



Memorandum

DATE: Wednesday, August 11, 2010

TO: Marc Brown, Community Planner
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SUBJECT: Whitemouth Reynolds Planning District Development Plan By-law NO. 27/10

Please be advised that Manitoba Conservation has reviewed the proposed Whitemouth Reynolds Planning District Development Plan By-law NO. 27/10 and has identified the following concerns.

➤ **Section 3.1 - Conversion of Crown Land to Municipal Jurisdiction**

Manitoba Conservation does not support all of Section 3.1 – *Conversion of Crown Land to Municipal Jurisdiction*. This section should be removed from the development plan.

The selected parcels identified on Policy Map 4 are mainly Provincial Forest lands and lands coded for forest management. Some of the lands are being targeted for *Protected Areas* status under the Province's Protected Areas Initiative. Council should be advised that due to changes in policy related to logging in parks, Provincial Forest lands are vital to current and future forest management initiatives.

This section also implies that Crown leases do not consider municipal goals/interests. It should be noted that the Crown Lands and Property Agency (CLPA) is open to receiving applications for Crown land disposition that includes leases, permits, sales etc., and these applications are circulated to local governments for review and comment.

It should be further noted that under *The Crown Lands Act*, only the Lieutenant Governor in Council can determine the limits to be placed upon the price of Crown lands and the terms and conditions of sale and payment

Manitoba Conservation is of the opinion that a development plan is not the appropriate mechanism to evaluate the possible allocation of Crown land.

- In the proposed development plan there are several references that describe hobby farms as operations with as many as 10 animal units. Also, the proposed development plan describes livestock operations as

having greater than 10 animal units. These descriptions of the size of operations, in animal units, do not comply *The Planning Act* which defines "livestock operation" as follows:

"a permanent or semi-permanent facility or non-grazing area where at least 10 animal units of livestock are kept or raised either indoors or outdoors, and includes all associated manure collection facilities, but does not include an auction mart."

Therefore, compliance with *The Planning Act* requires that the development plan must refer to hobby farms as operations with less than 10 animal units (i.e.: not more than 9 animal units) and "livestock operations" as involving 10 or more animal units. The paragraphs of the proposed development plan that require this correction are listed below:

- 2.2.2 Rural Mixed Use Corridor Area 1 and Area 2 Policies, Paragraph 4
 - 2.2.2 Rural Mixed Use Corridor Area 1 and Area 2 Policies, Paragraph 6(a) and 6(c)
 - 3.4.1 Hobby Farming Policies, Paragraph 2(a) and 2(b)
 - 4.2.1 Livestock Operation Policies, Paragraph 6.
- Under 1.1.1 Goals -- District Development Centers, paragraph 3(b), there is a reference to "hobby farming small scale livestock operations". Under sections 107(1) and 208 of *The Planning Act* a "small-scale livestock operation" involves 10 through 299 animal units inclusive. To avoid confusion with the meaning of "small-scale livestock operation" under *The Planning Act* it is recommended that the statement in the proposed development plan be re-phrased to read "hobby farming livestock operations involving fewer than 10 animal units".
- Under 2.2.2 Rural Mixed Use Corridor Area 1 and Area 2 Policies, paragraph 6, there is no provision for livestock operations that are exactly 200 animal units in size. It is recommended that the conditional uses should apply to 200 or more animal units.
- Under 4.1.1 Agricultural Green Zone Policies there are two references to "agricultural food land". The meaning of this phrase is not clear. Is the intended meaning agricultural cropland?
- Subsection 4.2.1 Livestock Operation Policies, Paragraph 10, of the proposed development is not in compliance with *The Planning Act*: This provision of the proposed development plan reads as follows:

"Within areas designated "Agriculture Green Zone" the following livestock size criteria shall apply:

- a) New and existing livestock production operations, to a maximum of 300 AU are considered permitted uses; and*
- b) Livestock production operations greater than 300 AU will be treated as Conditional Uses."*

The development plan must require that livestock operations involving 300 animal units or more must be designated conditional uses. Section 72(2) of *The Planning Act* stipulates that livestock operations involving 300 or more animal units must be designated conditional uses, and livestock operations involving fewer than 300 animal units (a maximum of 299 animal units) may be designated permitted or conditional uses.

