



Town of Fort Qu'Appelle Forensic Report

**Presented by: Greg Draper, Mike McCormack and
Nicole Kalesnikoff**

April 26, 2018

Welcome



The purpose of tonight's meeting is to discuss the findings of the MNP Investigative report. For the purposes of this evening, we would ask:

- Please hold all questions until the end;
- Please refrain from shouting out remarks, we will be pleased to answer all questions;
- Council will not be responding to questions at this meeting;
- We will be available for questions until 9 pm;
- We would request that people restrict themselves to one question at a time to allow others to participate.

Who We Are

MNP is the 5th largest business advisory and accounting firm in Canada.

MNP Investigative and Forensic Services practice combine the experience and skill sets of forensic accountants and forensic investigators as a team.

Mike McCormack and Nicole Kalesnikoff (senior MNP Forensic team members) have conducted this investigation with the assistance of independent property assessment. Greg Draper (MNP Partner) responsible for oversight and quality assurance.

Collectively, we have over 60 years experience in fraud investigation and dozens of years experience working with Towns, Rural Municipalities and Municipalities.

Independence

The engagement was performed in accordance with Standard Practices for Investigative and Forensic Accounting Engagements. These standard practices require that we conduct the investigation utilizing an investigative mindset in the identification, pursuit, analysis and evaluation of information relevant to each IFA engagement, contemplating that such information may be biased, false, unreliable and/or incomplete and that our findings and conclusions will be presented in an objective and unbiased manner.

Limitations

This presentation is based on the information available to us as of March 25, 2018.

Our Report must be considered in its entirety. Selecting and relying on specific portions of the analyses or factors considered by us in isolation may be misleading. The procedures performed do not constitute an audit of the financial statements of the Town of Fort Qu'Appelle.

Agenda



Background

Scope of Work, Work Conducted and Limitation

Definitions and Legislative Authorities

Summary of Findings

Background

The Town of Fort Qu'Appelle received a petition from its community by virtue of s.140 of the *Municipalities Act of Saskatchewan*:

- *“To determine whether any land transactions completed for other than fair market value between January 1, 2007 and December 2016, including but not limited to transactions with Abaco Energy Services Ltd. were completed in compliance with applicable laws and process, including but not limited to environmental legislation, public notice requirements for land sales and/or requirements for resolutions by council for land sales and procedures relating to conflicts of interest of councillors.”*

Background

Section 140.1 of the *Municipalities Act* sets out that a petition may be made for a “financial audit” or a “management audit”. A financial audit means an audit to identify:

- i) *Any instance of fraud, theft or other misappropriation of funds;*
 - ii) *Any improper or unauthorized transactions; or,*
 - iii) *Any non-compliance with this Act, any other Act or any bylaw of the municipality.*
- *The Council, on determining that the petition was sufficient, shall pass a resolution to engage the services of an auditor, cause the financial audit to be conducted within 180 days after the receipt by the council of the petition and fully cooperate with the audit.*
 - *If the auditor’s report identifies instances mentioned in clause 1(a), the auditor shall forward the report to the Deputy Minister of Justice for further investigation, and the municipality must refrain from providing public notice required.*

Scope of Review

MNP considered the following legislation (and consulted Government officials responsible):

- *Environmental Assessment Act*
- *Environmental Management and Protection Act;*
- *Municipalities Act of Saskatchewan;*
- *Planning and Development Act;*
- *Water Security Act; and,*
- *Criminal Code of Canada.*

Scope of review

MNP was engaged to perform the following:

- 1) Conduct a review of land transactions occurring between January 1, 2007 and December 31, 2016;
- 2) Determine if any of the land transactions were completed for other than fair market value;
- 3) Determine if the land transactions were completed in compliance with applicable laws and process, including but not limited to environmental legislation, public notice requirements for land sales and/or requirements for resolutions by council for land sales and procedures relating to conflicts of interest of councilors.

