide an introduction on how the municipality is handling

the telecommunication file, in a way that provides assurance to residents at large.

Ensuing discussion

In particular, subsection 1.03(a) did not provide satisfaction to either the Edmonton Federation of Community Leagues or Proponents; the use of “obtrusive” was thought to be subjective, by the Proponents, and the Edmonton Federation of Community Leagues didn’t like how narrow “obtrusive” made the clause, and would prefer that it be removed so that all Telecommunication Facilities are discouraged. The Proponents stated that residential areas are where subscriber demand and complaints about dropped calls or slow service are greatest, and so it is impractical to remove the possibility of new Telecommunication Facilities in residential areas.

Proponents wanted the purpose to indicate that it is to provide a “walk through” of consultation, that there is transparency in the process (for both the Proponents and the Administration), and that the Proponents are able to find a site that meets their coverage or capacity (bandwidth) requirements within residential areas.

Result

The purpose statement was unchanged.

2. Municipal Authority

No Consensus reached

Issue

In regard to subsection 3.01(a), Edmonton Federation of Community Leagues states that there is a Dual Aspect of Constitutional Law, and in fact, the Federal Government is not the sole approving authority for Telecommunication Facilities. As a result, the City has more authority in this matter than they are leading on, and should instead use their authority to play a greater role in the regulation of telecommunication infrastructure within the City’s jurisdiction.

Ensuing discussion

Proponents state that this policy is supposed to enhance Industry Canada Client Procedures Circular 4.2. Their interpretation is that the Land Use Authority has no authority to have a more onerous policy than the Client Procedures Circular - 2-0-03, and that anything in our own policy cannot “overly restrict” the installation of telecommunication equipment.

This policy document is designed to be a consultation and verification process, and not a regulatory process. In addition, Industry Canada states that the purpose of consultation with the Land Use Authority is not to seek permission to build radiocommunication sites. The permission to construct a site is implicit in the license granted by Industry Canada under federal jurisdiction.

Instead the intention is to give the Land Use Authority, as the body responsible for the management of development planning within its local jurisdiction, an opportunity to discuss any concerns they have regarding a proposed radiocommunication facility with respect to land-use. These concerns could be relative to proposed developments in the area, or take into consideration any impact on buildings and areas of recognized environmental, historical, architectural or archaeological value.

Result

Administration has reviewed this claim with the Law Branch, as well as Industry Canada. The *Radiocommunication Act* is intended to give the Minister of Industry broad powers, and as such, it should be interpreted broadly in the Minister's favour where there is ambiguity. As a result, the Law Branch is of the opinion that the current policy is within municipal jurisdiction, and we should not try to expand our role in this process.

Industry Canada, as the final arbiter of disputes, will assess whether the proponent has complied with both Client Procedures Circular 2-0-03 and Client Procedures Circular 2-0-17 and will review the concerns of the Land Use Authority. If the proponent is found to have complied with all federal requirements, then Industry Canada will consider the concerns of the Land Use Authority and make a determination on whether the proponent may build the site. Industry Canada's decision is final and is binding on both the Land Use Authority and proponent.

3. Setbacks

Consensus not applicable – not within municipal authority

Issue

Edmonton Federation of Community Leagues is concerned with safety and aesthetics; they desire to have a minimum setback of 1x the tower height into the policy. They desire to see a clause within the policy that states if the towers do not conform to the 1x tower height minimum setback, then the City would issue a letter of non-concurrence.

Ensuing discussion

The Minister of Industry via the *Radiocommunication Act* has the authority to approve all sites and erection of towers. Without definitions for these terms, there is room for subjective interpretation; however, Administration has been advised that the Minister's powers are to be interpreted broadly. As a result, "site" is taken to mean more than just the parcel of land where the telecommunication facility can be located, but also the location within that parcel, removing any ability for the City to regulate setbacks. It is also important to note that proposed policy C471C is a consultation document, and is not intended to have a Proponent seek permission to build a telecommunication facility. It is also important to acknowledge that most of the increased demand for cellular services and internet is within residential areas. Setbacks can be introduced as guidelines, however,

setting height limits (through an equivalent setback requirement) that are difficult to achieve given service demand will set up situations whereby the Development Officer will routinely need to consider accepting setbacks smaller than the guidelines.

