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Re: ***2066052 Alberta Ltd (AP) v. County of Stettler No. 6 (R) and others***
Appeal No. 1801-0367AC

This is to advise that the reserved judgment in the above named case will be released the morning of **July 12, 2019**. On that day, **between 9:30 a.m. and 10:00 a.m.**, a copy of the judgment will be sent to you as set out above.

That same day, the judgment will also be sent to the Canadian Legal Information Institute (CanLII) at 10:00 a.m. for publishing to its website, which may occur that same day. Any concerns with on-line judgments should be raised directly with CanLII.

In the Court of Appeal of Alberta

Citation: 2066052 Alberta Ltd v Stettler (County No 6), 2019 ABCA 279

Date: 20190712
Docket: 1801-0367-AC
Registry: Calgary

Between:

2066052 Alberta Ltd.

Applicant

- and -

County of Stettler No. 6 and the Subdivision and Development Appeal Board of the County of Stettler No. 6, Darcy and Judy Peeler, Lance and Maureen Kadatz, Ed and Vivian Bennett, Peter Wood, Bruce and Wendy Olsen, Kyle Bruggengate, Ken Vertz and Rochan Sands Heights Community Association

Respondents

Reasons for Decision of
The Honourable Mr. Justice Brian O'Ferrall

Application for Permission to Appeal

Reasons for Decision of
The Honourable Mr. Justice Brian O'Ferrall

Introduction

[1] The applicant, 2066052 Alberta Ltd., which operates as "Paradise Shores", seeks permission to appeal a decision of the County of Stettler No. 6 Subdivision and Development Appeal Board (SDAB) pursuant to section 688 of the *Municipal Government Act*, RSA 2000, c M-26 (*MGA*). The SDAB varied a decision of the County's Municipal Planning Commission, which had issued a development permit to the applicant to build the first phase of a recreational vehicle (RV) park on the shores of Buffalo Lake, Alberta. The SDAB confirmed the Commission's approval of the applicant's development permit, but modified the permit to reduce the number of RV stalls permitted from 370 to 168.

Background

[2] Initially, the proposed Paradise Shores RV Resort was to have comprised a 1000-stall RV park, a water park, pool, docks, and other amenities. The RV stalls were proposed to be made available for long-term leases of up to 35 years. They were proposed to be served by communal water, power, and sewage systems. Separate structures were proposed for communal laundry and shower facilities.

[3] The land upon which the proposed RV resort was to be developed is subject to a number of statutory plans. The first is the Buffalo Lake Intermunicipal Development Plan (BLIDP), a statutory plan arising out of an intermunicipal agreement among the five municipalities that ring Buffalo Lake: the County of Stettler No. 6, Lacombe County, Camrose County, and the Summer Villages of Rochon Sands and White Sands. The BLIDP's purpose is to "support the ongoing sustainability of Buffalo Lake while enhancing the aesthetic qualities of the Lake and the surrounding area." It does so primarily by capping the number of "dwelling units" allowed in the vicinity of the lake and concentrating development in "Growth Nodes."

[4] A second intermunicipal statutory plan which governs development of the subject lands is the Buffalo Lake South Shore Intermunicipal Development Plan (BLSSIDP). It was made pursuant to the BLIDP by the three municipalities which have jurisdiction over the development of lands at the south end of Buffalo Lake: the County of Stettler and the Summer Villages of Rochon Sands and White Sands. The BLSSIDP prescribes policies for the development of an area known as the South Shore Growth Node which comprises approximately 3,798 acres along a good portion of the south shore of Buffalo Lake. The purpose of the BLSSIDP was to further refine the policies laid down in the BLIDP by distributing density within the South Shore Growth Node. The number of dwelling units and the density of dwelling units in the South Shore Growth Node were determined by the BLIDP; but the BLSSIDP went further and allocated the total number of

dwelling units between the three municipalities and prescribed densities for the lands near the lake and lands farther away from the lake.

