

# Report

To: Mayor and Council

From: Faye Flatt, Municipal Planner

Date: 19 June 2014

Re: Zoning Amendment (File 3/14-A) - Boivin

Municipal Planner  
Report #2014-09

## 1. Background:

An application was received by submitted by Alan and Bernice Boivin to change the zoning on their property (Pcl 22252, Pt Res 1B pts 1 & 2 Plan 48R-1246) from Seasonal Residential (SR) to Residential Type One (R1).

The application was prompted by an application for business license for a water taxi business as a home occupation however the application could not be approved because a home occupation is not a permitted use in the Seasonal Residential zone. If approved the year round use of the property as a residence will also be recognized.

## 2. Property History

Information on file indicates this property was created in 1977 by consent granted by the Committee of Adjustment. At the time of consent approval, the property was described as an "abandoned right-of-way" (Parts 1 and 2 Plan 48R-1246) with access provided by a public road considered to be municipal in accordance with section 399 of the Municipal Act (copy attached). Municipal Property Assessment Corporation (MPAC) shows a residence was constructed on the property in 1950 although at the time of consent approval the property was shown as being vacant. This may indicate that a dwelling from earlier era was moved onto the property however there is no record of any building permits having been issued so this cannot be confirmed. The property has been zoned SR since 1998 but the zoning prior to that date cannot be determined.

## 3. Official Plan:

The property is designated as the **Living Area**. Small scale commercial uses are permitted in this designation, with the following policies applying:

- *Commercial uses that serve the needs of the immediate neighbourhood and may include ... personal services. (s.4.1.4.)*
- *Home Occupations and Home Professions may be permitted in single-detached residential ... as long as it is accessory to the principal residential use and occurs entirely within the confines of the dwelling unit. (s.4.1.8)*

The proposed use, that of a home occupation, is permitted on properties within the Living Area and a such an amendment is neither contemplated for the subject land nor required.



#### **4. Zoning:**

The property is zoned Seasonal Residential (SR). Uses permitted in SR zone are Single Detached Dwelling and Sleep Cabin. SR properties are permitted to be serviced with private well and septic as per section 3.3 of Zoning By-Law 3/14. After considering the options, it was suggested to the property owner that rather than submit a site specific amendment to add a Home Occupation as a permitted use, a request be made to rezone the property to R1.

Subsequent research and information obtained indicates that adding the permitted use of Home Occupation/Industry is now the preference given that regulations for R1 requires properties be serviced with municipal water and sanitary sewer.

#### **5. Provincial Policy Statements:**

The Planning Act requires that zoning amendments be consistent with provincial interests as identified in the 2005 Provincial Policy Statements (PPS). This proposal appears to support the direction of the PPS in regards to *accommodating an appropriate range and mix of residential, employment (including industrial, commercial and institutional uses), recreational and open space uses to meet long-term needs s. 1.1.1 (b).*

#### **6. Comments – circulated departments & public consultation:**

**Divisions/Agencies** - The application was circulated for comment to the manager/supervisor of each division for dissemination to appropriate staff and as well to the Fort Frances Power Corporation. There were no concerns identified as a result of circulation.

**Committee of Adjustment** - The Committee of Adjustment considered the amendment at the meeting held May 21, 2014 and recommends approval.

**Public Consultation** - Pursuant to legislated requirements, a public meeting was held on June 9, 2014. Ted Berry stated he spoke neither in favour of nor in opposition to the proposed amendment but opined that the Town had no authority to neither rezone the property nor issue a business license, as the property had no public access. Mr. Boivin spoke in favour of the application stating the business would be seasonal only and when he applied for a business license he did not realize the property was seasonal but that he wanted to obey the rules.

The municipal solicitor was consulted regarding the matters raised at the public meeting. He stated the importance that consistency is maintained when considering and making decisions on planning applications or other matters. In this instance the Town of Fort Frances has maintained in all instances that it has jurisdiction over property within its boundaries not within reserve. The subject land is within the boundaries of the municipality and has been zoned and rezoned since the implementation of zoning in the Town. The issue of access was considered when the Town of Fort Frances Committee of Adjustment created the lot in 1977. Our solicitor advises that in litigation already before the courts the Town has argued the Indian reserves were not approved until 1915, and that all roads existing prior thereto within the boundaries of the municipality were therefore considered municipal. There is also correspondence at the time consent was granted that assumed the road was municipal. That said, assuming the road is not municipal, the solicitor is not aware that the Town would have liability for visitors simply because it might not be a municipal road.



