

NOTICE OF DECISION

NO. DL 070/16

FILE NO. 16/IMD/004

Appellant, Town of Drayton Valley

Respondent, Brazeau County

Janet Hutchison
Hutchison Law
190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park, AB T8H 2A3

Gwendolyn Stewart Palmer
Shores Jardine
2250 Bell Tower
10104 103 Avenue
Edmonton, AB T5J 0H8

Citation: Town of Drayton Valley v Brazeau County (*re: Brazeau County Bylaw 905-16*)
2016 70

Re: **Appeal to the Municipal Government Board**
Intermunicipal Dispute – Section 690 *Municipal Government Act* (Act)
Bylaw under appeal: Brazeau County Bylaw 905-16, Brazeau County Land Use Bylaw

This is the decision of the Municipal Government Board (MGB) from a preliminary hearing held in the City of Edmonton on November 9, 2016 to establish dates for submissions on a jurisdictional matter and the merit hearing.

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

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

Background

[1] On August 16, 2016, Brazeau County (Brazeau) adopted Bylaw 905-16 (Bylaw 905), a new land use bylaw. On September 15, 2016, the Town of Drayton Valley (Drayton Valley) filed an appeal with the MGB stating that Bylaw 905 has or may have a detrimental effect upon because it allows outdoor storage as a permitted use in all Agriculture Districts. Further, the

definition for outdoor storage is vague and includes industrial storage. As required by section 690(1), Drayton Valley provided written notice of its concerns to Brazeau prior to second reading of the Bylaw.

[2] In the materials filed with its notice of appeal, Drayton Valley further explained that the reason for its appeal was that outdoor storage could take place on any parcel of land districted Agriculture (A) including lands adjacent to bodies of water, located in flood way or flood fringe areas, adjacent to provincial parks, or are otherwise unsuitable. This would undermine the intent of land use plans and bylaws to establish patterns of land uses to meet Section 617, which outlines the purpose section of Part 17 of the *Act*. Allowing outdoor storage as a permitted use impacts how Drayton Valley makes its planning decisions and may affect its municipal operations and how it plans and implements recreation and economic development initiatives. Brazeau has also not entered into mandatory dispute resolution, which both municipalities agreed to undertake when there was a dispute about land use. Mediation was a required first step in any dispute, and is a requirement under not only the *Act*, but also the 2012 Intermunicipal Development Plan adopted by both municipalities.

[3] Outdoor storage in an agricultural district is also the subject of another dispute filed with the MGB in 2016. That dispute, which is MGB File 16/IMD/003, concerns outdoor storage on two parcels of land located on the North Saskatchewan River, adjacent to Highway 39, and upstream from the fresh water intake for the region's water treatment plant. At issue was the adoption of direct control bylaw (Bylaw 892-16) for the lands when other statutory plans (such as the intermunicipal development plan, municipal development plan and area structure plan) identified the lands for agricultural use and not the industrial use contemplated in the land use bylaw in effect at the time which was Bylaw 782-12.

[4] After this appeal was filed on October 18, 2016, Brazeau adopted a new land use bylaw Bylaw 923/16 (Bylaw 923). Brazeau advised Drayton Valley that Bylaw 923 would address the issues raised with both appeals and would repeal Bylaw 905, Bylaw 892 and Bylaw 782-12. In its October 6, 2016 statutory declaration to the MGB, Brazeau stated that the adoption of Bylaw 923 and the repeal of the other bylaws would address the issues raised by Drayton Valley, resolve both 16/IMD/003 and this dispute, and make mediation unnecessary.

Joint Submission of the Parties

[5] At the outset of the hearing, both municipalities asked for additional time to file submissions on the jurisdiction of the MGB, due to the adoption of Bylaw 923, Brazeau's position on mediation and the status of Bylaw 905. Drayton Valley advised the panel that it was still discussing what actions it will take after the adoption of Bylaw 923 and the implication for this dispute and 16/IMD/003, and the status of Bylaw 892 and 905. Brazeau advised that it was willing to file submissions on the jurisdiction matter.

[6] The parties requested that the panel set:

1. A date and method for submission on the jurisdiction of the MGB after the adoption of Bylaw 923 and;
2. A set of submission dates and a merit hearing date in March or April 2017.