Result

Administration has consulted with the Law Branch and Industry Canada on this matter, and has determined that it is not possible to include this request in the policy. Aesthetics are addressed through Section 5 “Design and Visual Impact”

4. Development restrictions on aspects that Industry Canada has exempted

Consensus not applicable – not within municipal authority

Issue

Edmonton Federation of Community Leagues is concerned with the exclusion of several configurations of Telecommunication Facilities from public consultation, and the likely land use impacts on residential areas those facilities would have. Proponents are concerned that the City’s requirements are more onerous in some cases, than outlined in the default Client Procedures Circular-2-0-03.

Ensuing discussion

It is important to note that Industry Canada has specifically excluded several configurations of Telecommunications Facilities from public consultation, and those sites are therefore outside of the scope of proposed policy C471C. The exemptions are listed in Section 6 “Exclusions” of Client Procedures Circular-2-0-03; maintenance, upgrades to antennae, addition or modification to a Telecommunications Facility to enable co-location (provided the addition does not exceed 25% of the original Tower height), temporary installation not exceeding 3 months, and new antenna systems with a height less than 15 metres.

Result

As a result, our policy cannot include consultation requirements for those configurations. As a result, those sections were removed from the Public Consultation Requirements section.

5. Meeting format, location of meeting

No Consensus reached

Issue

The Edmonton Federation of Community Leagues insists on a “Town Hall Style” meeting, and proposed amendments to the draft policy to define what a town hall style is, with requirements for a specific time of day (7-9pm), and type of day (weekday, non statutory holiday) that meetings are permitted to be held. Administration and Proponents are opposed to a requirement for a “Town Hall

Style” meeting for all cases, but see it as being something that is escalated to over time, or in conjunction with public open houses, direct mail, or hand delivery.

Ensuing discussion

During discussions, the Proponents indicated that specifying the time of day is impractical, and is not consistent with their experience in how to best get people to attend these types of meetings. In addition, the Proponents said that they are always prepared to hold a town hall style meeting, but want to have an escalation of meeting types, using town hall style as a last resort. The Edmonton Federation of Community Leagues countered stating that the requirement for a town hall style meeting doesn't preclude other types of consultation from happening, but that their membership was very vocal in their preference for the town hall style. Administration pointed out that a town hall style meeting can be dominated by a few loud individuals, and other persons, either out of shyness or fear of reprisal do not have their voices heard. There was no agreement as to who should determine the format of the meeting. Edmonton Federation of Community Leagues wants it to be at their discretion, and/or always have a town hall style meeting.

Result

The public meeting format will still be determined by the Proponent (11.02(a)). Two sub points were added that state more than one meeting may be required, and that the meeting time should be chosen to capture as many comments as possible.

In relation to the location of the meeting:

Issue

Administration stated that the current wording is too general, and would prefer to define either a set distance from the tower, or require the meeting to be within the neighbourhood or the adjacent neighbourhood.

Ensuing discussion

The Proponents were ok with the wording from C471B, which would add “affected” back into the text (subsection 11.02(b)).

Result

Section 11.02 has been amended in an attempt to respond to both issues.

6. Definition of: Prescribed Distance, Telecommunications Facility, site, land use impact

Consensus was reached

Issue

The Proponent's submission stated that the requirement for 6 times the tower height for consultation is “well beyond what is required under the Industry Canada Client Procedures Circular”.

Administration desired clarification for several terms defined in the policy, including Telecommunications Facility, and Site.

Ensuing discussion

During discussion with the Proponent, they said that they had become accustomed to the 6 times the tower height requirement, and were willing to accept the current definition.

There were no objections to Administrations proposed changes to the definitions for Telecommunications Facility, and Site.

Result

- No changes were made to the definition of Prescribed Distance;
- Additional words were added to the definition for Telecommunication Facility to help by adding clarity, established industry terms, and zoning bylaw terms. As an extension, a new definition for site was proposed;
- Under 2.14(b) of Attachment 2, Significant Telecommunications Facility, subsection (iii) was removed due to being inappropriate for a definition.

In relation to a definition for “Land Use Impact”:

Issue

The Edmonton Federation of Community Leagues is very concerned with the potential affect of a new telecommunication tower will have on the use, value and enjoyment of their property. Due to this, they require specific references to these concepts within the policy.