Work conducted

We have completed the following and analyzed the results:

- a) Interviewed over **11 persons**; including former administrators, Councillors, Mayor and government officials;
- b) Conducted completeness testing to ensure MNP had received and reviewed all land sales; **14 further lots identified**
- c) Reviewed Town policies, minutes of meetings, land sales, Community Plan and documents – **10 years of meeting minutes, 800 pages of docs**;
- d) Performed records searches of ISC (land titles in Saskatchewan) -**375 documents**;
- e) Documents from the petitioners – **350 pages of documents**;
- f) Conducted independent appraisals for property sales – **26 residential lots, 10 commercials**; and,
- g) Reviewed applicable laws and regulations and consulted Government officials responsible.

Appraisals

For the sake of clarity, MNP subcontracted appraisal services to an independent professional appraiser. MNP did not conduct any appraisal and rely on the information from B R Gaffney and Associates.

As an appraisal was conducted by Crown Appraisers in 2010, we will refer to appraisals conducted on behalf of MNP as “MNP appraisal” and those conducted historically as “Crown appraisal”.

Scope Limitations

We were limited in our review for the following reasons:

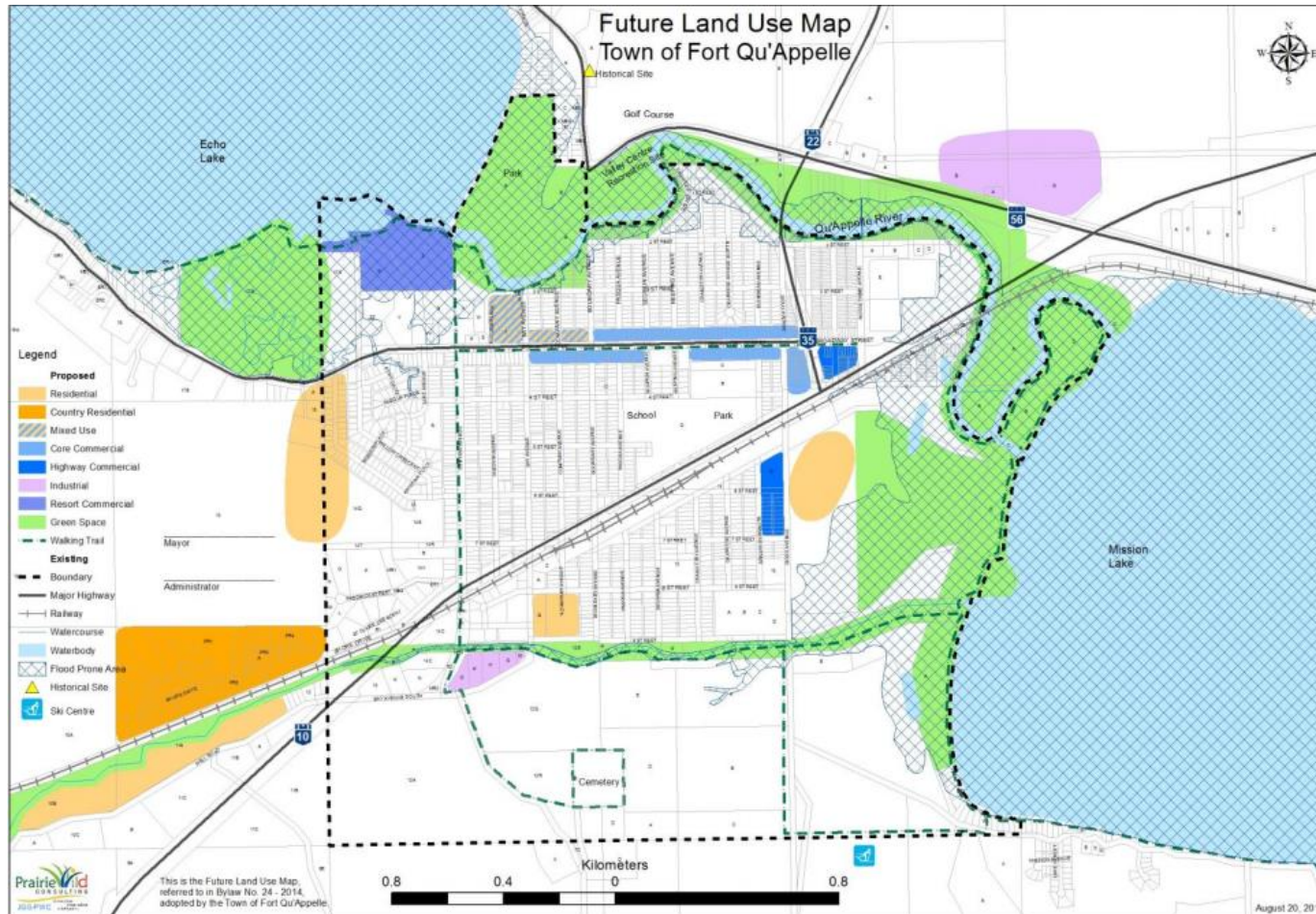
- MNP did not interview the owners of Abaco Energy Services during this engagement. Mr. Janz is a shareholder of this organization and as such was able to provide information regarding the sale.
- MNP did not consult with legal counsel during this engagement. MNP has provided legislation as it is available to the general public and has sought clarification from the Saskatchewan governmental departments responsible for those Acts. As such, we have not rendered a legal opinion with respect to compliance with any section of any Act referred to in this Report.
- MNP did not conduct a review of land development in Fort Qu'Appelle. Specifically, MNP did not review the development of Willow Court, construction of homes or land use within the property and adjacent properties.
- MNP are finders of fact and are not arbiters. We therefore do not use words which would be the jurisdiction of a Court.

