



The Municipal Board

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April 17, 2023

Jennifer Lim RPP
Threshold Planning Studio Inc.
31 Lakebourne Dr.
Winnipeg, MB R2P 1K9

Dear Jennifer Lim:

**RE: OBJECTIONS TO THE PROPOSED ZONING BY-LAW NO. 21-25 OF THE RURAL
MUNICIPALITY OF SPRINGFIELD
FILE NO. 22B3-0008**

We enclose for your information a copy of Municipal Board Order Number B-23-004.

Yours truly,



Erin Wills
Secretary

EW/amn/enclosure

THE MUNICIPAL BOARD OF MANITOBA
DECISION AND ORDER

DECISION DATE: April 17, 2023

Order No. B-23-004

File No. 22B3-0008

MATTER: Zoning By-law
The Planning Act, Section 77(5)

LOCAL AUTHORITY: The Rural Municipality of Springfield

BY-LAW NO: 21-25

HEARING DATE: February 15, 2023

PANEL: George Orle, K.C., Acting Chair
Margaret Bonekamp, Member
Hugh McMorrow, Member

PARTIES AND APPEARANCES:

for the Rural Municipality of Springfield
Faron Trippier, Legal Counsel, Fast Trippier Law

Legally Represented Public Presenters
James Mercury, Legal Counsel, MLT Aikins LLP, representing
Sio Silica Corporation
Brent Belluk
Shandy Walls

The Springfield Taxpayers Rights Corp.
Jennifer Lim RPP

INTRODUCTION

Rural Municipality of Springfield (the "Municipality") gave second reading to Zoning By-law No. 21-25 (the "Proposed Zoning By-law"), in which sufficient objections were made to the Proposed Zoning By-law and were referred to the Municipal Board (the "Board") pursuant to Section 77(5) of *The Planning Act* (the "Act"). The Proposed Zoning By-law seeks to replace the Rural Municipality of Springfield Zoning By-law No. 08-01 (the "Zoning By-law").

BACKGROUND

The Municipality gave first reading of the Proposed Zoning By-law on October 28, 2021. Following the first public hearing, the Municipality made amendments to the Proposed By-law and ultimately gave the Proposed By-law second reading on June 23, 2022.

The second reading of the Proposed By-law received sufficient objections and the Municipality referred the Proposed Zoning By-law to the Board on August 30, 2022.

Following receipt of the Proposed By-law, the Board requested additional documentation from the Municipality prior to setting the hearing. The hearing was set for February 15, 16 and 17, 2023.

PRELIMINARY ISSUE

Have the preliminary steps required of the Municipality under the Act prior to a referral been taken and, if not, is the referral valid?

LEGISLATION

The following Sections of the Act are relevant to these proceedings:

ADOPTION OF ZONING BY-LAW

Eligible persons

73.1(1) In this section, "**eligible person**" means a person who would be eligible, if a general election were held under *The Municipal Councils and School Boards Elections Act* on the day the objection was made, to vote at an election of members of

- (a) the council of the municipality, in the case of a zoning by-law of a municipality; or
- (b) the council of a member municipality, in the case of a district-wide zoning by-law.

Sufficient objections re adopting a zoning by-law

73.1(2) To be sufficient for the purposes of sections 74 to 79 (adoption of a zoning by-law), objections must be received from at least 25 eligible persons.

Sufficient objections re amending a zoning by-law

73.1(3) To be sufficient for the purposes of applying sections 74 to 79 to a proposed amendment to a zoning by-law, objections must be received from at least

- (a) 25 eligible persons; or
- (b) 50% of the total number of owners of property located within 100 metres of the affected property.

Objections on owner's behalf

73.1(4) A person who is authorized in writing by an owner described in clause (3)(b) may make an objection on the owner's behalf.

Public hearing

74(1) Before or after a board or council gives first reading of a zoning by-law, a board or council or a planning commission must hold a public hearing to receive representations from any person on the by-law, and give notice of the hearing in accordance with section 168.

Alteration to zoning by-law

74(2) If, after the public hearing, the board or council proposes to alter the by-law, a second public hearing must be held in accordance with subsection (1) to receive representations on the alterations to the by-law.

No hearing for minor alteration

74(3) A second public hearing is not required if the alteration is a minor one that does not change the intent of the by-law.

Adoption if objections not sufficient

75 Unless there are sufficient objections to the zoning by-law at the hearing held under subsection 74(1), the board or council may

- (a) proceed to give the by-law second and third reading; or
- (b) pass a resolution not to proceed with the by-law.

Notice to objectors

76(3) If the board or council gives the by-law second reading it must, as soon as practicable after second reading, send a notice to every person who objected to the by-law, stating that

- (a) the person may file a second objection to the by-law with the board or council by the deadline specified in the notice, which must be at least 14 days after the date of the notice; and
- (b) if sufficient objections are not filed before the deadline, the by-law may be given third reading without further notice.