Ensuing discussion

Proposed Policy C471C attempts to address land use impacts within reason (Section 4 “Location” and 5 “Design and Visual Impact”). with the caveat that it is improbable that a telecommunications facility will not be endorsed by Industry Canada if there is no reasonable alternative location or structure that is required to meet demand for telecommunications services.

There are varying interpretations for land use impacts, including what is reasonable “enjoyment of land”, and therefore, it is difficult to make a decision that everyone can agree upon. As well, it should be noted that it is very difficult to prove that the existence of a telecommunications tower or antenna structure has a negative impact on land value.

Result

For these reasons, Administration elected not to include this definition of “Land Use Impact” and rely instead on the guidelines related to land use impacts contained in the Policy. The Proponents and Edmonton Federation of Community Leagues agreed with this reasoning.

7. Land use impact, and potential impact on property values,
Consensus not applicable – not within municipal authority

Industry Canada specifically excludes “Land Value” as a valid comment during the consultation process, and so it is inappropriate to discuss this concept in the consultation document (see the Client Procedures Circular “4.2 Concerns that are not relevant” under “Public Reply Comments”, “potential effects that a proposed antenna system will have on property values or municipal taxes.”). Administration is not aware of any conclusive evidence that links antenna systems and property values..

8. Alternative consultation/door to door canvassing
Consensus was reached

Issue

This clause was added during previous meetings, to provide an opportunity for a limited consultation, without requiring the Proponent conduct a full-scale consultation process where only a few residences would be affected. The Proponents did not think that this would be safe for their staff to conduct, and the Edmonton Federation of Community Leagues did not want to circumvent a “Town Hall Style” meeting.

Ensuing discussion

The Proponents said that they wanted to distinguish between door to door canvassing, and hand delivered notification. Edmonton Federation of Community Leagues introduced the idea of a “paper consultation”, in which interested persons could respond with their comments and no public meeting would be required.

Result

All three parties agreed to remove door to door canvassing as an option (Subsection 11.04(a)). An option for a “paper consultation” was added in its place, where only a few residences would fall within the Prescribed Distance.

9. Screening and visual design elements – Lighting, tower type, building mounted facilities

Some consensus was reached

Issue

The Proponents stated that they were concerned that the references to NAV Canada were beyond municipal jurisdiction. The Proponents also indicated that this section doesn’t have relevance to consultation requirements, and suggests that this part be separated from this area, and instead, go in a section about suggested list of things to consult on.

Ensuing discussion

In the Design and Visual Impact section, (c) and (g) of subsection 5.02 were discussed. Administration clarified that these sections did not add or alter the NAV Canada requirements, but rather suggested that the Proponent avoid designs that would require those additional requirements. There were no major issues with any of the wording. Administration also noted that the wording used in this section is identical wording to the existing policy.

Result

No changes were made.

10. Preferred and Discouraged Locations; pre selecting/pre planning sites with Area Structure Plans

Some consensus was reached

Issue

The Edmonton Federation of Community Leagues consistently desires that no new telecommunication infrastructure be constructed in or near residential areas. However, the Proponents state that residential areas are the primary drivers for the need to expand coverage and capacity (bandwidth), and so, most new towers will be required in residential areas to meet the demand for service. City Council has expressed a desire to have the telecommunication sites pre-selected prior to development taking place (i.e. subdivision or area structure plan stage).

Ensuing discussion

On the matter of 4.02(a), everyone could agree that the best preferred locations were those that met the intent of this policy. There is recognition, however, that this approach has some limitations and so there is a balance that needs to be struck between the opposing viewpoints and interests inherent in the policy objectives.

Subsection 4.02(b)(vi) states a general term of “institutional uses” without defining what they are in Section 2. The Edmonton Federation of Community Leagues suggested that we use terms from the Zoning Bylaw so that the Development Officer (et al) has a better idea of what exactly constitutes an institutional use. There was general agreement that this was a good idea, however, the risk is that this will be confused with the Zoning Bylaw. After consulting with the Law Branch, Administration made the change to clarify what is meant by institutional uses.

For subsection 4.03(a), the Proponents state that residential areas are where the most new demand is occurring, and thus, where most of the new towers are needed, in order to expand capacity. The Proponents noted that clauses like this are used to challenge any new tower in a residential area. The Edmonton Federation of Community Leagues insists that residential areas be maintained as a discouraged use. This is a core concept for the policy, and would best be

decided at a political level, whether residential areas would be a discouraged location.