Scope limitations continued

During the course of our work, we requested the following documentation and interviews that we were unable to obtain:

- a) Interview with Cal Tulik, whom declined to be interviewed;
- b) August 2013 Offer from Apex to purchase 20 acres of parcel F as per Town minutes August 22, 2013;
- c) April 2012 offer to purchase “Parcel F” in the amount of \$30,000 as identified in the April 12, 2012 meeting minutes;
- d) Jan 7, 2011 communication from Mayor Osika to Pellaway representative; and,
- e) September 9, 2013 proposal letter from Abaco Group to purchase lots V and Q.

Concerning areas



Definitions – Fair market value

Canadian Uniform Standards of Professional Appraisers:

- *“The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self interest, and assuming that neither is under undue duress.”*
- *“The most probable price which a property should bring in a competitive and open market as of the specified date under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.”*

Summary of findings

Fair market value

Were any land transactions completed between January 1, 2007 and December 2016 completed for other than fair market value?

- **Yes.** Based on the independent appraisals, there were only five properties noted that were sold below fair market value.
 1. Parcel C and F – sold to Ron Tulik for \$10,000 – appraised value of \$15,000 – discount applied for reclamation conducted by Mr. Tulik
 2. Lot E, Block K – sold to Sask. Water for \$5,100 – appraised value of \$36,000
 3. Block A – sold to Blair Walkington for \$5,100 – appraised value of \$13,000
 4. Lot G Blk K – sold to Powerpin for \$10,000 – appraised value of \$17,500

Fair market value – residential lots

An independent appraiser conducted appraisals of 26 residential lots. All the lots were within market value.

MNP identified a further 14 lots in completeness testing. Using ISC and SAMA, MNP reviewed the property assessments and noted that there were no “quick flips” or sales below market value (as determined by the appraiser in other similar appraisals).

For residential property sales, Council used a standard price of \$185/front foot to determine the fair market value of the sale.

Fair market value

Were the transactions involving Abaco Energy Services Ltd completed for fair market value?

- **Yes.** The independent appraisal reports the properties were sold at their fair market values.

