

BOARD ORDER: MGB 065/03

FILE: 02/IMD/01

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 A INTERMUNICIPAL DISPUTE APPEAL lodged by the Summer Village of Sundance Beach (Summer Village).

BEFORE:

Members

H. Kim, Presiding Officer

D. Scotnicki, Member

D. Thomas, Member

Secretariat Advisor

D. Hawthorne

This is an appeal to the Municipal Government Board (MGB) regarding a dispute lodged by the Summer Village pursuant to Section 690 of the Act, respecting the adoption of Area Structure Plan Bylaw 26-02 by Leduc County (County).

Upon notice being given to the interested parties, a hearing commenced in the City of Edmonton on December 9, 2002, and was adjourned pending the outcome of attempts at mediation between the two municipalities. As a result of a mediated settlement, the hearing was closed on May 12, 2003, without the parties in attendance.

BACKGROUND

On October 10, 2002, the Summer Village appealed to the MGB claiming that the County had approved an Area Structure Plan Bylaw that has or may have a detrimental effect on the Summer Village. The Bylaw refers to part of the SW 28-47-1-5 in the Moonlight Bay/Kerr Cape vicinity on lands proposed for development by Gregg Properties Ltd.

Prior to the filing of the dispute by the Summer Village, the County conducted a public hearing respecting the Area Structure Plan Bylaw. The hearing commenced on August 13, 2002, and continued on September 10, 2002. The Summer Village gave written notice of its concerns to the County prior to 2nd reading of the Bylaw and prior to the public hearing. After the public hearing and despite the

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concerns expressed by the Summer Village, the County decided to adopt Bylaw 26-02 on September 10, 2002.

The Summer Village decided to appeal the decision of the County to pass the Bylaw because it was of the opinion there was potential for detriment in accordance with the following concerns.

- “1. The development provided for by the Area Structure Plan will put additional and undue stress on lake access points within Sundance Beach, which are already being fully utilized by the existing residents.
2. The potential Range Road #14 access point is too steep and narrow for practical lake access, with the result that lake access within Sundance Beach will become the practical default lake access.
3. Two potential access points will disturb shore vegetation, and have the potential to impact fish and fish habitat, to the general detriment of Sundance Beach.
4. Increased traffic on Range Road #14 will exacerbate the already-existing dust control problem in Sundance Beach.
5. The Area Structure Plan does not provide parking facilities to accommodate the increased traffic flow, and over-flow parking will foreseeably spill into Sundance Beach.
6. In general, the privacy and enjoyment of Sundance Beach residents, and their general recreational experience will be disrupted and detrimentally affected by the development.
7. The proposed Area Structure Plan does not adequately address sewage disposal issues, to the general detriment of Sundance Beach.
8. The proposed Area Structure Plan does not adequately address storm drainage, to the general detriment of Sundance Beach.”

On December 9, 2002, the MGB opened the hearing. The County advised that it wished to raise a jurisdictional argument respecting the validity of the appeal since mediation had not been attempted prior to the lodging of the appeal. However, the County indicated it was prepared to enter into the mediation process provided it did not prejudice its jurisdictional argument to the MGB.

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The MGB advised the parties that it was willing to hear expanded arguments on the MGB's jurisdiction at a hearing to be conducted on April 7, 2003. The MGB also ordered that a document exchange process occur prior to the hearing. The document exchange process would then form all the submissions of each party including submissions on jurisdiction and merit. In the meantime, the MGB encouraged the parties to use the mediation process to resolve all the issues.

In March 2003, the municipalities advised the MGB that mediation was scheduled but more time was needed. With the agreement of the landowner, the MGB agreed to delay the hearing to May 15, 2003 and adjusted the document exchange process accordingly.

On April 30, 2003, the municipalities advised the MGB that mediation had been successful and an agreement had satisfactorily resolved the issues between the municipalities. The County, the Summer Village, and the landowner requested the MGB order the County to amend the Area Structure Plan in accordance with the agreement, without reconvening the hearing and without requiring further submissions from the parties. The solicitors for all three parties noted the County would be required to conduct a lengthy public hearing process for the agreed amendments to the Area Structure Plan unless the MGB issued an Order. Section 690(7) of the Act relieves the County from conducting a public hearing if the MGB directs the Area Structure Plan be amended.

FINDINGS

1. Leduc County Bylaw 26/02, as adopted, is detrimental to the Summer Village of Sundance Beach.
2. Amendments to the Bylaw as a result of mediation have resolved the detriment.

In consideration of the mediated agreement and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

Pursuant to Section 690(5) of the Act, the MGB hereby orders Leduc County to amend Area Structure Plan Bylaw 26-02 in accordance with the mediated agreement reached between the Summer Village of Sundance Beach and Leduc County as shown in its entirety in Appendix "C" of this Board Order.

REASONS

By agreeing to amendments to the Area Structure Plan Bylaw, the County and the Summer Village have found a way to resolve their differences and find solutions to the question of detriment through

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mediation. This fact proves to the MGB that parts of Bylaw 26-02 as originally adopted were detrimental to the Summer Village. The MGB accepts the recommendation of all three parties, including the landowner, that the proposed amendments resolve the detriment and do not materially interfere with the plans of the landowner for a proposed development on the subject land.

Section 691(2) of the Act only requires that the MGB notify and hear from the two municipalities and the affected landowner. As a result, the MGB is satisfied that required parties have had sufficient opportunity for input to resolve the disputed matters.

