

In the Court of Appeal of Alberta

Citation: Canmore (Town of) v Three Sisters Mountain Village Properties Ltd, 2022 ABCA 346

Date: 20221025
Docket: 2201-0148AC
2201-0151AC
Registry: Calgary

Between:

Town of Canmore

Applicant

- and -

**Three Sisters Mountain Village Properties Ltd. and
Land & Property Rights Tribunal**

Respondents

- and -

Natural Resources Conservation Board and Stoney Nakoda Nations

Intervenors

**Reasons for Decision of
The Honourable Justice Jolaine Antonio**

Application for Permission to Appeal

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Introduction

[1] The applicant Town of Canmore seeks permission to appeal two decisions of the Land and Property Rights Tribunal (Tribunal) pursuant to s 688 of the *Municipal Government Act*, RSA 2000, c M-26. The underlying decisions arose from a dispute regarding the development of a project that was first approved at the provincial level over three decades ago but has yet to receive the necessary local approvals.

[2] In November 1992, the Natural Resources Conservation Board (NRCB) approved Three Sisters Golf Resorts Inc.’s application respecting the development of a large-scale recreational and tourism project located within the Town of Canmore, subject to certain conditions.

[3] Under its Land Use Bylaws, the Town must adopt, by bylaw, an area structure plan (ASP) before any subdivision or development in furtherance of certain projects can occur. Three Sisters Mountain Village Properties Ltd. (Three Sisters), successor to the original developer, proposed two ASPs for lands located within their project area: the Smith Creek ASP and the Three Sisters Village ASP.

[4] In December 2020, Three Sisters applied to the Town for adoption of the ASPs. The Canmore Town Council rejected the Smith Creek ASP in April 2021 and the Three Sisters Village ASP in May 2021.

[5] Three Sisters appealed the Town Council’s decisions to the Tribunal. It relied on s 619 of the *Municipal Government Act*, which provides in part that municipalities “must approve” bylaw amendment applications where they are “consistent with” an NRCB approval.

[6] The Tribunal issued its decisions on May 16, 2022: *Three Sisters Mountain Village Properties Ltd v Town of Canmore*, 2022 ABLPRT 671; *Three Sisters Mountain Village Properties Ltd v Town of Canmore*, 2022 ABLPRT 673. In each case, the Tribunal concluded the ASPs fell within the scope of s 619 and ordered the Town to adopt them.

[7] The Town applied for permission to appeal the Tribunal’s decisions. The NRCB and the Stoney Nakoda Nations were granted intervenor status to participate in both applications: *Town of Canmore v Three Sisters Mountain Village Properties Ltd*, 2022 ABCA 274.

Analysis

[8] I may grant permission to appeal if I am satisfied the Town’s grounds of appeal involve questions of law of sufficient importance to merit a further appeal and have a reasonable chance of success: *Municipal Government Act*, s 688(3).

[9] The Town’s proposed grounds of appeal raise several issues following four main themes: the retrospectivity of s 619 of the *Municipal Government Act*, whether the ASPs presented to Town Council were amended versions of prior ASPs or new ASPs, consistency of the ASPs with the NRCB approval, and adequacy of the Tribunal’s reasons.

[10] Three Sisters submits many of the issues raised by the Town involve questions of fact or mixed fact and law and are therefore not appealable under s 688 of the *Municipal Government Act*. I am persuaded, however, that these issues involve questions of law or jurisdiction, many of which pertain to the interpretation of s 619 of the *Municipal Government Act*.

[11] Three Sisters further submits the issues raised by the Town affect only the parties themselves and, as a result, are not sufficiently important to merit a panel hearing. The Town argues that resolution of these issues is important not only to the parties, and all residents of Canmore, but also to developers and municipalities who must navigate approvals at the provincial and municipal levels. The Stoney Nakoda Nations support the Town’s application, arguing certain issues engage the goal of reconciliation and the honour of the Crown. Additionally, the NRCB notes several grounds of appeal raise questions about the validity of its past public interest determinations, with potential implications for other bodies making similar decisions.

[12] I find the Town’s appeal is “of sufficient importance to merit a further appeal”: s 688(3) of the *Municipal Government Act: Carleo Investments Ltd v Strathcona (County)*, 2014 ABCA 302 at para 10.

[13] Finally, a ground of appeal has a reasonable chance of success if it is arguable, and a question of law is arguable if it is not frivolous: *Edmonton (City of) Library Board v Edmonton (City of)*, 2020 ABCA 170 at para 10. The Town’s proposed grounds of appeal are interrelated and pertain to the scope of the Town’s involvement and ability to apply its own processes in considering applications for projects within its boundaries. These issues are compounded by the evolution of the legal landscape surrounding project development in the 30 years since the NRCB approval. I find the issues raised by the Town surpass the “not frivolous” threshold.

[14] I am satisfied the Town’s appeal should proceed to a panel review. Permission to appeal is granted.

Application heard on October 5, 2022

Reasons filed at Calgary, Alberta
this 25th day of October, 2022



A handwritten signature in blue ink, appearing to read "Antonio J.A.", written over a horizontal line. The signature is stylized and cursive.

Antonio J.A.

Appearances:

K.L. Becker Brookes
for the Applicant

G.J. Stewart-Palmer, K.C.
for the Respondent Three Sisters Mountain Village Properties Ltd

M.J. d'Alquen
for the Respondent Land & Property Rights Tribunal

W.Y. Kennedy (no appearance)

F.N. Vance
for the Intervenor Natural Resources Conservation Board

B.A. Barrett
for the Intervenor Stoney Nakoda Nations