

IN THE MATTER OF an appeal by Carol-Ann McLaine and William McLaine of a decision by the Rural Municipality of Miltonvale Park to issue a development permit for a private utility structure (solar array) on July 15, 2020.

Reply to Grounds Listed in Notice of Appeal

1. The Rural Municipality of Miltonvale Park (the “Municipality”) did comply with its *Zoning and Subdivision Control (Development) Bylaw (2019)* when it issued a development permit to Jade and Zach Stephens on July 15, 2020. The permit was for a private utility structure (solar array). This is the only approval under appeal.
2. Various pieces of information regarding the status of the original application (not approved) and the revised application (approved) do not raise issues that are material to the outcome that is under appeal:
 - (a) The Municipality was not under the impression that this solar array would be mounted on a roof; however, that is a common practice for the installation of solar panels for private use.
 - (b) The initial application filed by Jade and Zach Stephens was never approved. Any initial miscommunication as to whether a development permit was required was actually corrected in later communication by the Municipality. A revised application was properly made by Jade and Zach Stephens and approved by the Municipality.
 - (c) The installer was told by the Municipality to observe the setbacks in the A1 zone. Again, and in any event, this does not raise an appealable issue. The private utility structure (solar array) that was approved by the Municipality on July 15, 2020 exceeded the setbacks in the A1 zone.
3. The Municipality posted notice of the development permit on its website on July 16, 2020 and at the Miltonvale Community Hall on July 20, 2020. Also, the appellants were personally provided a copy of the development permit on July 16, 2020. The appellants did not miss out on any appeal opportunity. They had actual notice of the approval.
4. The private utility structure (solar array) approved by the Municipality exceeds applicable setbacks in the bylaw.
5. The Municipality did not lack independence when it issued the development permit on July 15, 2020:
 - (a) Meeting with residents in an effort to resolve a dispute does not raise any defect as to procedural fairness. It is good government and neighbourly.
 - (b) The development officer did not ask the appellants to pay \$5,000.00. Exchanging ideas, discussing risks, and talking about impacts with residents involved in a dispute are without prejudice efforts to locate a resolution that will satisfy all involved parties.

- (c) The appellants complain about a number of things that are not actually matters of procedural fairness. The proposed development was known to the appellants as residents and neighbours. The property subject to the application was not registered in the names of the appellants as owners. The application was not one submitted by the appellants. The Municipality delivers notices to residents in accordance with its bylaw and considers information delivered to the Municipality by residents, including the objection and petition of the appellants.
 - (d) This application did not require notice to residents under the terms of the bylaw.
6. Generally accepted principles of statutory interpretation demonstrate that this development was a private utility structure and a permitted use in any zone. The private utility structure (solar array) approved in this case exceeded the requirements in the bylaw.
- (a) Section 4.24(2) of the bylaw does not conflict with the remainder of the bylaw for a number of reasons, including but not limited to:
 - (i) Regulating wind turbines specifically does not conflict with regulating public and private utilities generally.
 - (ii) Specifically exempting solar collectors from the maximum building height requirement does not conflict with section 4.24(2) of the bylaw.
 - (iii) Inconsistency does not arise because the appellants view some structures to be intrusive and other structures to be not intrusive.
 - (iv) A private utility does not need to produce a profit for Jade and Zach Stephens in order to be a private utility.
 - (b) The Municipality has primary responsibility for interpreting words and phrases in bylaw provisions that are not specifically defined within the bylaw itself. Support for the primary interpretation of the Municipality is found inside and outside the bylaw.
 - (c) The official plan for the Municipality supports the approval of this private utility structure (solar array). The Municipality is committed to supporting renewable energy generation and the use of alternate energy systems. This legal support extends beyond the official plan.
7. Public and private utilities are permitted uses in all zones. Buildings or structures related to public or private utilities may be located in any zone. No zone standards apply. This is a general provision in the bylaw.
8. The private utility structure (solar array) approved by the Municipality is permitted under the bylaw. This private utility structure (solar array) exceeds applicable setbacks. The Municipality also included a condition on the permit to further ensure that this solar array is, and remains, a private utility for the use of its owner.