

**THE RURAL MUNICIPALITY OF WHITEMOUTH**

**BY-LAW NO. 658/16**

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO AUTHORIZE THE ENTERING INTO AND EXECUTION OF A DEVELOPMENT AGREEMENT WITH DARYL AND CHRISTINA RUSHINKA.

**WHEREAS** Section 250(2) of Part 8, Division 1 of The Municipal Act provides in part as follows:

250(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following in part:

- (d) enter into an agreement with one or more of the following regarding anything the municipality has power to do within the municipality: a person, with an agency of the Government of Manitoba or the Government of Canada, or with another municipality, including a municipality in another province, to do with or on behalf of the municipality anything the municipality has the power to do within the municipality;

**AND WHEREAS** it is deemed necessary and desirable that The Rural Municipality of Whitemouth enter into an agreement with Daryl and Christina Rushinka;

**AND WHEREAS** the terms of the agreement are identified attached hereto as Schedule "A" .

**NOW THEREFORE BE IT AND IT IS HEREBY ENACTED** that the Council of The Rural Municipality of Whitemouth, duly assembled, enact as follows:

1. **THAT** the entering into the proposed Agreement is hereby approved and authorized.
2. **THAT** the Reeve and the Chief Administrative Officer of The Rural Municipality of Whitemouth are hereby authorized and instructed to execute the agreement, for and on behalf of the Municipality.

**DONE AND PASSED** by the Council of The Rural Municipality of Whitemouth in regular session assembled, this      day of                      , A.D., 2016.

For:	Against:
All	None

  
 \_\_\_\_\_  
 Reeve  
  
  
 \_\_\_\_\_  
 Chief Administrative Officer

Read a first time this 10<sup>th</sup> day of August, A.D., 2016  
 Read a second time this 10<sup>th</sup> day of August, A.D., 2016  
 Read a third time this 24<sup>th</sup> day of August, A.D., 2016

**SCHEDULE "A" TO BY-LAW 658/16**

THIS AGREEMENT MADE IN DUPLICATE THIS \_\_\_\_\_ day of \_\_\_\_\_, 2016  
BETWEEN:

**RURAL MUNICIPALITY OF WHITEMOUTH**  
(hereinafter referred to as "Municipality")

- and -

**DARYL and CHRISTINA RUSHINKA**  
(hereinafter referred to as the "Owners")

WHEREAS, the Owners are the registered owners of Parcels B, C and D of Plan 48927 WLTO in the NW ¼ of 30-11-12 EPM held under Certificate of Title #2465634/1 Municipality Roll No. 59715 (the "Lands");

AND WHEREAS, the Owners have applied to the Province of Manitoba, Indigenous and Municipal Relations, Community and Regional Planning Branch, File No. 4203-16-7290 for the subdivision of Parcel C Plan 11246 WLTO in the SE ¼ of 25-11-11 EPM held under Certificate of Title #2600511/1 Municipality Roll No. 59725 and owned by Blaine Harold Stead and Nicole Lynn Menard, a portion of which is to be consolidated with the Lands currently held by the Owners entering into this agreement. The conditional approval letter dated May 2, 2016 is attached as Schedule "A".

AND WHEREAS, the Whitemouth River is adjacent to the proposed lot and a creek runs through the proposed lot, both of which may make the lot subject to flooding, erosion and bank instability;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT:

- 1) The Owners and the Municipality hereby expressly acknowledge and agree that the Lands may be subject to flooding and both parties hereby acknowledge and agree that the Owners shall not be entitled to seek compensation, damages, claims, expenses, contributions of any kind from the Municipality, etc. as a result of any flooding of the Lands or escape of water to or from the Lands under any circumstances whatsoever. The Owners further acknowledge and agree that they shall be responsible for dyking or other water control measures on the Lands at their own expense entirely and in compliance with all applicable laws, regulations and/or rivers and streams controls. The Owners hereby release and agree to save harmless the Municipality from any liability whatsoever (including legal costs on a solicitor-client basis for defending such action) resulting from the foregoing.
- 2) The Owners and the Municipality hereby expressly acknowledge and agree that the Lands may be subject to erosion and bank instability and both parties hereby acknowledge and agree that the Owners shall not be entitled to seek compensation, damages, claims, expenses, contributions of any kind from the Municipality, etc. as a result of any erosion of the Lands under any circumstances whatsoever. The Owners further acknowledge and agree that they shall be responsible for erosion control measures on the Lands at their own expense entirely and in compliance with all applicable laws and regulations. The Owners hereby release and agree to save harmless the Municipality from any liability whatsoever (including legal costs on a solicitor-client basis for defending such action) resulting from the foregoing.
- 3) The Owners agree that due to the real risk and dangers of flooding, erosion and bank instability referred to in the preceding paragraphs they shall not at any time locate any permanent building, structure, or portion thereof, within thirty (30) meters above the normal summer water level of the Whitemouth River and the creek flowing into the Whitemouth River. Structures of a non-permanent nature can only be located within thirty (30) meters of the normal summer water levels with the prior written consent of the Council of the Municipality.