[5] In addition to these intermunicipal development plans (BLIDP and BLSSIDP, collectively referred to as the IDPs), the proposed RV park is subject to the County of Stettler Municipal Development Plan and the Paradise Shores Area Structural Plan (Paradise Shores ASP), the latter was prepared by the developer in order to obtain County approval for the RV park.

[6] On February 14, 2018, the County of Stettler conducted a first reading of two bylaws that would facilitate the approval of the RV park: Bylaw 1588-18, which adopted the Paradise Shores ASP, and Bylaw 1589-18, which rezoned the development lands from "Agricultural" to "Recreational Facility". However, the proposed RV park met with objections from not only local residents but also the neighbouring Summer Villages of White Sands and Rochon Sands.

[7] On May 3, 2018, the Summer Villages agreed to withdraw (or not pursue) their objections to the proposed RV park. This was done at an *in camera* meeting of the BLSSIDP Planning Committee, which was comprised of representatives of the County and the two Summer Villages. The Summer Villages apparently agreed to withdraw their objections to the rezoning and area structure plan if the number of RV stalls in the development were reduced from 1,000 to 750. The intermunicipal settlement agreement was in the form of a motion voted on by the three-member Planning Committee. Its terms were as follows:

> That the Buffalo Lake South Shore Intermunicipal Development Plan Committee agrees to accept the developer's offer to reduce the number of RVs in the proposed campground from 1,000 to 750 on the following basis;
>
> 1) The County will amend the area structure plan to reflect the maximum number of RV stalls at 750 prior to considering second reading of the bylaws; and
>
> 2) The County will move the bylaws to second reading and negotiate the conditions of and issue a development permit for Phase 1 (approximately 370 RV stalls); and
>
> 3) The County will consult with the Summer Villages in the drafting of development permit conditions; and
>
> 4) The developer shall not apply for a new development permit on this or another property within the IDP Growth Node until the Committee has completed a review of the IDP; and
>
> 5) The two Summer Villages shall withdraw their letters of disagreement on Bylaw 1588-18 and Bylaw 1589-18, thereby foregoing the right to file s. 690 appeals against these bylaws when the County gives third reading to the bylaws; and

6) The Buffalo Lake South Shore IDP defines an RV as a dwelling unit relative to the overall development capacity for the Growth Node and, as a result, the County's dwelling unit capacity of 2,159 dwelling units would be reduced by the number of RVs in the proposed campground.

7) The reduction by the developer of the number of RVs in the proposed campground does not imply that the proposed campground is a subdivision or that it is part of the "Small Lot Area" overlay district in the Buffalo Lake South Shore IDP or that the IDP contains a policy with a density restriction for a campground in the Growth Node area; and

8) When the IDP is reviewed the boundaries and area of the "Small Lot Area" will be recalculated by removing the proposed campground properties from the "Small Lot Area" and the Committee would then decide on the appropriate scenario under Appendix E of the IDP to determine a revised number of small lots that could be subdivided in the "Small Lot Area"; and

9) This agreement is subject to acceptance by the Councils for the three municipalities.

[8] At a subsequent meeting of the council of the Summer Village of Rochon Sands, a motion to accept the BLSSIDP Planning Committee's recommendation for the Paradise Shores RV park development was approved. Later, at a Summer Village of White Sands council meeting, a motion to conditionally accept the reduction in number of RVs from what the developer (the applicant) initially proposed was carried unanimously (i.e., 1000 to 750). Council of the County of Stettler, of course, passed the rezoning bylaw and the bylaw adopting the Paradise Shores ASP.

[9] Several months later, the County's development-approving authority (its planning commission) approved a development permit for the RV park. Thereafter, a number of local residents appealed the County's decision to issue the development permit for the RV Park to the SDAB. The local residents raised a number of concerns about the size and density of the RV park and the consequential impacts on traffic, the environment, lake crowding and boat launch capacity, emergency services, adjacent properties, and community infrastructure. They argued that the density of the RV park contravened the BLIDP and the BLSSIDP. They pointed to provisions in the IDPs stating that the density restrictions were intended to protect the rural (and recreational) character of the area. The developer argued that there was no conflict between the RV park and the IDPs and that the potential impacts of the development were adequately addressed by the conditions of the development permit.