The municipalities represent the best interests of their respective citizens, therefore, the opportunity for general public input was satisfied by the public hearing held by the County on August 13 and September 10, 2002. There are no outstanding issues from the affected landowner, therefore, the MGB is satisfied that further public hearings by the County are not required respecting the amendments proposed in the mediated agreement. Accordingly, the MGB is directing the County to amend Bylaw 26-02 in accordance with the agreement.

DATED at the City of Edmonton, in the Province of Alberta, this 16th day of May 2003.

MUNICIPAL GOVERNMENT BOARD

(SGD.) D. Thomas, Member

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APPENDIX "A"

PERSONS WHO MADE SUBMISSIONS TO THE MGB

NAME	CAPACITY
Grace Garcia Cooke	Leduc County Solicitor
Barry Sjolie	Leduc County Solicitor
Sheila McNaughton	Summer Village of Sundance Beach Solicitor
Anita Blais	Summer Village of Sundance Beach Administrator
Bob Riddett	Summer Village of Sundance Beach Planner
Brian J. Evans	Solicitor for Gregg Properties, Landowner

APPENDIX "B"

DOCUMENTS RECEIVED DURING THE HEARING ADJOURNMENT AND CONSIDERED BY THE MGB.

NO.	ITEM
1	Letter dated April 30, 2003 from B.J. Evans
2	Letter dated April 30, 2003 from S. McNaughton
3	Letter dated April 30, 2003 from B. Sjolie

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APPENDIX “C”

THE MEDIATED AGREEMENT BETWEEN THE SUMMER VILLAGE OF SUNDANCE
BEACH AND LEDUC COUNTY

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LEDUC COUNTY
and the
SUMMER VILLAGE OF SUNDANCE BEACH

The parties to this agreement are the Summer Village of Sundance Beach and Leduc County.

This document sets out the recommendations of the Mediation Committee. It is understood that these recommendations will only be binding if ratified by both Councils.

The members of the Mediation Committee are confident that these recommendations meet the needs of both municipalities in resolving the concerns of the Summer Village of Sundance Beach in relation to their appeal to the Municipal Government Board of Leduc County's S.W. 28-47-1-W5M Area Structure Plan, as adopted by Bylaw No. 26-02.

<u>J. B. W. Kelly</u>	<u>Don S. Macaulay</u>
<u>[Signature]</u>	<u>Edward Chubacka</u>
<u>John G. Jungersen</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>A. Blas</u>	<u>Kevin [Signature]</u>

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THE PARTIES AGREE AS FOLLOWS:

The Summer Village of Sundance Beach agrees, immediately upon ratification by both Councils of these recommendations, to withdraw its appeal to the Municipal Government Board of Leduc County's S.W. 28-47-1-W5M Area Structure Plan.

The recommended amendments to the Area Structure Plan are:

Sewage

~~Leduc County~~ will replace the wording on Page 11, paragraph 5.3, "In the interim, however, it is recommended that holding tanks be utilized by all lots." with the following wording:

In the interim, however, Leduc County has indicated that holding tanks will be mandatory.

Parking

Leduc County will note in the ASP that there is limited parking in the area and that purchasers should plan accordingly to meet their parking needs on their respective lots.

Leduc County may explore the option of including a requirement for a minimum number of parking spaces for each of the proposed lots in the ASP.

Storm Water Management

~~Leduc County~~ will require in the ASP that discharge rates of storm water from the ASP area into the Summer Village of Sundance Beach will be limited to pre-development rates.

Roads

In relation to that portion of Range Roads 14 and 15 south of Highway 616X, the parties agree to jointly review the standards for maintenance and upgrades and the basis of cost sharing between the parties.

Lake Access

Leduc County will amend Figure 4.3 by removing the area west of Range Road 14 from the map.

"The Summer Village of Sundance Beach" will be added to the parties to be consulted with respect to any construction within Range Road 14 right of way south of Lakeshore Drive, at the end of paragraph 5 in Section 4.3 of the ASP.

Future Discussions

The parties agree to hold further discussions with respect to planning and the environment as noted in the document, Topics for Discussion.

April 24, 2003

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TOPICS FOR DISCUSSION

This list was prepared by the members of the Mediation Committee. Some topics have already been addressed; others are still to be discussed and new topics may be added by the parties by mutual agreement.

Storm Water Management

- Storm water management within proposed subdivision and management of runoff through summer village drainage system

Lake Access

- Lake access through Sundance Beach
- Limited lake access specified within asp along lakeshore east/south of Sundance Beach – not an open-ended possibility for more currently referenced in asp
- Future development of RR14 as a lake access, lake access terrain, control RR14
- Public advertising of Sundance easements

Sewage and Environment

- Environmental concerns re: too much development around the lake
- Pollution
- Mandatory use of holding tanks for domestic waste water (sewage and grey water) prior to hook up to sewer line if, as and when constructed
- Oceans and Fisheries should test every system around lake for leakage
- Trees
- Public services (police, fire, ambulance)

Planning

- Jurisdiction
- Limit effects of county development on people of Sundance Beach
- Infrastructure plans
- Lake management plans
- Planning for today and tomorrow
- What aspects of the proposed development will adversely affect the village
- Full impact of ASP on Moonlight Bay

Road and Parking

- Dust control
- Parking restrictions within summer village and assurances of quiet, enjoyment of property by Sundance Beach property owners
- Parking in subdivision
- On-site parking within proposed subdivision