

October 20, 2015

To whom it may concern:

Subject: The Saskatchewan Ministry of Government Relations, Building Standards and Licensing Branch, has submitted proposed legislation changes to the UBAS Act to eliminate the current requirements that mandate Building Officials duties to perform plan reviews and inspections of buildings within the Province of Saskatchewan. The proposed changes allow 1st; owners the option to “Self Regulate” their construction projects through the use of “Owner’s Assurance of Compliance” forms along with “Letters of Undertaking” forms from registered professionals and 2nd; the proposed changes give direction to Local Governments and their appointed Building Officials as to the number and level of services they are permitted or prohibited to provide under the new legislation if the owner chooses to “self regulate”.

Purpose of proposed changes:

The main purpose of the changes are listed by the Ministry as methods to;

1st; save owners money on permit fees by substantially limiting the Local Governments and their appointed Building Officials involvement in building plan reviews and inspections in the hopes that a drop in permit fees charged by the Local Government will follow.

2nd; save owners time by providing a mandated, streamline system that drastically reduces the number of, and quality of, services Local Governments and their appointed Building Officials are permitted to provide.

Ministry’s reason for proposed changes:

In item 11 on page 5, under the heading of “Questions and Answers”, the Ministry poses a question of what current problems exist that prompted these proposed changes. The Ministry states that they are aware of situations where permit fees are significantly higher than the cost of providing services. No substantiated evidence of this claim has been provided for the readers review nor is there any suggestions of how the Ministry intends to evaluate each Local Government’s current fee structures.

Current Permit Fee Structures:

It is widely known and accepted by staff at Local Governments and at private Building Official companies that the vast majority of permit applications are for small Part 9 buildings. These small Part 9 projects generate the lowest cost recovery compared to actual administration costs. One example of this is a \$10,000.00 project for which a municipality or private inspection company charges a combined minimum fee in the neighborhood of \$225.00 for plan review and inspections of a project. This minimum fee would apply to all projects from a \$100.00 cost up to a \$50,000.00 cost of construction. Based on a combined municipal and private Building Official fee of \$5.00 per \$1,000.00 of construction costs, it is not until the projected construction costs are over \$200,000.00 that either party will be able to claim that cost recovery occurred.

One of the reasons losses occur on small projects is they often require from 2 to 4 inspections, each one of which must be accompanied by office administration in order to effectively document what occurred. When these costs are added to the costs of enforcement measures on small projects such as follow up letters, orders, and reviews of alternate solutions and preliminary reviews, then the financial picture becomes clearer. Obviously, in these cases, a negative cost recovery exists for both municipal bodies and private Building Official companies. These financial losses stay on record until permit applications for much larger projects are submitted, processed and fees are paid.

Only when the “average” construction costs of both large and small projects are considered together can the true financial picture be realized to allow an accurate evaluation of whether cost recovery is occurring or exceeded. The Ministry has not provided any information to substantiate the claim of over charges by the Local Governments or by private Building Official companies.

The proposed changes to eliminate plan reviews and inspections at the owners option, including on large Part 3 buildings, will undoubtedly place many Local Governments and private Building Official companies in the position of having to substantially raise their fees for smaller projects in order to obtain a true cost recovery system.

In item 11 on page 5, under the heading of “Questions and Answers”, the Ministry states they are aware of one large project that has a construction value of 2.6 billion dollars for which a private Building Official is charging a fee of \$1.50 per \$1000.00 of value for a total permit fee of 3.9 million over the 10 year duration of the project. The Ministry has not specifically stated that there was a complaint from the owner of this project and it must be pointed out that a permit fee of \$1.50 per \$1000.00 value of construction is extremely low compared to other permit fees throughout the Province or throughout Canada, in fact this fee is approximately 1/7th of 1%.

