MGB FILE NO.	**17/IMD-003**
IN THE MATTER OF	**AN INTERMUNICIPAL DISPUTE FILED PURSUANT TO SECTION 690 OF THE *MUNICIPAL GOVERNMENT ACT*, R.S.A. 2000 CHAPTER M-26 WITH RESPECT TO ROCKY VIEW COUNTY BYLAW NO. C-7700-2017, OMNI AREA STRUCTURE PLAN**
INITIATING MUNICIPALITY	**CITY OF CALGARY**
RESPONDENT MUNICIPALITY	**ROCKY VIEW COUNTY**
DOCUMENT	**REBUTTAL SUBMISSIONS OF THE CITY OF CALGARY**
FILED BY	**THE CITY OF CALGARY** David Mercer/Hanna Oh/Henry Chan 12th Floor, 800 Macleod Tr SE Calgary, AB T2G 2M3 david.mercer@calgary.ca hanna.oh@calgary.ca henry.chan@calgary.ca Phone: 403-268-2453 403-268-3662 403-268-5535 File No. P8577

Table of Contents

I. INTRODUCTION

1. This rebuttal submission is filed on behalf of the City of Calgary ("**City**") in rebuttal to the Rocky View County's ("**County**") Legal Argument filed on July 6, 2018.

2. The City will be submitting its evidentiary rebuttal submissions on transportation, emergency services, and planning concurrently with this legal response.

3. The City respectfully submits that the City's evidence proves that the detriment complained of resulting from the Omni Area Structure Plan ("**Omni ASP**") is both likely to occur and will have a significant impact on the City.

II. THE CITY'S RESPONSES

a) Rocky View's Characterization of the City's Motivations, Settlement Agreements, Urban Municipalities Task Force and the East Stoney Area Structure Plan

1. The City vehemently disagrees with the County's disparaging characterization of (i) the City's motivations for appealing the County's planning statutory plans, (ii) the settlement agreements reached between the County and the City on the Conrich Area Structure Plan and the Glenbow Ranch Area Structure Plan, and (iii) the County's criticisms of the Urban Municipalities Task Force and (iv) the East Stoney Area Structure Plan. The City also objects to the County calling the City's section 690 appeals an abuse of process. Not only are the County's statements untrue, they are irrelevant to this appeal and therefore no weight should be placed on these statements. Despite the City's position that the County's aforementioned comments are irrelevant to this appeal, the City will provide responses to the County's claims within its submissions.

The City's Motivations

2. Land use decisions within Alberta are intrinsically political in nature, which is why municipal councils have authority over land use decisions, including intermunicipal issues. While clearly there are political considerations, the City's detriment arguments are based upon the evidence provided to the Board.

3. The County's arguments in relation to the Urban Municipalities Task Force are untrue. The Calgary region members all have legitimate concerns with the unsustainable history of failed planning within the County. This includes the Lynx Ridge subdivision [**City Rebuttal Authorities TAB A, Order in Council O.C. 486/2004 and Council Report C2005-017**] which Calgary was forced to take over due to failing septic fields, the Highway 8 corridor subdivisions that continually come cap in hand to Calgary to take over unsustainable sewer servicing [**Genesis Submissions, TABS 14-17**], failing Highway 2 interchanges due to the Cross-Iron Mills mall development, developing slaughterhouses in the vicinity of urban development [**City Rebuttal Authorities, TAB B, Calgary Herald Article**] and many other failed planning projects. It is within this context that Calgary, Chestermere and Cochrane were forced to finally make a stand against detrimental development.

4. The County argues that the settlement agreements reached for the Conrich and Glenbow Ranch Area Structure Plan section 690 appeals reveals that the City's motivation for launching appeals are political rather than legitimate. This is not true. In fact, in two different Board hearings the City and the County presented the Conrich Area Structure Plan and Glenbow Ranch Area Structure Plan settlement agreements to the Board as resolving the detrimental impacts of those statutory plans on the City. The Board made findings of detriment on the basis of the respective settlement agreements for the Conrich and Glenbow Ranch Area Structure Plans and ordered the amendments recommended in the agreements. It seems disingenuous of the County to now take the position that no substantive changes to the ASPs were made or that detrimental impacts did not exist.

East Stoney ASP

5. The County uses the City's East Stoney Area Structure Plan ("**ASP**") as an example of how the City's planning is inadequate and claims that the East Stoney ASP does not demonstrate the quality of planning the City is expecting of the County through the appeal of the Omni ASP. As set out in the ***City's Planning Rebuttal***, the County has inaccurately portrayed the City's East Stoney ASP and planning process. The County did not request mediation nor initiate an appeal of the East Stoney ASP and was involved in the development of the plan.

6. Significantly, a Growth Management Overlay has been imposed by the City on the East Stoney ASP, as with all new City ASPs since 2012. The purpose of the overlay is to ensure that development cannot proceed until sufficient transportation, water, and fire response infrastructure and funding is available. The City works to secure funding for required capital and operating investments. The approval of funding is typically the pre-requisite for overlay removal. The tie between development proceeding and ability to find required capital and operating expenses is tightly connected for the City.

b) The Validity of the City's Emergency Services Ground of Appeal

7. The County's legal submissions argue that the City's emergency services ground of appeal is invalid because the City did not raise the issue nor attempt to mediate the issue in advance of its section 690 notice of appeal. The City is surprised the County did not raise the issue of the invalidity of this ground of appeal at either of the two preliminary hearings the Board held on the Omni ASP. In any event the City respectfully submits that the County is incorrect in its assertion that the City is required to raise and mediate an issue in advance of bringing an appeal. The Board has previously dealt with similar arguments in *Drayton Valley (Town), Re*, MGB 018/99, and *Edmonton (City), Re* (2007), MGB 130/07.

8. In *Drayton Valley (Town), Re* the Board decided that the Town was not restricted in its appeal to those issues raised in its notice of concern on the basis that there is nothing in section 690(1) and (2) as it then existed that tied the notice of concerns to the Notice of Appeal and that the legislation should be given a fair and liberal interpretation.

Drayton Valley (Town), Re, MGB 018/99, 1999 CarswellAlta 1829 ("*Drayton Valley (Town), Re*") at page 3 paragraph 7 issue 2 **[Tab C]**

9. The wording of section 690 has changed since the *Drayton Valley (Town), Re* decision was decided, however the requirement to provide written notice of its concerns to the adjacent

municipality prior to second reading of the bylaw remains consistent and the City submits that it is still the case that there is nothing in section 690 that limits the Notice of Appeal to the notice of concerns.

Drayton Valley (Town), Re at page 7 showing section 690 at the time the decision was made **[Tab C]**

10. In addition, the City is not required to mediate an issue before it can add it to its Notice of Appeal. In the *Edmonton (City), Re* decision at paragraph 83, the Board determined that "[i]t does not follow from the requirement for a statutory declaration regarding mediation that the Notice of Appeal is restricted to mediated issues only".

Edmonton (City), Re (2007), MGB 130/07, 2007 CarswellAlta 2175 ("*Edmonton (City), Re*") at paragraphs 83 and 84 **[Tab D]**

11. The Board in that decision declined to take a strict compliance approach to the interpretation of section 690 because it was not convinced that such an approach would achieve the purposes of the planning part of the MGA and specifically section 690. The Board supported a broad and purposive interpretation of section 690 because the impact of planning bylaws (in that case a municipal development plan) on adjacent municipalities can be significant and long term and "[t]o read the Act narrowly and technically is to ignore the greater context of planning and the context of that scheme in the current legislation."

