Manitoba Ombudsman

THE OMBUDSMAN ACT

CASE 2013-0069

RURAL MUNICIPALITY OF ST. CLEMENTS

&

RED RIVER PLANNING DISTRICT

REPORT ISSUED ON MARCH 2, 2015

CASE SUMMARY

Property owners in the Rural Municipality of St. Clements (the RM) made a complaint to our office alleging that the Red River Planning District (the RRPD) and the RM had handled their subdivision application unfairly.

The complainants alleged that the RM tabled their subdivision application despite having previously approved similar subdivision applications in the RM's agriculture restricted zone. The complainants stated that council tabled their application on the basis of an RRPD report to the RM, which noted that an anticipated secondary plan might provide policy direction for properties such as the one the complainants wished to subdivide.

The complainants further indicated that the RRPD had knowledge of the secondary plan, but neglected to caution them that their application could be delayed as a result of the secondary plan process.

Near the end of our investigation the RM approved the complainants' application, but it was subsequently rejected by the RRPD. The complainants appealed the RRPD's decision and the appeal is pending before the Municipal Board.

Based on our investigation, Manitoba Ombudsman concluded that the RRPD communicated the secondary plan consultation process to the public in a fair and reasonable manner. The ombudsman notes that if a planning district has information that would likely be of interest to a prospective applicant, information that is likely to affect their application, this information should be provided to the applicant before they submit the application and pay the application fee.

Manitoba Ombudsman also determined that the complainants' subdivision application was not treated consistently with how similar subdivision applications were treated. In order to ensure a consistent and fair process for all applicants, Manitoba Ombudsman suggested that the RM and

RRPD review the process by which they deal with subdivision applications that propose variations to the requirements set out in the RM's zoning by-law. Manitoba Ombudsman also suggested that the RM develop a policy that sets out when, how and for what period council may table a subdivision application.

In response to our suggestions, the RRPD explained that it wants to ensure the public is aware of the subdivision application process and the process for other types of applications. It is currently revising its brochures to ensure that the applicable process and procedures are clear to the public. The RM agreed to implement a policy regarding the tabling of subdivision applications.

OMBUDSMAN JURISDICTION AND ROLE

Manitoba Ombudsman is an independent office of the Legislative Assembly of Maitoba, reporting to the assembly through the Office of the Speaker. The responsibilities and authority of the ombudsman are set out in *The Ombudsman Act, The Freedom of Information and Protection of Privacy Act*, *The Personal Health Information Act*, and *The Public Interest Disclosure (Whistleblower Protection) Act.*

Under *The Ombudsman Act*, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, and municipalities, and their officers and employees. Investigations may be undertaken on the basis of a written complaint from a member of the public, or upon the ombudsman's own initiative.

The actions and decisions complained about in this case are matters of an administrative nature arising from the handling of a subdivision application by the Red River Planning District (the RRPD), formerly known as the Selkirk and District Planning Area Board, as well as the actions and decisions reached by the council of the Rural Municipality of St. Clements concerning this same subdivision application pursuant to the provisions of a provincial statute, *The Planning Act*.

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose. In cases concerning an impact on individual rights or benefits, we also examine the fairness of the action or decision. A complaint can raise questions of procedural fairness, substantive fairness or relational fairness. Procedural fairness relates to how decisions are reached including the steps followed before, during and after decisions are made. Substantive fairness relates to the fairness of the decision itself and relational fairness relates to how people are treated during the decision making process.

While our office has a mandate to investigate complaints, the investigative process we follow is non-adversarial. We carefully and independently consider the information provided by the complainant, the decision maker, and any witnesses we determine to be relevant to the case. Administrative Investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. If a complaint is supported by a finding of maladministration, the ombudsman may make recommendations pursuant to section 36 of *The Ombudsman Act*.

Administrative investigations can also identify areas where improvements may be suggested to a government body without a finding of maladministration. Such suggestions are made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can improve the relationship between government and the public, and reduce administrative complaints.

THE COMPLAINT

The complainants allege the RRPD and the RM unfairly handled their application to subdivide their property into two 2.1-acre lots. The complainants submitted their application on November 1, 2012. On January 29, 2013, the RM decided to table the complainants' application until the South St. Clements Secondary Plan was approved.

Despite the fact that the secondary plan had not yet been approved, the RM dealt with the subdivision application on November 18, 2014, and approved it. However, the RRPD then rejected the complainants' application on December 3, 2014.