[10] The SDAB confirmed the County's decision to issue the development permit. However, it imposed a condition that reduced the number of permitted RV stalls or campsites on the 83.4 acre parcel, NE20-40-20-W4M (NE20), from 370 to 168, thereby reducing the density of the permitted

development from around four dwelling units per gross acre to two dwelling units per gross acre. The SDAB noted that both IDPs limited development density, defined as dwelling units per acre. The SDAB found that the proposed RV stalls fell within the definition of a "dwelling unit" in the IDPs. It found also that the development lands fell wholly within the "Small Lot Area" defined in the BLSSIDP, in which density was to be limited to 1.97 dwelling units per acre. The density of the RV park as approved was 4.44 dwelling units per acre. The SDAB agreed with the residents that the density of the proposed development was not in keeping with the applicable policies of the IDPs. The SDAB was also of the view that reducing the density of RV stalls would address residents' concerns about potential impacts of the development on lake crowding, etc. The SDAB also held that to allow the RV park to develop at a density above the defined limit would unfairly transfer development potential away from other landowners, since the South Shore Growth Node was subject to a cap on the total number of dwelling units. For the foregoing reasons, among others, the SDAB made it a condition of the development permit that the total number of RV stalls (and/or campground sites) to be developed on the entire NE20 not exceed 168 RV stalls (and/or campground sites). The SDAB determined that only by limiting the permitted development to 168 stalls or sites would the development comply with the IDPs.

[11] Having received the SDAB's decision, the applicant applied for permission to appeal the SDAB's decision. The applicant alleges that the SDAB made the following errors of law or jurisdiction:

1. The SDAB exceeded its jurisdiction by allowing an appeal with subject matter that is within the sole jurisdiction of the Municipal Government Board (MGB);

2. The SDAB erred in determining that there were inconsistencies among the statutory plans, and in applying the provisions of the *MGA* related to the hierarchy of statutory plans;

3. The SDAB erred in applying the BLSSIDP policies pertaining to density to an RV park or campground;

4. The SDAB erred in finding that the intermunicipal settlement agreement was not binding on it;

5. The SDAB erred in failing to consider that the intermunicipal settlement agreement was an amendment to the BLSSIDP;

6. The SDAB failed to act fairly in basing its decision on an issue (namely, density) that had not been listed as an issue on the agenda for the SDAB hearing;

7. The SDAB erred by considering the fairness to other landowners in the South Shore Growth Node when making its decision; and

8. The SDAB further exceeded its jurisdiction by making a ruling that affected both Phase 1 and Phase 2 of the project, though only the permit for Phase 1 was before it.

Test for Permission to Appeal

[12] Section 688 of the *MGA* provides that an appeal lies to the Court of Appeal from a decision of a subdivision and development appeal board only on questions of law or jurisdiction and then only if the judge hearing the application for permission to appeal is of the opinion the question or questions of law are of sufficient importance to merit a further appeal and have a reasonable chance of success (*MGA*, s. 688(1) and (3)). So there must be a question of law. It must be sufficiently important to justify a further appeal, in addition to that to the SDAB. And the appeal must have a reasonable chance of success.

[13] The applicant argues that it had satisfied the test. Many of the local residents who were appellants before the SDAB and respondents on the present application argue that the test is not met. The County of Stettler and the SDAB take no position.

Standard of Review

[14] As indicated above, section 688(3) of the *MGA* provides that a judge may grant permission to appeal a decision of an SDAB "if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success." Whether the appeal has a reasonable chance of success engages a consideration of the appropriate standard of review. The standard of review applicable to the SDAB's interpretation of a municipality's land use bylaw in these circumstances is reasonableness (*Fuhr v Parkland (County)*, 2018 ABCA 442). In *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 SCR 293 the Supreme Court had this to say (at para 22):

> [T]he reviewing court should begin by considering whether the issue involves the interpretation by an administrative body of its own statute or statutes closely connected to its function. If so, the standard of review is presumed to be reasonableness (*Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3, at para. 46).