- Regarding the subdivision of properties containing livestock operations, it is recommended that an additional statement be included:

Subdivision of parcels containing livestock operations shall result in lots of such size and configuration so as to maintain a minimum 100 m (328') setback from the new property boundary to confined livestock areas and manure storage facilities.

- Under subsection 5.2.1 Zoning Bylaws the proposed development plan provides a description of zoning by-laws. To avoid any conflict between the zoning by-laws and provincial acts and regulations, it is recommended that an overarching statement be appended to subsection 5.2.1 Zoning Bylaws which cites provincial acts and regulations, as follows for example:

Zoning by-laws will be framed as required and/or permitted by provincial acts and regulations.

This qualifying statement is necessary because throughout the proposed development plan there are numerous references to the powers of zoning by-laws to regulate activities, notwithstanding provisions of provincial acts and regulations that restrict or require zoning by-laws pertaining to these activities.

- Under subsection 2.1.7 Piped Water and Sewer Policies, item 2 states:

"Where new water or sewer systems are provided within existing developed areas, existing development shall be required to connect to these systems within time frames established by Council."

Manitoba Regulation 83/2003 (*Onsite Wastewater Management Systems Regulation*) contains specific requirements to connect to new wastewater collection systems. Section 8.1(1) of the Regulation states:

"If a wastewater collection system is installed in an area not previously serviced by a wastewater collection system, an owner of land in that area must;

- a) connect his or her wastewater sources to the wastewater collection system; and*
- b) take any onsite wastewater management system or privy located on the land out of service and decommission it; before the earlier of*
 - i) the passing of a period of five years from the day that the wastewater collection system was installed; or*
 - ii) the transfer or subdivision of the land.*

To avoid conflict between the requirements established by Council and provincial legislation, it is recommended that this policy statement reference requirements of *M.R. 83/2003*.

➤ Section 4.3 -- Sustainable Environment

It is recommended that statement 3 be replaced with the following:

3. Natural areas and habitats shall be protected from incompatible or potentially incompatible land use activity/development where;

- a) rare or endangered flora and fauna have received provincial designation and protection under either the Manitoba *Endangered Species Act* or the federal *Species At Risk Act*;
- b) lands have been designated as protected under the Protected Areas Initiative;

- c) lands have been identified as wildlife management area(s), provincial park(s), ecological reserve(s), wildlife refuge(s), or provincial forest(s);
- d) other sensitive wildlife or aquatic habitat or ecologically significant area that has been identified, or
- e) private lands that have been voluntarily protected by landowners under *The Conservation Agreements Act*.

It is further recommended that the following policies be added to section 4.3 Sustainable Environment:

- Proposed developments located near waterways and water bodies that have the potential to alter, disrupt or destroy aquatic habitat; including the riparian area, will be referred to Manitoba Conservation for review.
 - Developments and the use of land within 1 mile of a designated provincial park, wildlife management area, provincial forest, ecological reserve or other protected area, will be referred to Manitoba Conservation for review and comment to ensure that future development(s) or changes in land use will not adversely affect the sustainability of the area or the resident flora and fauna.
 - Significant natural areas and sensitive environmental areas shall be identified and protected, where the potential for human activities to stress the environment may require designating these activities /developments as conditional uses.
 - Where privately initiated habitat conservation land leases or land transfers are proposed, Manitoba Conservation will be encouraged to consult with the Planning District affected prior to approving the designation of a private habitat conservation area.
 - Inter-municipal co-operation is encouraged in the application and implementation measures to protect the Planning District's natural environmental resources.
 - Public access to natural areas will be encouraged; where feasible, to foster an appreciation for the enjoyment of the natural world. Access should not lead to levels of activity or development which will exceed the capability of the area to sustain the environment and ecosystem integrity. Where Private land holdings are involved, access to these areas will be subject to the approval of the landowner.
 - Quality wetland habitats; including riparian areas shall be protected.
- It is suggested that in order to ensure long term planning is mutually beneficial to both the Planning District and the Province, all designated Crown lands within the Planning District (i.e., provincial parks, wildlife management areas, ecological reserves, protected areas, etc.) are identifiable on all applicable mapping products produced for the Development Plan and Zoning by-law documents. This will ensure that incompatible development(s) will not threatened or impact the ecological integrity of adjacent designated Crown lands.

