

BOARD ORDER: MGB 072/16

FILE: 16/IMD-04 RH

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (*Act*).

AND IN THE MATTER OF AN APPLICATION FOR REVIEW of a decision of the Municipal Government Board (MGB) filed by Brazeau County.

CITATION: Town of Drayton Valley v Brazeau County (*Re: Bylaw 905-16*), 2016 ABMGB 72

BEFORE:

H. Kim, Presiding Officer
M. Axworthy, Member
S. Boyer, Member

K. Lau, Case Manager
C. Miller Reade, Case Manager
A. Drost, Assistant Case Manager

OVERVIEW

[1] The MGB was asked to review their decision in DL 070/16 respecting an intermunicipal dispute between the Town of Drayton Valley (Town) and Brazeau County (County). Section 504 of the *Act* directs that the MGB can review, rescind or vary any decision it makes. This decision is to be read in conjunction with MGB Decision Letter 070/16 (DL).

REQUEST

[2] On November 29, 2016, in the City of Edmonton, an MGB panel considered written submissions in response to the County's request to review MGB DL 070/16. The DL established dates for submissions and a hearing date for the intermunicipal dispute. The County requested a review of the DL pursuant to section 504 of the *Act*. The request focused on the dates the MGB set for the hearing and disclosure and whether the hearing should be a preliminary hearing or merit hearing. The Town concurred with the request for review.

ISSUES

1. Should the MGB grant the County's request for review of MGB DL 070/16?
2. If so, what is the appropriate remedy?

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SUMMARY OF THE COUNTY'S POSITION

[3] The County submitted the MGB has authority to review or rehear a decision under section 504 of the *Act* and in accordance with the MGB Intermunicipal Dispute Rules (Rules). The reasons for the rehearing were provided by the County as:

- a. there was a procedural defect during the hearing which caused prejudice to one or more of the parties (Rule 24.5(b)); or
- b. there were other material errors that could reasonably have changed the outcome of the decision (Rule 24.5(c)); or
- c. any other circumstance the Board considers reasonable (Rule 24.5(d)).

[4] The County submitted that the MGB misunderstood the joint request of the parties at the November 9, 2016 hearing. The MGB scheduled the merit hearing while the parties were requesting a date for a preliminary hearing on jurisdiction. Further, the MGB did not give the parties opportunity to address merit hearing dates and disclosure on merit. The parties only addressed disclosure and hearing dates with respect to the preliminary issue. Finally, the dates set out in the DL do not provide the opportunity for the parties to respond to the others submissions.

[5] Instead, the County stated that the joint request from the Town and County was for a date between November 30th and December 2nd for the Town to advise the MGB and the County if the Town is withdrawing its appeal or proceeding with the appeal.

[6] The County provided the following dates for the MGB to consider for relief of the issues:

Step	Date
Town advise Board and County whether it is withdrawing or proceeding	December 2, 2016
Town submissions regarding the jurisdiction of the Board to hear its appeal	January 6, 2017
County Response Landowner Response	February 3, 2017
Town rebuttal (if any)	February 17, 2017
Hearing date on jurisdictional hearing to consider the question of jurisdiction of the MGB	March 7, 2017

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SUMMARY OF THE TOWN OF DRAYTON VALLEY'S POSITION

[7] The Town agreed with the County's application and the substance of the submissions with the exception of the proposed scheduling. The Town requests that the hearing be held after March 15, 2017 and submission dates as follows:

Step	Date
Town advise Board and County whether it is withdrawing or proceeding	December 2, 2016
Town submissions regarding the jurisdiction of the Board to hear its appeal	January 20 or 27, 2017
County Response Landowner Response	February 17 or 24, 2017
Town rebuttal (if any)	March 3 or 10, 2017
Hearing date on jurisdictional hearing to consider the question of jurisdiction of the MGB	After March 17, 2017

COUNTY RESPONSE TO TOWN'S POSITION

[8] The County, after receiving the Town's position, responded that the dates proposed by the County was to accommodate the MGB's March 7, 2017 hearing date set in DL 070/16. The County requests that given counsel's schedule that the hearing be set during the weeks of March 13th or 20th and that the earlier dates proposed by the Town (January 20, February 17 and March 3) be directed.

DECISION

[9] The MGB varies its decision in DL 070/16 and sets the dates and submissions to be as follows:

1. Written submission by the Town due on or before December 2, 2016 to advise if the Town is proceeding with the appeal.
2. Written submissions by the Town due on or before noon on January 20, 2017 to address the jurisdiction of the MGB to proceed with this dispute and advise what actions have or will be undertaken by the parties should the dispute proceed.
3. If the parties intend to proceed with this dispute, all documents and all bylaws related to this appeal and MGB file 16/IMD/003 (Including Bylaw 782-12), are to be either published on municipal websites or hard copies made available for review at municipal

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offices for any landowner, member of the public or affected party. If copies of all or part of the documents are requested, these may be provided at the cost established by the municipality.