By extension, the reasonableness standard also applies to the SDAB's interpretation of statutory plans such as intermunicipal development plans and land use bylaws which, in determining development appeals, the SDAB "must" have regard to (*MGA*, s. 680(2)(a.1) and (b)).

[15] Regardless of the standard of review which would be applied to the SDAB's decision in this case, in my view, the result would be the same.

Analysis

1. The SDAB encroached on the jurisdiction of the MGB

[16] The applicant argues that the SDAB had no jurisdiction to address the issue of density because that issue had been resolved by the County and the Summer Villages pursuant to the mediation provisions in the *MGA* governing intermunicipal disputes. The applicant argues that the SDAB has usurped the jurisdiction of the MGB to hear appeals with respect to intermunicipal disputes under *MGA*, s. 690. The applicant argues that in this case there was an intermunicipal agreement settling the dispute among three municipalities as provided for in s. 690. As a consequence, the applicant argues, the intermunicipality settlement agreement ought to have ended the matter. But, of course, it does not.

[17] An intermunicipal settlement agreement cannot deprive the SDAB of its statutory jurisdiction to hear and determine appeals from development authority decisions issuing development permits. And in determining such appeals, the SDAB is bound to comply with applicable statutory plans (*MGA*, s. 687(3)(a.2)). An intermunicipal settlement agreement may be a relevant consideration, but it is certainly not binding like a statutory plan (unless, of course, the intermunicipal settlement agreement is implemented by bylaws formally amending the relevant statutory plans, which did not happen here).

[18] The applicable statutory plans in this case include the IDPs, which prescribe maximum densities for the lands in question. The applicant argues that the intermunicipal settlement agreement had the effect of amending the IDPs. That argument cannot be sustained because the IDPs expressly provide that they can only be amended by bylaws of the parties to them. No bylaws amending the plans were enacted by any of the three municipalities governed by the BLSSIPD, let alone by the five municipalities governed by the BLIDP.

[19] As suggested above, quite apart from what the IDPs provide with respect to amendment, the *MGA* indicates that statutory plans are to be amended by bylaw (see for example, *MGA*, ss. 191(2) and 692(1)(f)). And if such a bylaw is proposed, there must be a public hearing (*MGA*, s. 692(1)). In this case, no such public hearing was held. The applicant argues that there was extensive public consultation. Public consultation is not the same as a public hearing. Not only the public, but the other municipalities which also have development lands surrounding Buffalo Lake (the Counties of Lacombe and Camrose) would be entitled to an opportunity to be heard because they too are impacted by a development density change on lands adjacent to Buffalo Lake.

[20] In short, the applicant fundamentally misconstrues the *MGA*. Section 690 of the *Act* governs intermunicipal disputes in which one or more municipalities are of the opinion that a plan or bylaw adopted by an adjacent municipality has a detrimental effect on them. In such circumstances, the aggrieved municipalities may appeal to the MGB and the MGB must then decide whether the plan or bylaw is detrimental to the municipalities appealing (*MGA*, s. 690(5)). The right to appeal is limited to the municipality or municipalities which are of the opinion that the

plan or land use bylaw may have a detrimental effect on them. This ground of appeal has no reasonable chance of success.

2. *The SDAB erred in finding inconsistencies among statutory plans and in applying provisions of the* MGA *related to hierarchy of statutory plans*

[21] Under this ground of appeal, the applicant makes two arguments:

(a) The applicant argues that the SDAB erred in finding that there were inconsistencies between or among the statutory plans. The applicant says there were no such inconsistencies.
(b) The applicant argues, in the alternative, that if there were inconsistencies between or among the governing statutory plans, the SDAB could not have regard to section 638 of the *MGA* which establishes a hierarchy of statutory plans in the case of conflicts. The applicant argues that s. 690(5.1) of the *MGA* required the SDAB to disregard that hierarchy. Section 690(5.1) states:

> 690(5.1) In determining under subsection (5) whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal, the Municipal Government Board must disregard section 638.