While the complainants acknowledge that the RM's zoning by-law requires a minimum lot size of four acres, they advise that the RM and the RRPD have approved lot sizes of 2.35 acres, 2.5 acres and 2.87 acres in similar subdivision applications in the past.

KEY ISSUES

Our office investigated the following issues:

1. Did the RRPD provide information to the complainants in a fair and reasonable manner when the complainants were preparing their subdivision application?

2. Was the RM's decision to table the complainants' application consistent with how the RM dealt with similar applications?

As noted above, near the end of our investigation a new RM council approved the complainants' application, but it was subsequently rejected by the RRPD. The complainants have appealed the RRPD's decision to the Municipal Board and they advise that a hearing date is scheduled for April 9, 2015. Given that the complainants have exercised their right to appeal the RRPD decision and the appeal is pending before the Municipal Board, in light of clause 18(d) of *The Ombudsman Act* our office is not in a position to review the RRPD decision as part of this report. This report addresses concerns arising prior to the RM's decision to approve the subdivision application on November 18, 2014.

BACKGROUND INFORMATION

The requirements and policies for the approval of a subdivision application are set out in *The Planning Act*, the RRPD Development Plan (By-law 190-08), and the zoning by-law for the RM (By-law 5-2002). The statutory basis for the RRPD Development Plan is set out in Part 4, Division 1 of *The Planning Act.* Subsection 40(1) of the act indicates that a planning district board must prepare a development plan for the entire district. Section 42 sets out what is required in a development plan, including plans and policies regarding the district's physical, social, environmental and economic objectives. The development plan also provides direction to secondary plans and zoning by-laws.

The Planning Act also authorizes a planning district to adopt a secondary plan to deal with objectives and issues in a particular part of the planning district, including subdivision matters. Section 64 of the act requires that a secondary plan be consistent with the planning district's development plan.

Section 68 of the act requires that a municipality's zoning by-law be generally consistent with the applicable development plan and secondary plan.

The Planning Act requirements for subdivision approval

Part 8 of *The Planning Act* sets out the statutory requirements for the approval of a subdivision application in the province of Manitoba. The substantive requirements are set out in section 123 of the act:

> ***Restriction on approvals***
>
> *123 A subdivision of land must not be approved unless*
>
> *(a) the land that is proposed to be subdivided is suitable for the purpose for which the subdivision is intended; and*
>
> *(b) the proposed subdivision conforms with*
>
> *(i) the development plan by-law and zoning by-law,*
>
> *(ii) any secondary plan by-law, and*
>
> *(iii) the regulations under section 146.*

The act sets out numerous procedural requirements for the approval of subdivision applications. First, the subdivision must be approved by the council of the area in which the land is situated. The council then notifies the approving authority of its decision. In the RM of St. Clements, the approving authority is the Red River Planning District.

Pursuant to section 126 of the act, if the RM council rejects the application, the planning district must also reject it. If this occurs, there is no appeal option pursuant to subsection 129(2) of the act.

However, if the council approves the application, the planning district must consider it and decide whether to reject or approve the application. In these circumstances, the applicant may appeal the planning district's decision to the Municipal Board under section 129 of the act. If the planning district does not make a decision within 60 days from the date of the RM's decision, the applicant may consider the planning district to have rejected the application and he or she may appeal the rejection to the Municipal Board.

The development plan and zoning by-law requirements for lot area

The RRPD Development Plan designates the property at issue in this complaint as being in the "Agriculture Restricted" area. The development plan states that lot sizes for any subdivision in the agriculture restricted area "should be generally 4 acres in order to preserve the character of the area."

The RM's zoning by-law also designates the property as being in the "Agriculture Restricted" area. The zoning by-law requires a minimum lot size of four acres in this area.

Pursuant to Part 6 of *The Planning Act*, an individual may apply to the RM for an order varying specific provisions of the zoning by-law. Section 97 of the act sets out the substantive requirements for approval of such an order, including the requirement that the variance be generally consistent with the applicable provisions of the development plan, the zoning by-law and any secondary plan.

POSITION OF THE COMPLAINANTS

The complainants believe that the RRPD and the RM treated their subdivision application in a manner that was inconsistent with three similar applications and as a result feel that the RRPD and RM have treated them unfairly.

The complainants believe that the RRPD should have cautioned them that their application would be problematic because of the proposed lot sizes before accepting the application. The complainants indicate that the RRPD had knowledge of the progression of the secondary plan, but neglected to caution them that their application could be delayed as a result of that process.