When Board or Council Holds Hearing

Objections at board or council hearing

77(1) When sufficient objections to a zoning by-law are received at a hearing held by a board or council under subsection 74(1), the objections must be dealt with in accordance with this section.

Options of board or council

77(2) The board or council may

- (a) give the by-law second reading; or
- (b) pass a resolution not to proceed with the by-law.

Notice to objectors

77(3) If the board or council gives the by-law second reading, it must, as soon as practicable after second reading, send the notice described in section 76(3) to every person who objected to the by-law.

Actions if second objections are not sufficient

77(4) If the board or council does not receive sufficient objections by the deadline set out in the notice under subsection (3), it may

- (a) give the by-law third reading; or
- (b) pass a resolution not to proceed with the by-law.

Referring objections

77(5) If a board or council receives sufficient objections by the deadline set out in the notice under subsection (3), it must, as soon as reasonably practicable, refer the objections to the Municipal Board.

FACTS AND EVIDENCE

Prior to this hearing the Board was provided with a resolution from the Municipal Council which purported to revoke the second reading of the Proposed By-law.

Immediately prior to the hearing the Board received a petition signed by numerous residents of the Municipality asking the Board to order a new second reading of the Proposed By-law which was to be in accordance with the requirements and the Act.

Jennifer Lynn is a registered professional planner and was retained on behalf of a group of residents collectively known as the Springfield Taxpayers Rights Corp. to prepare and provide evidence to the Board at the hearing. Ms. Lynn filed a public presenter form in her own name asking to make both a written and oral presentation at the hearing. The written presentation was submitted as a report and was filed with the Board on January 31, 2023.

In summary, Ms. Lynn's submission was that the Board should direct the Municipality to follow the legislated process and conduct a second public hearing for alterations to the Proposed By-law.

James Mercury, Legal Counsel for the legally represented objectors, advised the Board that in his opinion the alterations made to the Proposed By-law after the first reading were not minor and should have resulted in a second public hearing prior to second reading of the Proposed By-law.

Faron Trippier, Legal Counsel for the Municipality, initially submitted that the alterations made to the Proposed By-law after the first reading were minor and did not legally require a second public hearing. However, after a short adjournment allowing him to consult with his client, the Municipal Council, Mr. Trippier admitted to the Board that while the amendments taken individually were still in his opinion minor, taken as a whole they resulted in a major change to the Proposed By-law.

ANALYSIS

The legislation is clear and unambiguous in its requirements of what must take place prior to the matter being referred to the Municipal Board for a hearing.

Section 74(1) requires a public hearing either before or after the first reading of a proposed zoning by-law.

Section 74(2) requires that, after the aforementioned public hearing a proposal is made to alter the zoning by-law, a second public hearing **must** (emphasis ours) be held.

Section 74(3) removes the requirement for a second public hearing if the alteration to the zoning by-law is minor and does not change the intent of the original proposed by-law.

The wording of these three subsections imposes mandatory obligations upon Municipal Council. The only discretionary aspect in the subsections is the determination of whether or not changes are minor or major and if it affects the intent of the original zoning by-law.

Insofar as all of the participants in this hearing agree that the changes made after the first reading of the Proposed By-law were not minor and had the effect of changing the overall intent of the original Zoning By-law, the Board is not required to make a determination on that question.

CONCLUSION

Municipal Council had an obligation to conduct a second public hearing prior to having a second reading of the Proposed By-law. It did not do so. The referral of this matter to the Board is, therefore, not valid.

This Board panel further notes a related development in this matter. Prior to the date of signing this Order, a separate Board panel heard and disposed of an appeal of a decision of Municipal Council of the Rural Municipality of Springfield refusing an applicant's proposed amendments to Zoning By-law 08-01. That Board panel ordered Zoning By-law 08-01 to be altered as outlined in Municipal Board Order No. B-23-001 dated March 8, 2023 (the "Order B-23-001"). However, at the time of this hearing, the outcome of that appeal concerning Zoning By-law 08-01 was still pending and Order B-23-001 had not yet been issued.

Proposed By-law 21-25, which formed the subject-matter of these proceedings, seeks to replace Zoning By-law 08-01, in its pre-altered state. Since Zoning By-law 08-01 is now being altered, the Board recommends that Municipal Council carefully consider the implications of Order B-23-001 before deciding on next steps, if any, regarding Proposed By-law 21-25.

THEREFORE, THE BOARD ORDERS:

1. That the referral of the Proposed By-law No. 21-25 to The Municipal Board is **NOT VALID**.
2. That The Municipal Board File No. 22B3-0008 **IS HEREBY CLOSED**.

FOR THE MUNICIPAL BOARD

April 17, 2023
Date


George Orle, K.C., Acting Chair


Erin Wills, Secretary