



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Three Sisters Mountain Village Properties Ltd. v Town of Canmore, 2021 ABLPRT 816

Date: 2021-12-06

File Nos. P21/CANM/T-002 and P21/CANM/T-003

Decision No. LPRT2021/MG0816

Municipality: Town of Canmore

In the matter of an appeal under section 619 of the *Municipal Government Act*, being Chapter M-26 RSA 2000, (*Act*) from a decision of the Town of Canmore respecting the Smith Creek Area Structure Plan (Smith Creek ASP) and the Three Sisters Village Area Structure Plan (Three Sisters ASP)

BETWEEN:

Three Sisters Mountain Village Properties Ltd. (TSMVPL)

Appellant

- and -

Town of Canmore (Town)

Respondent Authority

BEFORE: H. Kim, Presiding Officer
(Panel)

K. Lau, Case Manager

DECISION

APPEARANCES

See Appendix A

This preliminary hearing before the Land and Property Rights Tribunal (LPRT) was held via written submission due December 3, 2021 after notifying interested parties.

BACKGROUND

[1] This is a preliminary hearing respecting an appeal by TSMVPL pursuant to s. 619 of the *Act* because the Town did not approve the Smith Creek ASP and the Three Sisters ASP despite an approval by the Natural Resources Conservation Board (NRCB) in NRCB Decision Report 9103 (NRCB Approval). The appeals of the Smith Creek and Three Sisters ASPs were filed with the LPRT on July 9, and August 6, 2021 respectively.

[2] The LPRT opened the appeal of the Smith Creek ASP at a preliminary hearing on September 3, 2021 and issued Decision LPRT2021/MG0483 on September 8, 2021. The LPRT opened the appeal of the Three Sisters ASP and continued the hearing of preliminary matters for the Smith Creek ASP on September 30, 2021. Decision LPRT2021/MG0662 (Order) was issued on October 25, 2021 granting the NRCB, the Stoney Nakoda Nations (Stoney Nations), and the Yellowstone to Yukon Conservation Initiative Society (Y2Y) limited intervenor status as follows:

- A. The NRCB is granted intervenor status to make submissions limited to matters with respect to the three areas noted in its request.
- B. The Stoney Nakoda Nations is granted limited intervenor status to make submissions as to how the ASPs and NRCB approval are to be interpreted given changes since 1992 affecting the Stoney Nations – and in particular how such changes may affect the consistency of these documents.
- C. The Yellowstone to Yukon Conservation Initiative Society is granted limited intervenor status to make submissions only with respect to consistency between the AEP Wildlife Corridor Approvals (Appendix 1 of the Smith Creek ASP and Appendix 1 of the Three Sisters ASP) and the NRCB Approval.

[3] The Order also denied the Town's request for a separate jurisdictional hearing, determined that the two appeals should be heard sequentially by the same panel and set the merit hearing as a hybrid hearing in Edmonton (subject to any applicable public health measures). LPRT administration was to set dates for the merit hearing and disclosure deadlines after consultation with the Appellant and the Town.

[4] On November 23, 2021 TSMVPL advised the LPRT of the hearing dates and disclosure deadlines agreed to between TSMVPL and the Town. On December 2, 2021 TSMVPL asked the LPRT to set dates and disclosure deadlines, stating that TSMVPL and the Town had agreed to a schedule, but were not able to reach agreement with the Intervenors. The LPRT sent an administrative letter to the Parties and Intervenors on December 2, 2021 stating:

Further to the discussion over email regarding hearing dates and disclosure deadlines, the LPRT will consider written submissions by the Parties and Intervenors on the proposed hearing and disclosure schedule. The proposed schedule is as follows:

Hearing Dates

- February 22-24, 2022
- February 28-March 3, 2022
- March 7-10, 2022
- BREAK: March 14-18, 2022
- March 21-24, 2022

- March 28-31, 2022

Disclosure Dates

Jurisdictional Questions

- December 24, 2021 – Town
- January 21, 2022 – TSMVPL
- January 31, 2022 – NRCB
- February 15, 2022 – Town Reply and TSMVPL reply to NRCB submissions only (if applicable)

Merits

- December 24, 2021 – TSMVPL and Y2Y & Stoney Nations
- January 28, 2022 – Town
- February 7, 2021 – NRCB (on remedy only)
- February 15, 2022 – TSMVPL reply

All submissions shall be sent by email to the LPRT (lpert.appeals@gov.ab.ca and kellie.lau@gov.ab.ca) and other parties by 4:00pm on December 3, 2021.