Edmonton (City), Re at paragraph 65 **[Tab D]**

12. Section 690(1) of the MGA permits a municipality to launch an appeal with the Board if it "is of the opinion that a statutory plan... has or may have a detrimental effect on it", has given written notice to the municipality before second reading of the bylaw and "has, as soon as practicable after second reading of the bylaw, attempted to use mediation to resolve the matter". It further requires the applicant to provide a statutory declaration stating "a) the reasons why mediation was not possible, b) that mediation was undertaken and the reasons why it was not successful, or c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal."

City Authorities at TAB 1: Excerpts from the *Municipal Government Act*, R.S.A. 2000 Chapter M-26

13. The City advocates for a broad and purposive approach to the interpretation of section 690(1) in order to achieve the purposes of the planning part of the MGA expressed in section 617 which states that the purpose of this part is to "... achieve the orderly, economical and beneficial development, use of land and patterns of human settlement... without infringing on the rights of individuals for any public interest except to the extent that it is necessary for the overall greater public interest." The Board in the *Edmonton (City), Re* decision stated that:

> This statement of intent shows the delicate balance that planning seeks to achieve between the public interest and individual rights. The use of land can have long term impacts, not only on the environment and infrastructure within the municipality, but also within adjacent municipalities. While recognizing the autonomy and right of every municipality to engage in its own planning processes, the Legislature also recognizes that these planning processes can have significant impacts on neighbouring municipalities. In

> the absence of any regional planning system, section 690 offers the last opportunity for an adjacent municipality to protect itself from a perceived detriment resulting from neighbour planning decisions and creates the last forum in which alleged inter-municipal planning issues can be debated and disputes resolved by an independent adjudicator. While the initiation of an appeal pursuant to section 690 is a serious matter, loss of the right to appeal provided by that section is no less serious. (emphasis added)

Edmonton (City), Re at paragraph 65 [**Tab D**]

14. The City submits that the Board should read the Act broadly in the greater context of planning and the legislation and consider the merits of the City's emergency services ground of appeal. The City has been engaging with the County on its concerns with the Omni ASP since at least December 2016 including mediation in February 2018 and a proposed settlement agreement in April 2018 which the City's Council ultimately refused to ratify. The City's emergency services issues are integrally connected to the transportation and planning issues that the County has been aware of since at least December 2016 as one of the City's concerns is that the traffic to and from the OMNI development will result in more accidents and emergency response calls for the City. The City's emergency services ground should be heard by the Board and not excluded based upon an alleged procedural defect. As the County is advocating that the Board not consider the Growth Plan and Regional Evaluation Framework in this appeal, it is essential that the City have the opportunity to fully present its concerns with the Omni ASP as this could be the last opportunity for the City to protect itself from the detrimental impacts of the Omni ASP. Finally, the City submits that one of the main purposes of a municipality in Alberta is to develop and maintain safe and viable communities and the City needs this opportunity to speak to Emergency Services in order to ensure that this purpose is met.

c) The Merits of the City's Emergency Services Appeal Ground

15. The ***City's Emergency Services Rebuttal*** sets out the City's comprehensive response to the County's emergency services evidence.

16. The City will be bringing an additional witness, Rourke Haggith, Manager, Strategic Services, Calgary Fire Department ("**CFD**"), to speak to some of the background analysis completed for its MVC Analysis.

17. In its Emergency Services Response the County presents evidence that it will not be relying on the City to provide emergency services to the Omni area. If the County does not intend to rely on the City to provide emergency services to Omni, the ASP should be amended to remove the option of contracting with adjacent municipalities for such services. Policy 15.2 of the ASP clearly states that "where appropriate... [fire services will be provided] by contract from adjacent municipalities". The policy should be amended to delete the portion that suggests that, where appropriate, fire services will be provided by contract from adjacent municipalities.

18. As detailed in the ***City's Emergency Services Rebuttal***, the CFD is concerned about the impact of the Omni development on the City even if not called to support the Omni ASP because of the increase in MVCs on City roads in the event of a larger response and with the County pulling multiple stations around its municipality to respond to Omni, the City will be called upon to respond to other areas of the County due to its reduced capabilities and the detriment to the City will still occur.

19. The County suggests that it is the vehicles driven by Calgary residents already on City roads regardless of the Omni development that will cause the increase in MVCs and proposes in its response to assist the City with MVC response. The City's response is that the City's analysis shows that it is the Omni development that is triggering the need for major infrastructure (***City's Transportation Rebuttal***). Also, as set out in the ***City's Emergency Services Rebuttal*** any increase in MVC responses as a result of the Omni ASP will have a negative effect on City service including performance reliability and concentration. Since Stoney Trail lies within the City boundary adjacent to the Omni area, the CFD will have no choice but to respond to these events and the City will not be compensated by the province for such response. As performance decreases and affects citizen outcomes and service levels, the City will need to look at increased investment in fire services in this quadrant. The County does not have the same apparatus, equipment, training or service levels as that of the City. If the County was to respond into the City to assist with MVCs, aside from OHS, labor, insurance and information and reporting requirement issues, citizens in Calgary may receive a different level of service than other areas serviced solely by the City creating a 2 tiered level of service for citizens. Recently, the City of Calgary Council has reaffirmed that it does not want a 2 tiered level of fire service in the City.

20. In addition, the County raises concerns with the City's submission related to the increase of MVCs resulting from the Omni ASP. While the City provides a response to the County's concerns in the ***City's Emergency Services Rebuttal,*** the City notes that the "Review of Submission by the City of Calgary related to the Omni Development would increase Motor vehicle Collisions" prepared by Watt Consulting Group, dated July 3, 2018 was stamped by a professional engineer in Alberta but did not have a permit to practice number or stamp affixed to the report. As such the City is concerned with and questions the quality of content and engineering opinions contained in this report as the authoring engineer and/or the engineering company have not authenticated the report as per standard engineering practice in the province and have not taken responsibility for the engineering review and opinions included.

21. Based on the City's analysis, traffic generated by development contemplated in the ASP area has the potential to lead to significant congestion and a large increase in motor vehicle incidents on City roads which will result in the reduction of traffic safety on City transportation systems without any commitment on the part of the County to mitigate ASP-related traffic safety issues. The County asserts that it will not be asking the City to provide any emergency services in the Omni area. If this is true, policy 15.2 of the ASP should be amended to delete the portion that suggests that, where appropriate, fire services will be provided by contract from adjacent municipalities.

d) Transportation

22. The ***City's Transportation Rebuttal*** sets out the City's comprehensive response to the County's transportation evidence.

23. As detailed in the ***City's Transportation Rebuttal***, the County has submitted multiple technical reports in support of their claims but the quality and value of some of these reports are questionable and they do not demonstrate that the County has mitigated the anticipated traffic impacts, large capital infrastructure costs and traffic safety issues generated by the build out of the Omni ASP.

24. The City is not satisfied by the County's assertions that any impact to City roads caused by development in the Omni area will be identified and addressed with appropriate cost contribution from the County and County developers [**County Legal Response para. 53**] nor is the City satisfied by the County's belief that the City and the County can come to an agreement on shared infrastructure issues to resolve any disputes [**County Legal Response para. 57**].

25. There is no guarantee that the City and the County will be able to come to an agreement on the issues regarding Omni and the Board should not consider a hypothetical future agreement between the parties in necessarily addressing the City's detriment that will be caused to the City. The fact that the City and the County have managed to come to agreement in the past on a few issues does not alleviate the detriment posed by the Omni ASP. Put another way, if a hypothetical future agreement could impact the Board's assessment of detriment, then detriment would never be found because detriment can always be alleviated hypothetically. In addition, the capital cost of most of the improvements identified by the City as being required are in the tens of millions of dollars and beyond the funding capability of most developers [***City's Transportation Rebuttal***].