The applicants note that seven months prior to accepting their application for processing, the RRPD had recommended to the RM that it reject a similar application, which proposed to subdivide a property into a 2.5-acre lot and a 3.5-acre lot, because the application was not in keeping with the intent of the development plan and zoning by-law. In the planning report for that application ("the 2.5-acre application"), the RRPD suggested that the RM may wish to await the outcome of the secondary plan process.

The complainants also feel it was wrong that council decided to table their application until the completion of the secondary plan. The complainants question why the RM followed the RRPD's suggestion to await the outcome of the secondary plan in their case but did not follow an identical RRPD suggestion regarding the 2.5-acre application.

POSITION OF THE RED RIVER PLANNING DISTRICT

The RRPD indicates that researching and preparing a development proposal is the responsibility of the applicant and not the role or mandate of its staff. The view of the RRPD is that its role is to regulate subdivision approval and ensure consistency with relevant legislation and process.

The RRPD believes that if the complainants had reviewed the development plan and zoning by-law, they likely would have noted that the land use policy states that, in the agriculture restricted area, lot sizes should be generally four acres. The RRPD advises that the complainants would have been able to draw their own conclusions about their proposal. The RRPD states that its policy documents are available online and at its office. The RRPD is also of the view that it made reasonable efforts to advise the general public of the secondary plan's development. These efforts included holding three community open houses regarding the secondary plan which were each promoted with mail-outs to all South St. Clements mailing addresses. The RRPD indicates that since March 2012, information about the South St. Clements secondary plan project has been available on both the RM and RRPD websites.

The view of the RRPD is that decisions on subdivision applications should be made in a consistent manner that is supported by statute, by-law and policy. The RRPD indicates that it has long recognized that the policy regarding applications in the agriculture restricted area is unclear and needs to be revised. The RRPD advises that it has been actively trying to address this matter for years and has invested a substantial amount of staff and financial resources into the issue. The RRPD indicates that despite its efforts regarding the secondary plan and a proposed amendment to the RRPD development plan, the planning district has been unable to find a positive resolution to the issue and it has taken far longer and been far more difficult than the RRPD anticipated.

The RRPD states that no subdivision applications are identical and that the complainants' application was treated differently because it was different than other applications in the area. The RRPD notes that no other subdivision application proposed lot sizes as small as the 2.1 acres proposed by the complainants. The RRPD also indicates that lot size is not the only factor it considers when administering the subdivision process and that many factors influence how a subdivision proposal is treated.

The RRPD explains that for a separate subdivision application in October 2012, it did not refer to the secondary plan in its report to the RM because the proposed lot size of 2.87 acres was closer to being in compliance with the development plan and zoning by-law. In the complainants' application, on the other hand, the RRPD advises that it found the subdivision application not in keeping with the intent of the development plan and zoning by-law because the proposed lot sizes of 2.1 acres were considerably less than four acres. As such, the RRPD indicated to council

that it may wish to await the outcome of the secondary plan, as the plan might result in allowing the complainants' application to proceed without necessitating a variance.

POSITION OF THE RURAL MUNICIPALITY OF ST. CLEMENTS

The RM advises that its council tends not to vary from advice offered or recommendations made by the RRPD regarding subdivision applications, as the RRPD has expertise in land use policy and the relevant provincial guidelines.

The RM explains that generally there are three factors that need to be addressed when considering subdivision applications: timing, local opposition and lot size.

The RM states that its decision to table the particular subdivision in this file had to do with timing. When this subdivision application was made, the RM believed the secondary plan for the area was near completion. The RM anticipated that the secondary plan would allow for two acre lots and that it would enable the RM to make the necessary changes to its zoning by-law in order to approve subdivision applications such as the complainants' in a consistent manner. Also, the RM felt that the complainants would benefit from their application being tabled because they would not need to pay another application fee to have the RM consider their application at a later date. The RM indicates that it did not foresee the secondary plan process would take as long as it did.

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- Interviews with the complainant, RRPD staff and RM staff;
- Review of documentation provided by the complainant;
- Review of information provided by the RRPD and the RM;
- Review of minutes from relevant council meetings; and
- Review of legislation and by-laws including *The Planning Act*, the RRPD Development Plan (By-law 190-08), and the zoning by-law for the RM (By-law 5-2002).

ANALYSIS OF ISSUES AND EVIDENCE

1. Did the RRPD provide information to the complainants in a fair and reasonable manner when the complainants were preparing their subdivision application?

The complainants indicate that when they approached the RRPD in the summer of 2012 and applied in November 2012, the RRPD did not caution them that their application could be delayed as a result of the secondary plan process or flag potential problems with their subdivision application.