ISSUE

[5] The only issue in dispute was whether the disclosure deadline for Y2Y and Stoney Nations should be set for December 24, 2021, and, if not, what date would be appropriate.

PARTY POSITIONS

TSMVPL

[6] TSMVPL requested the LPRT order the proposed schedule, stating that it attempts to be efficient and effective with all participants' time and efforts. It recognizes the need to provide submissions within a schedule that minimizes the risk of delay to the hearing dates.

[7] In respect of the NRCB, the proposed schedule for the jurisdictional matter provides opportunity for the NRCB to see the submissions of the Town and response of TSMVPL to determine if it wishes to file submissions, and provides the Town and TSMVPL the right to respond. For the merits, TSMVPL contemplated that NRCB may wish to provide submissions only in regard to remedy, and included that within the schedule.

[8] In respect of Y2Y and Stoney Nations, the scope of their submissions is set out in the Order, and is not responsive to either TSMVPL or the Town's submissions. TSMVPL's view is that Y2Y and Stoney Nations should file on December 24, 2021. To allow the Intervenors to file after the Town would put TSMVPL in the procedurally unfair position of having to respond to four submissions in two weeks, particularly in circumstances where TSMVPL would have no idea of what those submissions could include. The concern about timing to respond is heightened should the scope of the submissions extend beyond what TSMVPL understands to be the extent of their briefs. The participation of Intervenors should not negatively affect the proceedings. TSMVPL submits that the above schedule recognizes the rights of the parties and the Intervenors to file their submissions, and recognizes the limits given to the Intervenors, while providing TSMVPL, the appellant, time to respond.

[9] Should the LPRT direct that the Intervenors file after the Town, TSMVPL stated that it reserves the right to make a further application to the LPRT for either an adjournment, if it is not possible to respond, or for more time to respond.

Town

[10] The Town confirmed that it had agreed to the proposed schedule with respect to the disclosure dates for the jurisdictional questions, including the timing of the NRCB submissions. With respect to the disclosure dates for the merits hearing, the Town stated that it agreed to the filing dates proposed for TSMVPL and the Town, and took no position with respect to the filing dates for Y2Y, Stoney Nations and the NRCB, provided the Town is afforded the opportunity to respond to their submissions, either in its initial submissions or by way of a reply.

NRCB

[11] The NRCB supports the proposed submission and hearing schedule, to follow those of TSMVPL and the Town. The Order stated that the NRCB may make submissions in limited areas if the need arises, which the NRCB cannot assess until after it has reviewed the arguments of the two parties. Of the three areas of intervention that the LPRT panel permitted for the NRCB, the first is related to jurisdictional issues, and the third is related to remedy.

[12] The NRCB noted that its second area of potential intervention, concerning the interpretation of the *Natural Resources Conservation Board Act (NRCB Act)*, might arise at any point in the proceedings. The NRCB does not surrender the opportunity to make submissions on the second area of intervention whenever required.

Y2Y

[13] Y2Y takes no position on the proposed hearing dates. Y2Y understands its limited role in the appeals and will strive to make submissions which are both useful to the LPRT and different from those of the parties; however, the proposed disclosure deadline of December 24 for Y2Y's submission would render it impossible for Y2Y to ensure its submission is different from the parties.

[14] Y2Y requested a disclosure deadline for Intervenor submissions be set for a date after the merits disclosure deadline for the Town.

Stoney Nations

[15] The Stoney Nations take no position on the proposed hearing dates but are opposed to the proposed December 24, 2021 date for their disclosure. The Stoney Nations requested disclosure on the same date proposed for the NRCB, on either January 31, 2022 or February 7, 2022, stating that they should be entitled to review the disclosures of both TSMVPL and the Town, or at a minimum the disclosure of TSMVPL, prior to filing their disclosure. The Stoney Nations noted that it is common practice in appellate review that all Intervenors file their submissions after the main parties, and were surprised that not only was a different order being contemplated, but that the Stoney Nations would be treated differently than the NRCB who is also an Intervenor with limited scope of intervention.