[22] With respect, I had difficulty understanding the applicant's first argument. The SDAB devoted five pages of its 42-page decision to dealing with the applicable statutory plans and, with one qualification, found the statutory plans to be remarkably consistent, not inconsistent. The SDAB went to great lengths to demonstrate the consistency between the BLIDP and BLSSIDP with respect to the uses contemplated on the subject lands, with respect to density and the number of dwelling units permitted, with respect to what constitutes a "dwelling unit" for density purposes and with respect to whether the density provisions applied to development, not just to subdivision.

[23] The only relevant difference between the BLIDP and the BLSSIDP the SDAB noted was that the BLSSIDP introduced the concept of a "Small Lot Zone" to allow for concentrated nodes of increased density within 400 meters of the lake. The SDAB found, and a reading of both IDPs confirms, that both statutory plans called for an overall density restriction of 0.9 dwellings per gross acre. But the SDAB recognized that the density restriction of 0.9 dwellings per gross acre was an average and could permit concentrations of higher and lower density within any given growth node. The BLSSIDP itself raised the possibility of density transfers (BLSSIDP, s. 4.4.10) and so it created a "Small Lot Zone" to allow for increased density to a maximum density of 1.97 dwelling units/gross acre within 400 meters of the lake (BLSSIDP, s. 5.1.5.2(a) and (d)).

[24] The only other statutory plan inconsistency which the SDAB identified was that the Paradise Shores ASP (which was approved by the County) may not have complied with the IDPs. The IDPs required area structure plans to deal with density restrictions. The Paradise Shores ASP purported to deal with density (section 1.0), but it never did, other than to state that the purpose of the plan was to "outline the land uses, density, phasing, access, environmental considerations and servicing standards of a proposed 750 stall RV Park and Recreation Facility." The density restrictions set forth in the BLIDP and BLSSIDP were never dealt with in the Paradise Shores ASP.

[25] The applicant's second argument, that the prescribed hierarchy of statutory plans had to be disregarded, misapprehends the *MGA*. In determining whether a municipality is detrimentally affected by a statutory plan or a bylaw adopted by its neighboring municipality, the MGB is permitted to disregard the hierarchy of statutory plans set out in s. 638. However, that does not mean that the SDAB in determining a development appeal can do the same. Indeed, the SDAB is statutorily compelled to do the opposite. The SDAB must have regard to the hierarchy set forth in s. 638.

[26] In short, the applicant's first argument does no more than challenge the SDAB's interpretation of statutory plans upon which considerable deference is given, almost to the point of not even constituting a question or law or jurisdiction. The applicant's second argument may raise of question of law, but it is has no reasonable chance of success. The SDAB correctly interpreted the *MGA*. Neither one of the applicant's two arguments under this ground of appeal has a reasonable chance of success.

3. The SDAB erred in applying the BLSSIDP prescribed densities to an RV park

[27] The applicant argues that the SDAB erred in determining that the density restrictions in the BLSSIDP applied to an RV park. I can do no better refer to how the SDAB dealt with that argument to demonstrate that no question of law or jurisdiction arises here. As noted above, the SDAB found that an RV stall falls under the definitions of a "dwelling unit" found in both IDPs. Section 1.9 of the BLSSIDP defines "dwelling unit" as follows:

> '**Dwelling Unit**' means any residential unit, recreational unit, or commercial unit that is used to shelter and provide overnight accommodation. The use of a dwelling unit may be either permanent or temporary but shall be comprised of a self-contained building/structure/vehicle or a combination of interdependent buildings/structures/vehicles. A dwelling unit must provide sleeping quarters, sanitary facilities, and cooking facilities.

[28] Section 5.1.5 of the BLSSIDP imposes caps on the number of dwelling units and the density of those dwelling units defined in terms of dwelling units per acre. The SDAB applied those restrictions to determine the maximum number of RV lots that could be accommodated in the proposed park.

