

NOTICE OF CASE MANAGEMENT AND INSTRUCTIONS

Our Files: 16/IMD-03 and 16/IMD-04

January 16, 2017

Solicitor for Appellant, Drayton Valley

Janet L. Hutchison
Hutchison Law
#190-130 Broadway Boulevard
Sherwood Park AB T8H 2A3

Solicitor for Respondent, Brazeau County

Gwendolyn Stewart-Palmer
Shores Jardine LLP
2250-10104 103 Ave
Edmonton AB T5J 0H8

Landowner

Avalie Peck and Dennis McGinn
Box 6062
Drayton Valley AB T7A 1R6

Re: Intermunicipal Dispute – Section 690 Municipal Government Act

Appealed by: Town of Drayton Valley

Bylaws under Appeal:

Bylaw 892-15, An Amendment to the Brazeau County Land Use Bylaw to change the designation from Agriculture to Direct Control District on E½ of 3-49-7-W5M

Bylaw 905 - 16, Brazeau County Land Use Bylaw

The MGB has received requests from both Drayton Valley and Brazeau County to combine these matters, assign new dates for submissions, and set a date for a preliminary matter for two disputes as set out in DL 062/16, DL 070/16 and DL 072/16. Copies of these requests are attached to this letter.

Under Rule 8.1 e, the submission and hearing dates for these appeals are postponed. New dates will be established as a result of this case management session. The MGB requests that each municipality post a notice on the municipal websites explaining that the timelines for holding a hearing to consider these disputes is being reviewed.

The MGB has determined that these requests will be considered through case management by a board member of the MGB. This case management session will be conducted by teleconference, and attendance by participants is not required. The following date and time has been established for a teleconference to consider this request:

DATE: Monday, January 23, 2017
TIME: 10:00 AM
**PLACE: Mediation Room A,
2nd Floor, 1229 91 Street SW, Edmonton**

The teleconference instructions are as follows:

- 1) At 0955 all parties wishing to participate or listen on this hearing are to call **1-866-792-1317**.
- 2) Enter the conference ID number **3391817#**
- 3) Please identify yourself as you connect to the conference call. When you connect, please wait a moment to ensure that there is not a conversation in progress and wait until the panel member acknowledges you.

After this teleconference, the MGB will issue an instruction letter establishing the timeline for submissions in advance of a preliminary hearing.

Instructions

Solicitors for both municipalities are directed to discuss and establish an order of presentation and a schedule for submissions by each municipality, the landowners and the public for a preliminary hearing on these disputes. The schedule is to include time for the MGB to publish a notice of hearing in the newspaper. **A single written submission, agreed to by both solicitors, is due Friday, January 20, 2017 at 12 noon.**

Please note that this written submission will be the basis for the teleconference. This submission is to be sent electronically to mgbmail@gov.ab.ca, copies to the parties listed below, and then copied to the Case Manager.

If you require clarification, please contact me by calling toll free to 310-0000 then 780-422-8120, or by e-mail at cindy.millerreade@gov.ab.ca.

Yours truly,



Cindy Miller Reade
Case Manager

Attachments (2)

cc:

Dibben, Dwight, Town of Drayton Valley
Schoeninger, Marco, Brazeau County
Peck, Avalie and McGinn, Dennis
Dick, Andrew, Alberta Environment and Parks
Ngo, Peter (Doanh), Alberta Transportation
Scheidl, Michael, Alberta Municipal Affairs



HUTCHISON LAW

Our File: 51504 JLH

SENT BY EMAIL

January 6, 2017

Municipal Government Board
15th Floor Commerce Place 10155 – 102 Street
Edmonton AB T5J 4L4

ATTENTION: CINDY MILLER READE

Dear Madam:

**Re: Intermunicipal Dispute between Town of Drayton Valley and Brazeau County re:
Bylaw 892-15; MGB File No. 16/IMD/03 and re: Bylaw 905-16/ MGB File No.
16/IMD/04**

We are writing to request the MGB exercise its authority under s.9.1(i) of the Intermunicipal Dispute Procedure Rules and direct that the preliminary jurisdictional issue raised by the County's correspondence dated October 6th and 20th, 2016 in MGB File No. 16/ IMD/04 also be addressed in MGB File No. 16/IMD/03. As discussed in more detail below, the Town's further assessment of the preliminary jurisdictional issue indicates that as the County has taken the approach of repealing both bylaws that were under appeal, the preliminary jurisdictional issue has important implications for both of the Town's existing appeals. In particular, the Town has determined that the MGB should be made aware of the implications the preliminary jurisdictional issue has in MGB File No. 16/IMD/03, including the potential to save the MGB, and the parties, considerable time and resources. The Town has not, as of this date, been successful in reaching any agreement with the County on this issue.

