



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Village of Duchess v County of Newell 2022 ABLPRT 1277

Date: 2022-09-23

File No. 21/IMD-002

Decision No. LPRT2022/MG1277

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: H. Kim, Presiding Officer
A. Bandol, Member
M. Weatherall, Member
(the “Panel”)

R. Duncan, Case Manager

DECISION

SOLICITORS
See Appendix A

WRITTEN SUBMISSIONS
See Appendix B

[1] This decision letter provides the instructions issued by the Land and Property Rights Tribunal (Tribunal) regarding a postponement request contain the Status Update Report #5 documents submitted by the Village of Duchess (Village) and the County of Newell (County).

[2] Background information, a summary of the Status Update Report documentation submitted by the municipalities in accordance with the Decision Letter LPRT2022/MG1026, and the Tribunal's decisions/reasons related to the postponement request are provided below. Appendix A identifies the solicitors representing the Village and the County, while Appendix B is a listing of the exhibits.

BACKGROUND INFORMATION

[3] The following section provides background information related to the December 14, 2021 preliminary hearing as well as the January 28, 2022, March 1, 2022, April 19, 2022, and June 30, 2022 postponement request.

December 14, 2021 Preliminary Hearing

[4] 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 included:

- 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.

[5] 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 appeal was being filed under s. 690 of the *MGA* to preserve the Village's rights and in the hope and expectation that this dispute could be resolved through negotiation or mediation.

[6] 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 County limited the list of landowners to those within the A-GEN Agriculture, General District of the impugned bylaw.

[7] 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 area covered by the IDP to four and eliminated the Fringe District by rezoning these lands as A-GEN.

[8] Correspondence from the County on November 19, 2021 objected to the Village expanding its appeal beyond 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 failed to follow the IDP Dispute Settlement Process prior to filing its Notice of 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.

[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 was predicated on the mediation. However, the County requested the Tribunal to conduct a second preliminary hearing to address concerns related to the scope of the appeal; namely, the specific provisions of Bylaw 2016-21 that are alleged to have a detrimental effect, and the area affected by the appeal. The County also suggested the scope determination could be deferred until the merit hearing, and that the proceedings would require three to four days.

[10] During the December 14, 2021 preliminary hearing, the Village argued that a second preliminary hearing during the mediation process would be counterproductive and costly. However, the County argued that a second preliminary hearing was necessary to focus the issues, determine what lands are affected, and provide clarity about which bylaw applies in the area under dispute.

[11] After considering the parties' submissions, the Tribunal issued Decision Letter LPRT2021/MG0895 directing the matter of the scope of the appeal be deferred until the merit hearing. The Tribunal was not convinced conducting a preliminary hearing regarding the scope of the appeal would reduce the total number of hearing days required for these proceedings. The County stated the merit hearing's length will expand from two days to three to four days if the Tribunal defers the scope issue to the merit hearing or recognizes a wider scope. Since the Tribunal has not considered the scope issue yet, there is no assurance the preliminary hearing will reduce the time required by the County for the merit hearing. Moreover, the reduction in the total number of hearing days required for these proceedings would be minimal.

[12] The Tribunal required the municipalities to submit status update reports on January 28, 2022 and March 28, 2022, established a document exchange timeline and set the merit hearing to commence on April 12, 2022 and continue, if necessary, on April 13, 19, and 20, 2022. The Tribunal found the merit hearing and document exchange timeline dates were within the timeframe suggested by the municipalities and would provide the parties with enough time to develop their submissions. Despite the Tribunal sending preliminary hearing notices 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.

January 28, 2022 Status Report #1

[13] The municipalities submitted the required January 28, 2022 status update report (Status Report #1) to the Tribunal in accordance with Decision Letter LPRT2021/MG0895. Status Report #1 explains the municipalities had just started mediation, so it would be premature to adjust the hearing dates. Since there were no changes to the document exchange timelines or the hearing dates, the Tribunal did not issue a decision letter.

February 28, 2022 Status Report #2 and Postponement Request

[14] 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.

[15] Tribunal Decision Letter LPRT2022/MG0399 accepted the second status update report and granted the postponement request.

[16] The merit hearing was set to commence on June 6, 2022 and would continue, if necessary, on June 7, 8, and 10, 2022. The Tribunal found the document exchange timeline suggested by the municipalities would allow sufficient time for the parties to prepare their oral and written submissions. Since no landowners attended the December 14, 2021 preliminary hearing and the Tribunal had received no correspondence from landowners regarding this matter, there was nothing to suggest the additional time requested by the municipalities for the completion of the mediation would prejudice any other party.

