

Ombudsman Act Investigation Report  
Case 2018-0311:  
Rural Municipality of Rockwood

May 2021

Manitoba  Ombudsman

# Manitoba Ombudsman

**REPORT UNDER  
THE OMBUDSMAN ACT  
2018-0311  
RURAL MUNICIPALITY OF ROCKWOOD**

## **THE COMPLAINT**

The complainants contacted our office regarding the actions and decisions of the Rural Municipality of Rockwood (the RM) related to music festivals and retreats held on agricultural zoned land.

The complainants raised concerns that the RM issued temporary development permits (TDP) for music festivals and retreats held on agricultural zoned land adjacent to their property, but did not enforce the noise restrictions outlined in the permit conditions. The complainants are also of the view that a councillor was in a conflict of interest, given his spouse publicly supported these events via Facebook.

## **OMBUDSMAN JURISDICTION AND ROLE**

Under the Ombudsman Act, we investigate complaints about administrative actions and decisions made by any department or agency of the Manitoba government or a municipal government.

A matter of administration includes any practice, procedure, action or decision that government makes as it implements or administers its laws and policies. We examine the administrative processes and procedures followed when government applies legislation, regulation and/or existing policies.

Public bodies and their employees receive their authority and direction from legislation. To support and guide elected officials and staff in exercising this authority, public bodies develop policies, procedures, guidelines, bylaws, and other guidance documents. These documents are the primary framework for administering public programs and services.

Bylaws and other guidance documents have the power to affect the legal rights, and private interests and privileges of individuals. It is important that such bylaws are applied in a fair and reasonable manner.

We reviewed applicable provincial legislation and municipal bylaws relevant to this case, and considered the reasonableness of the actions of the RM.

## KEY ISSUES

1. Did the RM adequately enforce the conditions it implemented for the temporary development permits issued for these events?
2. Was a councillor in a conflict of interest when voting on matters related to these events?

## SCOPE OF THE INVESTIGATION

Our investigation of this complaint included a review of the following:

- Information and documentation provided by the complainant
- Information and documentation from the RM of Rockwood, including:
  - Emails and letters
  - Council meeting minutes
  - Temporary development permits
  - Conditional Use #RWC 6/18
  - Development Agreement #6/18
  - Notice of Inspection
- The Municipal Act
- Municipal Act Procedures Manual
- The Municipal Conflict of Interest Act
- The RM of Rockwood Administration Policy # 2013-01 – Council Members' Code of Conduct
- The RM of Rockwood Noise By-Law #17/12

- The RM of Rockwood Procedures By-Law #18/5
- The RM of Rockwood Zoning By-Law #17/09
- The RM of Rockwood Zoning By-Law Amendment #23/17

## ANALYSIS

### 1. DID THE RM ADEQUATELY ENFORCE THE CONDITIONS IT IMPLEMENTED FOR THE TEMPORARY DEVELOPMENT PERMITS ISSUED FOR THESE EVENTS?

The complainants contacted our office related to music festivals and events held on land adjacent to their property located in the RM.

The complainants allege that noise restrictions outlined within temporary development permits (TDP) issued for festival events held on an adjacent property were not adequately enforced. The RM issued TDPs to allow the use of the agricultural zoned land for a specific event/purpose, for a defined period of time, with certain applicable conditions as determined by the RM.

They advised that music continued beyond the noise limitations designated in the TDPs issued by the RM. The complainants stated they were unable to contact an RM representative to enforce the conditions of these event permits while these infractions were occurring, or rely on the RCMP to be available to respond to noise related complaints.

Although the complainants had concerns regarding all events held adjacent to their property, from the evidence reviewed, three main events were the focus of the noise concerns.

#### Real Love Summer Fest held July 28-30, 2017

At the time of this matter, the complainants resided on an Agricultural General Zone (AG) in accordance with the Rural Municipality of Rockwood Zoning By-law No. 17/09 (zoning bylaw). Under the zoning bylaw, AG zoned land includes general agricultural uses or other uses related to or compatible with agriculture, by permitted or conditional use.

On July 28, 29 and 30, 2017, the complainant's neighbors (the owners) held the Real Love Summer Fest 2017 on their property adjacent to the complainants. At the time of this event, a 'category' did not exist under the zoning bylaw, to allow for festival/music events on AG zoned land.

Upon becoming aware that Real Love Summer Fest July 28-30, 2017 was occurring, the complainants emailed the reeve at 11:36 p.m. on July 27, to obtain further information from the RM regarding the event.

