MSAT Order: 308

Before:

Metis Settlements Appeal Tribunal
Land Panel

Between:

Jeffrey Turcotte

Appellant

-and-

Fishing Lake Metis Settlement,
Metis Settlements General Council and
Metis Settlements Land Registry

Respondents

Concerning:

Posting of Available Land

Decision Date:

June 5, 2017

DECISION

The Hearing – parties, place and date

MSAT Panel members:
Phyllis Collins, Chairperson
Cody Hodgson, Panel Member
Joyce Parenteau, Panel Member

Parties Present at the hearing:
Jeffrey Turcotte, Appellant
Maureen Delorme, Fishing Lake Metis Settlement Lands and Membership Clerk
Arlene Calliou, Fishing Lake Metis Settlement Council
Shirley Calliou, Fishing Lake Metis Settlement Council
Dwayne Laboucane, Fishing Lake Metis Settlement Council

MSAT Staff:
Karen Mustus, Dispute Resolution Officer
Harold Robinson, Tribunal Secretary

Hearing:
Fishing Lake Metis Settlement Communiplex
May 1, 2017

1.1 Context

[1] Fishing Lake Metis Settlement (FLMS) Council posted the Provisional Metis Title (PMT) in the NW-08-057-2-W4M as available on July 14, 2016. Jeffrey Turcotte applied for the interest but did not get it. No one did, FLMS Council decided not to award the interest to anyone because of newly articulated concerns about the location, small size of the parcel, and potential future needs/uses of the Settlement for the parcel.

[2] With respect to Jeffrey's appeal, FLMS Council has the discretion to make interests available under the Metis Settlements Land Policy and it also has the discretion to award, or not award the interest to applicants once posted. In this case, FLMS Council chose not to award the interest to anyone, and it was within its rights to do so.

1.2 Evidence before the Panel

Jeffrey Turcotte, Appellant

[3] Jeffrey attended the hearing and said that he saw the posting in the Settlement Office for the PMT interest in the NW-08-057-2-W4M and applied for it. Jeffrey said that he was told by Settlement staff that he was the only member who applied for the posted interest and he expected to receive the interest as posted.

[4] Jeffrey said that he applied for the interest because the lot was located close to the townsite. He also thought that if he ever got a house from the Settlement, building cost would be lower because the new house could easily be hooked up to the cisterns and power lines already there for the previous house on site that burnt down. Jeffrey said that he also checked with the previous interest holder, Mervin Flamond—who also happens to be Jeffrey's uncle, as well as Mervin's son, Levi—about applying for the posted interest and Jeffrey said they told him to apply for it.

[5] Jeffrey said that he was surprised to learn that FLMS Council decided not grant him the interest, deciding instead to essentially withdraw the posting on the grounds that the parcel was too small and because the Settlement might have other uses for the land.

[6] Jeffrey said he appealed Council's decision because it didn't seem fair that he should be the only applicant and still not get the interest as posted.

Fishing Lake Metis Settlement Council

[7] FLMS Council said that it did not understand why the land was posted as available in the first place. Council members pointed out how they discussed the matter at a special council meeting on July 14, 2016 and noted that while Mervin Flamond was requesting the lands to be posted or transferred to his son [Levi], Council noted that the "land cannot have a home put on it, and that Mervin's PMT interest was already expired and cancelled in any event.

[8] Council members said that the size of the lot (6.84 acres) does not meet the minimum 10 acre pump-out requirement under new waste management regulations, and that the posting itself did not make reference to either the specific lot number (7A), nor did the posting indicate how big the lot is. Council also noted that the "uses" set out in the posting were not correct, in that a posting for a PMT interest usually indicates that the land be used for homesteading purposes.

[9] Council members also said that given the proximity of the lot to the main townsite, its small size and the fact that it is mostly covered in bush, the Settlement will likely use the lot for purposes other than homesteading in any event. One Council member suggested that it might be a good location for a healing centre. At the least, Council thought the land should be considered under the Settlements' ongoing land use study and perhaps dealt with through a land use plan or bylaw.

1.3 Findings of Fact

[10] This Panel received evidence from the parties at the hearing and also through the hearing package which was sent to parties prior to the hearing and reviewed with the parties at the hearing. In addition, this Panel admitted a letter that was sent to FLMS Council by the previous interest holder, Mervin Flamond as well as records showing that Mervin's registered PMT interest had been cancelled. These latter documents were stamped as "Exhibit 1."

[11] Considering the evidence given and reviewed at the hearing, this Panel finds that on the balance of probabilities, the following evidence is relevant and true:

- The MSLR documents in Exhibit 1 show that Mervin Flamond's registered PMT interest in Lot 7A was cancelled by the MSLR.

