Analysis of Municipal Responsibility Agreements (MRA) in Ontario in Relation to a Wastewater Management System Serving Multiple Rental Units with a Single Owner

Overview

With the goal of increasing rural densification and to respond to a lack of rental housing, a project, The Village, is proposed to privately service multiple rental units (tiny homes) with small wastewater management systems that serve more than one unit. Current design discussions are looking at systems that can manage up to 5 units, though the specifics of that would be determined at the time the site is engineered.

The following considers that project in the context of the Ontario government's:

> D-5-2 *Application of Municipal Responsibility for Communal Water and Sewage Services* (https://www.ontario.ca/page/d-5-2-application-municipal-responsibility-communal-water-and-sewage-services).

Finding

In the past, the Ministry of Environment (MOE) in Ontario became involved in providing communal services due to environmental and public health concerns in small communities where "*multiple private individual on-site services have malfunctioned*". D-5-2 specifies that a requirement for a municipal responsibility agreement (MRA) applies to:

> *"Expansions to existing multi-lot/unit residential development or new multi-lot/unit residential development to be served by communal water and sewage services."*

Further clarification of the meaning of some of these terms can be found in recent documents such as the *2023 Growth Plan Greater Golden Horseshoe* which defines new multiple lots or units for residential development as:

> *"The creation of more than three units or lots through either plan of subdivision, consent, or plan of condominium."*

The multi-lot test is also found in the *Ontario Provincial Policy Statement 2020* which defines private communal sewage services:

> *means a sewage works within the meaning of section 1 of the Ontario Water Resources Act that serves six or more lots or private residences and is not owned by a municipality.*

Additional information has been assembled by the Ontario Onsite Wastewater Association (https://www.oowa.org/industry-resources/decentralized-wastewater-systems/). Consistent with provincial statute, it defines

> *"Communal or shared systems, where some portion of the wastewater management system is connected to more than one lot. Onsite systems in Ontario that are wholly*

contained on the lot with the buildings served and that discharge to the subsurface fall under the jurisdiction of the Ontario Building Code. Onsite systems that are designed to treat more than 10,000 L/d, or discharge to surface water, fall under the jurisdiction of the Ministry of the Environment, Conservation and Parks (MECP).

The proposed project would begin (five 2-bedroom units) with a capacity below the 10,000 L/d threshold. The onsite system would need to comply with CAN/BNQ 3680-600 standard for certification of treatment units. The project proponents have discussed deploying systems approved under that standard with companies responsible for those types of systems. The specific configuration of those systems would depend on the site-specific conditions to be determined at the time the site is engineered (e.g. soil testing, hydrology, etc.). The deployment of these approved systems provides that no further information is required by a principal authority (e.g. municipality) to determine compliance with the effluent quality criteria (https://www.oowa.org/wp-content/uploads/2020/07/CodeNews-BNQ-8-6-2-2-appendix-5.pdf)

As detailed below, the requirement for an MRA would not apply to a project where a wastewater management system is deployed to privately service rental units and those units are on a single lot with one (home) owner. Nevertheless, the system deployed, its capacity and performance requirements, would be required to meet all Ontario and municipal standards related to sewage and water management. How those specific requirements apply to the proposed project would be confirmed at the time the site is engineered.

Analysis

The requirement for an MRA is linked to a multi-lot/unit residential development. The proposed Village rental community development is not a multi-lot residential development but a single owner and a single lot without subdivision.

The logic behind the MOE use of MRAs is based on the premise that should a communal system fail, there would be multiple homeowners who would lack access to their homes due to lack of proper sewer management. In such a case there may be no responsible authority to rectify the failure on behalf of these multiple homeowners, or that authority would lack the means or imperative to rectify the problem (i.e. not addressing the problem would have no significant consequences).

For this reason, MRAs were introduced which effectively made the local municipality the responsible authority for these communal facilities in the event of failure. This ensures homeowners would have ongoing access to their privately owned homes by having the municipality take "*assumption of the communal services.*" The guidelines explain this further by requiring an MRA to provide for "*interests in the land not already owned by the municipality will be transferred to the municipality at no cost to the municipality".* The legal complexity of doing this on a single owner's property who holds one complete and comprehensive title to all the

property and elements affixed to it would make severing out the one waste management component problematic and/or unworkable.