26. In addition, even if the City and the County were able to enter into a satisfactory agreement, there is no guarantee that the agreement will be followed. In 2010, The City entered into a Tri-Party Agreement with the County and a developer to resolve the City's appeal against Bylaws C-6854-2009 and C-6855-2009 concerning the Watermark at Bearspaw development. As part of the agreement, the County and the City recognized that existing and future land uses can have short and long-term impacts on surrounding municipalities that may be financial in nature. While the agreement recognized that a regional study of this nature would require time, the parties agreed to support and expedite the work required to address cross boundary financial impacts of development. Eight years later, no progress has been made on this work. **[Tab E, Watermark Agreement]**

27. Contrary to the County's statement that the City requires the County to conduct more traffic analysis at the ASP stage [**County Legal Response para.40**], the City has the information it needs now to determine that the impact of traffic generated from the Omni development will be detrimental on the City. The City's transportation Analysis proves the Omni ASP will require City funded capital costs at significant detriment to the City.

28. Within the County's submissions **[County Legal Response para. 51]** there is a reference to a new County Regional Transportation Infrastructure Off-Site Levy Bylaw that the City discovered was presented to County Council for first reading on Tuesday, July 10, 2018. The City has not been consulted on this bylaw. It purports to be 'regional' in nature, but surprisingly there was no engagement with the City prior to submission to Council.

29. As such, this is a brand-new issue for the City that the City had no knowledge of prior to (i) first learning of the bylaw when it was submitted in the County's evidence for this hearing, and (ii) finding out it had obtained first reading on July 10, only 5 weeks after the City disclosed its evidence. Ideally further time would be required to determine the true impact of this bylaw on the City's detriment arguments in this appeal.

30. One of the key underpinnings of the off-site levy process in Alberta is consultation. The importance of the consultation process is set out within the *Off-Site Levies Regulation,* Alberta Regulation, 187/2017 which includes a lengthy list of levy consultation requirements within section 8:

> (1) The municipality must consult in good faith with stakeholders prior to making a final determination on defining and addressing existing and future infrastructure, transportation infrastructure and facility requirements.
> (2) The municipality must consult in good faith with stakeholders when determining the methodology on which to base the levy.
> (3) Prior to passing or amending a bylaw imposing a levy, the municipality must consult in good faith on the calculation of the levy with stakeholders in the benefitting area where the levy will apply.
> (4) During consultation under subsections (1), (2) and (3), the municipality must make available to stakeholders on request any assumptions, data or calculations used to determine the levy.
>
> Off-site Levies Regulation, Alta Reg 187/2017 [**Tab F**]

31. In addition, absent the City's agreement, any regional off-site levy bylaw would only apply to the County, in accordance with section 12 of the MGA. That section states, in part, that a bylaw only applies within a municipality, unless the other municipality agrees and that both municipalities pass a bylaw adopting the agreement.

32. The MGA was recently updated to allow for intermunicipal off-site levies, at section 648.01, which states:

> (1) For the purpose of section 648(1) and subject to the requirements of section 12, 2 or more municipalities may provide for an off-site levy to be imposed on an intermunicipal basis.
>
> (2) Where 2 or more municipalities provide for an off-site levy to be imposed on an intermunicipal basis, the municipalities shall enter into such agreements as are necessary to attain the purposes described in section 648(2) or (2.1) that are to be funded by an off-site levy under section 648(1), by a framework made under Part 17.2 or by any other agreement. (emphasis added)

33. The City is surprised to learn of a new intermunicipal off-site levy process from the County's Legal Response. Clearly consultation and agreement with the City is required for this system to operate. In particular, the City is shocked that this bylaw was only ever mentioned in the County's Response, and was brought to the County's Council the week before the City is required to file its rebuttal materials. Based upon an initial review by the City, there is infrastructure within the City that is included in the list, which creates a duplication of levy bylaws that could impact both regimes. This effectively creates a further issue of detriment for the City that could amount to significant infrastructure risk for the City.

34. The City is also surprised that this new levy regime is intended to deal with the City's detriment concerns since most of the infrastructure required for Omni is not included within the long range transportation network or special area infrastructure of the bylaw.

35. The County cites the *Okotoks* decision at paragraph 54 of their Legal Response to support their argument that future cost sharing agreements might mitigate detrimental impacts of the Omni ASP on the City. The City submits that *Okotoks* does not stand for the proposition that future agreements will mitigate detriment if it is found because the test for detriment was not met in that decision due to insufficient evidence. Also, the City counters that section 690 offers the City the last opportunity to protect itself from the detriment resulting from the County's Omni ASP and this is the last forum in which these inter-municipal planning issues can be debated and resolved by an independent adjudicator.

36. While the City has a history of wanting to negotiate matters with the County in good faith, the fact that the County is passing a regional levy bylaw mere weeks after the City filed its evidence and a week before the City's rebuttal filling deadline, without consulting the City provides a reasonable basis for this Board to address the issue of detriment now and not leave it up to the parties to deal with in the future.

37. In the *Edmonton City, Re* decision, the Board held that a section 690 appeal is the last option a municipality has to alleviate the perceived detriment caused by another municipality's planning approvals and states at paragraph 65:

> In the absence of any regional planning system, section 690 offers the last opportunity for an adjacent municipality to protect itself from a perceived detriment resulting from neighbouring planning decisions and creates the last forum in which alleged inter-municipal planning issues can be debated and disputes resolved by an independent adjudicator.
>
> *Edmonton (City), Re* at paragraph 65 [**Tab D**]

38. As a result of the foregoing, the City submits that the Board must deal with the detriment issues now and not leave them for some possible future agreement that may never be completed.

39. The County has submitted its Transportation Response to suggest that the City's concerns have either been addressed or are based on overestimating traffic impacts or build out rates of development in the County. As detailed in the ***City's Transportation Rebuttal***, after reviewing the County's evidence, the City still contends that the Omni ASP will detrimentally affect the City's transportation network. Even using the County's suggested reduced land uses and trip generation rates, significant congestion will result and significant transportation infrastructure will still be required to mitigate the traffic impacts of the Omni ASP.

40. The City's position remains that it is clear that development of the Omni ASP will result in usage of City transportation systems beyond the capacity of the system without any practical

or current mitigation commitments from the County. The detriment is reasonably likely to occur and will have a significant impact on the City.

e) Planning

41. The ***City's Planning Rebuttal*** sets out the City's comprehensive response to the County's planning evidence.

42. The City maintains its position that the fact that the Omni ASP does not align with (i) the County's Municipal Development Plan ("**County Plan**") and (ii) the Intermunicipal Development Plan between the County and the City detrimentally impacts the City. While a mere change in plan does not necessarily cause planning uncertainty or significant detriment to a neighbouring municipality, the Omni ASP does.

43. The County Plan identifies the Omni ASP area as a Highway Business Area which the City relied on when planning its infrastructure and servicing priorities. The County claims the Omni area is a Highway Business Area rather than a Regional Business Centre and states that the only difference between the two is the size of the ASP area (***County Planning Response, page 22, Part II. Response to Planning Concerns at A.1. Inconsistency with Approved Statutory Plans, at paragraph 2***). Distinction of types of land use areas strictly by size of planning area is illogical and ineffectual as it would allow for any type or scale of land use within a planning area and render the designations useless.