[29] The applicant does not deny that an RV stall is a "dwelling unit." Rather, it claims that the density restrictions on dwelling units are meant to apply only to new subdivisions and not to a development permit for an RV park accommodating many dwelling units on a single, undivided parcel. This interpretation, however, is directly contradicted by section 5.0 of the BLSSIDP, which expressly states that the policies apply if "a parcel of land becomes the subject of an application for an area structure plan or an amendment to an area structure plan or an application for the rezoning of land, *a development permit*, or a subdivision" (emphasis added). Furthermore, the BLSSIDP Planning Committee's intermunicipal settlement agreement, upon which the applicant relies, expressly applies the definition of an RV lot as a dwelling unit to the applicant's proposed development (see paragraph 6 of that agreement at paragraph 7 herein).

[30] The applicant argues, in the alternative, that even if the BLSSIDP purports to govern density on single-lot developments, the BLIDP, which is the overarching and more authoritative plan, says that density restrictions are to apply only to subdivisions. The problem is that the statement in the BLIDP relied upon by the applicant for this argument specifically contemplated the completion of a further statutory plan, a "Growth Node Plan", which is what the BLSSIDP is. In other words, the BLIDP was not intended to be the last word on density restrictions which are to apply to multi-dwelling development permit applications on single lots or parcels of land. Furthermore, a close examination of the intermunicipal settlement agreement suggests that the intermunicipal settlement agreement itself did not preclude future reductions in density on the subject lands.

[31] The SDAB found as a fact that the gross density of the RV park development, 370 RV stalls on the 83.4 acre NE20 parcel, would be 4.44 dwelling units/gross acre. Both the BLIDP and the BLSSIDP contemplate that densities of 0.9 units per gross acre will not be exceeded. But because the development lands fall within the "Small Lots Area" of the BLSSIDP, the maximum gross density is permitted to increase to 1.97 dwelling units per acre in accordance with Policy 5.1.5.2(d) of the BLSSIDP. Again, the applicant argues these densities pertain only to residential subdivisions. However, as the SDAB pointed out, the policies of the BLIDP and the BLSSIDP apply to development permit applications when the application is to develop dwelling units. To repeat the quote from the BLSSIDP:

> The policies of this Plan…apply…when a parcel of land becomes the subject of an application for an area structure plan or…a development permit.

[32] The SDAB's interpretation and application of the density restrictions of the BLSSIDP to an RV park is certainly reasonable and, in my view, correct. Given the deference to be accorded to the SDAB in interpreting statutory plans, this ground of appeal has no reasonable chance of success.

4. The SDAB erred in finding the intermunicipal settlement agreement was not binding on it

[33] The applicant argues that the SDAB erred in holding that it was not bound by the intermunicipal settlement agreement between the County and the Summer Villages, which resulted in the Summer Villages withdrawing their objections to the development. What the applicant fails to appreciate is that all development permits must be granted in accordance with validly enacted statutory plans and bylaws. Here, one of the applicable plans is the BLSSIDP. By virtue of both the BLSSIDP (s 1.7) and the *MGA* (s 638), the intermunicipal development plan takes precedence over any municipal-level plan or area structure plan (viz. Paradise Shores ASP). It is not open either to the development authority or the SDAB to approve a development permit application that does not conform with the IDPs (*MGA* s. 687(3)). Whatever the municipalities' development authorities might think about the merits of a development or whatever neighboring municipalities might agree among themselves, a proposed development that does not conform to an intermunicipal development plan cannot be lawfully approved, either by the County's development authority or by the SDAB.

[34] As indicated above, the applicant attempts to skirt this problem by arguing that the agreement between the County and the Villages was in fact an amendment to the BLSSIDP.

[35] There are certainly provisions in the intermunicipal settlement agreement which appear to contradict or are inconsistent with the BLSSIDP. All the more reason for the three municipalities to pass bylaws amending the BLSSIDP. As indicated above, both the BLSSIDP and the *MGA* require statutory plans to be amended by bylaw. Until the BLSSIDP is formally amended to reflect what the municipalities may have agreed to, their settlement agreement is not binding on the SDAB.

[36] Whatever the municipalities might have agreed to, their agreement cannot constitute an amendment to the BLSSIDP. While the agreement was adopted by all three municipalities by resolution of council, it was not adopted by the Summer Villages by bylaw. Indeed, the settlement agreement was only conditionally accepted by one of the summer villages. The foregoing is fatal to the applicant's argument.