[16] The Stoney Nations stated that due to their limited role, they must be careful not to duplicate or repeat the submissions of the main parties to the appeal. Filings should occur sequentially to ensure that the Intervenors are aware of what has been previously filed. This will achieve expediency in the hearing process because it will reduce repetition and increase the ability of the Intervenors to focus submissions on the actual evidence to be relied upon at the appeal. Due to the limited scope of the Stoney Nations submissions, there is no real concern regarding TSMVPL's ability to respond or reply by February 15, 2022 date that TSMVPL proposed in its schedule to reply to the NRCB. The Stoney Nations disclosure on the same date as the NRCB does not delay the proposed schedule nor the proposed hearing dates. As an alternative, the Stoney Nations proposed they and all other Intervenors could file disclosure on January 28, 2022 and TSMVPL and the Town could file their replies on February 18, 2022. This would provide the parties three full weeks to reply to all of the Intervenors.

[17] The Stoney Nations also advised that, due to previously set deadlines in unrelated Queen's Bench matters involving the Stoney Nations, they will not be able to file by December 24, 2021.

FINDINGS

[18] The disclosure deadline for Y2Y and Stoney Nations should not be set for December 24, 2021 and the date should be set to allow an additional two weeks.

DECISION

[19] The hearing dates and disclosure deadlines are set as follows:

Hearing Dates

The hearing will take place on the following dates, commencing with the jurisdictional questions for both File P21/CANM/T-002 and P21/CANM/T-003.

- February 22-24, 2022
- February 28-March 3, 2022
- March 7-10, 2022
- BREAK: March 14-18, 2022
- March 21-24, 2022
- March 28-31, 2022

Disclosure Dates

The disclosure dates set below are for both File P21/CANM/T-002 and P21/CANM/T-003.

Jurisdictional Questions

- December 24, 2021 – Town
- January 21, 2022 – TSMVPL
- January 31, 2022 – NRCB
- February 15, 2022 – Town Reply and TSMVPL reply to NRCB submissions only (if applicable)

Merits

- December 24, 2021 – TSMVPL
- January 7, 2022 – Y2Y & Stoney Nations
- January 28, 2022 – Town
- February 7, 2021 – NRCB (on remedy and interpretation of the *NRCB Act* only)
- February 15, 2022 – TSMVPL reply and Town reply to NRCB submission only (if applicable)

[20] All submissions are due at 12 noon on the dates above. Submissions are to be made electronically to lppt.appeals@gov.ab.ca with a copy sent to kellie.lau@gov.ab.ca as well as:

- a) for the jurisdictional questions, to the parties and the NRCB; and
- b) for the merits, to the Parties and the Intervenors.

REASONS

[21] The Intervenors were made aware on October 25, 2021 of the expected date of the hearing and the permitted scope of their submissions; however, in view of the proposed disclosure deadline within three weeks and the Stoney Nations' prior commitments, the LPRT considers it reasonable to allow Y2Y and the

Stoney Nations more time. The LPRT notes that TSMVPL proposed the schedule and is not prejudiced by having less than three weeks to provide their disclosure.

[22] The Order granted Y2Y and the Stoney Nations limited intervenor status to provide submissions on the consistency of the ASPs with the NRCB Approval in certain specified respects. To that end, they already have the documents required to prepare their submissions and do not require the submissions of TSMVPL and the Town in advance of filing their disclosures. The LPRT agrees that due to the unknown content of the Intervenor's submissions, it would be unfair to TSMVPL not to allow sufficient time to review and respond to those submissions. The LPRT accepts TSMVPL's position that it requires time to respond to the Intervenor that does not overlap with the time required to respond to the Town's submissions. To that end, allowing an additional two weeks, to January 7, 2022 strikes a reasonable balance between allowing the Intervenor enough time to prepare their submissions and allowing TSMVPL enough time to review and respond, while at the same time ensuring the appeals are heard in a timely fashion.

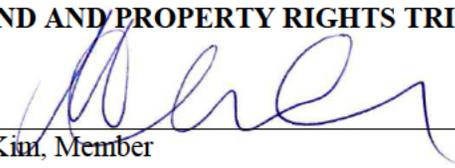
[23] The LPRT considered the concerns of the Intervenor with respect to inefficiencies due to duplication, and decided the potential of duplication in submissions would be preferable to the potential for delay or unfairness to the parties with respect to time to respond. Additionally, given the limited scope of the allowable submissions, the LPRT considered it to be unlikely that there would be significant duplication of evidence.