- 4) Sites for all future buildings, structures, both permanent and non-permanent, on the Lands must be raised to a minimum of 2 feet above 1997 flood levels.
- 5) To ensure the protection, retention and where required rehabilitation of the riparian areas, the natural vegetative cover must be retained or rehabilitated within thirty (30) meters above the normal summer water level of the Whitemouth River and the creek flowing into the Whitemouth River. Developments that create minor disturbances to the natural vegetative cover such as docks and pathways may be permitted in accordance with applicable laws and regulations, provided that not more than 25% of the length of the lot's shoreline is affected.
- 6) No excavations shall be made on the Lands except for the purpose of permitted construction or for the improvement of gardens, grounds or flood proofing thereof provided same does not negatively affect the riverbank and is in compliance with applicable laws, regulations and/or rivers and streams controls.
- 7) The Owners acknowledge that the advantages of country life includes the acceptance of adjoining agricultural operations which may include noise, odor and dust as part of accepted farm practices and livestock operations.
- 8) No building waste or other material of any kind shall be dumped or stored on the Lands except for clean earth for the purposes of leveling in connection with erection of a building, structure, thereof or the immediate improvement of the grounds provided same does not negatively affect the riverbank and is in compliance with applicable laws, regulations and/or rivers and streams controls.
- 9) The Owners acknowledge that there is and will be no obligation of the Municipality to construct any additional roads, or install any culverts under existing or future roads. The Owners shall be responsible for all maintenance of private access roads or driveways and that any future construction or upgrading of roads shall be subject to the prior approval of the Municipality and shall be done in accordance with the specifications set out by the Municipality.
- 10) PTH 11/44 is a Limited Access Highway under the jurisdiction of the Highway Traffic Board. Under the Highways Protection Act any new access or the removal, relocation, or modification (including a change in use) of an existing access to this highway requires a permit from the Highway Traffic Board. A permit is also required from the Highway Traffic Board to change the use of the land or building or to place, construct or alter any structures (including the alteration of existing buildings) within 38.1 m (125 feet) from the edge of the highway right-of-way. In addition, a permit is required from Manitoba Infrastructure for any planting placed within 15.2 m (50 feet) from the edge of the right-of-way of this highway;
- 11) Any new, modified, or relocated/removed access connection onto PR 406 requires a permit from Manitoba Infrastructure. A permit is also required from this department for any construction or placement of structures or objects on, above, or below ground level within 38.1 m (125 feet), or to place any planting within 15.2 m (50 feet) from the edge of this highway right-of-way;
- 12) Manitoba Sustainable Development must be contacted prior to installation of any septic system to ensure compliance with the *Manitoba Onsite Wastewater Management System Regulation No. 83/2003*.

- 13) The Owners shall pay the full cost of maintaining and protecting all Survey Monuments within and around the Lands and Planned Area, and in the cases where the survey monuments have been disbursed, moved, covered, mutilated or destroyed in any way while the Owner still owns the Lands, the Owner shall at his/her expense cause the monuments to be replaced by a Manitoba Land Surveyor.
  
- 14) The Owners agree to have the within Agreement registered in the Winnipeg Land Titles Office against the title to the Lands, in priority to any Mortgage or similar instrument. It is understood and agreed between the parties hereto that any subsequent Purchaser of the above-described Lands shall be bound by the provisions of this Agreement.
  
- 15) The burden and effect of these restrictions and covenants shall run with the Lands.
  
- 16) This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the Rural Municipality of Whitemouth has caused its corporate seal to be hereunto affixed, attested by the signatures of its proper officers, in that behalf, and the Owners have hereunto set their hands and seals the day and year first above written.

*Adonke*  
 WITNESS

*Madrndt*  
 WITNESS

*Daryl Rushinka*  
 Daryl Rushinka

*Christie Rushinka*  
 Christine Rushinka

RURAL MUNICIPALITY OF  
 WHITEMOUTH

*Paul Olaf*  
 REEVE

*Colleen Johnson*  
 CHIEF ADMINISTRATIVE OFFICER