[37] The intermunicipal disagreement resolution process provided for in both the BLIDP and BLSSIDP, and the process in which the County and the Summer Villages engaged, is expressly limited to disputes over "the interpretation or application of the provisions" of the IDPs, and then only to "ensur[e] that the principles, objectives, policies and provisions of the Plan are followed" (BLSSIDP, s. 6.10). It is not a process for amending an IDP.

[38] While the BLSSIDP Planning Committee can initiate an amendment, "[a]n amendment to the Plan has no effect if not adopted by all the Municipalities by bylaw in accordance with the Act [*MGA*]" (BLSSIDP, s. 6.8.3). This provision accords with the principle that a statutory plans can only be amended by bylaw (*MGA*, s. 191(2) and 692(1)(f)). This is not a mere technicality. The

requirement that an IDP be amended only by bylaw ensures that the amendment is subjected to proper public scrutiny in accordance with s 692 of the *MGA*, which requires that a proposed bylaw to amend a statutory plan be subjected to a public hearing on notice to parties affected. The argument that the intermunicipal settlement agreement, made as it was at an *in camera* meeting of the BLSSIDP Planning Committee, was a validly enacted amendment to the BLSSIDP has no reasonable chance of success.

5. The SDAB erred in failing to consider that the intermunicipal settlement agreement was an amendment to the BLSSIDP

[39] This argument has been dealt with above. But to summarize, the applicant argues that the intermunicipal settlement agreement had the effect of amending the BLSSIDP. That argument cannot be sustained because the BLSSIDP itself expressly provides that it can only be amended by bylaws of the parties. No bylaws amending the plan were enacted by any of the three municipalities governed by the BLSSIPD (nor, for that matter, were any bylaws amending the BLIDP, which also limits the density of development of the subject lands, enacted). If the SDAB failed to consider that the intermunicipal settlement agreement constituted an amendment to the BLSSIDP, it was correct in doing so. This ground of appeal has no reasonable chance of success.

6. The SDAB failed to act fairly in basing its decision on an issue that had not been listed on the agenda for the SDAB hearing

[40] The applicant raises an issue of procedural fairness, claiming that density was not listed as an issue on the agenda circulated before the SDAB hearing. This argument fails too. The first appeal topic identified in the SDAB's agenda was the proposed development's relationship "to applicable Statutory Plans and Land Use Bylaw including...the [BLSSIDP]." Density, and specifically whether the limits on dwelling unit density set out in the BLSSIDP applied to an RV park, was the central issue in the arguments about the relationship between the development permit and the BLSSIDP. Many of the written submissions made by those opposing the proposed development permit and distributed to the applicant prior to the SDAB hearing argued that the proposed RV park violated the BLSSIDP because it exceeded the maximum 1.97 dwelling units per acre. Moreover, the issue of density in relation to the BLSSIDP was also addressed by the County's development authority in its submissions to the SDAB. And, even the applicant, in its written submissions to the SDAB, expressly addressed the density issue under the heading of "Lake Crowding" (section 7.4.3). The applicant referenced the BLIDP and the BLSSIDP and argued that the adding of 370 RV stalls to the South Shore Growth Node represented less than 10% of the overall capacity of the South Shore Growth Node. That argument, of course, failed to address what adding 370 RV stalls to 80.39 acres of land adjacent to the lake in the NE-20-40-20-W4M would do to the density of those lands, as opposed to the entire South Shore Growth Node which comprised 3,798 acres. But regardless, it was clear to all that the density of the proposed RV park would be an important consideration in addressing a number of the other appeal topics on the SDAB's agenda, including traffic issues, environmental impact, lake

crowding and boat launch capacity, emergency services, noise, and the impact on adjacent properties. For example, both the BLIDP and the BLSSIDP expressly relate "lake crowding" to developing density. This ground of appeal has no reasonable chance of success.

