

Date: October 4, 2017

Report To: Mayor & Council

From: Tyson Dennis, Chief Building Official/Municipal Planner

Re: **Citizen letters with concern to Section 3.31 in the Zoning By-Law 03-14**

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At the regular Planning and Development Meeting on September 5, 2017, a matter regarding Zoning By-Law Section 3.31 was discussed with input from local citizens. The report compared the existing set back requirements from navigable and non-navigable watercourse, hazard lands and municipal surface drain areas. The previous Zoning By-Law states a much closer setback from any navigable and non-navigable watercourse. The changes and adoption of the 2014 03-14 Zoning By-Law does not allow a fair setback from these lands as it uses a setback which is 15m from the top of an embankment. This setback, in most cases, makes existing structures legal-nonconforming. Direction from the PDEC members was to research other communities, Ministry of Natural Resources, and reasons for the changes to the Zoning By-Law in 2014.

Communities in North Western Ontario have setbacks from navigable and non-navigable watercourse, hazard lands and municipal surface drain areas, which all vary in distance. These distances are not consistent and allow for interpretation. Some of these communities allow for less setback as some have larger distances required from watercourses and hazard lands. The Ministry of Natural Resources has set a "*Flood Water Disposition Measurement*" of Rainy Lake, which is 337 m (above sea level). When comparing areas of Town located on Rainy Lake and the Upper River, the 337m *Flood Water Disposition Measurement*, along with 15m horizontal setback, allows for development in a safe proximity to high water concerns. The MNR has previously determined a mark of 1090ft (332.2m) for no clearing of vegetation below this mark. There is no calculated *Flood Water Disposition Measurement* by the MNR for the lower river area. The vegetation removal mark, has been previously used but in hazardous areas such as creeks, streams and riverbanks, can still allow for damages to existing structures.

The changes in 2014 to the Zoning By-Law 03-14, were made from a provincial starting point which allowed municipalities to make set-backs in waterway and hazard lands while using area specific interpretation to govern those set-backs.

At the time of adopting Section 3.31 in the Zoning By-Law 03-14, the provincial 15m standard was used. Fort Frances has a diverse water course area throughout the Township. To have a single regulation for watercourse and hazard land set-back is not fitting for the different plots of land.

The Ontario Building Code governs proper building practices and states, when designing foundation, excavations and soil-rock structures, design shall be based on a subsurface investigation carried out by a person of competency in this field of work when local practice is

not ordinary. This allows an option for site-specific design to be carried out by an engineer or architect that is trained in soil and structural design, if the normal local practice is not capable of being completed. The Building Official or Inspector can request special site-specific design requirements.

The current Zoning By-Law Section 3.31 states:

### **3.31 SETBACKS FROM NAVIGABLE AND NON-NAVIGABLE WATERCOURSES, HAZARD LAND AND MUNICIPAL SURFACE DRAINS**

Notwithstanding any other provisions of this By-law, a **building** in any zone is required to be no closer than 15 meters from the top of the bank of any **watercourse**, or municipal drainage ditch permanent or intermittent, which may or may not be navigable. In the case of **hazard lands**, no part of any **building** shall be constructed closer than 15 meters to the nearest point of the area to which the hazardous condition is deemed to exist.

The recommendation from the Planning and Development Department is to amend the Zoning By-Law 03-14 Section 3.31 to read as follows:

### **3.31 SETBACKS FROM NAVIGABLE AND NON-NAVIGABLE WATERCOURSES, HAZARD LAND AND MUNICIPAL SURFACE DRAINS**

Notwithstanding any other provisions of this By-law, a **structure** in any zone, may be required to have the *normal ordinary water edge* determined by an Ontario Land Surveyor and a set-back determined from the *normal ordinary water edge*, back 15m, measured horizontally, to allow for development near navigable and non-navigable watercourses. This is to be determined on a site-specific basis.

In the case of **hazard lands and municipal surface drains**, no part of any **structure** shall be constructed closer than 15 meters, horizontally measured, to the nearest point of the area to which the hazardous condition is deemed to exist by an Ontario Land Surveyor.

The Planning and Development Department received recommendation from the Planning and Development Executive Committee on October 2, 2017, to amend Section 3.31 of the Zoning By-Law 03-14. The information at the PDEC meeting was discussed with concerned citizens and was agreed the draft amendment would allow for safe and proper setbacks. These changes would clarify where proper set-backs from watercourse and hazard lands would be measured from, on a site by site basis.

Respectfully submitted,

Original Signed By

Tyson Dennis

Chief Building Official/Municipal Planner

**Council approval of this report will:** allow for the application for Zoning By-Law amendment to be forwarded to the Committee of Adjustment for a public meeting on October 25, 2017. This would continue the application and amendment process for changes to the setbacks for navigable and non-navigable water-course and hazard lands on a site by site basis.