It is difficult to understand how or why the owner of a project such as that mentioned above would complain about paying 1/7th of 1% for a building permit fee when they should have a contingency fund built into their project that ranges from 2% to 10%. That contingency equates to between \$52 million and \$260 million. If this extremely low cost of a permit negatively affects a project with a construction budget as large a \$2.6 billion, then the project is likely doomed to failure and the possibility of not being able to complete the work.

The Ministry appears to be proposing measures to save a few wealthy company owners permit fees without truly considering the resulting lack of cost recovery that numerous Local Governments and private Building Official companies will experience, unless they raise their permit fees for small projects.

Implications to Local Governments:

Item 9 on page 4, under the heading of “Question and Answers” suggests that some municipalities may see the new regulations as an erosion of income opportunities. This suggestion does not recognize that most, if not all municipalities, are simply trying to fulfill their duty of care to their residents by ensuring to the best of their ability that the buildings in their areas are safe to occupy, and that they are free of serious defects. There are numerous legal cases in Canada in which municipalities have been held jointly, if not fully, responsible for failing to fulfill their duty of care partly because their inspector relied fully on a registered professionals document and, therefore, performed no in-depth plan review or inspections.

The Saskatchewan Ministry's proposal does not mention the results of any research into the new, possible legal actions that could be successful against a municipality as a direct result of these regulations prohibiting plan reviews and inspections on projects for which the owner has chosen the option to "self regulate" with the help of their registered professionals.

Item 8 on page 5 of the proposed changes in the tables, specifically states that when the owner has chosen the option of Owner's Assurance of Compliance, "self regulate" a local authorities appointed Building Official "shall" **limit** their services to those listed in (a) to (f). Of particular concern is items (a) which states that Building Officials are permitted to perform a "permit application review", and (c) they are permitted to perform "file management". The proposed changes do not give definitions of "permit application review" or "file management" or what they should or must include. No information is provided or suggested by the Ministry regarding the required level of care or the precise type of review or file management that is permitted by the local authorities and their appointed Building Officials. Performing plan reviews or site inspections are not listed in the permitted services when the owner has chosen self regulation.

The number and level of services a Local Government provides is a decision they should be permitted to make on their own and those decisions should be based on the level of liability they might be subjected to and should include the costs of protecting themselves against whatever liabilities they feel may exist. The Ministry has not suggested or offered to share in the liabilities or financial burdens of the Local Governments for issues that may arise as a direct result of the proposed limitations on services they are permitted to provide. If a municipal authority provides no plan review, as is proposed in the changes, then there is no 3rd party review and no way to confirm that what a designer or owner submitted for a permit actually does comply with the building code.

Not performing plan reviews will likely leave the municipality at a possible higher risk of liability due to different interpretations of "permit application review" or "file management", i.e., should their Building Official have performed a full plan review for code compliance during the application review before collecting fees, or should their file management have included following up on engineers listed deficiencies to see if they were repaired?

Lastly, as many Local Governments can attest to, they are always one of the named defendants in a legal case involving infractions of the building code. Municipalities have been proven to be jointly and severally liable which means if no one has the funds to pay damages then the municipality pays all of it.

Even though a municipality may have received copies of the proposed "Owner's Assurance of Compliance or Letters of Undertaking" from an engineer, the reality for municipalities is that the owner or designer may not have the funds to pay out damages. There are numerous reasons that can affect the owners, architects and engineers ability to pay damages. They range from, gone out of business, they claimed bankruptcy and lastly, they did not have errors and omissions insurance at the time a claim was made, i.e., they forgot or neglected to get an insurance rider after going out of business. It is not widely known but errors and omissions insurance is only valid if the company has a policy in place at the time the claim is made (same as insurance on a car, no payout unless the car is insured at the time of the incident). Municipalities receiving an Owner's Assurance of Compliance or a Letter of Undertaking from an architect or engineer holds no value if that person or company does not have valid insurance in place when a claim is made, this leaves the municipality holding the bag,

so to speak.