The RRPD indicates that researching and preparing a development proposal is the responsibility of the applicant and not the role or mandate of its staff. The RRPD believes that if the complainants had reviewed the development plan and zoning by-law, they likely would have noted that the land use policy states that lot sizes in the agriculture restricted area should be generally four acres.

The RRPD further states that in many instances, property owners unfamiliar with the development approval process hire lawyers or planning consultants for assistance. The RRPD states that if the complainants had identified that they did not understand the land use policy, the RRPD would have encouraged them to retain professional help.

The complainants have not indicated that they were unable to access the development plan and zoning by-law when they were preparing their application. Our office notes that both these documents are presently available on the RRPD website.

As outlined on page 11 of this report, the RRPD states that the South St. Clements Secondary Plan process had commenced in March 2012, approximately eight months prior to the complainants submitting their application. The RRPD indicates that it used several means to advise the public that a secondary plan was in development and invite community input, including holding three community open houses regarding the secondary plan which were each promoted with mail-outs to all South St. Clements mailing addresses. The RRPD also states that since March 2012, information about the secondary plan project in South St. Clements has been available on both the RM and RRPD websites.

The complainants indicate that they attended at least one of the open house meetings regarding the anticipated secondary plan. The complainants state that their understanding was that the secondary plan would focus on policy regarding the density of development in the Henderson Highway area, and not policy that would impact their property in the agriculture restricted area.

In our view, the RRPD communicated the secondary plan project to the public in a fair and reasonable manner.

Nevertheless, the complainants indicate that they were not aware that the anticipated secondary plan could have an impact on their application. The complainants note that in the October 15, 2012 planning report for the 2.87-acre subdivision application, the planning district had recommended that the RM approve the application and made no mention of the idea to await the outcome of the secondary plan before making a decision.

The complainants also note that the RM had approved that subdivision application on October 23, 2012 and the RM and RRPD had approved two other similar subdivision applications before that date. As such, the complainants indicate that when they submitted their application on

November 1, 2012, they did not think there would be a problem with their proposed lot sizes or that the anticipated secondary plan would impact their application. Based on their discussions with RRPD staff, the complainants believed that their subdivision proposal was consistent with what had been previously approved in the area.

At the time the complainants applied for the subdivision, the secondary plan project was still in the community consultation phase and the secondary plan had not yet been drafted. However, the as the RRPD noted in its planning report regarding the complainants' application, the RRPD anticipated that the secondary plan might provide for policy direction for properties such as the complainants'. The RRPD indicates that it anticipated that the secondary plan might provide for smaller lot sizes, such as those proposed in the complainants' application.

While we appreciate that it is the role of an applicant to research and prepare a subdivision application, planning districts should exercise good judgment about what information to share with prospective applicants. If a planning district has information that would likely be of interest to a prospective applicant, information that is likely to affect their application, this information should be provided to the applicant before they submit the application and pay the application fee.

The fact that the RRPD had raised the idea of awaiting the outcome of the secondary plan in its planning report for the 2.5-acre application, and again raised it in its report for the complainants' application, begs the question of why the RRPD would not have raised this with the applicants before they submitted their application. The RRPD's comments about the responsibilities of applicants and the possible need to consult legal counsel are valid, but do not overcome a reasonable expectation of good customer service on the part of fee-paying applicants.

2. Was the RM's decision to table the complainants' application consistent with how the RM dealt with similar subdivision applications?

The complainants' application to create two 2.1-acre lots appears to be comparable to other subdivision applications that they brought to the attention of our office, relating to land which was also in the agriculture restricted zone of the RM.

The RRPD indicates that a 2.35-acre application, which was first considered by the RM council in January 2009 and then approved by the RM in September 2011, is similar to the complainants' application in lot size and location.

As well, a 2.5-acre application, which the RM approved in April 2012, also dealt with land in the agriculture restricted zone of the RM; however, this parcel is located outside the floodway in a small pocket of land adjacent to the Rural Municipality of East St. Paul where existing lots are much wider than the lots within the floodway, which are very long and narrow.

The complainants also brought our attention to an application to subdivide land in the agriculture restricted zone into two 2.87-acre lots. The RM approved this application in October 2012. The

RRPD indicates that this application is similar to the complainants' application in location, but notes that the proposed lot sizes are larger.

The RRPD Planning Reports

Pursuant to subsection 124(2) of *The Planning Act*, if the RRPD receives a subdivision application that requires approval, the RRPD must prepare a planning report and send the report and a copy of the application to the council of the municipality in which the affected land is located.