For the reasons outlined in more detail below, the Town requests the MGB:

- i.) direct that submissions to be filed on the preliminary jurisdictional issue in MGB File No. 16/IMD/04, also be filed in MGB File No. 16/IMD/03, on the basis of the schedule established by the MGB's letter dated November 29, 2016, MGB Decision DL 072/16; and

- ii.) postpone the merit hearing (and amend the associated submission filing schedule which requires the Appellant submission be filed on February 16, 2017) in MGB File No. 16/IMD/03 such that the substantive submissions in that appeal are due a reasonable period of time after the decision on the preliminary jurisdictional issue in both appeals is rendered.

The Town is not requesting a postponement of the January 20, 2017 filing date set by MGB Decision DL 072/16. Rather, it requests the submissions and decision contemplated by MGB Decision DL 072/16 apply in both appeals. Also, while the Town is of the view that the within request can be addressed by the way of written submissions, if an appearance before a Panel is necessary, we are available to appear before the MGB in relation to the above requests on the following dates:

- i.) January 10, 2017;
- ii.) January 11, 2017 (morning only);
- iii.) January 16-19, 2017; or
- iv.) January 20, 2017 (morning only)

Summary of Background Facts

A general overview of events is necessary to provide the MGB with the context that connects the preliminary jurisdictional issue to both appeals:

- 1.) Prior to filing the appeal in MBG File No. 16/IMD/03, the flood prone areas (“the Lands”) that are the primary focus of both appeals were zoned as an Agricultural District (AG) under the County’s Land Use Bylaw 782-12 (“Old Land Use Bylaw”, Tab 1, County’s November 17, 2016 Binder). Outdoor Storage uses were listed as discretionary uses in that AG District.
- 2.) On March 1, 2016 the County passed Direct Control Bylaw 892-15 (“the River Flats Bylaw”, Tab 4 County’s November 17, 2016 Binder). The River Flats Bylaw rezoned the Lands to a Direct Control District. Under the River Flats Bylaw, Outdoor Storage uses were listed as permitted uses for the Lands.
- 3.) The Town filed a section 690 MGA appeal of the River Flats Bylaw on March 31, 2016 (MGB File No. 16/IMD/03).
- 4.) On June 27, 2016, the County announced it was considering adoption of Bylaw 905-16 (Tab 2, County’s November 17, 2016 Binder). Bylaw 905-16 stated it repealed the Old Land Use Bylaw in its entirety, with the exception of any Direct Control Bylaws listed in

Appendix 17.1. The River Flats Bylaw was not included in the Direct Control Bylaws listed in Appendix 17.1.

- 5.) Bylaw 905-16 rezoned the Lands back to an Agricultural District (AG). However, as in the River Flats Bylaw, Outdoor Storage uses were listed as permitted uses for the Lands (and for all areas zoned AG in the County).
- 6.) Despite concerns raised by the Town, in written and verbal communications that occurred between June 10 and August 16, 2016, the County gave Bylaw 905-16 second and third reading on August 16, 2016. Bylaw 905-16, repealed the Old Land Use Bylaw in its entirety.
- 7.) On September 15, 2016, the Town filed a section 690 MGA appeal in relation to Bylaw 905-16 (MGB File No. 16/IMD/04).
- 8.) The County subsequently considered a third Land Use Bylaw, being Bylaw 923-16 ("New Land Use Bylaw", Tab 3, County's November 17, 2016 Binder). The New Land Use Bylaw was to repeal all previous versions of the County's Land Use Bylaw, including Bylaw 905-16.
- 9.) On October 18, 2016 the County gave the New Land Use Bylaw third reading. Under the New Land Use Bylaw, the Lands remain zoned Agricultural (AG). However, Outdoor Storage uses are returned to the discretionary use status they had under the County's Old Land Use Bylaw.
- 10.) The Town did not file a section 690 MGA appeal in relation to the New Land Use Bylaw.
- 11.) On October 20, 2016, the County submitted a letter to the MGB in MGB File No. 16/IMD/ 04 which stated, inter alia "*Since Bylaw 905-16 has been repealed, the subject matter of the Town's complaint is no longer in existence. It is our view that the appeal has become moot.*" (emphasis added).
- 12.) The MGB held a preliminary hearing in MGB File No. 16/IMD/04 on November 9, 2016. MGB Decision DL 070/16 recognized the preliminary jurisdictional issue should be heard in MGB File No. 16/IMD/04. MGB Decision DL 072/16 set the schedule for the submissions and hearing for the preliminary jurisdictional issue.
- 13.) The Town's subsequent attempts to reach agreement with the County on the preliminary jurisdictional issues in both Appeals have not been successful.