The current accepted method for municipalities to reduce their liability has been to hire a qualified Building Official and have them perform both plan reviews and site inspections on all buildings, including large buildings. In many provinces, this practice has proven to drastically reduce or eliminate the damages a Local Government may be found liable for.

With these new regulations to eliminate plan reviews and inspections, municipalities are likely to have a higher risk of liability simply because they collected a fee for services and, in accordance with the limitations stated in the proposed regulation changes, made no attempt to ensure the drawings and/or work actually complied with the building code.

It seems to be grossly unfair and possibly unlawful for Provincial Legislation to take away a Local Governments ability and right to choose how to protect themselves and their residents against financial burdens from awarded damages and issues caused by unsafe buildings. It would not be surprising to find in the future that the Ministry itself is named in a legal case regarding the unfounded, inappropriate and unheard of enacted legislation to prohibit plan reviews and inspections by Building Officials on buildings, especially those for large buildings, based on a perceived permit cost savings to owners.

Cost Recovery Systems:

If the new regulations are enacted, municipalities will need to reassess their cost recovery systems to ensure that the loss of funds related to plan reviews and inspections, particularly those related to large buildings, will be obtained from other sources within their organization (likely raising permit fees on small projects). Local Government residents, who are less able to pay, will be stuck with fee increases that the wealthy companies did not want to pay with support from the province.

The need for municipalities to reassess their recovery systems is based on simple math; higher risk, less revenue, or risk the same but less revenue. This means less funds to pay existing staff, less to set aside to pay damages in court cases, less funds for insurances. Less funds for any of these or related services could mean having to raise their local taxes. Again, residents less able to pay are stuck with the bill.

Even without fee increases, municipalities and private Building Official companies will need to implement a minimum of 4 permit fee structures; 1 fee structure for owners choosing the proposed “Owner’s Assurance of Compliance” method on residential projects, a 2nd fee for standard residential projects, a 3rd fee for large projects choosing the proposed “Owner’s Assurance of Compliance” method and a 4th fee structure for owners not choosing that system on large projects.

Building Official as a 3rd party reviewer or not:

Also under item 9 on page 4, under the heading of “Question and Answers”, the Ministry suggests that Building Officials may see these new regulations as methods to limit their earning potential. This suggestion is short sighted and does not consider the professionalism of Building Officials. Most, if not all Building Officials who have chosen this profession have done so because they have a desire to help ensure the public is protected against faulty construction. As many Building Officials know, it is a lonely profession, one in which it is difficult to make friends, yet we strive to learn more, struggle to gain code compliance and attempt to mediate between owners, builders and employers on a daily basis, all for the good of public safety.

Regulations that specifically prevent a Building Official from performing a plan review or site building inspection, simply because the owner chose that option on their permit application, are seriously flawed.

Advantages of Building Official plan reviews and inspections:

Building Officials across Canada will support the fact that building inspections on all buildings, especially on large buildings, more often than not, reveal numerous code deficiencies many of which are serious potential safety hazards.

The deficiencies on large buildings are most often the result of the owner failing to contact the engineer or architect to request the needed inspections and some are, unfortunately, related to oversights of the registered professional.

The most common reason the owners are not contacting their registered professions to request the required inspections, is the additional costs they must pay when they do. Architects and engineers will confirm how often they struggle with trying to get owners to call them to arrange an inspection and how much they do appreciate having a 3rd party, such as the Building Official, insisting on and requiring inspections that were not performed.

With all due respect to registered professionals, Building Officials across Canada will confirm that it is rare for them to perform a plan review on a building in which they did not find several, if not numerous noncompliant code items.

To put this correctly into perspective, registered professionals are unparalleled in their education, knowledge and experience in their respective areas of discipline, however, as many of them will confirm, provincially scrutinized and legislated examinations on the correct use and interpretation of the National Building Code is not part of their required certification. By comparison, Provincial Regulations require Building Officials to write and pass specific examinations on the correct use and interpretation of the NBC.

