

In the Court of Appeal of Alberta

Citation: Spruce Grove Gun Club v Parkland (County) Subdivision and Development Appeal Board, 2015 ABCA 382

Date: 20151208

Docket: 1503-0285-AC

Registry: Edmonton

Between:

Spruce Grove Gun Club

Applicant

- and -

**Parkland County Subdivision and Development Appeal Board
and Parkland County**

Respondents

**Reasons for Decision of
The Honourable Madam Justice Myra Bielby**

Application

**Reasons for Decision of
The Honourable Madam Justice Myra Bielby**

[1] The applicant, the Spruce Grove Gun Club (the Gun Club), has applied for permission to appeal an October 23, 2015 decision of the respondent, Parkland County SDAB (the SDAB), whereby the SDAB allowed an appeal against its application for a development permit allowing it to operate a gun range (the gun range) on land located within the boundaries of the respondent Parkland County (the County). It had obtained similar, time-limited development permits in the past. The application for permission to appeal will be argued at a future time. On December 3, 2015, in preparation for the application for permission to appeal, the Gun Club applied to me for directions relating to service and for a stay of the October 23, 2015 decision until its application for permission to appeal is argued and, if such permission is granted, until a decision is issued in the underlying appeal. The Gun Club also applied for abridgement of time to bring on this stay application and to file materials in relation to same. The Gun Club closed the gun range for business as of November 10, 2015, the date of expiry of an earlier development permit allowing its operation.

[2] On December 3, 2015 I also heard an application on behalf of Darren DeGeer and Natasha DeGeer, landowners neighboring the gun range, to be added as respondents in relation to the Gun Club's application for permission to appeal, any ultimate appeal, the stay application and to file a memorandum of argument in relation to same, as well as an order for abridgement of time in relation to these applications. More than 15 other persons attended the December 3, 2015 hearing, most in response to being served with notice of it by counsel for the SDAB. Many of these persons identified themselves as having been appellants (the SDAB appellants) in the appeal to the SDAB, leading to the October 23, 2015 order under appeal.

[3] Counsel for the Gun Club opposed the DeGeers' formal application to be added as respondents, and argued that neither they nor any of the other SDAB appellants should be granted status in relation to any aspect of its permission to appeal application because that status should issue only upon their making formal application, supported by affidavit evidence addressing why they should be found to be "affected parties". Section 688(3) of the *Municipal Government Act*, RSA 2000 c. M-26 as amended, states that on application being made for permission to appeal a decision of a SDAB, the judge hearing the application must hear "the representations of those persons who are, in the opinion of the judge, affected by the application".

[4] Counsel for the respondents and potential respondents argued that where a person was an appellant in the procedure before the SDAB which led to the decision under appeal, that presumptively indicates he or she is "affected by the application" for permission to appeal that decision, and no more need be done by them to substantiate that status.

[5] Counsel for the Gun Club admitted to being unable to locate authority on the issue of how a judge should approach the determination of which persons are "affected parties". He suggested

that evidence is needed before a judge can conclude a party is an "affected" party from a comment made by Stevenson J.A. (as he then was) in his minority concurring decision, in *Pension Fund Properties Limited v. The Development Appeal Board of Calgary, et al.* 1981 ABCA 195 at para 20. The majority there chose to rely on evidence led before the SDAB that the applicant was not an affected party because he was a mere visitor to a shopping mall which was protesting a development which would place that mall into shadow; the appellant was the owner of the shopping mall.

[6] Here, the decision under appeal recorded that the SDAB appellants were each nearby residents of or owners of land near the gun range. In it the SDAB implicitly accepted they each had status to appeal, because it heard evidence from them, ultimately overturning the original decision to grant the development permit based on that evidence. The judge of this Court hearing the application for permission to appeal will, of course, be required to consider the contents of the decision under appeal, which records the resulting conclusion of the SDAB that these individuals were each negatively affected by the operation of the gun range.

[7] I conclude that no other party can represent the interests of the SDAB appellants in the same fashion as they could represent themselves during the permission application and on any resulting appeal. The SDAB is limited in the representations it can make. Counsel for the County advised that it is a common practice of this Court, in her experience, to allow a party which was a participant at a SDAB hearing to also be heard in the Court of Appeal on an appeal from its resulting decision.

