



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Village of Duchess v County of Newell 2022 ABLPRT 399

Date: 2022-03-15

File No. 21/IMD-002

Decision No. LPRT2022/MG0399

Municipalities: Village of Duchess v County of Newell

The Municipal Government Board (“MGB”) is continued under the name Land and Property Rights Tribunal (“Tribunal”), and any reference to Municipal Government Board or Board is a reference to the Tribunal.

In the matter of a proceeding commenced under Part 17 of the *Municipal Government Act*, being Chapter M-26 RSA 2000, (the “MGA”).

And in the matter of an appeal filed under Section 690 of the *MGA*.

BETWEEN:

Village of Duchess

- and -

County of Newell

BEFORE: F. Wesseling, Presiding Officer
A. Bandol, Member
M. Weatherall, Member
(the “Panel”)

R. Duncan, Case Manager

DECISION

ATTENDEES

See Appendix A

WRITTEN SUBMISSIONS

See Appendix B

[1] This decision letter provides the instructions issued by the Land and Property Rights Tribunal (Tribunal) subsequent to a postponement request made by the Village of Duchess (Village) and the County of Newell (County).

[2] A brief overview of the December 14, 2021 preliminary hearing, a summary of the March 1, 2022 postponement request, and the Tribunal's decisions/reasons related to the postponement request are provided below. Appendix A identifies the solicitors representing the Town and the County, while Appendix B is a list of the exhibits that have been submitted to the Tribunal at this time.

December 14, 2021 Preliminary Hearing Overview

[3] On October 21, 2021, the Tribunal received a notice of appeal from the Village regarding the County Land Use Bylaw 2016-21 (Bylaw 2016-21). The reasons for the Village's appeal include:

- Bylaw 2016-21 removed the Fringe District around the Village. This conflicts with the County of Newell & Village of Duchess Intermunicipal Development Plan (IDP).
- Bylaw 2016-21 makes substantial changes to the uses listed in the old Fringe District. Previously prohibited uses in the fringe area around the Village will negatively impact the quality of life for its residents.
- The County failed to meaningfully engage with the Village early enough for the Village to have any influence on the passage of Bylaw 2016-21. The IDP requires the County to provide the Village with opportunities to consult on matters of mutual interest.

[4] The Village stated that mediation was not possible because the County insisted on passing Bylaw 2016-21 prior to the October 18, 2021 municipal election and there was not enough time for proper consultation. The Village stated that it filed the appeal under section 690 of the *MGA* to preserve its rights and in the hope and expectation that this dispute can be resolved through negotiation or mediation.

[5] The Tribunal sent an acknowledgement letter to both municipalities on October 26, 2021 and requested the County to provide the contact information for the landowners in the area under appeal. In its November 10, 2021 correspondence, the County noted that Bylaw 2016-21 covers the entire municipality. The list of landowners was limited to those within the A-GEN Agriculture, General District of the impugned bylaw.

[6] On November 16, 2021, the Village clarified that the area under appeal is all the land within the IDP boundary. The Village explained that the IDP has six land use districts. Bylaw 2016-21 reduced the number of land use districts in the IDP to four and eliminated the Fringe District by rezoning these lands as A-GEN.

[7] Correspondence from the County on November 19, 2021 objected to the Village expanding the appeal area from the Fringe District to include the six land use districts within the IDP. The required statutory plan from the County also stated that:

- The Village has failed to follow the Dispute Settlement Process outlined in the IDP prior to filing its Notice to Appeal.
- The Notice of Appeal does not specify the provisions of Bylaw 2016-21 that are detrimental to the Village or provide reasons why these provisions are detrimental. Moreover, the Village made no effort to commence or implement mediation nor has it properly indicated why mediation was not possible.

- The uses in the land use districts are changes to form, not substance, and are not detrimental when considered in the context of federal and provincial legislation or the County's planning framework that includes the County's Subdivision Authority Bylaw 2018-21.
- The Village did not respond to the County's efforts to discuss Bylaw 2016-21.
- The Village provides no reason for why it did not respond to the County's August 3, 2021 invitation to have an IDP Committee meeting.

[8] On December 7, 2021 the Tribunal confirmed that a request to record the proceedings from a reporter for the **Brooks Bulletin** newspaper, S. Stanway, would be considered at the start of the December 14, 2021 preliminary hearing.

[9] Correspondence from both the Village and the County on December 9, 2021 identified that the two municipalities had agreed to enter mediation and provided a proposed schedule for the appeal that is predicated on mediation taking place. However, the County was requesting the Tribunal conduct a second preliminary hearing to address concerns related to the scope of the area affected by the appeal.