The Planning District contains the following designated Crown lands:

- Whitemouth Bog Ecological Reserve
- Pocock Lake Ecological Reserve
- Lewis Bog Ecological Reserve
- Whitemouth River Ecological Reserve
- Whitemouth Bog Wildlife Management Area
- Parts of the Whitemouth Falls Provincial Park
- Marchand Provincial Park

It should be noted that the Whiteshell Provincial Park; although not within the Planning District, is located immediately adjacent to the Planning District's eastern boundary and should be labeled accordingly with respect to one of the recommended policy statements listed above (*i.e., Developments and the use of land within 1 mile of a designated provincial park...*).

Information regarding the location and boundaries of the designated Crown lands within the Whitemouth River Planning District can be found on the Manitoba Land Information website at <https://mli2.gov.mb.ca>.

- With respect to designated Crown lands, it should be noted that the Lewis Bog Ecological Reserve, Whitemouth Bog Ecological Reserve, Whitemouth Bog Wildlife Management Area, and parts of Whitemouth Falls Provincial Park and Whiteshell Provincial Park all have protected areas status under the Province's Protected Areas Initiative. It is important that development and use of land adjacent to these lands does not negatively influence the ecological integrity that the designation has been established to protect. Therefore, it is suggested that these designated "protected" Crown lands be highlighted/delineated separately to ensure only acceptable forms of development or use of land occurs adjacent to these lands. Protected areas are land, freshwater or marine areas, where logging, mining, hydroelectric development, oil and gas development, and other activities that significantly and adversely affect habitat are prohibited by law.

Advisements to Council:

- Council should also be advised that additional Crown lands have been targeted for protected areas status within and downstream of the planning district. These proposals will be taken out for external review by the Planning District Boards, Municipal Councils, industry and others in the near future.

Manitoba Conservation will continue to update the Board so the development plan maps show the most up-to-date protected and designated Crown lands within the Planning District.

- Manitoba Conservation recently amended the *Onsite Wastewater Management Systems Regulation – MR 83/2003* (amended 156/2009) pursuant to *The Environment Act*. The new amendments:

- restrict the use of a disposal field for new systems in Sensitive Areas, Crown land cottage developments, provincial parks, and portions of the Red River Corridor,
- prohibit installation of new sewage ejectors,
- eliminate existing sewage ejectors at the time of any property transfer or subdivision (new amendments proposed),
- require minimum lot size for disposal fields,
- require decommissioning of out-of-service systems,
- prohibit new or replacement of existing onsite systems in areas serviced with wastewater infrastructure,

- require mandatory hookup to sewers in serviced areas,
 - clarify the authority to grant variances,
 - incorporate municipal wastewater management planning,
 - limit new and replacement systems to holding tanks or secondary treatment systems where wastewater infrastructure is planned but which may be 5 or more years in future,
 - extend the Regulation to the City of Winnipeg, and
 - repeal Schedule B, Standards for Septic Tanks and Disposal Fields Used in Connection with Low Use Water Closets.
- Manitoba Conservation will continue to inspect, monitor and enforce to ensure compliance with regulatory requirements of the *Livestock Manure and Mortalities Management Regulation (42/98)*. Manitoba Conservation will not assume responsibility for enforcement of conditions that are not required by this regulation (e.g., zoning by-laws). Definitions provided for under *The Environment Act* and related provincial regulation will continue to be used for administration of the regulation rather than any definitions included in municipal zoning by-laws and development plans.
- In addition to meeting conditions for municipal approval, livestock operations must meet provincial regulations. Compliance with the *Livestock Manure and Mortalities Management Regulation* is mandatory. The regulation can be viewed at: <http://web2.gov.mb.ca/laws/regs/pdf/e125-042.98.pdf>
- The Office of the Auditor General recommended that Manitoba Conservation use all available information to reduce the risk that livestock operations are not in compliance with the requirement to submit manure management plans. The plans are required for all livestock operations with 300 animal units or more under the *Livestock Manure and Mortalities Management Regulation (42/98)*. If the Planning District has information on location and size of livestock operations in the area and council concurs that it would be beneficial to share information they are advised to contact the Technical Review Officer of Manitoba Conservation at (204) 945-5168.

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/ds

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