7. The SDAB erred by considering the fairness to other landowners in the South Shore Growth Node in making its decision

[41] The applicant argues that the SDAB erred in its determination that allowing the RV park to develop at a density above the limit set out in the BLSSIDP would unfairly transfer development potential away from other landowners. The applicant claims that any unfairness to potentially affected landowners was addressed by the fact that these landowners had adequate notice of its permit application. Whether potentially affected landowners in the general vicinity of the south shore of Buffalo Lake had notice that the applicant's development permit application might adversely affect their development plans was certainly not clear. But, even if landowners received adequate notice, such notice would not allay the SDAB's concern about the fairness of a transfer of development potential.

[42] Because the proposed RV park is classified as a discretionary use, the onus is on the applicant to show that the exercise of the SDAB's discretion was unlawful. The applicant has not pointed to any error of law nor offered any argument as to why considering fairness to other landowners is beyond the purview of the SDAB. Again, this ground of appeal has no reasonable chance of success.

8. The SDAB exceeded its jurisdiction by making a ruling which affected subsequent phases of the development when only the first phase was before it

[43] The applicant alleges that the SDAB exceeded its jurisdiction by making a ruling that affected both Phase 1 and Phase 2 of the project, though only the permit for Phase 1 was before it. This claim was raised for the first time in oral argument, with no notice to the respondents. A close examination of maps in the Paradise Shores ASP shows that Phase 1 and Phase 2 together take up the entire NE-20-40-20-W4M parcel. Phase 1 appears to encompass somewhat more than half of the parcel and Phase 2, somewhat less. Regardless of whether or not the SDAB assumed that Phase 1 was to take up the entirety of the NE 20 parcel, when it set the maximum number of RV stalls, it purported to do so for the entire NE 20 parcel. The applicant now complains that in doing so, the SDAB has limited the number of RV stalls that can be developed in Phase 2 when it had no jurisdiction to do so.

[44] In its decision, the SDAB affirmed the County's decision to grant the applicant a development permit. If all the County approved was a development permit for Phase 1, as the applicant suggests, the SDAB "set aside the decision of the Municipal Planning Commission and replaced it with the following." What followed was an approval for a Recreational Vehicle Park and/or Campground on NE20. The relevant condition of the approval, that the total number of RV stalls and/or campground sites not exceed 168, applies to the entire 83.4 acre NE20 parcel. So if all

that was approved was Phase 1, it was approved on the basis that, absent a change in the governing statutory plans, the ultimate development of NE20 must not have more than 168 RV lots on it. Often development permit applications are approved on the condition that the proposed development not increase the density of an area greater than that upon which the development is proposed to be constructed. That is what development planning is all about.

[45] Also, part of the problem in assessing this ground of appeal is that the applicant did not put its development permit application or a copy of the development permit which the County approved before the Court. Therefore, for the purposes of dealing with this argument, I had to assume that the facts implied in the ground of appeal are correct. But even if the facts are as the applicant represented them to be, for the reasons stated in the preceding paragraph, this ground of appeal has no reasonable prospect of success.

Conclusion

[46] None of the grounds of appeal advanced by the applicant has a reasonable chance of success. Many of them do not raise questions of law or jurisdiction. They are matters of interpretation and application of statutory plans in respect of which the SDAB is accorded great deference. Even in the absence of deference, the SDAB's interpretations appear to be correct. They are certainly reasonable. The application for permission to appeal is dismissed.

Application heard on January 23, 2019

Reasons filed at Calgary, Alberta
this 12th day of July, 2019

Brian O'Ferrall

O'Ferrall J.A.

Appearances:

R.M. Schuett
for the Applicant

S.C. McNaughtan, Q.C. (no appearance)
for the Respondent, County of Stettler No. 6

J.M. Klauer (no appearance)
for the Respondent, Subdivision and Development Board of the County of Stettler No. 6

E.R. Feehan
for the Respondents, Darcy and Judy Peeler, Lance and Maureen Kadatz, Peter Wood, Bruce and Wendy Olsen, Kyle Bruggengate, Ken Vertz and Rochan Sands Heights Community Association

Respondents, Ed and Vivian Bennett (no appearance)