

Copy of the legal opinion received by the RM. Author and cc recipient have been removed at the request of the RM of Meota to ensure all questions are directed to the RM and not to the SARM (Saskatchewan Association of Rural Municipalities) lawyers that provided advice to the RM.

Sent: October 27, 2021 3:05 PM

To: Kirk Morrison <cao@rmmeota468.ca>

Subject: RE: Hamlet Procedure Bylaw - Review Request

Hi Kirk,

This is in response to your email to Mike of October 8, 2021, respecting the RM of Meota's proposed Hamlet Procedure Bylaw No. 19-01 ("Bylaw") and the proposed Financial Agreement ("Agreement").

Mike has asked for my assistance in reviewing the documents and providing advice and recommendations respecting the same.

You have asked for our comments respecting the following: (A) the RM's proposed Bylaw and Agreement; (B) the letter from the Organized Hamlet ("OH") of Days Beach ("Days Beach") contained in Admin Report 130-2021; (C) the proposed changes to the Bylaw and Agreement from Days Beach; (D) the email from Terry Lamon regarding the tax allocation to the hamlet account; (E) whether the RM and Days Beach should use the dispute resolution process outlined in section 77 of *The Municipalities Act*, S.S. 2005, c. M-36.1 ("the Act") if the parties cannot come to an agreement; and (F) whether the uniform mill rate that is applied to the RM should be used in Days Beach if the parties cannot agree to a different mill rate for Days Beach.

(A) Proposed Bylaw and Agreement

Bylaw

It should be noted at the outset that we recommend against implementing the proposed Bylaw No 19-01, for the following two reasons: (1) many of the provisions are already contained in legislation and regulations, and (2) the RM does not have the authority to implement a number of the provisions.

With respect to reason (1), while it may seem like a good idea to pass a bylaw that contains provisions from legislation, it may not be practical in practice. Should the relevant legislation and regulations that are repeated in the bylaw be amended at a later date, it may cause confusion as to the extent of the RM's authority if the bylaw and legislation are no longer consistent with one another. If the RM is referencing a bylaw that has since become outdated due to amendments to legislation, the RM may unknowingly be acting outside its authority or be unaware of other rights or restrictions imposed on it by legislation.

As such, if the RM does want to have a document that reconciles all those relevant parts of the legislation and regulations respecting OHs, I would recommend it include it in an Information Bulletin or manual that may be referenced as well as include the source of the authority described (for example, section 4 of the Bylaw which describes who is eligible to vote, I would recommend that the RM state

that, “in accordance to section 36 of *The Local Government Elections Act, 2015*, S.S. 2015, c. L-30.11, a person is eligible to vote...”). That way, whoever is referring to the document will know the source of the authority and understand that the legislation takes precedence over the RM’s document.

With respect to reason (2), many of the provisions contained in the Bylaw include the RM establishing requirements for the OH to follow that it does not have the authority to implement. The RM does not have the authority to determine how an OH is to conduct its meetings or how it prepares its meeting minutes. The OH Board must ensure that it follows the requirements established by the Act respecting its processes and procedures at meetings, but otherwise may set its own procedures. There is no authority contained in the Act that allows an RM to place additional requirements on an OH respecting its meetings.

While the RM could indicate to OHs its preferences with respect to the submission of meeting minutes, policy creation or amendments, and communications from the Board, it is my understanding that OHs are not required to follow those requests. While the OH Board acts as a representative of voters within the OH and it can only make recommendations to the RM Council respecting decisions, that does not mean that the RM Council has the authority to govern how the Board conducts itself in its capacities.

Agreement

With respect to the proposed financial agreement, I think it is a good tool that the parties may reference. I note that in your email, you have indicated that the formula to determine the allocation of taxes would not be negotiable. While the formula will likely be helpful to both parties in determining what may be a reasonable amount to allocate to the special hamlet account, I recommend that it be used more as a guide to assist parties in determining a reasonable allocation while still being open to other factors or reasons that may speak to a different allocation. If parties do not agree to the tax allocation, it is my understanding that the OH Board would still have the authority to refer this matter to the appeals board pursuant to section 77 of the Act.

I have also made other recommended changes and comments in the Agreement attached for your review.

(B) Letter contained in Admin Report 130-2021

The letter from Colleen Brennan, sent on behalf of Days Beach to RM Council, raises three concerns with the RM’s proposed Bylaw and Agreement: (1) The Act does not require an agreement for the OH Board to benefit from a lower mill rate that has already been established; (2) requiring an agreement is contrary to the intent behind section 283 of the Act; and (3) negotiation of tax allocation to the hamlet account.