The discussion with the solicitor expanded to the issue of Home Occupation/Industry on properties zoned Seasonal Residential. From a planning perspective, there appears to be no compelling reason not to allow home occupation activity in a seasonal residential zone and because it was thought to enhance and promote economic development opportunities for the community, a recommendation is included in this report that Home Occupation be added to section 4.7.1 as a permitted use in the Seasonal Residential zone.

**7. Executive Summary/Recommendation:**

The Official Plan is not offended by the proposed amendment. The proposal to permit a Home Occupation from the property does not conflict with the Provincial Policy Statements. Based on a thorough evaluation of the proposal from a planning, servicing and community perspective as well as consultation with municipal solicitor, it is recommended that

- (a) the land that is the subject of zoning amendment application 3/14-A to permit a Home Occupation be approved;
- (b) that the by-law to amend the zoning on the subject property be changed prior to enactment to add a Home Occupation/Home Industry as a permitted use to the Seasonal Residential (SR) zone at section 4.7.1 (including the proponent's property);
- (c) that in accordance with Section 34(17) of the Planning Act, the change to the proposed by-law as noted in (b) above be considered by Council to be minor in nature such that further public notice is not required.

The Planning and Development Executive Committee considered the matter at its meeting held June 19, 2014 and supported the above recommendation.

Respectfully submitted  
Planning and Development Division

  
N. Faye Platt, AMCT, ACST, CPT  
Municipal Planner

Att'd.

**COUNCIL APPROVAL OF THIS REPORT WILL:** authorize the preparation of a by-law to amend section 4.7.1 to add a *Home Occupation* as a permitted use to the already permitted use of a Seasonal Residential zone; that the change to the proposed by-law after the holding of public meeting be considered minor such that further notice is not required.

PART XX

HIGHWAYS AND BRIDGES

**396.**—(1) In this Part, "county bridge" means a bridge under the exclusive jurisdiction of the council of a county. Interpretation

(2) Except as provided by section 411, this Part does not apply to a Provincial road or bridge under the control of the Crown. R.S.O. 1960, c. 249, s. 412. Exception

**397.** Where power is conferred by this Part upon a council to pass by-laws for acquiring or for assuming a highway, it includes the power to pass by-laws for acquiring or for assuming part of a highway. R.S.O. 1960, c. 249, s. 413. Power to acquire part of highway

**398.** Where power to pass by-laws in respect of a highway or bridge is conferred by this Act on a council, unless otherwise expressly provided it is exercisable only by the council having jurisdiction over the highway or bridge or, if the highway or bridge is under the joint jurisdiction of two or more councils, only by the joint action of such councils, and a by-law by all of them is necessary for the exercise of such power. R.S.O. 1960, c. 249, s. 414. What councils to exercise powers re highways and bridges

**399.** Except in so far as they have been stopped up according to law, all allowances for roads made by the Crown surveyors, all highways laid out or established under the authority of any statute, all roads on which public money has been expended for opening them or on which statute labour has been usually performed, all roads passing through Indian lands, all roads dedicated by the owner of the land to public use, and all alterations and deviations of and all bridges over any such allowance for road, highway or road, are common and public highways. R.S.O. 1960, c. 249, s. 415. What constitutes public highways

**400.**—(1) Unless otherwise expressly provided, the soil and freehold of every highway is vested in the corporation or corporations of the municipality or municipalities, the council or councils of which for the time being have jurisdiction over it under this or any other Act. Highways vested in corporation having jurisdiction over them

(2) In the case of a dedicated highway, such vesting is subject to any rights in the soil reserved by the person who laid out or dedicated the highway. R.S.O. 1960, c. 249, s. 416. Reservation of rights in soil

**401.** Except where jurisdiction over them is expressly conferred upon another council, the council of every municipality has jurisdiction over all highways and bridges within the municipality. R.S.O. 1960, c. 249, s. 417. Jurisdiction of councils over highways