Parcels related to Abaco Energy purchase

- Parcel V is the Old Indian Hospital
- Parcel Q is a property adjacent to Parcel V which also is beside the Willow Court development Parcel YY.
- Parcel Y is a property adjacent to Q which gives access to the river.
- Parcels W and Z are owned by Water Security which give access to the lake.
- Parcel F is the old lagoon site

Parcels V and Q

The Parcel referred to as Parcel V was the location of the Old Indian Hospital. Parcel V was initially acquired from the Federal Government in November 2007 for \$1. We understand that at the time it was acquired the hospital had been decommissioned for some time and the building was abandoned and deteriorating. We understand that prior to the transfer to the Town the Government had remediated asbestos found in the building.

Parcel V and Q

- In October 2010 the Town obtained an independent appraisal on Lot V from Crown Appraisals. The appraisal determined a fair market value of \$99,000 as at October 1, 2010.
- The Crown appraiser was not contacted by anyone from the Town after the 2010 report was issued and he received no inquiries to update his 2010 appraisal.
- The MNP appraisal report has determined that fair market value for the parcels to be \$50,000/acre providing a value before demolition costs of \$392,000. The appraisal estimates the demolition costs to be approximately \$390,000 leaving a value of \$2,000.
- As the fair market value was determined to be \$2,000 as at January 27, 2014 by MNP's appraiser it may have been reasonable for the Town to sell the property for \$1

Parcel V and Q

- Parcel V – MNP appraised value of \$233,000 (without cost of demolition)
- Parcel Q – MNP appraised value of \$159,000

Council made a decision to sell these properties together to offset the costs of the demolition of the Hospital and to create revenue from a hotel/marina project.

Parcel Y

On March 5, 2015, the Town received a proposal to purchase Lot Y for \$1 from Abaco Energy Services.

A purchase agreement dated August 28, 2015 was executed between Abaco Energy Services and the Town for parcel Y in the amount of \$1.

We note that in this purchase agreement there is a requirement that Abaco and the Town are to enter into a service agreement prior to January 1, 2020 or the land will revert back to the Town.

Parcel Y

The appraisal for parcels W and Z (Water Security Agency) may not be representative of the value of Parcel Y and should not be relied on to determine the fair market value of Parcel Y.

The MNP appraisal report appraises the fair market value of Parcel Y as of August 28, 2015, to be \$0.

Essentially, due to the location of the property (flood plain) there is no future development potential.

Parcel F

Parcel F is the site of the old lagoon. The Town had been looking into reclaiming the lagoon to make the property commercially viable.

Since 2010 the Town had been considering using the old lagoon to dispose of debris from the old hospital upon demolition of the hospital.

Parcel F

A proposal was received by the Town from Apex Enterprises to haul the rubble from the hospital site to the old lagoon to use as fill for the lagoon.

Apex proposed to use the hospital rubble to fill the old lagoon then complete the remediation of the lagoon by covering the lagoon with a 6" clay cap with the clay and labour to be provided at the expense of Apex.

In exchange for this work Apex requests that when the job is completed they would receive 3 acres of this parcel of land.

Parcel F

The Town reviewed the proposal with the Saskatchewan Watershed Authority and set out the conditions to allow this;

- *“as long as the ground level within the former lagoon to be developed is above 480.65 m or filled to an elevation of 480.65m, then Saskatchewan Watershed Authority would not be opposed to development of this site....this review is limited to the susceptibility to flooding for a new development, and does not address any potential environmental issued with respect to development on the former lagoon site. Questions regarding environmental issued should be addressed by the Ministry of Environment.”*

Parcel F

July 26, 2010 – Reply letter from Saskatchewan Ministry of Environment identifying the following:

- *“...First option would be to have the concrete crushed down to useable material and have a local contractor use for road bedding material...Ideally the ministry prefers this option as it makes use of the old material in an environmentally conscientious manner.”*
- *“Second option is similar to what you had suggested by disposing the concrete at the abandoned lagoon site and once demolition is complete the ministry would like to have the abandoned lagoon site covered with soil to eliminate any voids.*
- *Should you decide to dispose of the concrete material by the second option we as a department suggest that a caveat is placed on the said property to eliminate and question as to the condition of the said property (previous lagoon/filled with concrete).”*

Legislation

Did land transactions completed between January 1, 2007 and December 2016 comply with environmental legislation including the Environmental Assessment and Management Act and the Environmental Impact Act?