- A house was built on Lot 7A, but it burnt down a number of years ago.

- FLMS Council had a special council meeting on July 14, 2016, in part to consider Mervin's request to post the NW-08-057-2-W4M as available or to transfer the [expired/cancelled] interest to his son, Levi. Council declined the request noting that the "lands cannot have a house put on it [and that the] land[1] (sic) were cancelled.

- The PMT interest in the NW-08-057-2-W4M was nevertheless posted as available. However, the posting does not specify which lot is being made available. Nor does the posting contain any information about who is eligible to apply for it.

[1] This should read that Mervin's "interest" was cancelled, not the "land."

- Jeffrey was working for FLMS at the time and he saw and applied for the posting the day it went up, July 14, 2016. In his application, Jeffrey identifies that he is applying for lot 7A, 6.99 acres. In answer to the question on the application form about why he wants the land and his intended uses for it, Jeffrey writes: "[Because it is] close to townsite and if I ever get a house I can place it there as all the cisterns and power is already set up."

- FLMS Council held a special council meeting on September 6, 2016. Council considered Jeffrey's application for the available land, but did not approve it "because the land is close to townsite and FLMS might need the land."

- FLMS wrote to Jeffrey on September 9, 2016 advising him that he was not given the interest because of the proximity of the land to the townsite and that the Settlement may use the land in the future. Jeffrey was also advised of his right to appeal Council's decision within 30 days.

- Jeffrey filed an appeal in writing with MSAT on September 12, 2016. He wrote that:

    - I believe that I am entitled to this land as I did follow all the rules of the posting;
    - From what I understand, I was the ONLY applicant;
    - I was deferred as I was told I have too many Metis Titles, which I do not. I have two PMTs not MTs and I was willing to give these up for this posting;
    - ... My uncle Mervin Flamond once held this land and I applied to keep it in the family, wishing to build a house here as all the hook-ups are already in place.

1.4 How the law applies to this matter

[12] FLMS Council made a decision about the land on September 6, 2016 and informed Jeffrey in writing of its decision a few days later. Jeffry filed his appeal on September 12, or within 30 days of Council's decision. In doing so, Jeffrey secured his right of appeal in this matter and the Appeal Tribunal's jurisdiction over this matter has not been raised by the parties and is not in question.

[13] What is in question is whether FLMS Council can change its mind about a posting and not award the posted interest to anyone.

[14] In this regard, the answer is yes, FLMS Council can change its mind and reject all applications—even if there is only one application—for the posted interest.

[15] This power is found in section 4.7(2) of the MSGC Land Policy, which reads:

> **4.7 Decisions**
> (2) The settlement council may accept an application or reject all applications for the posted interest.

[16] As a matter of good governance, though, settlement councils should be prepared to provide reasons for or against accepting applications and those reasons must not be capricious or tainted by favoritism.

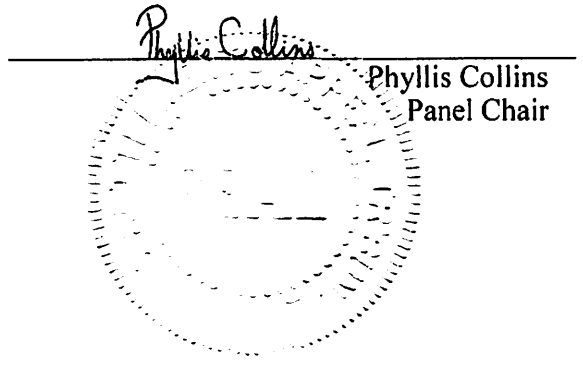
[17] In this Panel's view, the reasons given by FLMS Council in its letter to Jeffrey are not capricious or tainted by favoritism. FLMS Council is legitimately concerned that while a house was built on the land in in the past, there does not appear to be sufficient land in lot 7A (at 6.84 acres) to meet the minimum 10 acre pump-out regulatory standard. That FLMS Council is also considering how Lot 7A may fit into other settlement planning processes also suggests that its decision has less to do with the applicant and more to do with the overall interests to the settlement. Put another way, FLMS Council's decision is not about Jeffrey per se, and more about the best interests of the settlement writ large.

[18] Accordingly, given that FLMS Council has the discretion under the MSGC Land Policy to reject all application and given that it exercised its authority in a manner that appears to be reasonable, this appeal is dismissed.

1.5 Decision

[19] Jeffrey's appeal is dismissed.

Dated in the City of Edmonton, in the Province of Alberta on this 6th day of June 2017.



Phyllis Collins
Panel Chair