

In the Court of Appeal of Alberta

**Citation: Calterra Land Developments Inc. v. Rocky View (Municipal District No. 44),
2005 ABCA 356**

**Date: 20051025
Docket: 0501-0206-AC
Registry: Calgary**

2005 ABCA 356 (CanLII)

IN THE MATTER OF Section 688 of The *Municipal Government Act*
of the Province of Alberta, being Chapter M-26.1, Statutes of
Alberta, 2000, as amended

AND IN THE MATTER OF a proposed appeal by
CALTERRA LAND DEVELOPMENTS INC., from the
Decision of the Subdivision and Development Appeal Board
of the Municipal District of Rocky View No. 44
(the “SDAB”)

Between:

Calterra Land Developments Inc.

Applicant/Appellant

- and -

**The Municipal District of Rocky View No. 44
and the Subdivision and Development Appeal Board
of the Municipal District of Rocky View No. 44**

Respondents (Respondents)

**Oral Reasons for Decision of
The Honourable Madam Justice Constance Hunt
In Chambers**

Application for Leave to Appeal
and
Application to Add Intervenant

**Oral Reasons for Decision of
The Honourable Madam Justice Constance Hunt**

[1] The applicant, Calterra Land Developments Inc. (“Calterra”), seeks leave to appeal a decision of the Rocky View Subdivision and Development Appeal Board (“the SDAB”). That decision denied Calterra’s appeal of several conditions imposed by the Rocky View Municipal Council when it approved Calterra’s application to develop Phases II and IV of its subdivision. Conditions 2(b) and 7 concern the supply of water to the subdivision while conditions 3 and 4 require Calterra to build an emergency access road.

[2] According to s. 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26, leave can only be granted on a question of law or jurisdiction. The question raised must be of sufficient importance to merit further appeal and have a reasonable chance of success.

[3] I accept that a finding of fact made in the absence of evidence is a jurisdictional error. Where, however, there is some evidence to support a finding of fact, this court cannot intervene: *Eckardts Tecumseh Mountain Guest Ranch Ltd. v. Crownsnest Pass (Municipality)* (2003), 339 A.R. 184 (C.A.) at para. [15], 2003 ABCA 287.

[4] The applicant claims that there was no evidence to support the SDAB’s conclusions that the Rocky View Water Co-op (“Co-op”) is available and capable of providing water to the new phase of Calterra Estates and that Calterra has an easement that would allow it to construct an emergency access road on adjacent lands. Having listened carefully to the submissions this morning and having read the material ahead of time, I have concluded that there was some evidence supporting the SDAB’s findings. As a result, I am not granting leave to appeal. I will briefly mention some of the evidence.

[5] The concept plan adopted by the municipality in 2000, in which Calterra participated, clearly contemplated both the emergency road access and the piped water which formed part of the SDAB’s conditions. Thus, the concept plan itself provides some evidence on both points.

[6] Calterra’s counsel suggested that Calterra is only one of several owners involved in the concept plan and therefore cannot take steps to amend the concept plan itself. However, it is telling that Calterra’s letter of April 10th, 2005 to the M.D. of Rocky View Planning Department states:

the applicant is not willing to pursue any amendments to the existing concept plan at this time as existing legal opinions have already confirmed that the current policy is suitable and applicable in its current form and the above identified solutions are suitably valid in compliance of the existing policies as stated in the current concept plan.

[emphasis added]

Moreover, the possibility of amending the concept plan was canvassed by the SDAB, as revealed by the minutes on page 5 of the SDAB Order.

[7] More specifically, as to the emergency access road, the easement agreement with Mr. Stickle is in evidence. While the easement agreement may be subject to some interpretational disputes, the view of the agreement taken by the SDAB is supportable and therefore an appropriate part of the evidence it considered. In saying that, I am not making any legal ruling on what the easement agreement means. But the SDAB's view of it is supportable and therefore provides some evidence for its decision. Also, there was evidence that the province requires emergency access. Again, that is some evidence supporting the SDAB's findings.

[8] On the issue of the water, the evidence included the report or letter in 2000 from the Co-op itself, as well as Calterra's own written submissions to the SDAB, p. 2 of which said:

The appellant also does not have any firm agreements for water supply with any utility or service provider at this time as this process is not within the control of the appellant at this time.

[emphasis added]

[9] Calterra's counsel suggested that this supported Calterra's position that there was no evidence, but I do not see it that way. I also think it was telling that Calterra did not put before the SDAB more up-to-date information from the Co-op to show that piped water was an impossibility.

[10] I therefore conclude that there was some evidence to support the SDAB's findings. The test for leave has not been met, and the application is dismissed.

[11] I want to thank both counsel for their helpful arguments in this complicated matter. You were both very helpful in getting me through the material.

[12] Mr. Stickle, what that means to you is that Calterra has not obtained leave. There will be no appeal to this Court. Therefore, there is nothing in which for you to intervene.

(Mr. Stickle speaks to the Court)

[13] Well, Mr. Stickle, it's very late. I've been in court for almost four hours this morning and I have read your material. I understand that you have complaints and you have issues. But, because I have not granted leave to appeal to Calterra, this Court has nothing further to say about the decision of the SDAB. Whatever other issues you may have about the easement agreement, I do not have any authority to deal with them at this time. The SDAB's decision stands and this Court is not going to be doing anything further about that. There is nothing before this Court for you to intervene in. I can't say it any more clearly than that.

(Counsel speaks to costs)

[14] I am not persuaded that there is any reason to deviate from the normal rule. Costs will follow the event.

Application heard on October 18, 2005

Reasons filed at Calgary, Alberta
this 25th day of October, 2005

Hunt J.A.

Appearances:

R. J. Simpson
for Calterra Land Developments Inc.

W. Barclay
for The Municipal District of Rocky View No. 44
and The Subdivision and Development Appeal
Board of the Municipal District of Rocky View No. 44

Mr. Rodney Charles Stickle
Appeared on his own behalf