With respect to (1), section 71 of the Act indicates that the RM may, with the OH’s consent, establish a uniform mill rate for the OH that is different from the rest of the RM. So, while the Act does not specifically require a financial agreement to be signed, if the OH does not agree to enter into an agreement with the RM that would set a different mill rate, then the default result would be that the mill rate applied would be the same mill rate as that applied in the rest of the RM.

I agree with Days Beach on point (2) that the expenses of the OH and work done by the RM on behalf of the OH should inform what its mill rate should be for the year. The proposed Agreement indicates that

the mill rate will be based upon revenues that are required by the OH based on its proposed budget. I do not think that this Agreement is contrary to the intent behind section 283 of the Act, when it is clear that the OH's budget will be a driving factor to determine a different mill rate. If the OH is of the belief that the mill rate that is applied to the rest of the RM is "significantly in excess of the funds required to cover the expenses", then that would be reflected when reviewing the budget and a reasonable mill rate should be determined from that. While the RM's proposed mill rate for the OH may be higher than Days Beach would like or that has previously been used, if the OH Board does not agree to the different mill rate, the RM has no choice but to use the uniform mill rate that is applied to the rest of the RM.

Determination of the tax allocation to the hamlet account as referenced in item (3) of the letter, should be done by way of agreement as noted in section 69(1)(b) of the Act. The tax allocation should be reviewed annually. If the parties cannot come to terms respecting an agreement through negotiations, then the matter should be determined by the dispute resolution process described in section 77 of the Act.

(C) Days Beach Proposed Changes

As noted above, I recommend against the RM passing the Bylaw. If however the document is edited and reworked so that it may be used as a reference, then I do not see any problem with the changes noted by Days Beach up to section 12 of the Bylaw. With respect to section 12, whether the OH is in favour or not, legislation indicates that the RM may set a different mill rate for the OH if the Board agrees, otherwise the mill rate will be the mill rate that is applied elsewhere in the RM.

Similarly, section 13 of the Bylaw is in reference to section 283(2.1) of the Act which indicates that the RM may set a lower uniform rate for taxable assessments in any hamlet. The hamlet does not have any authority in this respect. If council decides not to set a lower uniform rate for taxable assessments in the hamlet, then the rate that is applicable for the rest of the RM will be used in the hamlet.

I do not see any problems with implementing the changes proposed by Days Beach contained in the Agreement.

(D) Tax Agreement Email from Terry Lamon

As previously noted, the tax allocation that is agreed upon by the Board and the RM should be reviewed annually in light of the OH's budget and the services that the RM provides to the OH. As such, although the tax allocation may have been a 40-60 split for some time, that does not preclude the RM and Board from agreeing to a different allocation in subsequent years.

Where one of the parties is seeking to change the allocation, parties should meet and attempt to negotiate the allocation of taxes, and as noted above, should be considering what services the RM provides to the OH to inform the decision as to what a proper allocation may be. If the parties cannot come to an agreement after having attempted to negotiate the allocation, then either party may commence the dispute resolution process identified in section 77 of the Act.

(E) Dispute Resolution Where No Agreement

Generally speaking, where there is a disagreement between Council and the Board, the process to be followed is to apply to the appeal board to have the matter resolved, pursuant to subsection 77(1) of the Act.

However, it should be noted that while the legislation does not limit this process to only certain types of disputes, there is case law to suggest that this provision is only applicable where the dispute is in relation to a matter where both parties have jurisdiction over a matter, and not simply matters that affect the OH. As an example, the case of *Organized Hamlet of Candiak v Montmartre (Rural Municipality)*, 2008 SKQB 496 [*Candiak*], involved a dispute between the RM and the Board regarding the RM's decision to lift weight restrictions on a road that was within the OH's boundaries. Although the decision affected the OH, Justice Mills in the *Candiak* case determined that the RM has exclusive jurisdiction over roads within the municipality pursuant to section 12 of the Act, and therefore the dispute resolution process was not available to the OH.

However, where both the RM and the Board have the authority to contribute to a decision respecting the OH [such as the allocation of the taxes collected for municipal purposes or a special levy that may be imposed in the OH] and a dispute arises, these are matters involving overlapping jurisdiction and are therefore disputes that may be brought to the appeals board.

(F) Uniform Mill Rate

As I have noted, I agree with the RM that if the Board does not agree to the RM's proposed different mill rate for the OH, then the mill rate to be applied is the same as that applied to the rest of the RM.

Closing

I trust that the above answers your questions.

If you have any comments or concerns with any recommendations or comments contained in this email, please do not hesitate to contact either Mike or me and one or both of us can discuss this further with you.

Thank you,