Our office reviewed the RRPD's planning report for the complainants' application and the other subdivision applications that the complainants brought to our attention. In its planning reports for the 2.35- and 2.87-acre applications, the RRPD found that the applications were in keeping with the development plan and zoning by-law, despite the proposed lot sizes being below the four acres required in the zoning by-law. However, in its planning reports for both the 2.5-acre application and the complainants' application, the RRPD found those applications were not in keeping with the development plan and zoning by-law.

The RRPD's reference to the secondary plan

In its planning reports for both the 2.5-acre application and the complainants' application, the RRPD also noted that the RM council may wish to await the outcome of the secondary plan, as it might provide policy direction for such subdivision applications.

The RM approved the 2.5-acre application without waiting for the secondary plan, but decided to table the complainants' application. The RM explained that while there was a relationship between the 2.5-acre applicant and one of its councillors, the councillor in question did not take part in the proceedings related to that application.

The complainants indicate that on January 30, 2013, municipal staff informed them that council had determined that their application would be heard once the secondary plan process was complete.

Summary

The following table summarizes how the RM and the RRPD dealt with the complainants' subdivision application and the three other subdivision applications the complainants brought to the attention of our office. All the applications related to property in the agriculture restricted zone in the RM:

Proposed subdivision	**Date of RRPD Planning Report(s)**	**RRPD found the application in keeping with the development plan and zoning by-law**	**RM decision (and date of decision)**	**RRPD decision**
Two 2.35-acre lots	January 12, 2009 September 19, 2011	First report: No Second report: Yes	Tabled (Jan. 27, 2009) Approved (Sep. 27, 2011)	 Approved (Oct. 2011)
One 2.5-acre lot & one 3.5-acre lot	March 28, 2012	No	Approved (April 24, 2012)	Approved
Two 2.87-acre lots	October 15, 2012	Yes	Approved (Oct. 23, 2012	Approved
Two 2.1-acre lots	January 17, 2013	No	Tabled (Jan. 29, 2013) Approved (Nov. 18, 2014)	 Rejected (Dec. 3, 2014)

The secondary plan

The RRPD indicates that secondary plans are local community plans and require input from the public. The RRPD states that much of a secondary plan focus is on efficient land use and densification, which can be a sensitive issue for community members who wish to preserve a rural lifestyle. The RRPD explains that the sensitive nature of a secondary plan can delay the adoption of a plan, which involves community consultation.

The RRPD states that the South St. Clements Secondary Plan process commenced in March 2012. The first secondary plan open house was held on June 6, 2012 and the second open house was held on October 30, 2012. The complainants' property is located in the area that would have been affected by the proposed South St. Clements secondary plan.

At the time the complainants submitted their application in November 2012, the RRPD indicates that the secondary plan background study was complete and that potential changes to land use policy were identified. The RM and RRPD anticipated that the secondary plan might provide for smaller lot sizes, such as those proposed in the subdivision application in question.

A final secondary plan open house was held February 5, 2013.

The RRPD advised our office that the province required an amendment to the RRPD development plan in order for the secondary plan process to proceed. The RRPD indicated that the amendment would allow for two acre lots in the agriculture restricted area. However, in December 2014 the minister of Manitoba Municipal Government informed the RRPD that the amendment to the RRPD development plan was rejected. The RRPD advises that as a result, no work is presently being carried out on a secondary plan for South St. Clements.

Analysis

In this case, the RM council acted within its legislated authority when it tabled the complainants' subdivision application. However, the RM council's decision to table the complainants' application was not consistent with how the RM dealt with similar applications. The RM was prepared to approve the other applications without tabling them.

The RRPD states that applications like the 2.35-acre application were the impetus for commencing the secondary plan process and that the 2.87-acre application highlights the need for further policy direction for subdivision applications of this nature.

The 2.5-acre application was similar to the complainants' application in that the RRPD planning reports for both applications found that the proposals were not in keeping with the development plan and zoning by-law. Nevertheless, while the RM was prepared to process and approve the 2.5-acre application, it chose to table the complainants' application for nearly two years.

The RM and RRPD state that the RM's decision to table the complainants' subdivision had to do with timing. When the complainants submitted their subdivision application, the RM believed the secondary plan for the area was near completion. The RM anticipated that the secondary plan would allow for two acre lots and that it would enable the RM to make the necessary changes to its zoning by-law in order to approve subdivision applications such as the complainants' in a consistent manner. Also, the RM felt that the complainants would benefit from their application being tabled because they would not need to pay another application fee to have the RM consider their application at a later date. The RM indicates that it did not foresee the secondary plan process taking such a long time.