44. The fact that the Omni ASP conflicts with the County Plan causes detriment to the City because this ad hoc form of planning results in the City losing the ability to predict and incorporate adjacent County development into its own growth management, infrastructure and servicing plans. If the Omni ASP is not revised to remove this detriment the City will be forced to reprioritize its infrastructure investment priorities to deal with the infrastructure burden created by the intense land uses contained within the Omni ASP area.

45. The County further argues that the Omni ASP combines two Highway Business Areas in order to create infrastructure and servicing efficiencies. However, the consolidation of two Highway Business Areas also consolidates the impacts of development into one concentrated area. This means that instead of distributing transportation demand across a network, the demand is concentrated in one area of the network. In addition to ignoring the combined impact in the Omni ASP, the County has permitted a greater scale of business uses within the combined planning area, creating even higher demand than the two Highway Business Areas would require. The City did not – and could not - anticipate the combined load of two Highway Business Areas in one consolidated location, let alone the additional intensity of uses proposed in the Omni ASP to that of a Regional Business Centre. The City will now be forced to change its own infrastructure and servicing priorities to mitigate the impacts of a Regional Business Area scale development outside of its boundaries.

III. RESPONSE TO THE COUNTY'S CRITICISM OF THE CITY'S RELIEF REQUESTED

46. The City maintains its position that the only remedy that completely alleviates all the City's detriment concerns would be for the Omni ASP to be completely repealed.

47. Counsel for the County claims that the Omni ASP amendments proposed by the City are unnecessary. The City responds as follows (and has fixed typos in its proposed language):

a) Amend Map 5: Land Use Scenario on page 24 to replace the Commercial and Light Industrial land uses with a "Special Policy Area" designation. This change is necessary so that the detrimental impacts of the Omni ASP as detailed in the City's transportation, emergency services, and planning evidence are not imposed on the City. By creating a Special Policy Area, an amendment to the ASP will be required to facilitate commercial and light industrial land uses in the Special Policy Area.

b) Add Policy 15.9. Counsel for the County states that the County will not be requesting the City provide fire service to the Omni ASP area. If that is the case, the City suggests that policy 15.9 is not required but policy 15.2 should be amended to remove the following ", and where appropriate, by contract from adjacent municipalities".

c) Add Policy 16.16: If a Transportation Impact Assessment prepared as part of a *local plan* or subdivision application identifies transportation improvements are necessary in the City of Calgary, the developer and/or the County will be responsible for the cost of such improvements prior to approval of any *local plans* or subdivision. The City is not satisfied with the existing language in the ASP. Nothing in the policies cited by the County, Policies 16.1, 16.2, 16.5, 16.6, 16.12, 16.13,16.15, 21.8, 21.12, 22.5, ensures that the City will not be responsible for infrastructure improvements required as a result of the Omni ASP. The County states that the requirement to construct or pay for the construction of infrastructure is a condition of subdivision approval in accordance with the MGA. However, a significant portion of the improvements necessary to facilitate the Omni ASP is typically City-funded and the City wants the Omni ASP to be clear that the City will not be responsible for costs for improvements in the City required because of Omni. The City would prefer if the Omni ASP is completely repealed.

d) Replace Policy 21.7: As part of the *local plan* approval process, the identification, timing, and funding of any required off-site improvements relating to hard and soft infrastructure shall be required. If a Transportation Impact Assessment prepared as part of a *local plan* identifies transportation improvements are necessary in the City of Calgary, the developer and/or the County will be responsible for the cost of such improvements prior to approval of any *local plans* or subdivisions. As mentioned above, the City is not satisfied with the existing language in the ASP. Nothing in the policies cited by the County ensures that the City will not be responsible for infrastructure improvements required as a result of the Omni ASP. The County states that the requirement to construct or pay for the construction of infrastructure is a condition of subdivision approval in accordance with the MGA. However, a significant portion of the improvements necessary to facilitate the Omni ASP is typically City-funded and the City wants the Omni ASP to be clear that the City will not be responsible for costs for improvements in the City required because of Omni. The City would prefer if the Omni ASP is completely repealed.

e) Replace Policy 22.5.d with the following "Impacts on 84th Street and East Stoney Infrastructure including a commitment by the developer and/or the County to be responsible for the cost of any improvements;" As mentioned above, the City is not satisfied with the existing language in the ASP. Nothing in the policies cited by the County ensures that the City will not be responsible for infrastructure improvements required as a result of the Omni ASP. The City wants the Omni ASP to be clear that the City will not responsible for costs for improvements in the City required because of Omni. The City would prefer if the Omni ASP is completely repealed.

All of which is respectfully submitted this 18 day of July, 2018

Per: _____

David Mercer
Counsel for the City of Calgary

INDEX TO CITY OF CALGARY REBUTTAL AUTHORITIES

O.C. 486/2004
OCT 19 2004

Province of Alberta
Order in Council

ORDER IN COUNCIL

Approved and ordered:

Lieutenant Governor

The Lieutenant Governor in Council orders that

(a) effective January 1, 2005, the land described in Appendix A and shown on the sketch in Appendix B is separated from the Municipal District of Rocky View No. 44 and annexed to The City of Calgary,

(b) any taxes owing to the Municipal District of Rocky View No. 44 at the end of December 31, 2004 in respect of the annexed land and the assessable improvements to it are transferred to and become payable to The City of Calgary together with any lawful penalties and costs levied in respect of those taxes, and The City of Calgary upon collecting those taxes, penalties and costs must pay them to the Municipal District of Rocky View No. 44,

(c) for taxation purposes in 2005 and subsequent years up to and including 2019, the annexed land and the improvements to it

(i) must be assessed by The City of Calgary on the same basis as if they had remained in the Municipal District of Rocky View No. 44, and

(ii) must be taxed by The City of Calgary in respect of each assessment class that applies to the annexed land and the assessable improvements to it, using

(A) the municipal tax rate established by the Municipal District of Rocky View No. 44, or

(B) the municipal tax rate established by The City of Calgary,

whichever is lower,

(d) The City of Calgary must pay to the Municipal District of Rocky View No. 44, not later than July 1, 2005, an amount calculated as follows:

2004 Taxes x 5

where

(i) "2004 Taxes" means the property taxes for municipal purposes payable in 2004 in respect of the annexed land and the assessable improvements to it, and

CHAIR

(ii) "5" represents the tax years 2005, 2006, 2007, 2008 and 2009,

(e) The City of Calgary is entitled to the taxes payable in respect of the annexed land and the improvements to it in each of the years 2010 to 2019,

(f) for taxation purposes in 2020 and subsequent years, The City of Calgary may assess the annexed land and the improvements to it pursuant to the property tax bylaw of The City of Calgary and is entitled to the taxes payable in respect of the annexed land and the improvements to it, and

(g) not later than December 31, 2005, The City of Calgary must provide a connection from its sanitary sewer system to the wastewater system being constructed to service the annexed land pursuant to Local Improvement Bylaw C-5871-2004 of the Municipal District of Rocky View No. 44.

