

NOTICE OF DECISION

DL 034/16

FILE NO. 16/IMD/003

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Town of Drayton Valley**

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Landowner

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CITATION: Town of Drayton Valley v Brazeau County (*Re: Brazeau County Bylaw 892-15*)
2016 ABMGB 34

**Re: Appeal to the Municipal Government Board
Intermunicipal Dispute under Section 690 Municipal Government Act (Act)
Bylaw under Appeal: Brazeau County Bylaw 892-15, Amending the Land Use
Bylaw for NE and SE 3-49-7-W5M from Agriculture to Direct Control.**

This is the decision of the Municipal Government Board (MGB) from a preliminary hearing held in the City of Edmonton on Tuesday May 24, 2016 to establish dates for mediation and the merit hearing.

Before: E. Bruton, Presiding Officer
W. Jackson, Member
L. Loven, Member

C. Miller Reade, Case Manager
R. Duncan, Case Manager

**Town of Drayton Valley as represented by Hutchison Law – Appellant v Brazeau County
as represented by Shores Jardine LLP - Respondent**

Landowner – A. Peck and D. McGinn

Background

[1] On March 31, 2016, Town of Drayton Valley (Drayton Valley) filed a notice of appeal stating that Brazeau County Bylaw 892-15 has or may have a detrimental effect on it. Bylaw 892-15 amended the Brazeau County (Brazeau) Land Use Bylaw for parts of the NE and SE 3-49-7-W5M (E ½ of 3) to allow outside storage.

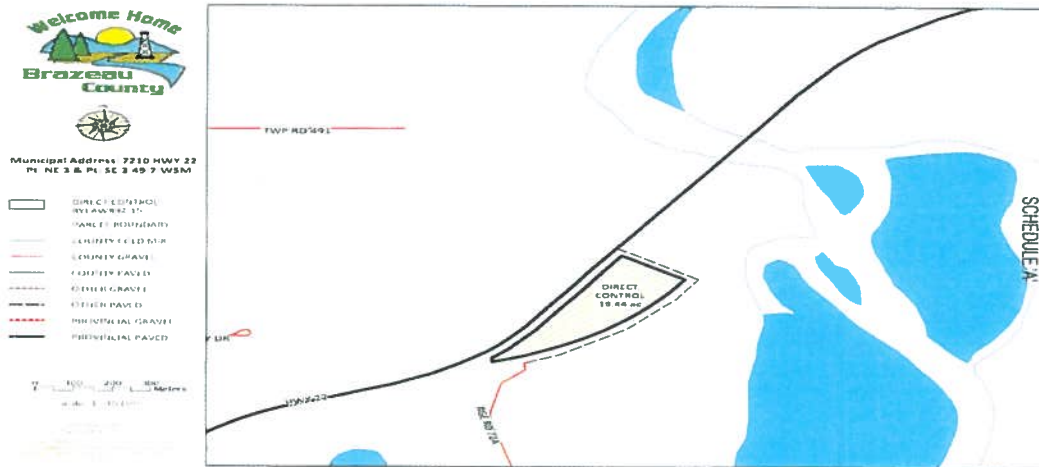


Figure One: Map of Area

[2] The notice of appeal included a statutory declaration and an extensive set of reasons for the appeal from Drayton Valley’s Chief Administrative Officer (CAO). It states that Bylaw 892-15 breaches the Provincial Land Use Policies, Brazeau’s statutory plans, and the agreements in the Intermunicipal Development Plan (IDP) and will cause detriment to Drayton Valley by:

1. Permitting spot zoning that will affect an important entrance into Drayton Valley.
2. Permitting planning and development on its border and in an interface area that undermines Drayton Valley’s planning goals, priorities and planning instruments.
3. Creating uncertainty that will impact intermunicipal planning.
4. Negatively impacting community recreation areas that will affect recreation and economic development.
5. Negatively impacting the areas adjacent to, and the water within the North Saskatchewan River, the water quality, supply and water treatment infrastructure and impacting an important asset for the region.
6. According to the River Flats Area Structure Plan, the lands are environmentally sensitive and are potentially located on flood plain.

The appeal notice also states that Brazeau did not use the mandatory dispute resolution process set out in Section 5.3 of the IDP when Drayton Valley raised its concerns.

[3] On April 8, 2016, the MGB notified the parties that an appeal had been filed and also that Bylaw 892-15 is of no effect until the MGB issues a decision or the appeal is withdrawn. The

MGB requested that the parties discuss a schedule of dates allowing mediation and evidence exchanges to occur prior to a merit hearing.

[4] On April 12, 2016, Brazeau responded, stating that it is willing to enter into mediation and requested that the MGB allow time for the mediation to occur before scheduling the merit hearing. On May 16, 2016, the Landowner made a written request to be included in the mediation.