[8] For these reasons I grant the application to add Darren DeGeer and Natasha DeGeer as respondents to the application for permission for leave to appeal and in any resulting appeal. I declare that any of SDAB appellants, so identified in the decision under appeal have similar status as respondents in this matter.

[9] Somewhat ironically, counsel for the Gun Club went on to argue that a process should be established so that other parties who might have an interest could apply to be added as respondents, in particular people identified in the affidavit of Ralph McDonald, a director of the Gun Club, as being affected or potentially affected by its closure. These would include members of police departments, sheriffs' offices and security guards who have used its facilities to keep their registrations current. He did not, formally or informally, advise any of these parties of the proceedings on December 3, 2015, or invite them to attend, or obtain affidavit evidence from them.

[10] I cannot see that specific directions on a process to add potential additional respondents are needed at this time. Should any party believe he, she or it is affected by the Gun Club's application for permission to appeal, or any resulting appeal, and is not yet a respondent, they may make an application to determine their status in the normal course any time prior to the date set for arguing the application for permission to appeal.

[11] No one challenged counsel for the Gun Club's description of the test for a stay as a tripartite one: a serious issue to be determined, irreparable harm to the applicant and that the

balance of convenience favours the applicant. Each of these three components must be established prior to the granting of the stay.

[12] In relation to the first, that there is a serious issue to be argued at the application for permission to appeal, the Gun Club will argue, among other things, that the SDAB was prevented, by concerns of procedural fairness or the operation of *res judicata*, from refusing to issue another time-limited development permit for its operation in 2015. This is because it had complied, including through the expenditure of significant sums of money, with all conditions imposed by the SDAB when it received a prior time limited development permit in 2014.

[13] The bar for proving that a serious issue exists is admittedly low; counsel for the DeGeers did not argue that it had not been met. I agree.

[14] In relation to irreparable harm, the Gun Club argued that the harm that should be considered is not only its own harm, but that of its members and customers. Mr. McDonald deposed that members of the Edmonton Police Service, the Alberta Sheriffs Branch, the Brinks company, safety officers for the Alberta Federation of Shooting Sports, County Bylaw enforcement officers, various youth club members, elite competitors and members of local clubs all have used the gun range for target shooting, to keep their qualifications current and/or for training purposes at various times in the past. He deposed that no facility with equal features is located within 300 km of the Gun Club.

[15] However, no evidence of any type was led as to the presence or lack of availability of other gun ranges in the vicinity. No evidence was led that any police service or other user of the gun range, including members of the Gun Club, used it exclusively or were precluded from shooting or maintaining required registrations due to the unavailability of other options. No direct evidence was obtained by way of affidavit or otherwise from any of these users.

[16] Rather, in making its representations to the SDAB, as set out at para 35 of the decision under appeal, the Gun Club represented that only 15% of the activities on the gun range related to law enforcement but as revenue generated from that source was by way of honorarium only, law enforcement sources contributed approximately 6 – 7% of the club's revenue. Paragraph 35 goes on to state: "On the shotgun side, competition is approximately 1%, the rest is recreational. On the pistol side, 20% is competitions and 80% is recreational. In the rifle ranges 90-95% is recreational". Of their 900 members, only 201 were said to use the facility 6 times or more per year.

[17] From this I conclude that any substantial inconvenience to be suffered due to the closure of the gun range would be suffered by Gun Club members only. That inconvenience would not extend to their being unable to shoot at all, given the lack of evidence that no other gun ranges are available to be used by them. This leaves the issue of financial inconvenience. The Gun Club will likely lose membership fees as members choose not to renew because the gun range has been closed. It may be required to pay severance pay to its terminated employee. Any monies spent in

improving the gun range to comply with conditions imposed in earlier years on the granting of other development permits will be lost if the gun range never reopens.

[18] It is true that these losses of membership fees will not necessarily be recoverable in a legal or in a practical sense if the appeal is heard and successful, and the gun range reopened. Any such fee loss would be modest, however, given that there is no reason that the permission application and any resulting appeal cannot be heard before May, 2016 when the Gun Club's "busy season" would likely commence: see para 35 of the decision under appeal. If the Gun Club is permitted to reopen, any monies earlier invested in improvements to the gun range will then be recovered in the normal course, over time.