Rather, as would be the case with any failure that led to lack of access to a tenant's rental unit (e.g. fire, required remediation due to health concerns such as mold, pests or structural issues, loss of access to utilities such as water, heat, electricity, etc.), the obligation of the lessor to the lessee is governed by the *Residential Tenancies Act* (RTA). Recourse and responsibilities for lessees and lessors in such circumstances are laid out in this Act. Municipalities do not bear responsibility for rectifying issues that put a tenant's occupancy of their rental unit at risk, this rests solely with the landlord.

The framework for how this operates flows from section 20 of the RTA which states:

> *20 (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards. 2006, c. 17, s. 20 (1).*

Subsection 224(1) Part XIV of the RTA outlines a regulatory requirement for the Ontario government to establish maintenance standards in rental properties. Further, a role for the municipality is laid out in subsection 224.1(1) of the RTA which requires municipalities to receive and investigate complaints from tenants regarding those standards. Moreover, the municipality's inspector can put forward a work order to require the landlord to address non-compliance with the maintenance standards.

Part III of Ontario regulation 517/06 on rental maintenance standards deals with "Utilities and Services" which encompass plumbing, electrical, heating, lighting, and ventilation. Section 9 states the following in relation to plumbing:

> *Maintenance*
>
> *9. (1) Plumbing and drainage systems in a residential complex, and their appurtenances, shall be maintained free from leaks, defects and obstructions and adequately protected from freezing. O. Reg. 517/06, s. 9 (1).*
>
> *(2) A residential complex shall be provided with a means of sewage disposal. O. Reg. 517/06, s. 9 (2).*
>
> *(3) The means of sewage disposal shall be maintained in a good state of repair. O. Reg. 517/06, s. 9 (3).*

These provisions ensure that there is a means and a process to raise concerns regarding the maintenance of utilities, including sewage disposal. Specifically, if an issue arises with a waste management system serving multiple units in a single owner rental community, and if the owner did not address the problem, tenants could raise the issue with the municipality. The municipality could then inspect the issue and, if necessary, issue work order to the owner to

rectify the problem. The obligation to rectify the problem rests with the owner, not with the municipality.

A tenant can also file a Tenant Application about Maintenance (Form T6) with the Ontario Landlord and Tenant Board (LTB). This would allow the tenant to bring forward unaddressed maintenance issues with the LTB which could then undertake several actions including:

1. Grant a rent abatement (reduction), which means the landlord would be required to pay an amount directly to the tenant or the tenant would be allowed to hold back all or part of the rent.

2. Order the landlord to repair or replace something, or do work by a certain date.

3. Allow the tenant to repair or replace something, or do work, and order the landlord to pay the tenant for the cost of the repair.

4. Order the landlord to pay the tenant for: any reasonable expenses the tenant paid to repair or replace something, or for work that the tenant did, which the landlord was responsible to do damage caused to the tenant's property, or out of pocket expenses of the tenant, that resulted from the maintenance and repair problems

5. Stop the landlord from increasing the rent for the rental unit, until the landlord fixes any serious maintenance problems.

6. End the tenancy (but only if the tenant asks or the rental unit is unsafe).

7. Make another type of order; for example, an order which requires the landlord to pay money to the tenant.

In some cases, municipalities may also establish property standards, through bylaws, which may or may not be health or welfare related. A landlord would be required to comply with those bylaws which provide another avenue to ensure waste management systems are properly maintained.

Moreover, should a waste management system be subject to approval by the Ontario government (e.g. environmental compliance approval), the Ontario government under the Ontario Water Resources Act, is authorized to issue a work order under paragraph 16(3)(d), a provincial officer may issue an order to a person in contravention of a provision of the Act or regulations. That work order may require: "*the repair, maintenance or operation of water works or sewage works in such manner and with such facilities as are specified in the order".*