[17] The Village and the County were to submit a third written status update report to the Tribunal by April 19, 2022. If additional time was required, the written request was to provide the Tribunal with an alternative document exchange timeline and merit hearing dates.

April 19, 2022 Status Report #3 and Postponement Request

[18] On April 19, 2022, the Tribunal received the third status update report (Status Report #3) from the municipalities.

[19] The Tribunal was informed the municipalities had not been able to narrow the scope of the appeal. However, on April 14, 2022, the County provided the Village with proposed amendments to Bylaw 2016-21 that would remove the land uses in the A-GEN Agriculture, General District. The County asserted that the amendments, if adopted by its Council, would address the issues identified by the Village in its appeal. The amendments to Bylaw 2016-21 were set for first reading on April 21, 22 and a public hearing was tentatively scheduled for May 21, 2022. The County and the Village requested the Tribunal to adjourn the proceedings indefinitely, without setting any future hearing dates (*sine die*).

[20] Tribunal Decision Letter LPRT2022/MG0549 accepted the third status update report and granted the postponement request. However, to ensure the appeal moved forward in a timely manner, the Tribunal did not grant a postponement *sine die*. Although there was a plan to resolve this dispute, there was no assurance the County's proposed amendments would be sufficient to address the concerns of the Village. Therefore, the Tribunal found it prudent to set a new hearing date.

[21] The Tribunal established a new document exchange timeline and scheduled the merit hearing to commence at 9:00am on September 19, 2022, continuing, if deemed necessary by the Tribunal, on September 20, 21 and 23, 2022. The Village and the County were also required to submit another written

status update report to the Tribunal by 2:00pm on Thursday, June 30, 2022 to address progress by the municipalities in regard to the scope issue and/or identify if the municipalities had been able to narrow the number of merit hearing issues. The June 30, 2022 status update report would also provide the municipalities' solicitors with an opportunity to request alternative hearing dates to accommodate their availability.

June 30, 2022 Status Report #4 and Postponement Request

[22] On June 30, 2022, the Tribunal received a fourth status update report (Status Report #4) from the municipalities.

[23] The Tribunal was informed that there was still a need for the merit hearing as the amendments to Bylaw 2016-21 did not address all the Village's concerns about the elimination of the Fringe Land Use district. Although the mediation had been terminated, the meeting scheduled by the Village and the County on August 3, 2022 showed there was still a desire by the municipalities to resolve this appeal outside the formal dispute process. There was also disagreement between the municipalities on the need for the Tribunal to issue Case Management directives or conduct a preliminary to identify a comprehensive list of the Village's concerns. However, the Village and the County proposed a document exchange timeline and merit hearing dates that would accommodate the availability of the solicitors of each municipality.

[24] Decision Letter LPRT2022/MG1026 acknowledged the status update reports and correspondence from the municipalities. The status update report requirement provided an opportunity for the requested alternative hearing dates to accommodate the availability of their solicitors. The Tribunal accepted the document exchange timeline suggested by the municipalities and set the merit hearing to commence on November 14, 2022. Since there were no landowners in attendance at the December 14, 2021 preliminary hearing and the Tribunal has not received any correspondence from property owners in the affected area, the Tribunal concluded that the postponement would not impact any other parties. The municipalities were instructed to submit a status update report (Status Update #5) on September 9, 2022 to identify if any progress had been made to narrow the scope of the appeal.

[25] The Tribunal denied the request for the Tribunal to conduct Case Management or a preliminary hearing. The *Intermunicipal Dispute Rules* allow Case Management meetings to focus the issues of an appeal; however, disagreement by either municipality could trigger a preliminary hearing and further delay the proceedings.

STATUS REPORT #5

[26] In accordance with LPRT2022/MG1026, the municipalities submitted the fifth status update report on September 9, 2022. The Tribunal was informed that the County and the Village are making progress in addressing the issues of concern. Based on the discussions between the two municipalities, the County is planning to bring forward amendments to Bylaw 2016-21 that may resolve the current dispute. First reading of the Bylaw 2016-21 amendments are expected to be brought to County Council on September 22, 2022, while second and third reading are scheduled for October 21, 2022. To facilitate the resolution of this matter, the municipalities requested the Tribunal to postpone the proceedings *sine die* or give the municipalities until September 19, 2022 to suggest new dates.