Alberta

For Information only,
Recommended by: Minister of Municipal Affairs

Authority: Municipal Government Act
(section 126)

APPENDIX A

DETAILED DESCRIPTION OF THE LANDS SEPARATED FROM

THE MUNICIPAL DISTRICT OF ROCKY VIEW NO. 44

AND ANNEXED TO THE CITY OF CALGARY

THOSE PORTIONS OF THE EAST HALF OF SECTION SEVEN (7), TOWNSHIP TWENTY-FIVE (25), RANGE TWO (2), WEST OF THE FIFTH MERIDIAN AND THE NORTHEAST QUARTER OF SECTION SIX (6), TOWNSHIP TWENTY-FIVE (25), RANGE TWO (2), WEST OF THE FIFTH MERIDIAN DESCRIBED AS:

PLAN 7510139
BLOCK A
CONTAINING 55.9 HECTARES (138.21 ACRES) MORE OR LESS INCLUDING CONDOMINIUM PLAN 9910105;

PLAN 9310474
BLOCK C
CONTAINING 44.44 HECTARES (109.81 ACRES) MORE OR LESS INCLUDING CONDOMINIUM PLAN 0013086; AND

THAT PORTION OF ROADWAY CONTAINED WITHIN PLAN 7510139 STARTING FROM THE MOST SOUTH EASTERLY POINT OF PLAN 8710546, BLOCK 2, LOT 36 TO A POINT WHERE A LINE DRAWN DUE SOUTH INTERSECTS THE NORTH BOUNDARY OF PLAN 7510139, BLOCK 2, LOT 8 AND CONTAINING ALL THAT PORTION OF SAID ROADWAY TO THE EAST BOUNDARY OF THE SOUTH EAST QUARTER OF SECTION SEVEN (7), TOWNSHIP TWENTY-FIVE (25), RANGE TWO (2), WEST OF THE FIFTH MERIDIAN

EXCEPTING THEREOUT:

PLAN 7510139, BLOCKS 1 AND 2;

SUBDIVISION 8710546 CONTAINING 1.19 HECTARES (4.72 ACRES) MORE OR LESS;

SUBDIVISION 9010400 CONTAINING 11.36 HECTARES (28.07 ACRES) MORE OR LESS;

SUBDIVISION 9510940 CONTAINING 1.824 HECTARES (4.51 ACRES);

SUBDIVISION 8710469;

SUBDIVISION 9010497;

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION SIX (6), TOWNSHIP TWENTY-FIVE (25), RANGE TWO (2), WEST OF THE FIFTH MERIDIAN, WHICH LIES TO THE NORTH OF THE MAIN LINE OF THE CANADIAN PACIFIC RAILWAY ON PLAN RY 10 AND TO THE SOUTH OF SUBDIVISIONS 9310474 AND 9010497 CONTAINING 60.9 HECTARES (150.52 ACRES) MORE OR LESS;

A STRIP OF LAND CONTAINED IN THE NORTHEAST QUARTER OF SECTION SIX (6), TOWNSHIP TWENTY-FIVE (25), RANGE TWO (2), WEST OF THE FIFTH MERIDIAN, 66 FEET IN PERPENDICLAR WIDTH ADJOINING THE NORTHERLY LIMIT OF THE CANADIAN PACIFIC RAILWAY COMPANY RIGHT OF WAY ON PLAN RY 10, EXTENDING WESTERLY FROM THE EAST BOUNDARY OF THE SAID QUARTER SECTION A PERPENDICULAR DISTANCE OF 1650 FEET CONTAINING 1.02 HECTARES (2.53 ACRES) MORE OR LESS;

PARCEL E, 7416 JK;

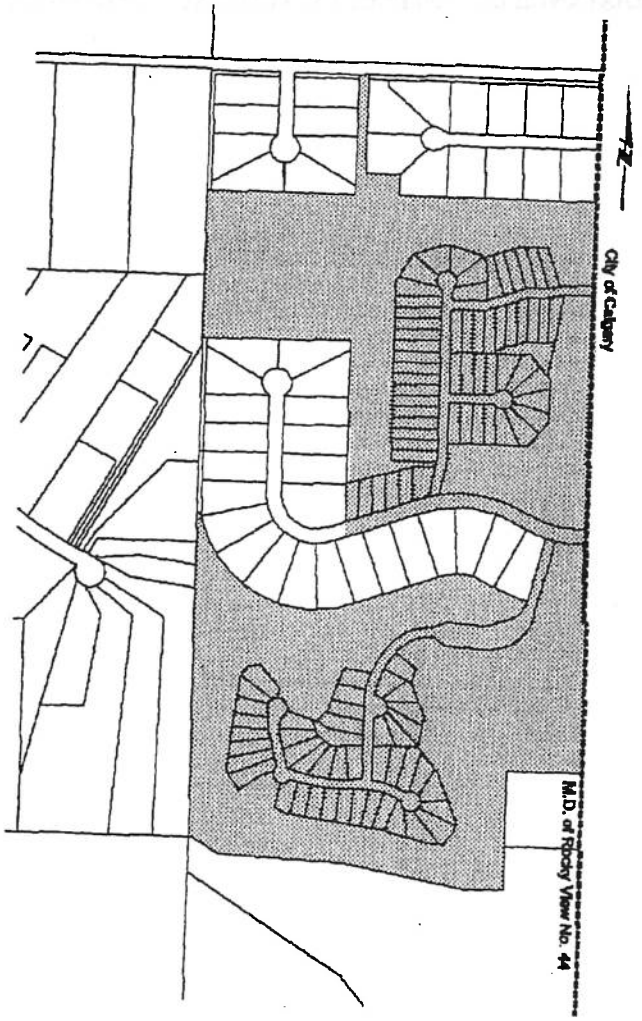
PARCEL A, 1139 HJ;

CPR RY10; AND

CPR 8511241.

APPENDIX B

A SKETCH SHOWING THE GENERAL LOCATION OF THE AREA ANNEXED TO THE CITY OF CALGARY



LEGEND

Area Annexed from the Municipal District of Rocky View No. 44 to The City of Calgary

LYNX RIDGE ANNEXATION – COMPENSATION FUNDING

SUMMARY/ISSUE

Budget request for funding to comply with Order in Council 486/2004 requiring The City to compensate the MD of Rocky View for loss of property tax revenues resulting from the annexation of Lynx Ridge to the city.

PREVIOUS COUNCIL DIRECTION

No previous Council decisions or direction has been provided regarding the Lynx Ridge annexation. However, in the recent MD of Foothills annexation, Council approved funding to compensate the MD of Foothills for the loss of property tax revenues. Compensation in this regard is common in annexation processes.

RECOMMENDATION:

That Council:

1. Approve the payment of $687,382.15 by The City to compensate the MD of Rocky View in accordance with Order in Council 486/2004.
2. Approve a one-time increase of $688,000 to Operating Program #616, Land Use Planning & Policy, to make the payment. The funding to come from Mill Rate Stabilization Reserve.

INVESTIGATION

On 2004 October 19 the Province of Alberta issued Order in Council 486/2004 annexing the Lynx Ridge area to the City of Calgary. The purpose of the annexation was to address serious environmental concerns with respect to a failing septic system for the residential development in this subdivision.

The Order in Council specifies a number of conditions. The City of Calgary must provide a connection from its sanitary sewer system to the wastewater system being constructed in Lynx Ridge pursuant to an MD local improvement bylaw. The City must pay to Rocky View an amount equal to five times the 2004 property taxes for municipal purposes. The 2004 property taxes for municipal purposes amounts to $137,476.43. The five-year property tax total is therefore $687,382.15. Landowners in Lynx Ridge are also afforded property tax mitigation; the Lynx Ridge properties must be taxed using The City's tax rate or Rocky View's tax rate whichever is lower for a period of 15 years to the end of 2019.

It should be noted the City Manager sent a letter to the Deputy Minister of Municipal Affairs on 2004 October 8 expressing concerns with these conditions as well as the irregular annexation boundary. Further clarification of the conditions was provided by Municipal Affairs however the requirements remain as in the final Order in Council (Attachment).

IMPLICATIONS

General

The financial and other conditions in this Order in Council may affect negotiations with the MD of Rocky View related to The City's ongoing comprehensive annexation application.