- Yes.

From a review of documents held by the Town and applicable legislation it appears that the Town had the appropriate approvals from the Saskatchewan Ministry of Environment and the Saskatchewan Watershed Authority.

Legislation

Did land transactions completed between January 1, 2007 and December 2016 comply with public notice requirements and other provisions of the *Municipality Act of Saskatchewan*?

- Yes, with the exception of the commercial or industrial properties.

Land cannot be sold at less than fair market value without a public offering and public notice must be given when considering such a transaction.

Legislation

From our investigation we have determined that no public notices or offerings were performed in relation to the following parcels, which were sold below fair market value;

- 1) Notre Dame Avenue – Lot E, Block K
- 2) Blk A Plan 101986320
- 3) Lot G Blk K, 298 2nd Street E
- 4) Parcel C, Plan 101377548
- 5) Parcel F, Plan 101377548

Legislation

Did land transactions completed between January 1, 2007 and December 2016 comply with other applicable legislation including the *Planning and Development Act, 2007*, municipal bylaws and Council resolutions?

- Yes, with further review of parcels Q and Y required when development is requested.

Conflict of interest

Was any person in a conflict of interest, as defined by the *Municipality Act of Saskatchewan* or the Town of Fort Qu'Appelle Code of Conduct?

- No.

We understand that at the time of the sales to Abaco Energy, Councillor Brian Janz was also a director of Abaco Energy services, though not a shareholder in the company:

- Mr. Janz did not participate in any meetings where there were approvals made regarding Abaco Group or Abaco Energy Services;
- There was no documented special meeting which involved the sale of the Hospital to Abaco where Mr. Janz is documented to have attended; and,
- We have found no corroborating documents that Mr. Janz acted in a conflict of interest.

Government Agencies' Responses

Community Planning

Community Planning, Land Use and Development, Government of Saskatchewan:

- A. *For a municipal council to develop land, they must consult the Statement of Provincial Interest Regulations, the Planning and Development Act, their Official Community Plan and their Municipal Zoning By-law;*
- B. *Block Q and Block Y were considered floodways (partial in the case of Q) and as such there could be no development of those lands;*
- C. *As these lands were floodways, any development which may affect the fish habitat invoked the Duty to Consult with First Nations in the area;*
- D. *Council must determine their compliance with the legislation prior to the sale and development of lands;*
- E. *The lands were not municipal reserve or environmental reserve lands according the Planning and Development Act, 2007; and,*
- F. *Council would need to re-zone the lands and amend their zoning by-laws to allow for changes to the use from their Official Community Plan.*

Water Security Agency

MNP contacted Legal Services for WSA:

- *“In general, Water Security Agency does not need to be kept apprised of land sales where municipalities are divesting themselves of land that abuts a waterway.*
- *Municipalities must ensure that any land sales comply with The Planning and Development Act, 2007 and The Statements of Provincial Interest Regulations established thereunder (for subdivisions, for example, approval from Community Planning is required under such legislation).”*

Environment Assessment

MNP contacted the Environmental Assessment and Stewardship, Sask Ministry of Environment:

- *Based on the description provided, it looks like you're looking for information on Environmental Site Assessment (ESA) rather than Environmental Impact Assessment (EIA). The two differ in that ESA looks into the past history of a structure, facility, and/or land area for past instances of spills or environmental impacts. EIA is conducted prior to an activity, project, or facility being developed to identify and assess the potential for adverse environmental effects, and establish mitigation measures to minimize those effects. **EIA would not be involved in the sale of land.***
- ***An environmental impact assessment would not be required for demolish of a building on pre-disturbed land.***

Questions & Answers