In order to comply with the Ministry's proposed regulations for site reviews, owners will be required to have their engineer and architects perform more inspections than the appointed Building Officials had conventionally performed, the costs of which will cancel out any savings to the owner on the permit fee. When these additional engineer inspection costs are added to the Local Governments "revised" permit fees, the total cost to the owner will actually be higher than it currently is, not to mention the increased fees to owners of smaller projects.

The existing 3rd party review of plans and site inspections by Building Officials has saved many lives and has prevented many potential building component failures due to code infractions. Allowing owners the choice to eliminate a 3rd party plan review or 3rd party inspection, under the false premise of cost savings, poses a potential danger to the subsequent owners and occupants of buildings. If 3rd party plan reviews and inspections are not performed, then many of the issues Building Officials are finding will never be found until it is too late.

3rd party plan reviews and inspections by qualified Building Officials are invaluable to ensure building code compliance. Without a 3rd party plan review or inspection, the owner, through their

designer, is approving their own drawings and their own inspections. Owners are unlikely to make continuous requests to have their engineer's attendance on site simply because each time they make that call, the engineer charges an additional fee. No amount of "Assurance" documentation can replace a 3rd party review and inspection by an unbiased, qualified Building Official.

Private inspection companies, loss of revenue:

With regard to the Ministry's comment on possible private Building Official company concerns of loss of income, this is partially true, however, in order to realize their own cost recovery system and to maintain a profit, private Building Official companies will need to raise their fees for smaller projects and/or to compensate for the loss on plan reviews and inspections on residential and large buildings where an owner has chosen to "self regulate". Without fee increases, the existence of their companies may no longer be viable. If private Building Official companies are forced into raising their fees, these costs would be passed on to Local Governments who in turn must charge more to their residents. The question then becomes; are owners really saving costs on their permit fees as is suggested by the Ministry as being their prime objective?

New Saskatchewan Owner's Assurance of Compliance and Letters of Undertaking:

The National Building Code 2010, is currently used in Saskatchewan. That NBC has provisions within it that require registered professionals involvement on Part 3 buildings and Part 4 components of buildings. These requirements have been in place for over 20 years. The assurance forms proposed by the Ministry are documents that should have been introduced many years ago. There are currently no required document methods used, or legislated to be used, within Saskatchewan to ensure registered professionals are performing the expected duties and providing the expected level or amount of inspections.

Sentence 2.2.6.2 (1) of Division C in the National Building code requires as follows;

"The information shown on architectural drawings and on drawings for heating, ventilation and air conditioning systems shall be clear and legible and shall contain all necessary details to demonstrate conformance with this Code. (see Appendix A)" Appendix A has a 14 item list of things to include on drawings, which includes showing the location and design of all fire separations.

The proposed regulations prohibit Building Officials from doing 3rd party plan reviews or inspections, therefore, how can it be confirmed that any of the 14 items, including fire separations, are designed and placed correctly on the drawings or built correctly on site? Who will confirm that a code analysis is correct for the building being proposed? Who will read and approve alternate solutions that are submitted with the new Owner's Assurance of Compliance and who takes the liability for approving and providing acceptance that an alternate solution actually does meet the same level of performance as required by the NBC?

The proposed Owner's Assurance of Compliance and Letter of Undertaking forms submitted by the Ministry for review do not contain sufficient information to show compliance with the National Building Code.

Forms that are missing precise specifics or wording taken directly from the NBC may cause more legal issues than one might expect at the onset. Assurance documents must have very specific code requirements and legal information included within them. These types of documents must be

reviewed by legal experts who have experience in preparing such documents. If the documents are not correctly prepared or written, then they may be providing false or misrepresented liability protection.

The proposed assurance forms are on the correct path to effective code enforcement however they should be included in the body of the building code and should not be presented as part of the proposal to eliminate plan reviews and inspections, especially on large buildings. These forms have been needed for many years in Saskatchewan and should be included in the Saskatchewan amendments to the NBC regardless of any other proposals. There are other provinces that have effective assurance documents which should be looked to as models.

