

Saskatchewan Municipal **Best Practice**

Municipal Land Use Policy

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THE PRACTICE

The Resort Village of Island View has implemented a comprehensive Municipal Land Use Policy to guide decision-making and stewardship of its public lands. The policy provides guidance for future requests for use of public reserves, to ensure they are consistent with provincial and federal legislation. It also provides a protocol for the orderly removal of illegal developments that have taken place on public reserves in the past. This also serves to promote Resort Villages as legitimate and responsible municipalities within the context of the Municipalities Act.

Due to the seasonal and recreational nature of resort communities there is a tendency to want to minimize municipal roles and responsibilities particularly in regards to planning and environmental stewardship. As a result, administrators and elected officials can be hesitant to introduce and enforce development and land use Bylaws that may not be popular. The Resort Village of Island View reversed this trend beginning with a Development Statement (2005) and Development and Zoning Bylaws (2005). Unfortunately the Planning and Development Act at that time did not provide capacity to implement specific policies and Bylaws to support and administer public lands within the meaning of the Act.

According to Municipal Affairs and PARCS, the Resort Village of Island View is the first resort community in Saskatchewan to establish a comprehensive land use policy for public lands. While other resort communities have also taken court action against illegal "boat houses", this has primarily focused only on one parcel of reserve land related to the shoreline and has not extended to other parcels of public land. The Resort Village of Island View Municipal Land Use Policy (2010) is unique in several ways:

- It uses the municipality's authority under the Municipalities Act to supplement the Planning and Development Act.
- It addresses all public lands in the Village under control of the Village including those where there is also an element of overlap in provincial and federal jurisdiction such as the shoreline.
- It provides for variation of use dependent upon the unique nature of individual parcels of public lands
- It provides for some minor works and uses without permit on condition that they are consistent with the recreation nature of the village, benign, impermanent, and do not infringe on public access or public safety.
- It provides for the orderly removal of illegal developments while eliminating unnecessary hardships by allowing the current "owner" to maintain the development for a reasonable period of time on condition that the developments are maintained in safe and good order.

THE PROCESS

The first step of the process was to thoroughly review the findings of the various court decisions in regards to the direction provided to Council for stewardship of public lands. Through this process it became clear that Council could no longer maintain the status quo. As a result, the Village Council passed a motion to suspend all developments on public lands during a period of six months to give it time to determine the appropriate approach. The motion also established a Committee of

Council of the Whole to work on the strategy between Council meetings. Notice was placed in a community newsletter and mailed to all ratepayers outlining this action and Council's intent. Regular updates were provided at Council and were also included in the minutes which are posted on the community bulletin board and also placed on the Village Website. Council's intention was to have a policy approved and in place by Spring 2010 when the highest level of resort activity would resume.

Over the Fall and Winter of 2009/10 the Committee conducted a thorough review of developments on the municipal reserve. It discovered a wide array of private developments including "boat houses", pumps, water lines and pump houses, stairs, junk, storage buildings, flower beds and others. It also became clear that that several parcels of the public lands had unique features and public uses and were impacted differently by the type and severity of encroachments. Each of these parcels needed to be defined for common understanding and policies would need to be developed to address the unique nature of each parcel.

The policy and background to the policy was then submitted to a lawyer who had conducted the cases and previously provided advice to Council. Council passed the Bylaw with three readings on May 1, 2010. Council also passed a further resolution at the meeting to conduct a community information meeting as soon as possible to provide background for the Bylaw and an overview of administration of the Bylaw.

A community newsletter providing an overview of the Bylaw and a notification of the public meeting was sent to all ratepayers. The meeting was held May 21, 2010. A presentation was given which gave a history of public land use and legislation, a visual indication of the extent of illegal developments in the Village, and an overview of the Bylaw. Reactions in the meeting indicated that there was some level of discomfort with the Bylaw. While there was a general acknowledgement of the legal obligations, there was some concern expressed regarding the requirement to remove illegal developments over time.

Within a few weeks it was clear that individuals who had developments on the public reserve did not view an orderly removal of illegal developments as acceptable and viewed the Bylaw as a direct attack on their property values and wealth potential. They attended several Council meetings over the Summer and Fall and demanded that Council rescind the Bylaw. In order to allow ratepayers to express their concerns and in order to try to provide more clarity regarding the legal obligations that public land remain for public use, Council provided considerable time during these Council meetings for questions and answers. Given that this group of individuals did not seem to accept the legislation and Council's authority, Council arranged to meet with Saskatchewan's Ministry of Municipal Affairs to review the court findings, committee research findings, legal advice provided to the Village, and an overview of the Bylaw. The meeting confirmed that Council was correct in its understanding of the legislation and its obligations under the legislation.

As a follow up, a senior manager with Municipal Affairs attended two Council meetings to clarify the legislation, obligations and authority of Council under *The Municipalities Act* and *The Planning and Development Act*. Unfortunately this was not accepted and a petition was circulated to hold a referendum on the Bylaw.

The petition was submitted and deemed sufficient in terms of the number of petitioners. Council sought out legal advice and based on this advice, Council discovered that the wording of the petition was flawed and therefore Council was not in a position to put forward an acceptable question for a vote. Council then passed a resolution not to proceed with a referendum. Following this decision Council prepared a community newsletter which provided a detailed description of the court decision, Council's obligations and authority, and clarification that Council cannot condone illegal developments on public lands.

THE RESULTS

Given limited resources, a large amount of volunteer time from Council members was required to engage in court action, research, and development of policy. This process also required a significant financial commitment by the Village in order to engage the services of legal council which led to questions by ratepayers as to whether this was the best use of tax money.

While there was strong opposition by a significant segment of the community, people have also shown support for good governance and the maintenance of public lands. The process has helped community member engagement. Recently there has been renewed interest in developing appropriate and sustainable recreation opportunities within the Village.

Notice has been given to all individuals who have developments on the Public Reserve to register these developments with Council by May 01, 2011. Those developments that are not registered will be declared abandoned and removed. Those that are registered will be reviewed in accordance with the Bylaw and actions may be taken to make alterations to ensure public access and safety during a period of abeyance, or if these cannot be satisfactorily resolved, they may be cited for removal. The primary outcome will be that everyone in the community benefits from the restoration of public reserves to public use. Furthermore the initiatives will enhance the attractiveness of the Village for individuals interested in acquiring resort properties.

LESSONS LEARNED

- Resort Villages have the same obligations and authorities as any other municipality.
- Small municipalities can engage in significant policy directions with limited resources but it requires a high level of volunteer commitment.
- While there are overlapping provincial and federal jurisdictions for many public reserves, municipalities need to be confident that they control use of public lands.
- Shorelines are defined by legislation not by survey.
- The courts and Municipal Affairs will support Council when they are exercising their legal responsibilities
- Determination is integral to success