Joint Submission by Brazeau and Drayton Valley

[5] A schedule of dates was submitted requesting a three day merit hearing in October. The municipalities have agreed to mediation. They have applied to Municipal Affairs for funding, and have discussed a set of dates and a list of possible mediators. The municipalities are unwilling to include the Landowner as a full participant in the mediation, but were open to considering written submissions during the process. In response to a question by the Panel, the municipalities agreed to provide a progress report on the mediation on June 30, 2016.

Landowner

[6] The Landowner requested to participate in the mediation. The Landowner wants to provide some information about the parcels' history and its use for outdoor storage. Time and effort has been invested into the development of Bylaw 892-15 by the Landowner. The appeal appears to show a disagreement between the municipalities about the meaning of outdoor storage, and the intended use of the lands. The Landowner also offered to provide a written submission to the municipalities for their use in the mediation.

Decision

[7] After hearing the submissions of the parties, and the intention of Brazeau and Drayton Valley to enter into mediation, the MGB makes the following decision:

Mediation

- 1) Mediation will occur between the municipalities in June and July. The panel accepts the proposed timeline for mediation and orders:
 - a. The Landowner may provide a written submission to the municipalities outlining:
 - i. the history of the parcel and,
 - ii. how outdoor storage is consistent with the Intermunicipal Development Plan.This document is to be provided no later than June 21, 2016 to both municipalities. If the mediation proceeds prior to June 21, 2016, the municipalities must notify the Landowner of the intended start date. The Landowner is to be allowed five business days to submit their materials.

- b. Drayton Valley will prepare the June 30, 2016 mediation progress report to the MGB. The municipalities will advise the MGB if additional time is needed to complete the mediation.

Evidence Exchanges and Merit Hearing Dates

- 2) A merit hearing is scheduled for Tuesday, October 25 to Thursday, October 27, 2016 in Drayton Valley. The location of the hearing will be set by MGB administration and notice provided to all parties. The timelines for evidence exchanges are as follows:

Action	Due Date
Submissions of Appellant, Drayton Valley (including will-say statements)	August 5, 2016
Submission of Respondent, Brazeau (including will-say statements)	September 28, 2016
Submission of Landowner	September 28, 2016
Rebuttal by Drayton Valley	October 7, 2016

[8] All submissions are due no later than **12:00 noon** on the date noted. Submissions may be made electronically to all parties and to the MGB. The MGB’s copy is to be sent to mgbmail@gov.ab.ca. Despite Rule 11.2 of the Intermunicipal Dispute Procedure Rules (IMD Rules) five hard copies (one unbound) are required by the MGB. Hard copies are to be delivered to the MGB’s Edmonton office within three (3) business days. One hard copy is also to be delivered to other parties (Drayton Valley, Brazeau, and the Landowner) within three (3) business days.

Public Disclosure

[9] The MGB requests that a copy of each municipality’s submissions be published on their websites. Also, a hard copy of their submissions is to be made available for public viewing at the municipal office during regular hours. If copies of these documents are requested, they may be produced for a fee as established by the municipality. The MGB also requests that a copy of the notice of the merit hearing be posted on each municipality’s website.

Court Reporter

[10] Drayton Valley and Brazeau will be responsible for retaining the services of a court reporter for the merit hearing. The costs associated with the court reporter will be shared equally by the municipalities, and a copy or the written transcript will be provided to the MGB at no cost as it is part of the record for this hearing.

Reasons

[11] The municipalities affirmed their willingness to proceed with mediation, and the Panel accepts that the parties will attempt mediation. Time is required to let the mediation process unfold. In keeping with recent MGB practice, a progress report is required to ensure that mediation is proceeding. This report also allows the municipalities to advise if any of the matters under appeal are being withdrawn or if additional mediation time and new evidence exchange dates are required. The Panel accepts the schedule of dates put forward by the municipalities. The schedule incorporates time for mediation and is mindful of the MGB's fall hearing schedule.

[12] The Panel acknowledges the Landowner's request to participate in the mediation process; however, the Act only contemplates mediation be undertaken by the municipalities. Landowners have been involved in previous mediation processes, but only at the request or invitation of the municipalities. In this case, municipalities have asked to pursue mediation without the Landowner. The Landowner's alternative proposal to provide a written submission was accepted by the municipalities allowing an appropriate opportunity for the Landowner to provide relevant information. The written submission will allow for the information to be given to the municipalities for their consideration, and addressed in the mediation.

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

Dated at the City of Edmonton, in the Province of Alberta, this 15th day of June 2016.

MUNICIPAL GOVERNMENT BOARD



E. Bruton, Presiding Officer

cc: Dwight Dibben, Town of Drayton Valley
Marco Schoeninger, Brazeau County
Andrew Dick, Alberta Environment and Parks
Peter (Doanh) Ngo, Alberta Transportation
Michael Scheidl, Dispute Resolution Services, Alberta Municipal Affairs.