4. The MGB will place a notice in the local newspaper, the Drayton Valley Western Review, in January requesting that any landowner or affected party wishing to make a submission or speak to this appeal to advise the MGB in writing of their intention no later than February 17, 2017 at 12 noon.
5. The preliminary hearing, if required, is set to commence on March 21st in a location determined by the MGB. The MGB orders that the following actions occur on or before the following dates:

<i>Action</i>	<i>Date</i>
Town's submission as to status of appeal	December 2, 2016
Town's submission on jurisdiction	January 20, 2017
County and Landowner submission on jurisdiction	February 17, 2017
Town rebuttal, if required	March 3, 2017
Hearing	March 21 – 23, 2017, if needed

[10] All submissions are due at 12 pm (noon) on the dates above and are to be submitted electronically to mgbmail@gov.ab.ca. Five hard copies (one unbound) are to be sent to the MGB within three business days of the dates listed. A hard copy is also to be sent to both counsel and the CAO of the other municipality.

REASONS

[11] As pointed out by the County, Rule 24.5 of the MGB Intermunicipal Dispute Rules sets out the circumstances that the MGB can exercise its power under section 504 to allow a rehearing or review of a decision. In this case, the MGB thanks the parties for clarifying their positions; the MGB has a better understanding of what the parties have agreed upon and their requests.

[12] Based on the schedules provided by the parties, the MGB has set dates for submissions and a preliminary hearing to determine the issue of jurisdiction – should the appeal proceed. The MGB preferred to hear the preliminary matter at the beginning of the merit hearing; however, recognizes and accepts the parties' preference to hold a hearing to deal only with the preliminary matter. In this case, the MGB grants this request and the notice of the preliminary hearing will follow, if required, and will contain the time and location of the hearing.

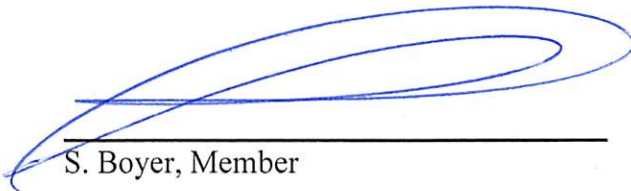
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[13] This panel is not seized.

Dated at the City of Edmonton, in the Province of Alberta, this 29th day of November 2016.

MUNICIPAL GOVERNMENT BOARD



S. Boyer, Member

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DOCUMENTS RECEIVED:

NO.	ITEM
1R	County's Request for Review
2A	Town's Response
3R	County's Rebuttal

APPENDIX "B"

LEGISLATION

Municipal Government Act

The *Act* provides for the MGB to reconsider its decisions.

504 The Board may rehear any matter before making its decision, and may review, rescind or vary any decision made by it.

MGB Intermunicipal Dispute Procedure Rules

These rules provide situations where the MGB may exercise its powers to review an order under section 504 of the *Act*.

24.1 A request may be submitted to the Board in writing to rehear, review, vary or rescind any matter or decision under the discretionary power granted by section 504 of the *Act*.

24.2 A request under this Rule must include

- (a) A detailed statement explaining how the request meets the grounds for a rehearing or review listed under this Rule; and
- (b) The following background information:
 - (i) Name of the applicant.
 - (ii) Board decision number.
 - (iii) Address, phone number and contact persons for the appellant and respondent municipalities.

24.3 Requests must be made no later than 30 days following the date of the decision.

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- 24.4 After a request is filed pursuant to the Rule, the Chair may
- (a) Refer the matter to a case manager for case management,
 - (b) Refer the request to the panel that originally heard the matter for further directions, final determination, or both, or
 - (c) Refer the request to a new panel for further directions, final determination, or both.
- 24.5 The Board may exercise its power under section 504 of the *Act* in the following circumstances:
- (a) New facts, evidence or case-law that was not reasonably available at the time of the hearing, and that could reasonably have affected the decision's outcome had it been available,
 - (b) A procedural defect during the hearing which caused prejudice to one or more of the parties,
 - (c) Other material errors that could reasonably have changed the outcome of the decision, or
 - (d) Any other circumstance the Board considers reasonable.
- 24.6 The following are generally not sufficient grounds to grant a rehearing or review:
- (a) Disagreement with a decision.
 - (b) A party's failure to provide evidence or related authorities that were reasonably available at the time of the hearing.