For subsection 4.03(d), there was discussion about what an “inappropriate” parks location is, resulting in a reference to consultation with Parks/Community Services department. Edmonton Federation of Community Leagues wanted to know what the considerations would be, in order to narrow the scope of discretion.

Pre-selection of sites is a good idea and has been brought up several times throughout the past 15 years. However, this policy is primarily a tool to facilitate and make transparent, the public consultation process. An amendment to the Municipal Development Plan, the Subdivision Design Guidelines, or other municipal plan would be the more appropriate mechanism to handle this type of planning.

Result

- There is agreement to refer 4.02(a) back to subsection 1.03 (objectives of this policy), as a site that satisfies those objectives would be a preferred location.
- 4.02(b)(vi) was updated to make reference to the use classes in the Zoning Bylaw that constitute “institutional uses”.
- 4.03(d) Administration changed the wording to say that the Development Officer will make a determination in consultation with Parks Department, but stopped short of referencing the considerations. The broad interpretation is designed to be flexible as new situations or considerations arise.
- Subsection 11.01 of the policy explicitly states that areas with that have been preselected are exempt from consultation.

11. Site investigation requirements and Co-location feasibility rules - issues of confidentiality, including the coverage/capacity maps and third party consultant

Some consensus was reached

Issue

Administration wants an ability to verify the need for a tower in a given location, and have the Proponent provide maps at public meetings in order to assist the public in understanding why a particular location is chosen, and why a new tower is required. Proponents do not trust their network diagnostics with any third party other than Industry Canada.

Ensuing discussion

On the issue of third party analysis, there was agreement to change the third party to Industry Canada, and to require that an expert qualified to give an opinion within the Proponent’s organization would be required to provide that opinion. The Proponents stated that they have an issue with providing capacity (bandwidth) or coverage maps, but also said that they often have them available

for community consultation sessions. It remains unclear what the issue with providing the maps are. Subsection 8.02 also does not specify when documents need to be submitted, so clarification was made. The maps are something that the Proponents make as part of their site selection process, and it seems reasonable that they would be able to make something suitable for general consumption.

Result

On the issue of third party analysis, there was agreement to change the third party to Industry Canada, and to require that an expert qualified to give an opinion within the Proponent's organization would be required to provide that opinion. No change was made to the mapping requirement, other than to change "capacity" to "bandwidth".

On the issue of timing:

Issue

Proponents thought that the requirement to have a response for co-location interest from other Proponents would amount to dead time, and they did not want the process to be held up because other Proponents did not respond to their inquiry.

Ensuing discussion

Administration clarified that the 30 days waiting for a response from other proponents as being able to be done concurrently with the rest of the site-selection process. There was also agreement that the application should not be held up due to not having a response from other Proponents on the co-location question, and amendments were made to the policy to reflect that.

Result

Clarification was made so that there is a process step after 30 days to move the application forward.

12. Mailed notification content

Some consensus was reached

Issue

The Edmonton Federation of Community Leagues is concerned that advertisement for public consultation opportunities regarding telecommunication facilities will be considered junk mail, and not read by the recipient.

Ensuing discussion

All three parties seemed amenable to having some sort of wording on the outside of the envelope that identifies it as an invitation to a cell tower meeting. The Proponents objected to the suggestion of having a blank envelope (no identification of the company on the mailouts), and Administration agreed. There

was no consensus about what the wording should be, and the Proponents were instructed to send Administration the wording they currently use for their mailouts, or what they would propose if they have no wording. Administration has not received any response from the request.

For reference, Calgary directs the letters to “occupant” and requires the following:

“A CELL TOWER IS PROPOSED WITHIN [INSERT PRESCRIBED DISTANCE] OF THIS RESIDENCE. INFORMATION IS ENCLOSED.”

However, both Administration and Proponents take issue with the “occupant” since the property owner has arguably more interest in the outcome than the tenant.

Result

Administration decided that the direction from Industry Canada is to include occupants and property owners (section 4.2 of CLIENT PROCEDURES CIRCULAR -2-0-03). This will increase the time and effort Administration will need to process applications, and new POSSE functionality may be required to generate the mailing lists and remove duplicates.