



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Village of Duchess v County of Newell 2022 ABLPRT 1382

Date: 2022-10-27

File No. 21/IMD-002

Decision No. LPRT2022/MG1382

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 confirms that on October 21, 2022 the Land and Property Rights Tribunal (Tribunal) received the required Status Update Report #6 and was advised that the Village of Duchess (Village) is withdrawing its appeal of the County of Newell (County) Bylaw 2016-21.

[2] The following provides background information about the appeal, a summary of Status Update Report #6 and appeal withdrawal, and the Tribunal's decisions/reasons related to the withdrawal request. Appendix A identifies the solicitors representing the Village and the County, while Appendix B is a listing of the exhibits.

BACKGROUND INFORMATION

[3] Background information related to the December 14, 2021 preliminary hearing as well as an overview of the status reports and postponement requests submitted by the municipalities is provided below.

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 to preserve the Village's rights and in the hope the dispute could be resolved through negotiation or mediation.

[6] The required statutory declaration from the County 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 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.

[7] 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. However, the municipalities disagreed about the need for a second preliminary hearing to focus the issues, determine what lands are affected, and provide clarity about which bylaw applies in the area under dispute.

[8] Decision Letter LPRT2021/MG0895 established a document exchange timeline and set the hearing to commence on April 12, 2022 and continue, if necessary, on April 13, 19, and 20, 2022. 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. However, the hearing dates set by the Tribunal would provide enough time for it to consider arguments regarding the scope and merits of the appeal. The municipalities were also required to submit status update reports on January 28, 2022 and March 28, 2022.

Overview of Status Reports and Postponement Requests

An overview of the status reports and postponement requests received by the Tribunal is provided below.

- On January 28, 2022, the municipalities submitted the required status update report (Status Report #1) to the Tribunal. The municipalities explained that they 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.
- On March 1, 2022, the Tribunal received a second status update report (Status Report #2) from the municipalities with a request for additional time to complete the mediation. Tribunal Decision Letter LPRT2022/MG0399 identifies that the Tribunal accepted the second status update report and granted the postponement request. The merit hearing was set to commence on June 6, 2022 and would continue, if necessary, on June 7, 8, and 10, 2022. 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.
- On April 19, 2022, the Tribunal received the third status update report (Status Report #3) from the municipalities. Although the municipalities had not been able to narrow the scope of the appeal, the County submitted that the amendments it was proposing to Bylaw 2016-21 would address the issues identified by the Village. The County and the Village requested the Tribunal to adjourn the proceedings indefinitely, without setting any future hearing dates (*sine die*). Tribunal Decision Letter LPRT2022/MG0549 identifies that the Tribunal 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*. The Tribunal established a new document exchange timeline and scheduled the hearing to commence 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 on June 30, 2022.
- On June 30, 2022, the Tribunal received a fourth status update report (Status Report #4) from the municipalities. The amendments to Bylaw 2016-21 did not address all the Village's concerns. Although the mediation had been terminated by the County, the meeting scheduled by the Village and the County on August 3, 2022 showed there was still a desire to resolve this appeal. Tribunal Decision Letter LPRT2022/MG1026 identifies that the Tribunal denied the request to conduct case management as any disagreement by either municipality about a decision made by the Case Manager could trigger a preliminary hearing and further delay the proceedings. The Tribunal accepted the document exchange timeline suggested by the municipalities and set the merit hearing to commence on November 14, 2022. The municipalities were 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.
- On September 9, 2022, the Tribunal received a fifth status report update (Status Report # 5) from the municipalities. The Tribunal was informed that the County and the Village had made progress regarding this matter and that the County was bringing forward amendments to Bylaw 2016-21 that

could resolve the dispute. The municipalities requested the Tribunal to postpone the proceedings *sine die* or give the municipalities until September 19, 2022 to submit new dates. The Tribunal accepted the document exchange timeline suggested by the municipalities. The first document exchange was scheduled for December 30, 2022 and the merit hearing was set to commence on February 20, 2023 continuing, if deemed necessary by the Tribunal, until February 24, 2023. LPRT2022/MG1277 identifies that the Village and the County were to submit a status update report on October 21, 2022, advising the Tribunal if the municipalities were able to resolve the dispute and/or narrow the number of merit hearing issues. A request for another postponement would require the municipalities to provide an alternative document exchange timeline and hearing dates.

STATUS REPORT #6 AND APPEAL WITHDRAWAL

[9] The Village submitted the sixth status report update (Status Report #6) to the Tribunal on October 21, 2022. The Tribunal was informed that on October 20, 2022 the County gave third reading to Bylaw 2039-22, which made further amendments to County Bylaw 2016-22. These amendments addressed the Village's outstanding concerns and Village Council approved the withdrawal of this appeal. It was also agreed that each municipality would bear the costs it incurred in relation to these proceedings.

TRIBUNAL DECISION AND REASONS

The decision and reasons of the Tribunal are provided below.

Decision

The Tribunal accepts Status Report #6, the withdrawal of the appeal, and the agreement that each municipality will bear its own costs in relation to this matter. This file is now closed.

Reasons

[10] Decision Letter LPRT2022/MG1277 allowed time for the municipalities to resolve their dispute or narrow the scope of the appeal. Status Report #6 confirms that the amendments to Bylaw 2016-21 addressed the concerns of the Village. Although these proceedings were quite lengthy, the Tribunal appreciates the efforts made by the Village and the County to resolve this dispute at the local level.

[11] Rule 14.1 of the *Land and Property Rights Tribunal Intermunicipal Dispute Rules (IMD Rule)* allows the Village to withdraw its appeal. *IMD Rule* 14.2 states that subject to a waiver from the Tribunal or Tribunal Administration, the appellant municipality that submits a withdrawal request is to appear on the scheduled date to explain the reason for the withdrawal. The Tribunal understands that intermunicipal disputes can have a significant impact on the affected landowners. However, no written or oral submissions have been received from any of the affected landowners in regard to this appeal. Moreover, the first document exchange not scheduled until December 30, 2022. Since there is no evidence to indicate the resolution of this matter by the municipalities will impact any of the affected landowners, the Tribunal accepts the withdrawal of the appeal. The Tribunal also waives the requirement for the parties to provide any additional oral or written submissions and cancels the hearing scheduled to commence on February 20, 2023.

[12] In accordance with *IMD Rule* 15.3, the Tribunal accepts the agreement between the two municipalities with regard to costs. The municipalities have submitted the agreement to the Tribunal in writing and the Tribunal does not need any additional information.

Dated at the City of Edmonton in the Province of Alberta this 27th day of October 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 Dutchess.
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 Dutchess.
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.
27-V	October 21, 2022 correspondence from G. Fitch on behalf of the Village of Dutchess.