[19] I therefore conclude that the Gun Club has not established any significant degree of harm to anyone other than its own members, and that the potential loss to the members will be modest and financial in nature. This is not sufficiently "irreparable" to meet the prerequisites for the granting of the requested stay. The Gun Club's application for that stay must therefore fail.

[20] Even had I concluded that the harm established was sufficiently irreparable to meet the second aspect of the test, I would have resolved the third aspect, the balance of convenience, in favour of the SDAB appellants with the result the stay would have been refused for that reason as well. While many of these appellants spoke about suffering negative consequences from the operation of the gun range when I gave them the opportunity to make representations during argument, I have not considered any information given by them at that time which was not also found within the decision under appeal. Inviting them to speak thus served two purposes only: the first to ascertain that they wished standing to participate, and the second to ascertain that they opposed the granting of the stay and the reopening of the gun range.

[21] The decision under appeal, however, amply describes the consequences of the operation of the Gun Club on homeowners who purchased, sometimes recently, homes located close or very close to the gun range and on other residents in the area. The following refers to extracts from that evidence relating to SDAB appellants who also attended and made representations before me on December 3, 2015.

[22] Paragraph 25 of the decision under appeal records the position of Joel Babineau; he was concerned about his safety because a bullet flew past him when he was outside. He was concerned about the loss of enjoyment of his property, and lower property values, due to the operation of the Gun Club.

[23] Paragraph 16 records the situation of Allen Gamble who lives approximately one-half mile north-east of the gun range. He found the noise level to be unbearable, robbing his family of the quiet use of their property. Paragraph 21 describes the situation of Teresa Kesser who lives 500 m south of the Gun Club. Her concerns were noise, safety and the environmental impact. There was no way to mitigate the impact of the noise in her view. She and her partner could not host events because their guests are concerned for their safety. They could not escape the noise even with the windows closed. She could not study in the house on weekends due to the noise. At paragraph 24

Cheryl Ball is described as speaking on behalf of a community group. She was concerned about the effect of the noise of gunfire on children in the area.

[24] At paragraph 20, counsel for the DeGeers advised that her clients lived 1.8 km north of the Gun Club. She submitted an affidavit from Mr. DeGeer in which he deposed that even indoors, his house shook from the noise of the gun range. The impact could last entire days on the weekends and evenings in the summer. While his affidavit was not filed in support of his applications on December 3, 2015, the information contained in that affidavit as recorded in the decision under appeal is properly before me on this stay application.

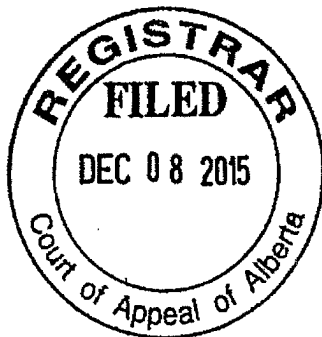
[25] Residents of the area have real, substantiated concerns about ongoing noise and safety for themselves and their children arising from the continued operation of the Gun Club. These concerns sway the balance of convenience away from granting the stay, and preserving the status quo. Relevant also is the fact that the application for permission to appeal and any resulting appeal could well be resolved before the spring when, according to the evidence before the SDAB, the Gun Club's busy season would be expected to commence.

[26] Because I have dismissed the application for the stay for other reasons, it is not necessary to consider the DeGeers' argument that it should be refused as it would be ineffective to allow the Gun Club to resume operations, in any event, given the provisions of s 16.14.1 of the County's Land Use Bylaw.

[27] The application for the stay is therefore dismissed. Any application by the Gun Club or any respondent to abridge time for the filing of the applications and supporting memoranda in relation to any of the above issues is hereby granted.

Application heard on December 3, 2015

Reasons filed at Edmonton, Alberta
this 8th day of December, 2015



[Handwritten signature]
Bielby J.A.

Appearances:

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for the Applicant

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S.C. McNaughtan, Q.C.
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K.L. Hurlburt
for the proposed Respondents D. DeGeer and N. DeGeer