The reeve responded to the complainant's email the morning of July 28, providing the chief administrative officer's (CAO) contact information for them to follow-up on the matter.

The complainants communicated with the CAO who advised the RM was unaware of this event and would be following up with the South Interlake Planning District (SIPD). The CAO further stated the RCMP had been notified about the event and a noise complaint had been logged with the RCMP for the band starting at 12:00 a.m. The complainants advised the level of noise from the music festival forced them to leave their home both evenings of the event.

Following the event, the SIPD contacted the owners August 2, 2017, to advise it had received a complaint of unauthorized land use, and advised the owners they were not authorized to hold such events without a permit from the RM or SIPD.

### I AM Festival held August 18-20, 2017

The RM approved a TDP on August 9, 2017, by Resolution No. 2017 360, for the I AM Festival held August 18-20, 2017, with the following noise condition:

- 1. That all operations follow all the regulating By-laws of the R.M. of Rockwood noting that all activities that create noise that will be a nuisance to neighboring properties shall cease at 11:00 p.m.*

The complainants advised that in accordance with the TDP, noise ceased on the permit holder's property adjacent to their residence at 11:00 p.m. on August 19, 2017. Although this met the TDP noise conditions, the complainants indicate the event started up again on property not associated with the owners across the road from the event site, when loud music started playing shortly after at 11:45 p.m.

In an email to the RM sent at 2:52 a.m. on August 20, 2017, the complainants state they observed people setting up on both the owner's property and the neighboring property across the road on August 17, but did not realize its purpose until late evening on August 19 when the music started playing at the property across the road.

The complainants advised they made noise complaints with the RCMP at approximately 12:10 a.m. and 2:42 a.m. August 19, but to their knowledge, the RCMP did not attend. Further, the complainants stated they attempted two calls to the RM's bylaw enforcement officer regarding the noise issue, with no response that morning. The complainants also stated they observed people crossing the road returning to the owner's property once the music ceased playing at the neighboring property.

The RM stated that its bylaw enforcement officer did not attend the event and indicated that it was beyond the bylaw officer's regular working hours at the times the complainants attempted calling the officer, regarding their noise complaint related to this event.

Real Love Summer Fest held July 27-29, 2018

The RM approved a TDP on December 13, 2017, by Resolution No. 2017 534, TDP issued for Real Love Summer Fest held July 27-29, 2018<sup>1</sup>, with the following noise conditions:

1. *That all operations follow all the regulating By-laws of the R.M. of Rockwood noting all activities that create noise that will be a nuisance to neighboring properties shall cease at 11:00 p.m.;...*
7. *That the land owners will cease all music and noise at 1:00 a.m.*

The complainants raised several concerns to the RM prior to the Real Love Summer Fest, related to the festival being held adjacent to their property and how the RM would address the TDP conditions it implemented for the event. The concerns were based on the complainants' experience with the Real Love Summer Fest held in 2017 on the adjoining property.

In an email to the RM sent at 12:36 a.m. July 28, the complainants indicated that in accordance with the TDP noise condition 1, noise that would be a nuisance to neighboring properties had not ceased by 11:00 p.m. Further, they were of the view that the requirement of noise condition 7 was not met, as all noise and music had not ceased at 1:00 a.m.

On this point we note that the noise parameters outlined within the TDP conditions were not clear, creating some confusion for the complainants. We understand from conversations with the RM, that it intended the wording of condition 1 to refer to its noise bylaw, wherein it stipulates the maximum hour to create noise within the municipality is 11:00 p.m.

The RM further advised that for condition 7 of the TDP, council's intention was to allow two additional hours beyond regular noise bylaw requirements for noise to conclude, with all event noise to cease at 1:00 a.m.

In an email to the RM sent at 4:32 a.m. on July 29, 2018, the complainants state they were awakened by music, people talking and vehicular noise at approximately 3:00 a.m. The complainants advised they observed a number of trucks and other vehicles leaving the property and were of the view the noise was likely created by individuals dismantling equipment to pack up and leave the property.

The email also indicates the complainants called the bylaw enforcement officer at 3:25 a.m. July 29 to make a noise complaint, given the TDP stated that all music and noise would cease by 1:00 a.m., but advised the officer did not attend the property at that time.

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<sup>1</sup> We note the temporary development permit was issued for July 28, 29 and 30 (Saturday to Monday), although the actual event occurred July 27, 28, and 29 (Friday to Sunday).

