

LPRT FILE NO.	21/MD-002
IN THE MATTER OF	AN INTERMUNICIPAL DISPUTE
INITIATING MUNICIPALITY	VILLAGE OF DUCHESS
RESPONDENT MUNICIPALITY	COUNTY OF NEWELL
DOCUMENT	STATUTORY DECLARATION
NAME (ORGANIZATION)	BROWNLEE LLP Attention: Jeneane S. Grundberg, Q.C. and Alifeyah Gulamhusein
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Land and Property Rights Tribunal

Intermunicipal Dispute between County of Newell and Village of Duchess **File 21/MD-002**

STATUTORY DECLARATION

I, MATTHEW FENSKE, of the City of Brooks, in the Province of Alberta, municipal employee, declare that:

1. I am the Chief Administrative Officer for the County of Newell (the “County”).
2. I have knowledge of the matter and the appeal filed by the Village of Duchess (the “Village”) pursuant to Section 690 of the *Municipal Government Act* (the “MGA”) and related specifically to the County’s Land Use Bylaw 2016-21(the “LUB”).
3. I make this declaration in response to a notice of appeal filed by the Village on October 21, 2021 (the “Notice of Appeal”) to the Land and Property Rights Tribunal (the “LPRT”) which the Village notes has been filed to “preserve its rights and in the hope and expectation that this dispute can be resolved through negotiation or mediation”.
4. The County’s position is that the Village has not engaged in the Dispute Settlement Process outlined in the Intermunicipal Development Plan Bylaw No 1780-13 and No 455-13 adopted by the County and Village respectively (the “IDP”) prior to filing this Notice to Appeal. As the Village has failed to follow the IDP, it cannot proceed before the LPRT with the intermunicipal dispute that is the subject of the Notice of Appeal.
5. The County’s position is that no proper Notice of Appeal has been filed by the Village pursuant to the requirements of section 690 of the MGA for the following alternative reasons:
 - a. The Notice of Appeal does not specify the provision(s) of the LUB that has a detrimental effect on the Village as required (MGA, s 690(2));
 - b. The Notice of Appeal does not specify reasons as to why the provisions have a detrimental effect on the Village as required (MGA, s 690(2)); and
 - c. The Village has made no genuine effort to commence or implement mediation nor has the Village properly indicated why mediation is not possible (MGA, s 690(2));

- d. The Village has not complied with the Dispute Resolution Process in the IDP, as set out in paragraphs 4, 6(a), 7 and 8.
6. In response to the Notice of Appeal, the County states that its position is as follows:
- a. The Village has not complied with the Dispute Settlement steps outlined in Part B, Section 4.0 of the IDP which requires specific steps to settle disputes locally before going beyond the local level, including calling a meeting of the IDP Committee (Step 2), calling a joint meeting of Councils (Step 5), and contacting Alberta Municipal Affairs to commence mediation (Step 6).
 - b. The Village has not made a meaningful attempt to commence or implement mediation, as evidenced in the timeline below.
 - c. To the extent that the LUB, in the A-Gen Agriculture, General District (the “A-G District”) contains uses that were not previously referenced in the Fringe-FR District in the Bylaw 1892-17 (the “Previous LUB”), those uses are not “detrimental” as prescribed in section 690 of the MGA given:
 - i) The changes are to form, not substance;
 - ii) The nature of the use itself is not detrimental;
 - iii) Any negative impact is sufficiently negated or mitigated to render the use not detrimental:
 - a. when considered in the context of the County’s planning framework, including the IDP;
 - b. when considered in the context of federal legislation; or
 - c. when considered in the context of provincial legislation, including the requirements of section 619 of the MGA.
 - d. To the extent that the LUB, in the A-G District changes any provisions respecting subdivision in the Fringe-FR District in the Previous LUB, those changes are not “detrimental” as prescribed in section 690 of the MGA given:
 - i) the changes are to form, not substance;
 - ii) any negative impact is sufficiently negated or mitigated to render the change not detrimental when considered in the context of the County’s planning framework, including the Subdivision Authority Bylaw 2018-21.

- e. While the Village in its Reasons for Appeal alleges a lack of meaningful consultation because the County wanted to address the LUB amendments prior to the municipal election, the timeline below outlines the County's multiple efforts to consult with the Village, its success in consulting with other affected municipalities, and the Village's limited response respecting engagement:

Date	Event
June 21, 2021 to July 11, 2021	County Virtual Open House and Online Survey about LUB. An entire storyboard is dedicated to Solar Panels and Fringe District proposed amendments.
June 23, 2021	<u>County invites Village to participate in County Virtual Open House on LUB.</u>
July 7, 2021	Email from Village to County seeking consultation timelines noting LUB will be on Village's next Council meeting agenda
July 8, 2021	Email from County to Village advising County hopes to adopt LUB before new Council elected (October 18, 2021).
July 8, 2021	Email from Village to County noting they probably want to set up a meeting about new LUB because they have a "few items in the fringe areas where we may have concerns".
July 8, 2021	<u>Email from County to Village agreeing that a meeting to discuss LUB is a good idea.</u>
July 8, 2021	Email from County to Village noting County will set up a meeting.
July 19, 2021	Email from County to Village advising County is taking LUB for first reading on August 5 and public hearing in September. <u>Email advises County is available for a meeting with Village on July 23, 2021.</u>
July 20, 2021	Email from Village advising it cannot meet with County until after July 29, 2021 noting Village proposes to follow up with County after July 30, 2021.
<i>July 21, 2021</i>	<i>County meets with Town of Bassano about LUB.</i>
<i>July 22, 2021</i>	<i>Email from County to Town of Bassano addressing LUB concerns.</i>
<i>July 28, 2021</i>	<i>County meets with City of Brooks about LUB.</i>
August 3, 2021	Telephone call from County to Village regarding LUB followed by an email from County to Village attaching LUB for first reading scheduled August 5, 2021 and advising public hearing to be scheduled September 9, 2021. <u>Email also asks Village to advise if they want to set up a formal IDP meeting.</u>
August 5, 2021	LUB receives 1st reading
August 5, 2021	County circulated the notice and package for the September 9, 2021 public hearing to neighbouring municipalities: Village of Duchess, City of Brooks, Village of Rosemary and Town of Bassano.
<i>August 10, 2021</i>	<i>IDP Committee Meeting: County and City of Brooks</i>
<i>August 30, 2021</i>	<i>Email from City of Brooks to County providing letter with LUB comments.</i>

<i>August 31, 2021</i>	<i>IDP Committee Meeting: County and Village of Rosemary</i>
September 1, 2021	Email from Village to County providing letter with LUB comments noting Village has “some very large concerns”.
September 2, 2021	Email from County to Village advising that many issues raised by the Village were raised by the other neighbouring municipalities and are being address in amendments to LUB. Email acknowledges that consequential updates to IDP will be needed upon passage of the LUB. <u>Email provides that County will provide new LUB for comment and suggests a meeting once revised LUB circulated.</u>
September 3, 2021	Email from County to Village with proposed revisions to LUB for public hearing incorporating public feedback. <u>Email notes County is open to hosting a meeting with Village to discuss concerns.</u>
<i>September 3, 2021</i>	<i>Letter from Village of Rosemary to County about LUB following IDP Committee meeting.</i>
<i>September 7, 2021</i>	<i>Email from MD of Taber to County with LUB comments. Email from County to MD of Taber responding to comments.</i>
September 7, 2021	Email from Village to County asking if County will address Village’s concerns before public hearing.
September 7, 2021	Email from County to Village noting the County will not be able to address all Village concerns but most were addressed in September 2, 2021 attachments. <u>Email invites Village to public hearing and advises that County is open to hosting a meeting to discuss concerns.</u>
September 8, 2021	Emails between Village and County culminating in Village thanking the County for adding the Village’s letter to the public hearing package. <u>Village advises it is not available to discuss the LUB the week of September 13, 2021 but is available October 4, 5 or 6, 2021.</u>
<i>September 9, 2021</i>	<i>Email from MD of Taber to County noting concerns with LUB have been addressed to MD of Taber’s satisfaction.</i>
September 9, 2021	Public hearing on LUB.
September 9, 2021	2 nd and 3 rd reading of LUB delayed to September 23, 2021.
September 10, 2021	<u>Email from County to Village advising that the County is available anytime the week of September 13, 2021 except Friday and also the next week.</u> Email advises County intends to put LUB on Council agenda for 2 nd and 3 rd reading on September 23, 2021.
September 14, 2021	Email from Village to County attaching letter with items to discuss prior to scheduling a meeting.
<i>September 21, 2021</i>	<i>2nd IDP Committee Meeting: County and City of Brooks</i>
September 22, 2021	<u>Email from Village to County confirming meeting with County on September 22, 2021 from 1pm to 3pm to discuss LUB and Village’s proposed edits. Meeting occurred as scheduled.</u>
September 23, 2021	LUB receives 2nd and 3rd reading.
October 7, 2021	Email from County to Village thanking Village for attending October 7, 2021 public hearing for Subdivision Authority Bylaw 2018-21 and inviting

	Village to suggest amendments to IDP.
October 15, 2021	Email from Village to County advising that Village will write its own policy and will schedule an IDP Committee meeting after municipal election.

7. Contrary to the Village's statutory declaration, the Village did not respond to the County's multiple attempts to meet to discuss the amendment to the LUB and only agreed to a meeting only one day before the scheduled date for 2nd and 3rd reading (which was delayed from September 9, 2021 to September 23, 2021).
8. The Village provides no reason for why it did not respond to the County's August 3, 2021 invitation to have an IDP Committee meeting or make any requests to have an IDP Committee meeting as required under the steps prescribed in the Dispute Settlement Process in the IDP prior to filing the Notice of Appeal.

DECLARED before me at the County of Newell,
in the Province of Alberta
this the 19th day of November, 2021.



A Commissioner for Oaths in and for the
Province of Alberta

Ariana Nielsen
My commission expires
January 14, 2022



MATTHEW FENSKE