[27] A second letter from the municipalities on September 20, 2022 identified that Village Council reviewed the proposed amendments to Bylaw 2016-21 at its September 19, 2022 meeting and passed a motion supporting the amendments. The municipalities suggested two document exchange and hearing date options for the Tribunal to consider (Table 1). It was explained that Option 1 is preferred by the County, while Option 2 is favoured by the Village. Although each option is supported by the solicitors of both municipalities, Option 2 accommodates the availability of the County's legal counsel and witness.

Table 1: Document Exchange and Merit Hearing Options

Action	Previous Dates	Option 1 – Proposed Dates	Option 2 – Proposed Dates
Status Report #5	Sept. 9, 2022	Oct. 21, 2022	Oct. 21, 2022
County submission on Scope	Sept. 23, 2022	Dec. 30, 2022	Dec. 2, 2022
Village submissions on Scope and Merits	Oct. 7, 2022	Jan. 13, 2023	Dec. 16, 2022
County Rebuttal on Scope and Submissions on Merits	Oct. 21, 2022	Jan. 27, 2023	Jan. 13, 2023
Village Rebuttal on Merits	Nov. 4, 2022	Feb. 10, 2023	Jan. 27, 2023
Hearing	Nov. 14-18, 2022	Week of Feb. 20, 2023	Week of Feb. 6, 2023

TRIBUNAL DECISION AND REASONS

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

Decision

[29] The Tribunal accepts Status Update Report #5 submitted by the Village and the County on September 9, 2022 as well as the September 20, 2022 correspondence from the municipalities.

[30] The hearing will commence at 9:00am on February 20, 2023 and will continue, if deemed necessary by the Tribunal, until February 24, 2023. The proceedings will be conducted by teleconference.

[31] The Village and the County are to submit a status update report (Status Update Report #6) by 4:00pm on Friday, October 21, 2022, advising the Tribunal if the municipalities were able to resolve the dispute and/or narrow the number of merit hearing issues. If additional time is required, the written request must be submitted by both municipalities and must provide the Tribunal with an alternative document exchange timeline and merit hearing dates.

Scope

[32] The document exchange timeline for the scope issue 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 Friday, December 30, 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 Monday, January 16, 2023. 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 Monday, January 16, 2023. 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 Friday, January 27, 2023. 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

[33] 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 Monday, January 16, 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 Friday, January 27, 2023. 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 Friday, January 27, 2023. 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 Friday, February 10, 2023. 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.

[34] The submissions to the Tribunal are to be emailed to lprt.appeals@gov.ab.ca as well as richard.duncan@gov.ab.ca, and reyjie.torres@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.

[35] 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

[36] The September 9, 2022 Status Update Report #5 required by Tribunal Decision Letter LPRT2022/MG1026 gave the municipalities an opportunity to disclose whether they have been able to narrow the scope of the appeal. Despite the termination of the mediation, the Village and the County have continued to discuss this matter. These discussions have resulted in County bringing forward proposed amendments to Bylaw 2016-21 that are supported by the Village. Although the municipalities have not stated that they have been able to reduce the scope of the appeal, they have indicated that amendments to Bylaw 2016-21 may resolve the current dispute. While there is no assurance that the amendments will address all the Village's concerns, the two municipalities have demonstrated a desire to resolve this matter at the local level. The Tribunal is encouraged by the efforts being made by the municipalities and finds it reasonable to grant the postponement.

[37] The *Land and Property Rights Tribunal Intermunicipal Dispute Procedure Rules (IDP Procedure Rules)* allows the Tribunal to consider a request to postpone the proceedings *sine die*. However, the parties are to include reasons why they are not able to suggest a new document exchange timeline or hearing dates. The Village and the County may have a plan in place to resolve this matter, but that is not sufficient to indefinitely adjourn the proceedings without setting future hearing dates. To ensure this appeal moves forward in a timely manner, the Tribunal denies the request to grant a postponement *sine die*.

[38] The October 21, 2022 Status Update Report #6 will accommodate the implementation of the County's Bylaw 2016-21 amendment plan. This will give the municipalities an opportunity to disclose if they have been able to resolve their differences and/or identify if they have been able to narrow the scope of the appeal.