A letter from the RM to the complainants dated August 28, 2018 states:

*The By-Law Enforcement Services do not respond to complaints until the next day if the call is received beyond normal work day hours. The call you made to By-Law Enforcement at 3:25 a.m. would not have been acted on until the next day, if deemed warranted.*

*Should the call be of an emergency nature, then a call to 911 would be warranted. If the RCMP feel there is a need for By-Law Services, such as a case of a vicious dog attack, the RCMP call By-Law Enforcement.*

*By-Law Services do not operate on a 24 hour clock, and are only contracted in case of emergencies. By-Law Services are generally covered by a part time staff member over the weekend.*

The RM advised that it contracted its bylaw enforcement officer to attend this event beyond his regular working hours. The RM advised that the officer remained at the event on July 27, and 28 until 1:00 am. from his observation, the event noise concluded in accordance with the TDP condition 7.

In conversations with our office the RM also advised that it informed the RCMP about the upcoming 2018 Real Love Summer Fest prior to the event, and sent a reminder email concerning the event on July 27, 2018, at 4:25 p.m.

We reviewed correspondence from the RCMP to the RM that reflects that members were held up with higher priority matters on July 27, but patrolled the location between 12:30 and 1:00 a.m. on July 28. The members advised:

*...they observed many vehicles leaving the site...but did not see 'people' wandering around...they noted there were over 100 vehicles still on site, but they literally did not hear a sound of any kind. There were also no complaints received from anyone regarding this event.*

#### How the RM enforces TDP conditions

The RM issued TDPs with specific conditions related to multiple events held by the owners. In correspondence to our office related to how it ensures the TDP conditions it mandates are met, the RM stated:

*These permit conditions are enforceable by the By-Law Enforcement Officer as well as the Development Officer for South Interlake Planning District. On-site visits are the only way to ensure compliance.*

In conversations with our office the RM advised it has access to 1.5 bylaw enforcement officers, whose enforcement area includes the rural municipalities of Rockwood and Woodlands. The RM further stated the bylaw enforcement officers' regular daily shifts end at 4:30 p.m., but at times officers may be contracted to work 'after hours' with overtime pay.

The RM advised that should it perceive it is required for an event, the RM will notify the bylaw enforcement officer to attend the event, observe any non-compliance and report back to the chief administrative officer. The RM stated that the bylaw officer has the discretion to determine the length of time they attend most events, but in some circumstances, the RM may request the officer to stay until the end of an event to ensure TDP conditions are met.

The RM implements the conditions requirements outlined in TDPs, with the expectation these requirements will be followed by the applicants, but there is a gap in the resources available to the RM to enforce a potential condition infraction if it occurs beyond regular RM business hours. Further, the options available to residents to communicate a condition infraction to the RM are heavily reliant on the communication occurring during the RM's regular business hours.

The RM also advised that like other municipalities, it relies on the RCMP to do community policing for events in the municipality, and advises the RCMP of upcoming events.

In correspondence to our office, the RM advised that should an individual believe the conditions of a TDP are not being met, the following options are available to address the matter:

- residents can contact their local councillor regarding any issue
- complaints can be logged with the RM through contact information displayed on the RM's website
- should immediate assistance be required, the bylaw enforcement officer may be called during regular business hours
- if the nature is that of an emergency, the RCMP can be contacted via 911

During our investigation, the RM advised that upon further review of the options available to its residents to address matters such as this, it was of the view it could provide better communication assistance to its residents of the processes in place. The RM advised it will review and implement a procedure on its website, directing its residents of the options identified above

While clearly communicating such information is helpful, it does not in our view address the issue of on-site enforcement when potential infractions are occurring outside of regular business hours.



We understand that the RM relied on the RCMP for community enforcement matters. Although the RCMP does community policing, its members availability to attend events or enforce matters, would depend on the nature of the complaint and competing responsibilities within its jurisdiction for matters that fall within its purview. Further, making appearances at these events would be at the RCMP's discretion.

We also note that although the RM may contract its bylaw enforcement officer to attend certain events after regular working hours, the officer has the discretion to determine how long they remain at an event, unless specified by the RM. As such, if contacted in the early morning hours related to TDP conditions not being met for certain events, there is no requirement for the officer to return and observe possible TDP condition infractions.

In this instance, the bylaw enforcement officer did not attend the event site upon receiving a call in the early morning hours from the complainants related to two events, there was no way for the RM to verify that a condition infraction was occurring.

Under section 13 of the Municipal Act, the council of a municipality is responsible for the adoption, administration and enforcement of the zoning bylaw and all other bylaws respecting land use and development for the municipality.