[10] The written and oral submissions from the Village argued that conducting a second preliminary hearing during the mediation process would be counterproductive and costly. The purpose of mediation is to give the parties the opportunity to discuss and, hopefully, resolve the matters in dispute. In this case, that would include the scope issue. Furthermore, the purpose of mediation is to direct time and money away from formal legal proceedings into an informal dispute resolution process. The Village asserted that the County's approach runs counter to the purpose of mediation and will result in increased legal costs for both parties.

[11] In its written and oral submissions, the County confirmed the municipalities agreed to pursue mediation and had taken steps to begin the mediation process in January 2022. The County argued that a second preliminary hearing was necessary to:

- Focus the issues and streamline the merit hearing by determining which land use districts are under appeal.
- Limit the complexity of the merit hearing by determining what lands are affected and which landowners should be participating.
- Reduce the scope of the mediation by reducing the number of issues.
- Provide clarity for the County by specifying which bylaw applies in the area under dispute.

[12] The County explained that an appeal under section 690 of the *MGA* is unique in that it automatically suspends the bylaw being appealed, so it is imperative to conduct a preliminary hearing to address the scope issue as quickly as possible.

[13] After considering the oral and written submission of the parties, the Tribunal made the following decisions and issued Decision Letter LPRT2021/MG0895.

[14] The Tribunal denied the request to record the proceedings. The Tribunal was provided with no evidence to conclude there were any impediments that would diminish Ms. Stanway's ability to take accurate notes during the proceedings.

[15] The preliminary matter related to the scope of the appeal was deferred until the merit hearing. The Tribunal was not convinced that conducting a preliminary hearing regarding the scope of the appeal in January 2022 would streamline the merit hearing process, reduce the complexity of the merit hearing, assist

the mediation process, or provide the bylaw clarity being sought by the County. Moreover, the reduction in the total number of hearing days required for these proceedings would be minimal.

[16] The merit hearing was set to commence on April 12 and continue, if deemed necessary by the Tribunal on April 13, 19, and 20, 2022. The Tribunal also established the following document exchange timeline:

- January 31, 2022 – the Village and the County is to submit a status update to the Tribunal.
- February 28, 2022 – the Village and the County are to submit a second status update to the Tribunal. This status update should indicate if the municipalities were able to narrow the scope of the appeal and/or identify if more time is needed to complete the mediation.
- March 14, 2022 – the County is to submit its documentation and submissions related to the scope of the appeal issue.
- March 21, 2022 – the Village is to submit its response to the scope of the appeal issue; and its documentation related to the merits of the intermunicipal dispute.
- March 21, 2022 – the affected landowners are to submit their response to the scope of the appeal issue.
- March 28, 2022 – the County is to submit its rebuttal to the scope of the appeal issue; and its response to the merits of the intermunicipal dispute.
- March 28, 2022 – the affected landowners are to submit their response to the merits of the intermunicipal dispute.
- April 4, 2022 – the Village is to submit its rebuttal to the merits of the intermunicipal dispute.

[17] The Tribunal found that the document exchange timeline was within the dates suggested by the municipalities and would provide the parties with enough time to develop their submissions. Despite the Tribunal sending preliminary hearing notification letters to all affected landowners in the IDP area and publishing preliminary hearing notices in the local newspapers, the Tribunal received no submissions from these parties. Moreover, no affected landowners attended the preliminary hearing.

[18] The municipalities submitted the required January 28, 2022 status update to the Tribunal in accordance with Decision Letter LPRT2021/MG0895. Correspondence from the Village listed the meetings that had already been conducted by the two municipalities and submitted a mediation schedule. The Tribunal was informed that since the mediation had only started it would be premature to discuss adjusting the hearing dates. After considering the correspondence from both municipalities, the Tribunal accepted the mediation status report. Since there were no changes to the document exchange timelines or the hearing dates established by Tribunal Decision Letter LPRT2021/MG0895, the Panel did not issue a second decision letter.

FEBRUARY 28, 2022 POSTPONEMENT REQUEST

On March 1, 2022, the Tribunal received a second status update report from the municipalities with a request for additional time to complete the mediation. The County and the Village proposed the following alternative document exchange timeline and merit hearing dates:

- May 3 - County submissions on scope due.
- May 12 - Village and landowner submissions on scope and Village submissions on merits due.
- May 25 - County rebuttal on scope and County and landowner submission on merits due.
- May 31 - Village rebuttal on merits due.
- June 6-8 and 10 - hearing dates.

Tribunal Decision and Reasons

[19] After considering the postponement request from the municipalities, the Tribunal's decisions and reasons are provided below.

Decision

[20] The Tribunal accepts the second status update report and the postponement request submitted by the Village and the County. The merits of this appeal will be heard via videoconference commencing at 9:00am on June 6, 2022 and will continue, if deemed necessary by the Tribunal, on June 7, 8, and 10, 2022.