Social

The Lynx Ridge site-specific annexation results in primarily urban residential development being annexed to the city. As such, there is unlikely to be any social ramifications resulting from the municipal boundary change, i.e., lifestyle impacts.

Environmental

The annexation will result in this area being serviced with City sanitary sewer, which will solve a serious environmental and health concern with the existing septic sewer system.

Economic (External)

The annexation brings approximately 88 hectares of land into the city. It includes residential development, a golf course and clubhouse.

LYNX RIDGE ANNEXATION – COMPENSATION FUNDING

BUDGET IMPLICATIONS

There is no budget allocation in 2005 to fund the compensation payment. It is proposed that the 2005 Operating Program #616, Land Use Planning & Policy, be increased one-time by $688,000 to make the payment. The funding to come from Mill Rate Stabilization Reserve.

The annexed area will impact upon City services. There are ongoing and future residential development applications in accordance with the existing land use designation resulting in processing and inspection requirements by The City. Moreover, The City assumes jurisdiction over public roads in the area. The extent of these impacts to City budgets is unknown at this time.

RISKS

The risk in not approving the compensation funding is to be in contravention of the provincial Order in Council.

ATTACHMENT

Order in Council 486/2004

Long delayed Balzac beef plant to finally open

AMANDA STEPHENSON, CALGARY HERALD (HTTPS://CALGARYHERALD.COM/AUTHOR/AMANDAMSTEPH) Updated: February 16, 2017

Rich Vesta, CEO of Harmony Beef, near the holding pens in Balzac, in this file photo. *JENN PIERCE / CALGARY HERALD*

A long-shuttered beef processing plant in Rocky View County is set to open its doors under new ownership by the end of the month, two years later than originally anticipated.

Harmony Beef — the new name for the former Rancher's Beef plant near Balzac — will begin slaughtering cattle Feb. 27, according to Rich Vesta, the plant's owner. It will open with 175 employees, and is expected to ramp up to full production of 750 to 800 head a day within a year. Ultimately, the plant could employ between 350 and 375 people, Vesta said.

The plant — located north of Stoney Trail not far from Calgary city limits — will not only provide a third processing option to Western Canadian beef producers currently faced with a Cargill-JBS duopoly, it will be the largest facility in Canada built to European Union standards. Though the plant has not yet applied for EU certification, if it does, it will have the ability to take advantage of increased export opportunities brought about by this week's passage of the Canada-EU Trade Agreement (CETA).

While Vesta said he is feeling good about the upcoming opening, he acknowledged getting to this point has not been easy. When the veteran cattleman (Vesta has held executive positions at some of the best-known meat companies in the U.S., including JBS) bought the plant out of bankruptcy three years ago, he set an opening date of January 2015. That date was pushed off, due to lengthy delays securing permits for the unique water recycling facility Vesta wanted to construct at the site.

"We didn't fully anticipate the regulations and variances that needed to be accomplished before that could be done, from a provincial and a county standpoint," Vesta said in an interview. "So it was a learning experience."

The plant also faced opposition from the City of Calgary, with Mayor Naheed Nenshi, local real estate developers and residents of northeast subdivisions expressing concerns about possible odours once Harmony Beef is in operation. To allay those fears, Harmony hired an independent odour consultant to review its planned practices, and will soon be installing an "electronic nose" on the plant that will notify management if there is a smell coming from the plant.

That comes on top of the "multi-millions" in retrofits that Vesta has poured into the plant since its purchase, in an effort to make it state-of-the-art in everything from environmental responsibility to animal handling practices.

On Tuesday, Nenshi told reporters he still has concerns.

"The city continues to believe that that is not the ideal location for that kind of use. In fact there are even more people living just across Stoney Trail from there," Nenshi said. "But it is opening, so we have to take the landowner and operator at face value — that they really are going to mitigate noise and odour concerns for the neighbours."

Vesta said he is confident Calgarians will soon realize there fears were unfounded. He said odours generated from beef processing plants generally come from rendering or hide processing — neither of which will be done at the Harmony Beef site. In addition, there are no lagoons or feedlot pens on site that could cause a stench.

Rocky View County Reeve Greg Boehlke said he doesn't expect any trouble with odour and added the county would require it to be addressed quickly if it did become a problem.

"The development permit calls for stringent guidelines on odour control, they (Harmony Beef) have a state of the art system, and we will be monitoring it," Boehlke said. "We made a commitment to the city that we will be monitoring it . . . So I don't think there will be any issue there whatsoever."

The Rancher's Beef plant was built a decade ago by a group of beef industry investors who wanted to give the cattle industry access to much-needed slaughter capacity in light of the post-BSE U.S. border closure. However, it ran into financial difficulties and closed in 2007, after just 14 months in operation. Sunterra Beef later bought the plant for an undisclosed amount, but never reopened it.

Bryan Walton, CEO of the Alberta Cattle Feeders Association, said the industry has waited a long time for the plant to be reopened. He said the obstacles Harmony Beef has faced — from permitting and regulatory delays to vocal opposition from nearby Calgary — shouldn't have happened.

"We were concerned with the kind of holdups we saw with this business — or for that matter, with any other that would want to locate in Rocky View or any other county," Walton said. "If we want the Alberta advantage to be real, then these kinds of impediments can't block businesses from investing in this province, or delay them, or push them to other jurisdictions."

— With files from Annalise Klingbeil, Postmedia

astephenson@postmedia.com (mailto:astephenson@postmedia.com)

Twitter.com/AmandaMsteph

1999 CarswellAlta 1829
Alberta Municipal Government Board

Drayton Valley (Town), Re

1999 CarswellAlta 1829

In the Matter of the "Municipal Government Act" (the Act)

In the Matter of an intermunicipal dispute lodged by the Town of Drayton Valley

D.L. Shelley Presiding Officer, F. Martin Member, R.A. Bishop Member

Heard: December 21, 1998
Judgment: January 18, 1999
Docket: MGB 018/99

Counsel: J. Agrios, for Town of Drayton Valley
D. Haldane, for Municipal District of Brazeau No. 77
J. Murphy, for D.C. Energy Services Corporation

Subject: Public; Civil Practice and Procedure; Property; Municipal
Related Abridgment Classifications
Municipal law
XVIII Planning appeal boards and tribunals
XVIII.2 Practice and procedure
XVIII.2.a Notice
XVIII.2.a.ii Of appeal
Municipal law
XVIII Planning appeal boards and tribunals
XVIII.2 Practice and procedure
XVIII.2.e Adjournment
Headnote
Municipal law --- Planning appeal boards and tribunals — Practice and procedure — Notice — Of appeal
Municipal law --- Planning appeal boards and tribunals — Practice and procedure — Adjournment

***D.L. Shelley Presiding Officer*:**

Background

1 The Town has appealed, pursuant to Section 690 of the Act, the M.D.'s adoption of two statutory plan bylaws. The bylaws under appeal are the Municipal Development Plan ("the MDP") and the 50th Street East Area Structure Plan ("the ASP"). The appeal was further refined by the Town when it advised that the issues under appeal were related to the ASP in its entirety, and solely to the two-mile urban fringe of the Town within the MDP. The Town has further qualified the two-mile urban fringe, to exclude any areas across the river.

2 After filing the appeal pursuant to s.690, the Town gave notice of its intent to annex certain lands from the M.D. The area covered by the notification generally coincides with the two mile fringe area of the Town.

Issues

3

1. Whether the Town's appeal of the adoption of the MDP and the ASP by the M.D. should be adjourned pending the outcome of the annexation proceedings?

2. Whether the Town can raise concerns in its Notice of Appeal that were not raised prior to second reading of the bylaws?