[39] The Tribunal considered the two document exchange timelines and hearing dates suggested by the municipalities. It is understood that the solicitors support both document exchange timeline and merit hearing dates options. Both Options are within the adjournment timeframe that is typically granted for proceedings of this type. However, the Tribunal considers Option 1 to be more advantageous as it accommodates the availability of the County's solicitor and witness. This should facilitate the efficiency of the proceedings.

[40] In accordance with s. 691(2) of the *MGA*, exchange dates have been included so the Tribunal can ensure affected landowners are able to make submissions regarding this appeal. Since the amount of time allocated by Option 1 for the affected landowners and the Village to submit their responses to the County's scope documentation is limited due to the January 1, 2023 statutory holiday, the landowner's submissions on scope and the Village's submissions on scope and merits have been adjusted from January 13, 2023 to January 16, 2023.

[41] The Table 2 provides a summary of the dates set for the status update report, document exchange timeline and merit hearing.

Date	Summary of Required Action
October 21, 2022	The Village and the County are to submit a status update report (Status Update #6) to the Tribunal.
December 30, 2022	The County is to submit its documentation and submissions related to the scope of the appeal issue.

Date	Summary of Required Action
January 16, 2023	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.
January 16, 2023	Affected landowners are to submit their response to the scope of the appeal issue.
January 27, 2023	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.
January 27, 2023	Affected landowners are to submit their response to the merits of the intermunicipal dispute.
February 10, 2023	The Village is to submit its rebuttal to the merits of the intermunicipal dispute.
February 20, 2023	The merit hearing is to commence. If deemed necessary by the Tribunal, the merit hearing will continue to February 24, 2024.

[42] Section 18.1 of the *IDP 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.

[43] In accordance with s. 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.

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

Dated at the City of Edmonton in the Province of Alberta this 23rd day of September 2022.

LAND AND PROPERTY RIGHTS TRIBUNAL

(SGD.) H. Kim, Presiding Officer

APPENDIX A

SOLICITORS

NAME	CAPACITY
J. Grundberg	County of Newell, Legal Counsel, Brownlee LLP
A. Gulamhusein	County of Newell, Legal Counsel, Brownlee LLP
G. Fitch	Village of Dutchess, Legal Counsel, McLennan Ross 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 of Dutchess– 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 of Dutchess and the County of Newell.
3-C	November 10, 2021 correspondence from J. Grundberg, Brownlee LLP, solicitor for the County of Newell.
4-LPRT	November 12, 2021 correspondence from the LPRT to the Village of Dutchess and the County of Newell.
5-V	November 16, 2021 correspondence from G. Fitch on behalf of the Village of Dutchess.
6-C	November 19, 2021 correspondence from J. Grundberg and statutory declaration from the County of Newell.
7-P	December 7, 2021 correspondence from S. Stanway.
8-V	December 9, 2021 correspondence from G. Fitch on behalf of the Village of Dutchess.
9-C	December 9, 2021 correspondence from J. Grundberg on behalf of the County of Newell.
10-C	January 25, 2022 correspondence from M. Fenske, County of Newell.
11-C	January 27, 2022 correspondence from A. Gulamhusein on behalf of the County of Newell.
12-LPRT	February 8, 2022 mediation status update report acknowledgment.
13-C	March 1, 2022 correspondence from A. Gulamhusein on behalf of the County of Newell.
14-LPRT	March 9, 2022 mediation status update report confirmation.

15-C April 19, 2022 correspondence from J. Grundberg on behalf of the County of Newell.

16-LPRT LPRT2021/MG0895 decision letter issued December 21, 2021.

17-LPRT LPRT2022/MG0399 decision letter issued March 15, 2022.

18-LPRT LPRT2022/MG0549 decision letter issued April 22, 2022.

19-V June 30, 2022 correspondence from G Fitch on behalf of the Village of Duchess.

20-C June 30, 2022 correspondence from G. Grundberg on behalf of the County of Newell.

21-V July 7, 2022 correspondence from G. Fitch on behalf of the Village of Duchess.

22-C July 11, 2022 correspondence from J. Grundberg on behalf of the County of Newell.

23-LPRT July 12, 2022 status update report acknowledgement.

24-LPRT LPRT2022/MG1026 decision letter issued July 15, 2022.

25-C September 9, 2022 correspondence from A. Gulamhusein on behalf of the County of Newell.

26-C September 20, 2022 correspondence from J. Grundberg on behalf of the County of Newell.