Ongoing Legislative Change by the County and its Implications for both Appeals

In both MGB File No. 16/IMD/03 and MBG File No. 16/IMD/04, the County received a letter from the MGB advising that, pursuant to s.690 (4) of the MGA, the bylaw under appeal was of no force and effect while the intermunicipal dispute was ongoing.

In both cases, after the Town had filed its appeals, the County adopted new legislation that, on plain reading, purported to repeal the Bylaws that were the subject of the Town's section 690 MGA appeals.

In MGB File No. 16/IMD/04, the County has taken the position that it can undertake a legislative repeal of the bylaw in dispute and render the Town's section 690 MGA appeal moot. (see County correspondence to MGB dated October 6 and 20, 2016). Although the legislative record indicates the County has also repealed the River Flats Bylaw, the County has not yet raised this issue in MGB File No. 16/IMD/03.

No agreement regarding how this preliminary jurisdictional issue affects both appeals, under s.15 of the MGB's Intermunicipal Dispute Procedure Rules, has been possible. As such, an MGB ruling on the question of how s.690 (4) MGA affects the County's ability to repeal bylaws under appeal and, in turn, affect MGB jurisdiction may be required to settle this issue for both appeals.

The Town considers it essential that the MGB be made aware that the County's positions on how its legislative repeals affect jurisdiction and mootness in the second appeal (MGB File No. 16/IMD/04) may have equal application in the first appeal (MGB File No. 16/IMD/03). Out of respect for MGB resources, the Town wishes to ensure the parties do not have to argue this preliminary jurisdictional issue more than once as the legal issue is the same in both appeals. Further, the Town submits it is essential that the ultimate interpretation of s.690 (4) of the MGA apply in both appeals to ensure consistency in the MGB's process.

The preliminary jurisdictional issue identified by MGB's Decision Letter DL 070/16 will require the MGB to decide whether s.690 (4) of the MGA permits the County to pursue ongoing legislative action so as to affect pending MGB appeals. Specifically, the MGB will need to decide whether a Respondent municipality in a section 690 MGA appeal may repeal a bylaw that is the subject of the section 690 MGA appeal and, in so doing, render the section 690 MGA appeal moot.

Broader Implications of the County's Position in MGB File No. 16/IMD/04

If the County's position in MGB File No. 16/IMD/04, as set out in its October 6 and 20, 2016 correspondence, is proven correct, the same principles should govern MGB File No. 16/IMD/03. Specifically, if the County has the ability to repeal a bylaw that is the subject of a section 690 MGA appeal, the County has now repealed both bylaws which are the subject of the Town's appeals. If one accepts the County's reasoning in MGB File No. 16/IMD/04, one must also accept that the River Flats Bylaw has been repealed and the Appeal in MGB File No. 16/IMD/03 is also moot. Specifically, if the County's position on jurisdiction is upheld, the Lands have already returned to the zoning and outdoor storage use classification (discretionary) that existed before the intermunicipal dispute arose.

The Town considers it essential that the MGB deal with all issues relevant to both appeals on this preliminary jurisdictional issue for both appeals for reasons including:

- i.) Hearing the preliminary jurisdictional issue twice would waste valuable MGB resources and result in unnecessary expense to the parties;
- ii.) Hearing the preliminary jurisdictional issue in each appeal separately, and potentially before separate panels, could result in an inconsistent interpretation of s. 690(4) of the MGA and confuse this area of MGB jurisdiction;
- iii.) If the County's October 20, 2016 position on the preliminary jurisdictional issue is accepted by the MGB, it may conclude both appeals, as the net effect would be a finding that Bylaw 923-16 is currently the only Land Use Bylaw in effect in relation to the Lands. The Town has not appealed Bylaw 923-16 as it returned the zoning of the Lands to the zoning that existing prior to the intermunicipal disputes.

The Town respects the MGB and its' resources and, as efforts to resolve this issue by agreement have failed, the Town felt it essential to bring to the MGB's attention that directing a hearing of the preliminary jurisdictional issue in both appeals has important potential impacts on the MGB's resources and hearing schedule.

Summary

Based on the foregoing, the Town is requesting that:

- 1.) The preliminary jurisdictional issue identified in Decision letter DL 070/16 be argued in both MGB File No. 16/IMD/03 and MGB File No. 16/IMD/04;

- 2.) The MGB proceed with the preliminary jurisdictional issue hearing on the schedule set out in the MGB's Decision DL 072/16, unless the Panel determines that schedule should be postponed pending a decision on the within request or the County requests a postponement;
- 3.) The MGB postpone the dates set by MGB Decision DL 062/16 regarding the merit hearing in MGB File No. 16/IMD/03, such that the Town and the County will not be obligated to file substantive submissions or proceed with the merit hearing until such time as the preliminary jurisdictional issue is decided in both MGB File 16/IMD/03 and MGB File No. 16/IMD/04; and
- 4.) The MGB deal with the within application by way of written submission, subject to a request for an oral hearing by the County or a direction from a Panel that an oral hearing of this matter is required.

