

In the Court of Appeal of Alberta

Citation: Stuber v County of Barrhead No. 11 (Subdivision and Development Appeal Board), 2017 ABCA 52

Date: 20170210
Docket: 1403-0243-AC
Registry: Edmonton

2017 ABCA 52 (CanLII)

Between:

Delphi Stuber and Michael Stuber

Applicants
(Appellants)

- and -

Subdivision and Development Appeal Board of the County of Barrhead No. 11

Respondent
(Respondent)

- and -

County of Barrhead No. 11

Respondent
(Respondent)

- and -

Stony Valley Contracting Ltd.

Respondent
(Respondent)

The Court:

**The Honourable Mr. Justice Ronald Berger
The Honourable Mr. Justice Brian O’Ferrall
The Honourable Madam Justice Jo’Anne Strekaf**

Memorandum of Judgment

Appeal from the Decision by
The Subdivision and Development Appeal Board
Dated the 28th day of August, 2014

Memorandum of Judgment

The Court:

[1] Delphi Stuber and Michael Stuber were granted permission to appeal a decision of the Subdivision and Development Appeal Board of the County of Barrhead No 11 (“SDAB”) on the question of “whether the SDAB’s reasons [regarding its decision to issue a development permit to Stony Valley Contracting Ltd (“Stony Valley”)] were sufficient to comply with section 687(2) of the *Municipal Government Act*”: *Stuber v County of Barrhead No. 11 (Subdivision and Development Appeal Board)*, 2015 ABCA 339 at para 29.

[2] Stony Valley was granted a development permit for a sand and gravel extraction and crushing operation (“DP 06-2014”). The operation is on Crown land located about nine miles from the Stubers’ three quarter-sections of land. Portions of the preferred haul route proposed by Stony Valley was adjacent to the Stuber property and passed 92 metres from their residence and 16 metres from buildings on their land to which they attributed historical significance.

[3] Barrhead County’s approval of DP 06-2014 was subject to 16 conditions, including:

2. The Developer being required to enter into and comply with a development agreement with the County of Barrhead that shall include such matters as reclamation, control of on-site noise, dust, weeds, storage of top soil, designation of haul routes to reduce noise, dust and maintenance of roads and the construction of roads to the County’s specifications and satisfaction.

[4] The Stubers and other landowners appealed DP 06-2014 to the SDAB. During the nine-hour hearing the Stubers raised a number of concerns with respect to the preferred proposed haul route, such as increased truck traffic, noise and dust.

[5] The SDAB dismissed the appeal. Its Reasons modified condition 2 and conditions related to hauling hours. The revised condition 2 now reads:

2. The Developer being required to enter into and comply with a development agreement with the County of Barrhead No. 11 that shall include such matters as reclamation, control of on-site noise, dusty, weeds, storage of top soil, designation of haul routes to reduce the impacts of noise and dust, maintenance of roads and the construction of roads to the County’s specifications and satisfaction. The approved haul route shall be essentially as depicted on the map comparing proposed haul routes (Exhibit 13) as Final Route in green. Variations from this route shall be at the discretion of the County of Barrhead No. 11.

[6] At issue on this appeal is the sufficiency of the SDAB's Reasons. The Stubers submit that the Reasons are inadequate as they do not explain why the SDAB chose the haul route adjacent to their property, from amongst the three routes that had been under consideration by Stone Valley.

[7] The respondents submit that a challenge to the sufficiency of an administrative tribunal's reasons is not a stand-alone ground of appeal and that the Reasons, read in context of the record and evidence before the SDAB, show its reasoning path that the haul route was chosen because it impacted the least number of adjacent landowners as compared to the other two proposed routes. The respondents also contend that the question of which haul route should be approved was only part of the SDAB decision, and deference should be afforded to the decision.

[8] Section 687(2) of the *Municipal Government Act*, RSA 2000, c M-26, requires an SDAB to "give its decision in writing together with reasons for the decision within 15 day after concluding the hearing."

[9] The standard of review when assessing the adequacy of reasons is reasonableness: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 22. The Court held that inadequacy of reasons is not a standalone basis for quashing a decision of an administrative body and that a reviewing court should look to the record for the purpose of assessing the reasonableness of the outcome.

[10] More specifically, it held at paragraphs 14 to 16:

Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses -- one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at s. 12:5330 and 12:5510). It is a more organic exercise -- the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[11] While the Reasons do not state why the SDAB designated the haul route it did, they expressly address the changes made to condition 2 of DP 06-2014 which designated the haul route. Paragraph 4 of the Reasons state (with emphasis added):

The Board was convinced that the Conditions of Approval of Development Permit Application 06-2014 with the changes set out by the Board in their decision in this hearing, adequately address concerns with respect to the haul route, environmental and agricultural impacts, noise, dust and air pollution, and human health concerns.

[12] Moreover, the record and minutes from the hearing indicate that there was evidence from which the SDAB could reasonably have reached the decision regarding the haul route selected. The minutes include the following:

- a. A presentation (Exhibit 14) by Stony Valley entitled Final Proposed Haul Route which stated:

We have met with residents and landowners for the past three years to discuss potential haul routes from the Project Development Area to the Provincial Highway 18. We have identified a haul route through the Connor Creek Provincial Grazing Reserve that affects the least number of residents and landowners.”

This statement was consistent with several maps depicting various haul routes for the proposed development.

- b. Dan Fouts, Stony Valley’s representative (F20):

gave an explanation of the options and final decision upon a ‘Haul Route’. The new LOC to deal with this route is included in the application. The options to re-route the ‘Haul Route’ to address concerns brought forward by the Stuber’s was discussed.

c. Rick Neumann, the County's development officer,

spoke specifically to:

- i. Alternative Haul Routes, indicating that portions of roads in both the County of Barrhead No. 11 and Lac Ste. Anne County would be developed and improved;
- ii. Public Consultation, indicating that a number of avenues were afforded adjacent landowners for comment and input

[13] The essence of DP 06-2014 was approval of Stony Valley's sand and gravel extraction and crushing operation. The location of the haul road was a relatively minor aspect of the overall development. The SDAB was not required to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion": *Newfoundland and Labrador Nurses' Union* at para 16. The minutes show that the SDAB was alive to issues relating to the location of the haul road. Evidence on the record demonstrates that the haul route selected was within the range of reasonable outcomes.

[14] Having regard to the applicable deferential standard of review, the appeal is dismissed.

Appeal heard on February 1, 2017

Memorandum filed at Edmonton, Alberta
this 10th day of February, 2017

Berger J.A.

As authorized by: O'Ferrall J.A.

Strekaf J.A.

Appearances:

M.M. Conroy and J.D. Buhler
for the Appellants

M.J. Arnston as agent for K.L. Becker Brookes
for the Respondent Subdivision and Development Appeal Board of the County of Barrhead
No. 11

J.S. Grundberg
for the Respondent County of Barrhead No. 11

J.R. Pawlyk
for the Respondent Stony Valley Contracting Ltd.