

No Pain, All Gain

The case for plain language in municipal regulation

It's late in the afternoon on Friday; the office is quiet. Suddenly, the phone rings. There's a resident on the line – she's planning to build a shed in her backyard and wants to know where to put it. The development officer is gone for the day, but you figure the question is easy enough to answer. You flip open your copy of the land use by-law.

It takes a minute to remember that sheds are called “accessory buildings” in the by-law, and a few minutes more to find the part about accessory buildings in residential areas. You're relieved when you discover it, but the feeling is quickly followed by a mild sense of panic after you read the regulation once ... twice ... three times ... and still aren't sure you fully understand it. You feel sheepish admitting this to the caller, who took the time to inquire and obviously deserves the correct advice.

The truth is – many of us have probably faced similar difficulty comprehending the regulations in a land use by-law. The problem may be common, but the solution could be more plain – and simpler – than you think.

What is Plain Language?

Simply put, plain language is writing that's clear and understandable for your audience; what constitutes plain language for a particular document depends entirely on who will use it. For example, a land use by-law written in plain language would ensure the diverse groups of people who rely on the by-law for

guidance – administrators, council, builders, and the general public – could easily find the information they need, understand the information, and use it to take appropriate action.

Unfortunately, there aren't any examples of land use by-laws written in plain language. Instead, we tend to write regulations in language that sounds official, thinking it's the best way to convey our content. But, according to Ginny Redish, president of the plain language firm Redish & Associates, a regulation is more than just a statement of content. “A regulation is meant to cause people to act or not act in a certain way. It's actually a set of questions and answers, a conversation about how to act,” she says.

Consider the regulation for accessory buildings, below, which is made up of a number of actual regulations.

Accessory Buildings in Residential Areas

1. An accessory building shall not:
 - I exceed one storey or 4.3 metres in height; or
 - II occupy more than two-thirds of the width of the rear yard of any site; or
 - III exceed 12 percent of site area, unless a different standard is prescribed within the regulations contained within the relevant district; or
 - IV be located in the front yard of a residential district; or
 - V be erected or placed in the rear yard of a site within 0.9

metres of the side or rear boundary of the site; or

VI be erected or placed within 1.0 metre of the façade of the primary building; or

VII be used as a dwelling.

Now, consider the same regulation rewritten in plain language:

Accessory Buildings in Residential Areas

Placement

1. An accessory building may only be located in a rear yard.
2. Within the rear yard, an accessory building must be located at least 1.0 metre away from any other building and 0.9 metres away from all property lines.

Size

3. An accessory building may be up to 4.3 metres tall, and may only have one storey.
4. The size of an accessory building may be up to 12 percent of the site area, unless noted otherwise in this by-law.
5. An accessory building may be up to two-thirds of the width of the rear yard.



CHELSEY JERSAK is a Professional Planner and avid believer in the importance of clear communication. She loves a plain old good chat. Feel free to get in touch with her at <chelsey@chelseyjersak.com> or on Twitter via <@chelseyjersak>.

Use

- No one may live in an accessory building.

The meaning of both of these regulations is the same. However, the plain language version stands out because it focuses on what to *do* rather than what *not* to do, it contains short sentences and clear vocabulary, and it uses headings to organize information into smaller, more easily digestible pieces.

Benefits of Plain Language Regulation

The biggest benefit of plain language regulation lies in what Redish calls the “magic” of voluntary compliance. If people don’t clearly understand how to do something, they may call to ask, or they may simply do what they think they should do ... which may or may not be correct. And, let’s face it: no one likes being told they did something wrong. Plain language regulations can help reduce

the need to cite people, as well as avoid the cost and frustration of a rework or, worse, an appearance in court.

The second major benefit to plain language regulation is that it makes people’s lives easier, by reducing the time and effort they need to spend on figuring out the by-law. Says Redish, “Builders want to build, they don’t want to read your regulations. If you could write something that they could read more quickly and understand more easily ... you’re helping them. Successful communication is respecting busy people’s time.”

But, Is It Legal?

The short answer is yes – it’s legal. “As lawyers, we’re actually told by the courts to use plain language,” says Jeneane Grundberg, Partner at Brownlee LLP in Alberta. “At the end of the day, the land use by-law is your front line document. It needs to be understandable, not only by plan-

ners and developers, but also by mom and pop.”

From a legal standpoint, creating and using clearly-defined definitions throughout the by-law is extremely important, because litigation can arise if a definition results in multiple interpretations by multiple people. Definitions written in plain language can help reduce this ambiguity.

What’s Next?

Plain language regulation will require us to let go of the need to sound “official,” along with our attachment to compound sentences and “notwithstanding” clauses. It will instead require us, as administrators and elected officials, to make the needs of our readers – our residents – our top priority. Because, as Redish reminds us, “You can’t change your readers. You can only change your language.” MW

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by George B. Cuff, FCMC

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