Municipalities are responsible for governing fairly and equitably on behalf of its residents, and residents have the right to expect the municipality to govern effectively under the laws, policies and procedures that apply to it conducting municipal business.

From our review of the evidence, it does not appear the RM had a process in place to ensure that all stipulated conditions can be enforced in its approved TDPs. In our view, if the RM applies conditions to a permit it issues, it must ensure that it had the ability and mechanisms in place to enforce them.

In this case, although the RM imposed conditions within TDPs it issued for festivals and music events within its community, it is our view that the RM did not have a plan or the resources in place to ensure these conditions would be met. The RM does not have a policy or procedure to ensure the TDP conditions it stipulates are enforced. Further, the RM has no criteria or framework for determining when it will extend the hours of bylaw officers, rather, these are discretionary decisions made by the RM based on if it believes the officer's attendance is warranted for an event.

Our office is of the view that the presence of clear, written policy and procedures can be helpful to both the public and the RM. Having such procedures in writing allows staff to reference and share RM processes with affected individuals, especially where concerns about outcomes are raised.

## Zoning amendment

We note that the owners subsequently applied to the South Interlake Planning District for proposed text amendments to the RM's zoning bylaw to include retreats and events. The RM approved By-law #23/17, amending its zoning bylaw to include rural retreats and events as a conditional use for agricultural zoned land.

The complainants opposed the amendment as they were of the view that these types of retreats and events should not be allowed in the area.

Under the authority of the Municipal Act, municipal councils have significant autonomy to manage municipal affairs and to make decisions they believe will best meet the needs of their communities, in accordance with the legislation and the bylaws that govern their actions.

In this instance, the RM had the authority to amend its zoning bylaw to include rural retreats and events as a conditional use for agricultural zoned land and followed the applicable procedure in making the change.

Upon receiving conditional use approval to operate as a rural retreat and events centre on October 3, 2018, the owners were required to enter into a development agreement with the RM.

The agreement provides the RM with the ability to enforce a \$5,000 bond as security, to address any infractions should conditions of the agreement or approved events not be met. Further, the agreement outlines operating parameters for any event to be held on the subject property. The events are separated into five categories related to the number of people attending. Based on these categories, the operating parameters further designate annual event frequency, security requirements, noise restrictions and emergency service requirements.

The development agreement provides more detail as to the parameters of events and a financial penalty if conditions are not met. However, the effectiveness of this agreement is, as noted in this report, contingent on the ability of the RM to monitor events for non-compliance.

Although we recognize that some conditions could be enforced by attending the site prior to an event, we understand that to enforce conditions such as those related to noise/music, parking restrictions, and the number of attendees, the bylaw enforcement officer would have to attend the property at the time of a condition violation to observe it happening.

## **2. Was a councillor in a conflict of interest when voting on matters related to these events?**

The complainants are of the view that there may be a conflict of interest on the part of a council member whose spouse publicly supported these events.

It is important to note that the Municipal Council Conflict of Interest Act deals with conflicts arising from a narrow pecuniary (financial) interest.

In this instance, from our review of this matter there is no evidence to suggest that the councillor or his spouse benefitted financially from these events.

However, ombudsmen have typically taken a broader approach to conflict of interest. In our 2013 publication *Understanding Fairness, A Handbook on Fairness for Manitoba Municipal Leaders*, a conflict of interest is defined as when one's personal interest conflicts with the public's interest, or with one's duty as a public official. Further it states, "The appearance or perception of conflict can be as harmful to public confidence as actual conflict."

Further, the RM's Council Members' Code of Conduct Policy No. Administration 2013-01, defines:

*Public confidence and public trust are essential to good governance.*

*To promote public confidence and public trust, members of the Council of the Rural Municipality of Rockwood strive to govern in a fair, objective and transparent manner and in the best interests of the municipality at all times.*

Our office recognizes that the appearance or perception of a conflict can be just as harmful to public confidence as a substantiated conflict.

Through our investigation of this matter, we note that although the councillor voted on matters related to these events before council, he was not directly involved in these events. We understand however, that the councillor's spouse publicly supported these events via Facebook and volunteered at a one festival, including working at the front gate and handing out water bottles. We understand she was not financially compensated as a volunteer, nor did she run a booth or personally sell anything at any of these events.

Given the councillor's spouse publicly supported these events via Facebook and volunteered at one of the festivals, it may have created a perception of bias when the councillor voted on matters related to these events. We understand that the councillor did not recuse himself from the vote, and voted in favour of these events.