What have other Provinces done for “Assurance” documents:

Below is an excerpt from the Province of British Columbia 2012 Building Code.

The Letters of Assurance in BC were introduced into the BC Building Code in 1992 and only after years of considerable research and consultation with affected parties, including legal staff, was completed.

To date, and after 23 years of using Letters of Assurance, nearly all of the municipalities within BC have, and still are, performing plan reviews and inspections on large and small buildings that have Letters of Assurances for them.

Laws in BC have mandated that a reduction in a permit fee should be provided to partly compensate owners for having to hire registered professionals. Municipalities in BC have all agreed to provide a 5 % reduction in the permit fee up to a maximum of \$500.00 per project if registered professionals are required on a project.

It must be pointed out that the BC building code appendix notes dealing with Letters of Assurance do not suggest eliminating 3rd party plan reviews or 3rd party inspections by Building Officials as is written in the Saskatchewan proposal, in fact, the appendix notes below make it clear that the BC Letters of Assurance are **not intended to alter the roles and responsibilities of the authorities having jurisdiction.**

Local Governments in Saskatchewan should consult with their legal team to consider how their roles and responsibilities may be affected as a result of the enactment of the proposed Saskatchewan changes to the UBAS regulations which mandate that building plan reviews and inspections be prohibited.

Beginning of Excerpt

Appendix A – Division C

(BC Building Code)

Explanatory Material

A-2.2.7. Professional Design and Review

This Subsection provides for the use of what are generally called Letters of Assurance. The letters themselves, known as Schedules A, B, C-A and C-B and located at the end of Division C, are intended to put on paper the responsibilities of the owner and the various registered

professionals in a construction project. The Letters of Assurance do not impose any additional responsibilities on the registered professionals **nor are they intended to alter the roles and responsibilities of the authorities having jurisdiction.**

The Schedules have been very carefully scrutinized by the Ministry of British Columbia, Union of BC Municipalities, Building Officials' Association of British Columbia, Architectural Institute of British Columbia, Association of Professional Engineers and Geoscientists of British Columbia and their respective legal counsel. The precise wording in the letters is extremely critical and must not be modified. Any notations on these Schedules which are absolutely necessary to suit a particular project must be clearly and legibly marked in ink on the copies.

End of Excerpt

As seen within the above excerpt, the intent of Letters of Assurance should not reduce the roles and responsibilities of a Local Government. Mandating the level or number of services a Local Government is permitted to provide is an attempt by the Ministry to reduce these bodies roles and responsibilities without the offer of liability compensation.

Final Comments and Conclusions:

Building standards and the Ministry of Government Relations has put forth a proposal which includes the principal that if professional designers are involved in a project, then 3rd party, unbiased, plan reviews and inspections by professional Building Officials are not required. Based on the content of the responses and opinions within this letter, these changes could be considered to be flawed, inconsistent and an unwarranted approach to solving a problem that does not exist.

One can only assume that current government regulations that require electrical, gas, plumbing, health, boiler, elevator, and mine inspections and plan reviews will remain status quo, even though these also require professional designers and have separate permit fees. Should the government decide to eliminate the requirements for these additional plan reviews and inspections, the ripple effect of such far reaching legislation could force many highly experienced, hardworking Saskatchewan professionals to change careers or relocate to another Province.

The disclosed motivation of the governments proposed changes seems to be founded in wealthy company owners concerns over high permit fees and the unproven claim of Local Government permit fees that recover more than the actual costs, neither of which has been substantiated.

In closing, we would be happy to attend an in person meeting to further explain our position and opinions on the proposed UBAS Regulation changes.

Sincerely,

Handwritten signatures in blue ink. The first signature is partially obscured by a horizontal line. The second signature is clearly legible as "Clayton M." and the third as "Daniel C. Sabz".

Management and Building Officials of MuniCode Service Ltd.