[21] The Village and the County are to submit a third written status update report to the Tribunal by 2:00pm on Tuesday, April 19, 2022 advising if the municipalities were able to address the scope issue during the mediation process and/or narrow the number of merit hearing issues. The municipalities may also make a request for additional time for the completion of the mediation. If additional time is required, the written request must be approved by both municipalities and must provide the Tribunal with an alternative document exchange timeline and merit hearing dates.

Scope

[22] The document exchange timeline for the scope issues is identified below.

The County is to submit its documents, legal argument, and "will say" statements regarding the scope issue to the Village and Tribunal by 2:00pm on Tuesday, May 3, 2022. Subject to *Freedom of Information and Privacy Act (FOIP)* requirements, both the Village and the County will arrange to have the documentation available for viewing by affected landowners and the public at their respective municipal offices during normal business hours. Subject to *FOIP* requirements, the municipalities are to also publish the submission on their respective websites.

The Village is to submit its scope issue response documents, legal argument, and "will say" statements to the County and Tribunal by 2:00pm on Thursday, May 12, 2022. Subject to *FOIP* requirements, both the Village and the County will arrange to have the documentation available for viewing by affected landowners and the public at their respective municipal offices during normal business hours. Subject to *FOIP* requirements, the municipalities are to publish the submission on their respective websites.

Affected landowners are to provide their written submission regarding the scope issue to the Tribunal, the Village, and the County by 2:00pm on Thursday, May 12, 2022. Copies of these submissions may be made available for viewing by other landowners and/or the public at the Village and the County municipal offices during normal business hours.

The County is to submit its scope issue rebuttal to the Village and the Tribunal by 2:00pm on Wednesday, May 25, 2022. Subject to *FOIP* requirements, both the Village and the County will arrange to have the documentation available for viewing by affected landowners and the public at their respective municipal offices during normal business hours.

Merits

[23] The following identifies the document exchange timeline for the merits of the intermunicipal dispute.

The Village is to submit its documents, legal argument, and "will say" statements related

to the merits of the intermunicipal dispute to the County and Tribunal by 2:00pm on Thursday, May 12, 2022. Subject to *FOIP* requirements, both the Village and the County will arrange to have the documentation available for viewing by affected landowners and the public at their respective municipal offices during normal business hours. Subject to *FOIP* requirements, the municipalities are to publish the submission on their respective websites.

The County is to submit its response documents, legal argument, and “will say” statements related to the merits of the intermunicipal dispute to the Village and Tribunal by 2:00pm on Wednesday, May 25, 2022. Subject to *FOIP* requirements, both the Village and the County will arrange to have the documentation available for viewing by affected landowners and the public at their respective municipal offices during normal business hours. Subject to *FOIP* requirements, the municipalities are to publish the submission on their respective websites.

Affected landowners are to provide their written submission regarding the merits of the intermunicipal dispute to the Tribunal, the Village, and the County by 2:00pm on Wednesday, May 25, 2022. Copies of these submissions may be made available for viewing by other landowners and/or the public at the Village and the County municipal offices during normal business hours.

The Village is to submit its rebuttal related to merits of the intermunicipal dispute to the Village and the Tribunal by 2:00pm on Tuesday, May 31, 2022. Subject to *FOIP* requirements, both the Village and the County will arrange to have the documentation available for viewing by affected landowners and the public at their respective municipal offices during normal business hours.

[24] The submissions to the Tribunal are to be emailed to lppt.appeals@gov.ab.ca and richard.duncan@gov.ab.ca. Eight hard copies (one unbound) are to be delivered to the Tribunal’s Edmonton office within two (2) business days following the due date. One hard copy is to be delivered to other parties within two (2) business days.

[25] The Village and the County are responsible for retaining and scheduling the services of a court reporter for the merit hearings. All associated costs of retaining the court reporter are to be shared equally between the municipalities. Written transcripts are to be provided at no charge to the Tribunal no later than seven (7) days after the completion of the merit hearing. Upon payment of a reasonable fee, the written transcripts may be provided by the municipalities to affected landowners.

Reasons

[26] While the Tribunal endeavors to schedule hearings in an efficient and timely manner, it appreciates the efforts of the two municipalities to resolve this matter through mediation. The significance of timeliness for an intermunicipal dispute is magnified owing to the fact that the provision of the bylaw or amendment that is the subject of the appeal is deemed to be of no effect and does not form part of the bylaw until the issue is resolved. However, since there were no landowners in attendance at the December 14, 2021 preliminary hearing and the Tribunal has not received any correspondence from landowners regarding this matter, there is nothing to suggest the additional time requested by the municipalities for the completion of the mediation will prejudice any other party. The Tribunal notes that the mediation process and people involved in these discussions is at the discretion of the municipalities.

