

## **Rural Municipality of McKillop 220**

### **Construction and Development in the RM**

It has come to the attention of the RM Council that certain misinformation about an appeal of a decision of the Development Appeals Board is circulating in the municipality. This notice sets out the facts relating to that appeal.

#### ***Development Appeals Board Decision***

The applicant applied for a development permit to build a garage on a vacant residential lot. The Development Officer refused to issue the permit because the RM's Zoning Bylaw (234/11) only allows garages to be built as an accessory use to a permitted principal use. Since there was no principal use established on the lot, there could be no accessory use.

The applicant appealed that refusal to the Development Appeals Board. Evidence provided to the Board established that there are some properties in the RM where garages have been built with no principal use. There were no development permits issued in many of these cases, but in some cases there were.

The RM argued that the erroneous issuance of permits that are not authorized under the RM's Official Community Plan (OCP) and Zoning Bylaw does not constitute an amendment or repeal of the bylaws. The bylaws remain valid law until they are amended in accordance with the required legal procedure. *The Planning and Development Act* specifically states that a municipality is required to comply with its OCP and zoning bylaws.

Nevertheless, the Appeals Board decided that the failure by the RM to rigorously enforce its bylaws relating to accessory uses meant that it had "acquiesced" to their non-application, and issued the permit.

#### ***Grounds of Appeal***

An appeal of an appeals board decision can be made to the Saskatchewan Municipal Board (SMB), but the notice of appeal must be filed within 20 days of the decision. In this case, the RM had to file an appeal no later than August 24, 2016. Legal counsel for the RM prepared a notice of appeal based on this error of law by the Appeals Board but, on August 23, 2016, also became aware that provincial regulations under *The Planning and Development Act* might apply to restrict development on the particular lot for which this development permit was sought. Those regulations, called *The Statements of Provincial Interests Regulations*, contain rules that apply to all municipalities in Saskatchewan. The notice of appeal simply quotes those provisions of the provincial law. Reference to these regulations had to be included on August 24 because that was the deadline for the notice of appeal to be submitted. Including this reference in the notice gives the RM time to determine what the actual development constraints are in relation to this particular development permit application.

#### ***Statements of Provincial Interests Regulations***

The regulations prohibit, *insofar as is practical*, the development of new buildings and additions to buildings in the flood way of the 1:500 year flood elevation of any watercourse or water body and require flood-proofing of new buildings and additions to buildings to an elevation of 0.5 meters above that elevation.

### ***Prohibition against building in flood way in place since at least 1983***

Ever since 1983, when the development plan and zoning bylaw of the Last Mountain Lake Planning District of which the RM of McKillop had been a part, were approved, construction and development in the 1:500 flood way has been restricted. In the 1983 bylaw, the bottom surface of the first floor or the bottom surface of the slab on grade of any building or structure had to be above the 1:500 design flood level.

### ***Subdivision Approvals***

Community Planning, which is the provincial government agency that approves all subdivision applications in all RMs, has included this prohibition as a condition on all of its subdivision approvals. Over the last two decades, Community Planning has registered caveats on the titles to properties in these subdivisions. In fact, the lot that is the subject of this development appeal is caveated.

### ***RM's Bylaws must comply with Provincial Regulations***

The RM's OCP and Zoning Bylaw, approved by Community Planning effective July 30, 2012, incorporate the rule relating to the 1:500 flood elevation, but because it is a rule contained in provincial legislation the RM must comply with it regardless.

### ***LIDAR Report***

The LIDAR report obtained by the RM in June 2016 provides accurate mapping of the elevations in the RM. It will now be possible to accurately determine in which areas of the RM building is unsafe and/or to establish specific building requirements applicable to those areas.

Council has made NO "declaration" about any particular area in the RM and will not be in a position to do so until the LIDAR data is properly analyzed.

### ***Next Steps***

RM administration is working with the RM's legal counsel and planning consultants to determine which specific areas of the RM are affected by *The Statements of Provincial Interests Regulations* and how. Their initial task is to determine if/how the 1:500 rule applies to the particular lot that is the subject of the current appeal. Once that analysis is complete, it will inform the RM's position regarding the appeal.

As soon as the analysis of the impact of the LIDAR data on the development appeal is completed, the project will move on to the next step, which is the analysis of that data as it applies throughout the RM. Once affected areas are identified, property owners will be notified.

The RM is also in the process of developing bylaw amendments to explicitly identify the methods by which the required flood-proofing above the 1:500 flood elevation will be implemented. As well, the RM must apply the "insofar as is practical" condition in the regulations to its proposed bylaw amendments. These bylaw amendments will be vetted through the public participation process set out in *The Planning and Development Act, 2007*, and ultimately must be approved by Community Planning.

The RM will update information about this project on its website, as more information becomes available.