3. Whether the Town's original Notice of Appeal provides adequate reasons and, if not, whether the Town should be required to identify the specific provisions of the bylaws under appeal?

Legislation Referenced

Municipal Government Act

4 Part 4, Division 6 (Annexation), sections 113 - 128 (reproduced at Appendix "C")

5 Part 17, Division 11 (Intermunicipal Disputes), sections 690 and 691 (Appendix "C")

6 *Judicature Act*, section 8 (Appendix "C")

Review of the Arguments and Decisions on the ISsues

7 The Board considered the submissions of the Town and the M.D. With regard to Issue 1, the Board also heard from counsel for an affected landowner.

1.

Whether the Town's appeal of the adoption of the MDP and the ASP by the M.D. should be adjourned pending the outcome of the annexation proceedings?

Summary of the Town's Argument - Counsel for the Town stated that if the annexation is successful, then the issues raised in the appeal regarding the MDP and the ASP would be moot. If the annexation was successful, the Town would have the ability to ultimately repeal the MDP and the ASP. Counsel for the Town urged the Board to avoid a multiplicity of proceedings involving the same lands. Counsel suggested that the Board be governed by principles similar to those in section 8 of the *Judicature Act*. Counsel estimated that the annexation application would be ready to proceed before the Board in March or April of 1999. He conceded that if the Board was of the view that the annexation would take longer than this, the application for an adjournment should fail.

Summary of the M.D.'s Argument - Counsel for the M.D. argued that an adjournment would be contrary to the provisions of the Act which sets out separate procedures for annexation and intermunicipal disputes. The existence of two procedures means that the two disputes can run concurrently. The M.D.'s position was that a multiplicity of proceedings does not exist because the issues to be determined are distinct, the procedures are distinct, and there is no potential for conflicting orders.

Counsel for the M.D. reviewed the procedure for annexation set out in Part 4 Division 6 of the Act. Counsel noted that there are no time frames in the annexation sections, and argued this was because the Legislature envisioned an annexation application taking some time to work through. Counsel contrasted that with sections 690 and 691, which he argued are designed to have intermunicipal disputes heard promptly. The M.D. stated that section 690 (4) is the reason for the difference, because it suspends the operation of the provisions under appeal. This suspension has the effect of putting development on hold, and affects the rights of landowners to develop their lands.

Summary of the Affected Landowner's Argument - D.C. Energy Services Corporation is the owner of 80 acres of land in the fringe area. Counsel advised that his client has an application before the M.D. that has been held up by this appeal. Counsel argued that the annexation and intermunicipal disputes are two separate processes which

can operate concurrently. Counsel took the position that the tradeoff for certainty in planning and development is an expeditious process. Counsel opposed the adjournment. He submitted that it should only be granted if no party would be affected by the delay, and that his client was an example of a landowner who was so affected.

Board's Decision and Reasons - The Board denies the Town's request to adjourn the intermunicipal dispute until after the annexation appeal is determined. The Board is of the view that the Act clearly sets out a procedure for intermunicipal disputes and sets out a different procedure for annexation. Annexation and intermunicipal disputes have their own sets of issues and time frames within which the matters are to be heard. Intermunicipal disputes are intended to proceed expeditiously, given the suspension of the bylaws by operation of section 690 (4), and the resulting affect on landowners.

2.

Whether the Town can raise concerns in its Notice of Appeal that were not raised prior to second reading of the bylaws?

Summary of the M.D.'s Argument - The M.D. took the position that the Town may only appeal those issues of which it gave the M.D. notice prior to second reading of the bylaw. Counsel for the M.D. stated that the purpose of this requirement was to allow the M.D. an opportunity to address or resolve the concerns prior to second reading. The M.D. is of the view that it cannot have taken steps to resolve concerns of which it had no notice, and by its silence the Town has represented that its concerns are limited to those of which notice was given before second reading.

The M.D. argues that only full disclosure will satisfy the objects of the Act, because the objective is to encourage municipalities to resolve their concerns. Counsel for the M.D. urged the Board to find that on appeal the Town was restricted to the matters set out in their letter of August 12, 1998 (which appears at Tab 7 of Exhibit 1).

Summary of the Town's Argument - Counsel for the Town submitted that the letter of August 12, 1998, together with the letter of May 29, 1998 (which appears at Tab 6 of Exhibit 1) very clearly identifies the Town's concerns. The Notice of Appeal merely elaborates on the points raised in the two letters. In his written Argument (Exhibit 4), Counsel for the Town drew the Board's attention to sections 690 (1) and (2). Counsel submitted that the requirements for a Notice of Appeal are different from the notice of concerns and, if it was intended that the two documents contain the same level of detail, then the wording of sections 690 (1) and (2) would have been the same.

Counsel for the Town argued that section 690 (5) gives the Board wide jurisdiction to answer the question of whether a statutory plan or bylaw is detrimental and to make an order accordingly. The Town's position was that section 690 (5) does not limit the Board to dealing with only the matters raised in the notice of concern.

Board's Decision and Reasons - The Board accepts the Notice of Appeal and the amended Notice of Appeal. The Board finds that it is not precluded from hearing the issues raised in the Notice of Appeal, as amended. In other words, the Town is *not* restricted on this appeal to those issues raised in its notice of concern.

The Board is unable to support the argument made by the M.D., because it found the M.D.'s interpretation of section 690 required too much reading into the legislation. The Board was of the view that there was nothing in section 690 (1) and (2) that tied the notice of concerns to the Notice of Appeal. The Board found the Town's argument regarding section 690 (5) to be persuasive, and in line with the Board's view that the legislation be given a fair and liberal interpretation. The Board was of the opinion that the legislation would have to specifically restrict rights of appeal, to the matters raised before second reading in the notice of concern, before it would be prepared to interpret the section more restrictively.

3.

Whether the Town's original Notice of Appeal provides adequate reasons and, if not, whether the Town should be required to identify the specific provisions of the bylaws under appeal?

Summary of the M.D.'s Argument - The M.D., in its written materials, argued that the Notice of Appeal stated conclusions and often restated sections of the Act, rather than provide reasons as required by section 690 (2). The M.D. took the position that the Notice of Appeal should show why a particular provision of the bylaw caused detriment. Counsel argued that the Notice of Appeal must show a cause and effect relationship between the provisions of the bylaw and the alleged detriment. Counsel gave as an example the Notice of Appeal prepared by the City of Edmonton respecting bylaws passed by the Municipal District of Sturgeon (found at Tab 13 of Exhibit 1).

In his oral argument, Counsel indicated that he was not asking for the Notice of Appeal to be struck but, rather, asking the Board to require the Town to (i) identify those sections of the MDP and ASP which the Town alleges are detrimental, and (ii) to summarize the detriment in a fashion similar to Tab 13 of Exhibit 1. Counsel stated that requiring the Town to identify the sections and the alleged detriment at this juncture is in line with the spirit of the legislation, would allow the parties to see if common ground exists, and would enable the M.D. to prepare for the hearing by knowing which witnesses to call.

Summary of the Town's Argument - Counsel for the Town maintained that the Notice of Appeal, as amended, sets out the reasons why the MDP and the ASP have a detrimental effect on the Town. Counsel argued that the level of detail requested by the M.D. is more appropriate for written argument submitted on a hearing of the merits of the appeal, and that this application was premature.

Board's Decision and Reasons - The Board finds that it is reasonable, at this point in time, to order the Town to (i) identify the specific sections of the MDP and the ASP which the Town sees as detrimental, and (ii) provide a summary of the way in which each section results in detriment to the Town.