[27] The Tribunal agrees with the document exchange timeline and hearing dates suggested by the municipalities. The document exchange timeline will allow sufficient time for the parties to prepare their oral and written submissions regarding this matter. Both solicitors are available on the hearing dates suggested and neither solicitor identified any issues related to the availability of their experts. The April 19,

2022 status update report requirement has been added by the Tribunal to give the municipalities another opportunity to ask for additional time to complete the mediation and/or pass any bylaw amendments needed to resolve the dispute. Moreover, the status report requirement will allow the municipalities to disclose whether they have been able to narrow the scope of the appeal. In brief, the document exchange timeline and merit hearing dates are as follows:

Date	Summary of Required Action
April 19, 2022	The Village and the County are to submit a status update to the Tribunal. This status update should indicate if the municipalities were able to narrow the scope of the appeal and/or identify if more time is needed to complete the mediation.
May 3, 2022	The County is to submit its documentation and submissions related to the scope of the appeal issue.
May 12, 2022	The Village is to submit: <ul style="list-style-type: none"> • its response to the scope of the appeal issue; and • its documentation related to the merits of the intermunicipal dispute.
May 12, 2022	Affected landowners are to submit their response to the scope of the appeal issue.
May 25, 2022	The County is to submit: <ul style="list-style-type: none"> • its rebuttal to the scope of the appeal issue; and • its response to the merits of the intermunicipal dispute.
May 25, 2022	Affected landowners are to submit their response to the merits of the intermunicipal dispute.
May 31, 2022	The Village is to submit its rebuttal to the merits of the intermunicipal dispute.
June 6, 2022	The merit hearing is to commence. If deemed necessary by the Tribunal, the merit hearing will continue on June 7, 8, and 10, 2022.

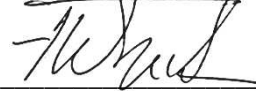
[28] Section 18.1 of the *Land and Property Rights Tribunal Intermunicipal Dispute Procedure Rules* identifies that the Tribunal may conduct hearings by any combination of videoconference, in-person, telephone or other form of electronic conference, or written materials and submissions delivered to the Tribunal. In keeping with its current practice, the Tribunal will conduct the public hearing using a videoconferencing platform to ensure the proceedings move forward in a timely manner.

[29] In accordance with section 688(2.2) of the *MGA*, transcripts may be required for intermunicipal dispute proceedings. The Village and the County will be responsible for retaining the services of a court reporter for the public hearing. The costs associated with the court reporter will be shared equally by the municipalities and a copy of the written transcript will be provided to the Tribunal at no cost as it is part of the record for this hearing. The municipalities must provide a written copy of the transcripts to the Tribunal no later than seven (7) days after the completion of the public hearing.

[30] The panel is not seized with this matter.

Dated at the City of Edmonton in the Province of Alberta this 15th day of March, 2022.

LAND AND PROPERTY RIGHTS TRIBUNAL

A handwritten signature in black ink, appearing to read 'F. Wesseling', is written over a horizontal line.

F. Wesseling, Member

APPENDIX A

SUBMISSIONS

NAME	CAPACITY
G. Fitch	Village of Dutchess, Legal Counsel, McLennan Ross LLP
J. Grundberg	County of Newell, Legal Counsel, Brownlee LLP

APPENDIX B

DOCUMENTS RECEIVED BY THE TRIBUNAL

NO.	ITEM
1-V	October 21, 2021 correspondence from G. Fitch, McLennan Ross LLP, on behalf of the Village – Notice of Appeal for Intermunicipal Dispute and Statutory Declaration (Intermunicipal Dispute Appeal).
2-LPRT	October 26, 2021 correspondence from the Land and Property Rights Tribunal (LPRT) acknowledgement and instruction correspondence to the Village and the County.
3-C	November 10, 2021 correspondence from J. Grundberg, Brownlee LLP, solicitor for the County.
4-LPRT	November 12, 2021 correspondence from the LPRT to the Village and the County.
5-V	November 16, 2021 correspondence from G. Fitch on behalf of the Village.
6-C	November 19, 2021 correspondence from J. Grundberg and statutory declaration from the County.
7-P	December 7, 2021 correspondence from S. Stanway.
8-V	December 9, 2021 correspondence from G. Fitch on behalf of the Village.
9-C	December 9, 2021 correspondence from J. Grundberg on behalf of the County.
10-C	January 25, 2022 correspondence from M. Fenske.
11-C	January 27, 2022 correspondence from A. Gulamhusein.
12-LPRT	February 8, 2022 mediation status report acknowledgment.
13-C	March 1, 2022 correspondence from A. Gulamhusein.
14-LPRT	March 9, 2022 mediation status report confirmation.