The parties suggested that written submissions could be provided for the jurisdictional matter in the last week of November. After the jurisdictional matter was addressed, advertising could occur for the merit hearing. The parties indicated that they would be willing to post this decision and any related documentation on their websites.

Decision

[7] After considering the requests of the parties, the MGB orders:

1. Written submissions by both parties due on or before noon on Friday, December 2, 2016, 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.
2. 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 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.

For its records, the MGB requests that Brazeau County provide a hard copy and an electronic copy of these documents to the MGB at its earliest convenience.

3. The MGB will place a notice in the local newspaper, the Drayton Valley Western Review, in December 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 January 4, 2017 at 12 noon.
4. If necessary, the merit hearing will be set for March 7, 2017, in a location to be determined by the MGB. The MGB orders that the following actions to occur on or before the following dates:

Action

Submissions on the Jurisdictional Matter
 Landowner or Affected Party Submissions
 Drayton Valley First Submission (with Will-Say Statements)
 Brazeau County Response (with Will-Say Statements)
 Landowner Response
 Drayton Valley Rebuttal

Date

December 2, 2016
 January 4, 2017
 January 17, 2017
 January 24, 2017
 February 21, 2017
 March 1, 2017

All submissions are due by 12 noon. Submissions may be made electronically to mgbmail@gov.ab.ca. Five hard copies (including one unbound) will be sent to the MGB within three business days. A hard copy is to be sent to both counsel and the CAO of the other municipality.

The panel is not seized.

Reasons

[8] The MGB understands that, due to the adoption of Bylaw 923, there are discussions underway which could impact this appeal. Both parties suggested that written submissions could establish the intentions of Drayton Valley and Brazeau, discuss the three bylaws as well as Bylaw 762-12, and address the MGB's jurisdiction in relation to this appeal. The MGB accepts that some time is needed for these activities to occur and has set submission dates.

[9] From the MGB's perspective, this hearing was necessary to open this appeal, and hear from the parties about their ongoing discussions. When an intermunicipal dispute is filed, there are often few details provided in the parties' statutory declarations. Often between the time of filing the dispute and the first hearing date, the facts contained with the statutory declaration have changed, discussion has occurred between the parties establishing the groundwork for the mediation process, or determining potential dates for evidence exchange and merit hearing. The MGB observes that, since the appeal period for Bylaw 923 was still active at the date of this hearing, there is a potential that another dispute could be filed.

[10] The above schedule recognizes the need for submissions about the MGB's ability to hear an appeal on Bylaw 905 given the adoption of Bylaw 923. After this matter is addressed and in the event that a merit hearing is required, there must be time for the production, submission, and response for any evidence or reports prior to the commencement of a merit hearing. Under the *Act* and the MGB's procedure rules, notice must be given to landowners whose lands are located within the area of the plan or bylaw to advise them of the date of the merit hearing. Notice also provides the landowners with information about where and how they might review each municipality's documents and the process to make a submission to the MGB and the municipalities.

[11] When setting dates, the intent of the MGB is to ensure that the appeal is proceeding in a timely manner, all parties are aware of timelines for submissions and how they are to be delivered to the MGB and other parties. The date of the merit hearing is set to meet the scheduling constraints of the municipalities and the MGB. Given the dates provided by the municipalities and the MGB's schedule, the panel chose March 7, 2017 as a start date for the merit hearing.

[12] The MGB's request to post any materials related to this appeal will allow Brazeau's landowners and any affected parties an opportunity to review the material and to determine if they will be filing a submission or a response with the MGB. In order that all parties may understand the issues under appeal, the MGB requests all three bylaws (Bylaws 923, 905 and 892) as well as the previous land use bylaw (Bylaw 782-12) be made available to the public, and copies provided by to the MGB. If copies of these documents are requested by members of the public, the municipalities may provide them at a cost established by the municipality.

Dated in the City of Edmonton, in the Province of Alberta on the 17th day of November 2016.

MUNICIPAL GOVERNMENT BOARD



H. Kim, Presiding Officer

cc: Dwight Dibben, Town of Drayton Valley
Marco Schoenenger, Brazeau County
Jennifer Martin, Town of Drayton Valley
Rod Fraser, Town of Drayton Valley
Martino Verheaghe, Brazeau County
Andrew Dick, Alberta Environment and Parks
Peter (Doanh) Ngo, Alberta Transportation
Michael Scheidl, Alberta Municipal Affairs