All of which is respectfully submitted,

HUTCHISON LAW

PER: JANET L. HUTCHISON

JLH/cm

cc: Client

cc: G. Stewart-Palmer, Shores Jardine LLP

cc: Andrew Dick, Alberta Environment and Parks

cc: A. Peck, Landowner

cc: P. Ngo, Alberta Transportation

cc: M. Scheidl, Alberta Municipal Affairs

cc: M. Schoeninger, Brazeau County

VIA EMAIL

January 13, 2017

Municipal Government Board
1229 91 St SW
Edmonton, AB T6X 1E9

Tel 780.448.9275

Fax 780.423.0163

Suite 2250
Bell Tower
10104 – 103 Avenue
Edmonton, Alberta
T5J 0H8

Attention: C. Miller Reade, Case Manager

Dear Madam:

gwendolyn@shoresjardine.com

Re: Intermunicipal Dispute – Section 690 Municipal Government
Appeals by the Town of Drayton Valley
Bylaw Under Appeal: Bylaw 892-15 and Bylaw 905-16 – Brazeau County Land
Use Bylaw
Decision DL 070/16
Your files: 16/IMD/003 and 16/IMD/004
Our File: 9275 GJSP

I am writing in response to Ms. Hutchison's letter of January 6, 2017.

The County has reviewed Ms. Hutchison's letter. The County does not object, in principle, to the Town's request to have the jurisdictional issue which was addressed in DL072/16 in regard to 16/IMD/004 canvassed by the parties in relation to 16/IMD/003 and reserves the right to provide further comments in response to the letter at a preliminary hearing (see below) or at the argument on its merits.

However, the County is requesting a preliminary hearing to address the following matters:

1. The Town has rightly indicated that the County has taken the position in 16/IMD/004 that Bylaw 905/16 has been repealed and therefore the Town's s. 690 application is moot. The Town does not agree with the County's position. In DL072/16, the Board directed that the Town file written submissions first, with the County responding.

In the ordinary course, the party who is putting forward a position would argue first in support of that position, with the second party responding. In 16/IMD/004, this would have had the County argue in favour of Bylaw 905-16 being repealed (and therefore the Town's s. 690 application being moot), with the Town responding to the application.

DL072/16 reversed that order of argument.

If the Town is now seeking to argue the question of the status of Bylaw 892-15 (i.e., that Bylaw 892-15 is repealed), it is the Town who is making this argument (since the County did not raise it). If the Town is permitted to present its argument on Bylaw 892-15 at the same time as it is putting forward its argument in relation to Bylaw 905-16, the County understands that the Town would be arguing both for, and against validity in the same argument.

The County wishes a preliminary hearing so that the Board can provide specific direction in relation to the order of argument, and so that the Town can provide further clarity in relation to the questions that it is seeking direction from the Board. The County does not wish to wait until after the Town files argument to raise this question, as it is of the opinion that neither party would benefit from waiting until the later date to address this matter.

2. A preliminary hearing would provide an opportunity to determine if there will be evidence provided by either party.
3. I have previously indicated to the Board's administration that there may be possible conflicts if certain Board members are slated to hear matters in which I appear as counsel. I would like the opportunity to specifically address this matter, so that we are not faced with an adjournment of the application due to a potential conflict of one of the Board members.

I have not had an opportunity to canvas these issues with Ms. Hutchison. Given the timing of her letter, the need to respond to the Board by noon on January 13, 2017 and the timing of Ms. Hutchison's response in relation to 16/IMD/004, I am prepared to attend a preliminary hearing to address the above matters as soon as possible. I am available to attend a hearing on the following dates (addressing the dates Ms. Hutchison is available):

January 17, 2017 – afternoon only
January 18 or 19, 2017 – morning or afternoon
January 20, 2017 – morning
January 23 – 26, 2017 – morning or afternoon

If you have any questions, please do not hesitate to contact me.

Yours truly,

SHORES JARDINE LLP

FOR PER: 

GWENDOLYN J. STEWART-PALMER

Gwendolyn@shoresjardine.com

Direct line: 780.702.4275

January 13, 2017
Page 3 of 3



CC: Client
Janet Hutchison
Andrew Dick, Alberta Environment and Parks
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P. Ngo, Alberta Transportation
M. Scheidl, Alberta Municipal Affairs
D. Dibben, Town of Drayton Valley