[24] Stoney Nations suggested that it was unfair to set a disclosure deadline different from the NRCB; however, the LPRT notes the NRCB intends to make submissions only if necessary, based on the parties' submissions, and would generally be dealing with legal matters. In comparison, Y2Y and the Stoney Nations are anticipated to provide documentary evidence independent of evidence in the party submissions; therefore, it is reasonable to set different disclosure dates from the NRCB. While it may not be common practice in appellate review to have intervenors make submissions so early in the process, the LPRT determined it is most practical in the current circumstances to allow Intervenor submissions two weeks after the TSMVPL submission but before the Town's submission.

[25] With respect to NRCB potentially requiring an opportunity to respond to interpretation of the *NRCB Act*, the LPRT determined its omission in the proposed schedule was likely inadvertent, and included an opportunity for submissions in that regard, if necessary, at the same time as submissions with respect to potential remedy.

Dated at the City of Edmonton in the Province of Alberta this 6th day of December, 2021.

LAND AND PROPERTY RIGHTS TRIBUNAL



H. Kim, Member

APPENDIX A

PARTIES WHO MADE WRITTEN SUBMISSIONS FOR THE HEARING:

NAME	CAPACITY
G. Stewart-Palmer	Counsel for Three Sisters Mountain Village Properties Ltd.
F. Vance	Counsel for Natural Resources Conservation Board
S. Fluker	Counsel for Yellowstone to Yukon Conservation Initiative Society
K. Becker Brookes	Counsel for Town of Canmore
B. Barrett	Counsel for Stoney Nakota Nations

APPENDIX B

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

NO.	ITEM	Pages
File #:	P21/CANM/T-002 Smith Creek ASP	
1A	2021-07-09 Notice of Appeal	4
1A	2021-07-12 Letter Smith Creek 619	2
1A	2021-07-12 LPRT Notice of Appeal and Attachments	1617
2A	#8 Technical Review of the Environment Impact Statement Smith Creek ASP	25
3R	Letter to LPRT from RMRF July 23, 2021	4
4N	NRCB	1
5S	Stoney Nakota Nations	1
6S	SNN Intervention Memo	5
7S	Snow Affidavit sworn 2021-09-16 service copy	188
8Y	Letter Yellowstone to Yukon	1
9Y	Y2Y written argument	12
10Y	Jodi Hilty Statement 09-17-21 final	4
11Y	Hilary Young Statement 09-17-21 final	7
12Y	Human-Wildlife Coexistence Report	86
13R	Letter from Canmore	2
14R	Submissions for Town of Canmore	80
15A	Cover Letter from Appellant re jurisdictional hearing	1
16A	Brief re. Preliminary Jurisdictional Hearing and consolidation	183
17A	Cover letter Intervenors	1
18A	Brief re. Intervenors	194
19A	Appellant submission re. disclosure deadlines	4
20N	NRCB submission re. disclosure deadlines	1
21Y	Y2Y submission re. disclosure deadlines	1
22R	Town submission re. disclosure deadlines	2
23S	Stoney Nations submission re. disclosure deadlines	3
File #:	P21/CANM/T-003 Three Sisters Village ASP	
1A	2021-07-09 Notice of Appeal	4
1A	2021-07-12 Letter Three Sisters 619	2
1A	2021-07-12 LPRT Notice of Appeal and Attachments	1858
2R	Letter to LPRT from RMRF July 23, 2021	4

3N	NRCB	1
4S	Stoney Nakoda Nations	1
5S	SNN Intervention Memo	5
6S	Snow Affidavit sworn 2021-09-16 service copy	188
7Y	Letter Yellowstone to Yukon	1
8Y	Y2Y written argument	12
9Y	Jodi Hilty Statement 09-17-21 final	4
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11Y	Human-Wildlife Coexistence Report	86
12R	Letter from Canmore	2
13R	Submissions for Town of Canmore	80
14A	Cover Letter from Appellant re jurisdictional hearing	1
15A	Brief re. Preliminary Jurisdictional Hearing and consolidation	183
16A	Cover letter Intervenors	1
17A	Brief re. Intervenors	194
18A	Appellant submission re. disclosure deadlines	4
19N	NRCB submission re. disclosure deadlines	1
20Y	Y2Y submission re. disclosure deadlines	1
21R	Town submission re. disclosure deadlines	2
22S	Stoney Nations submission re. disclosure deadlines	3