From our review of this complaint, we recognize that some individuals may have the perception that the councillor was in a conflict of interest position, given his spouse's interest in these events. Once a conflict between a public official's personal interests and a public decision is identified, it can be difficult to demonstrate that a decision they made was fair and not influenced by other factors.

It is important for elected officials to ensure public trust and confidence that decisions made on behalf of the municipality they represent, are in the best interests of its citizens.

As such, it is our view that it may have been beneficial for the councillor to identify his spouse's interest and potential involvement in these events, prior to his considering matters related to these events and festivals as an RM councillor at council meetings.

This may have helped to address the perception that he may personally benefit from decisions made as an elected official, solely based on the fact that his spouse supported these events. Further, by defining this interest at council meetings wherein matters were considered related to these events, the councillor's position related to these decisions would be clear and on record.

Our office interviewed the councillor regarding the appearance of bias. In conversations with our office, the councillor indicated that he had not previously considered that his participation in votes related to these events could be perceived as unfair. He stated that it did not cross his mind that it may be perceived in this way, given that his wife was an unpaid volunteer at one festival, and was expressing her personal interest in support of these community events.

The councillor advised that he could see now that there could be a perception or appearance of bias on his voting on these matters, given his spouse's public personal interest in these festivals.

The councillor stated that he would endeavor to verbally identify and address any potential issues, prior to his considering matters as an RM councillor at council meetings, to remove future appearances of bias or conflict.

## CONCLUSION AND RECOMMENDATION

We recognize the tremendous personal affect these events had on the complainants, given their concerns related to their privacy and well-being, raised to the RM and to our office. The culmination of which ultimately resulted in the complainants selling their home and moving from the community.

From our review of the evidence, we are of the view that the RM did not appear to fully enforce the conditions outlined in the temporary development permits it granted for these events. As a result, this complaint is supported.

Given the RM is imposing conditions within the permits it issues for these events, it is our view that the RM should take steps to ensure it has the ability to enforce all listed conditions on behalf of its residents. As such, our office makes the following recommendation:

**The RM of Rockwood should develop and implement a decision-making framework, that guides when it deploys resources to enforce TDP permit conditions. Further, the RM post these procedures to its website upon completion, to ensure public access.**

With respect to the conflict of interest allegation, we recognize that although not in a pecuniary conflict related to these events and festivals, it may have been beneficial for the councillor to identify his spouse's interest and potential involvement in these events prior to considering matters at council meetings.

It is important for elected officials to ensure public trust and confidence that decisions made on behalf of the municipality they represent, are fair and in the best interests of its citizens. As such our office makes the following suggestions for administrative improvement:

- That the RM ensure its elected officials are aware of their responsibilities under its Council Members' Code of Conduct Policy.
- That the RM consider further training, related to identifying conflicts and potential appearances of bias prior to making decisions as elected officials.

## RESPONSE TO THE RECOMMENDATION

We provided the RM with an advance copy of this report so it could advise our office of the steps it proposes to take, to give effect to our recommendation. In accordance with subsection 36(3) of the Ombudsman Act (the Act), council met at its regular meeting of council on May 12, 2021, to consider our recommendation "in camera."

As per subsection 37(1) of the act, the RM provided a written response to our office on May 19, 2021, outlining its response to our recommendation as follows:

*As the RM of Rockwood contracts the by-law services from the Rockwood-Woodlands By-law Enforcement and Animal Control Board, the RM will notify and request the services of the by-law enforcement officer to be in attendance during the entire TDP to ensure conditions are met. The RM will pay the overtime costs to ensure by-law enforcement is in attendance.*

Further, upon its consideration of our two administrative improvements, council advised the following:

*All members of council have completed the code of conduct training, as required, by the province of Manitoba. As well, the required code of conduct and conflict of interest policies are included in the council orientation package given to each councillor following their successful election to office.*

*The RM of Rockwood is always receptive to training as offered from time to time through its association with AMM and the Province of Manitoba.*

## **CLOSING REMARKS**

We are pleased that the RM agreed to contract the services of its bylaw enforcement officer to be in attendance for future TDP events, to ensure any TDP conditions outlined by the RM are met.

We also would like to recognize that the RM administers code of conduct training in accordance with the province of Manitoba requirements, and ensures code of conduct and conflict of interest policies are included in the council orientation package, provided to each councillor following their successful election to office. Further, we are pleased that the RM is receptive to further training through its association with AMM and the Manitoba government, when available.

Lastly, we would like to acknowledge the cooperation and receptiveness of the RM throughout our investigation of this matter.

The release of our report now concludes our involvement regarding this complaint.

## **MANITOBA OMBUDSMAN**