Unfortunately, the timeline that the RM anticipated did not materialize and the complainants' application was tabled for an inordinate and excessive period of time. Although the RM and RRPD recently issued decisions on the complainants' application, the RM did not make a decision on the complainants' application for nearly two years. This is a significant delay that left the complainants in a state of prolonged uncertainty, as the lack of RM decision resulted in the RRPD not having a duty to make a decision pursuant to subsection 126(5) of *The Planning Act*. Had the RM rejected the application, the complainants would not have had the right to appeal the matter (pursuant to subsection 129(2) of the act). However, the RM's eventual decision was to approve the application, which meant that the complainants would have a right of appeal pursuant to section 129 of the act.

While the RM indicates that it felt it was acting in the interest of the complainants when it tabled their application because it was saving the complainants the cost of another application fee, our office notes that this belief was based on the presumption that the complainants' application

would be rejected if it were not tabled. It was only once the RM made a decision that subsection 126(5) of *The Planning Act* required the RRPD to make its decision within 60 days. As the RM has now approved the application and RRPD has rejected it, the complainants have been able to exercise their right to appeal the RRPD's rejection of their application and the appeal is pending before the Municipal Board.

In our view, the RM should make decisions on subdivision applications in a consistent manner that is supported by statute, by-law and policy. In the absence of a consistent process, we understand why applicants such as the complainants can form the belief that the RM is processing applications arbitrarily. While no subdivision applications are identical, the process and criteria for approving the applications should be consistent. As a result, our office suggests that the RM and RRPD review the process and criteria the bodies follow when dealing with subdivision applications that propose variations to the RM's zoning by-law. We suggest that the RM and RRPD have a process that ensures applications are treated consistently and fairly.

The RM also informs us that it has reflected on the delay of nearly two years that resulted from its decision to table the complainants' application. The RM indicates that it is now of the view that it is not fair to an applicant to table their application indefinitely, even if the RM believes that doing so will prevent the applicant from having to pay another application fee. Given this view, our office suggests that the RM develop a policy that sets out when, how and for what period council may table a subdivision application. We suggest that the policy include a provision that allows an applicant the opportunity to request that their application return to the council agenda so that the council may make a decision on the application.

CONCLUSION

Based on our investigation, Manitoba Ombudsman concluded that the RRPD communicated the secondary plan consultation process to the public in a fair and reasonable manner. Manitoba Ombudsman notes that if a planning district has information that would likely be of interest to a prospective applicant, information that is likely to affect their application, this information should be provided to the applicant before they submit the application and pay the application fee.

Furthermore, when the timeline that the RM anticipated for secondary plan completion did not materialize, the complainants' application was tabled for an inordinate and excessive period of time. The RM recognizes in retrospect that this delay was not fair to the applicants. Although the complainants would not have had the right to appeal the RM's decision had the RM rejected the application, the RM's eventual decision was to approve the application. It was only after the RM made a decision in November 2014 that the RRPD was required to make a decision as well. Once the RM approved the application and the RRPD rejected it, the complainants were able to exercise their right to appeal the rejection to the Municipal Board. Their appeal is now pending.

Our office determined that the complainants' subdivision application was not treated consistently with how similar subdivision applications were treated. We suggested that in order to ensure a consistent and fair process for all applications of this nature, the RM and RRPD should review

the process by which the bodies deal with subdivision applications that propose variations to the RM's zoning by-law. Specifically, the RRPD should review what information it can and should provide applicants, in the interest of providing better customer service. It is also suggested that the RM develop a policy that sets out when, how and for what period the RM council may table a subdivision application. We suggested that the policy provide an applicant the opportunity to request that their application return to the council agenda so that the council may make a decision on the application.

The applicants were not well-served by either the planning district or the RM council in this case. Although there were no recommendations that could assist the individual complainants in this case, we felt it appropriate to make suggestions for improvement that might benefit people in similar circumstances in the future. These suggestions were made for the benefit of the public, and also to assist the RM and the RRPD.

In response to our suggestions, the RRPD explained that it wants to ensure the public is aware of the subdivision application process and the process for other types of applications. It is currently revising its brochures to ensure that the applicable process and procedures are clear to the public. The RM agreed to implement a policy regarding the tabling of subdivision applications.

MANITOBA OMBUDSMAN