The wording of section 690 (2) and (4) suggests that specific provisions be identified in the Notice of Appeal, but does not clearly require or limit the parties to them. The Board agrees with the M.D.'s position that requiring the Town to go through this process will separate the issues that may be resolved between the parties from the remainder to be decided by the Board at the hearing on the merits. In addition, it will serve to clarify the issues and allow the parties to effectively prepare for the merit hearing. The Board recognizes that the Notice of Appeal found at Tab 13 of Exhibit 1, is a good example, and suggests the Town may wish to use it as a guide.

Information Exchanges and Scheduling

8 Board Order MGB 269/98 scheduled the merit hearing for February 16, 17, 18 and 19, 1999, and set out time lines for information exchanges. Counsel for the Town advised the Board that the Town Manager, a central witness, will be out of the country from February 1 to March 15, 1999, and requested that the merit hearing be rescheduled. Counsel for the Town undertook to provide, and did provide, available dates to the Board Secretariat.

Decision Summary

9 The Board directs as follows:

1. The request to adjourn the intermunicipal dispute lodged by the Town, until after the determination of the Town's annexation request, is denied. The merit hearing of the intermunicipal dispute will reconvene in the Town of Drayton Valley at 10:00 a.m. on March 17, 1999. The hearing is scheduled for March 17, 18, 22, and 23, 1999.

2. The Notice of Appeal and the amended Notice of Appeal are accepted, and the Town is not restricted on this appeal to those issues raised in its notice of concern.

3. The Town shall provide the M.D. and the Board with further particulars of the appeal by 4:30 p.m. on February 1, 1999. The further particulars must (i) identify the specific sections of the MDP and the ASP which the Town sees as detrimental, and (ii) provide a summary of the way in which each section results in detriment to the Town.

4. Subject to a further order of the Board, the Town, the M.D., affected landowners and any other intervenor/ interested party, shall adhere to the following schedule and timelines for notification and exchange of information:

a) The Town shall submit to the Board at its Edmonton office and to the M.D. at its office, by no later than 4:30 p.m. on February 16, 1999, all factual information, statement of issues, legal argument and witness/expert witness lists for distribution. Included with the expert witness list shall be full written resumes or curriculum vitae for each expert. The Board will distribute this material to landowners, who have advised the Board that they intend to make a submission, and to those parties requesting intervenor status;

b) The M.D. shall submit to the Board at its Edmonton office and to the Town at its office, by no later than 4:30 p.m. on March 2, 1999, all factual information, statement of issues, legal argument and witness/expert witness lists for distribution. Included with the expert witness list shall be full written resumes or curriculum vitae for each expert. The Board will distribute this material to landowners who have advised the Board that they intend to make a submission, and to those parties requesting intervenor status;

c) Rebuttal, if any, to a response shall be provided at the time of the hearing of the related issue or issues; and

d) Landowners who have advised the Board that they intend to make a submission, and intervenor/interested parties, after having received the Town material submitted to the Board on February 16, 1999 shall, if they so choose, submit to the Board at its Edmonton office, by no later than 4:30 p.m. on March 2, 1999, all factual information, statement of issues, legal argument and witness/expert witness lists. Included with this list of expert witnesses shall be full written resumes or curriculum vitae for each expert. The Board will distribute this material to the parties.

5. Subject to any adjustment necessitated by the balance of convenience determined by the Board at the time of the hearing, the order of presentation at the hearing will be as follows:

a) Town's presentation and witnesses.

i. Cross-examination by the M.D. of each witness following evidence in chief.

ii. Cross-examination by each intervenor of each witness following evidence in chief.

iii. Questions from the Board.

iv. Questions arising from the Board's questions.

b) M.D.'s presentation and witnesses.

i. Cross-examination by the Town of each witness following evidence in chief.

ii. Cross-examination by each intervenor of each witness following evidence in chief.

iii. Questions from the Board.

iv. Questions arising from the Board's questions.

c) Landowners' presentations and witnesses, if any (order of presentation as deemed convenient by the Board).

i. Cross-examination by the Town of each witness following evidence in chief.

ii. Cross-examination by the M.D. of each witness following evidence in chief.

iii. Questions by the Board.

iv. Questions arising from the Board's questions.

d) Intervenors' presentations and witnesses, if any (order of presentation as deemed convenient by the Board).

i. Cross-examination by the Town of each witness following evidence in chief.

ii. Cross-examination by the M.D. of each witness following evidence in chief.

iii. Questions by the Board.

iv. Questions arising from the Board's questions.

e) Legal arguments by the M.D., landowners, intervenors and the Town.

f) Closing submissions by the M.D., landowners, intervenors and Town.

g) Rebuttal submissions by M.D., landowners, intervenors and Town.

6. Any application for a change to the schedule set by this order of the Board shall be in writing. If the Town and M.D. wish to postpone the schedule of events in order to either pursue negotiations arising from the notification of annexation or an alternative dispute mechanism, the Town and M.D. must jointly make such a request. In all other matters, prior notification must be given to all parties prior to submission to the Board of any such application. With an application for change, an administrative panel of the Board will be convened to hear argument from the parties to the matter.

7. Formal notice of the directions of the Board for exchange of information and reconvening of the hearing will be by copy of this order, which will also be forwarded to all landowners identified by the M.D.

APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE OR MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

NAME	***CAPACITY***
M. Hamdon	Mayor, Town of Drayton Valley
M. Deol	Town Manager, Town of Drayton Valley
J. Agrios	Solicitor, Town of Drayton Valley
K. McKenzie	Planner, Town of Drayton Valley
D. McQueen	Deputy Mayor, Town of Drayton Valley
K. Porter	Manager, Municipal District Brazeau No. 77
R. Matthews	Development Officer, Municipal District of Brazeau No. 77
D. Haldane	Solicitor, Municipal District of Brazeau No. 77
M. Schwab	Reeve, Municipal District of Brazeau No. 77
K. Gwozdz	Planner, Municipal District of Brazeau No. 77
J. Murphy	Solicitor, D.C. Energy Services Corporation

APPENDIX "B"

I. DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

NO.	***ITEM***
1.	Written Submission of the M.D. of Brazeau (Dec. 1/98)
2.	Written Submission of the Town of Drayton Valley (Dec. 1/98)
3.	Written Response of the M.D. of Brazeau (Dec. 9/98)

4.	Written Response of the Town of Drayton Valley (Dec. 9/98)
5.	Map of the Development Areas Proposed for Urban Development by M.D. of Brazeau: 1998
6.	Letter, dated August 14, 1998, from Bart Guyon, Reeve of the M.D. of Brazeau to Mayor Thomas McGee of the Town of Drayton Valley
7.	Letter, dated June 29, 1998, from Mayor Thomas McGee of the Town of Drayton Valley to Reeve Bart Guyon of the M.D. of Brazeau.

APPENDIX "C"

Municipal Government Act

690(1) If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may appeal the matter to the Municipal Government Board by

(a) filing a notice of appeal with the Board, and

(b) giving a copy of the notice of appeal to the adjacent municipality within 30 days of the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and the efforts it has made to resolve matters with the municipality that adopted it.

(3) A municipality, on receipt of a notice of appeal under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statement setting out the actions it has taken and the efforts it has made to resolve matters with that municipality.

(4) When the Municipal Government Board receives a notice of appeal under this section, the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal until the date it makes a decision under subsection (5).

(5) If the Municipal Government Board receives a notice of appeal under this section, it must decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

(a) dismiss the appeal if it decides that the provision is not detrimental, or

(b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

(6) A provision with respect to which the Municipal Government Board has made a decision under subsection (5) is,

(a) if the Board has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and

(b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.

(7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Board under this section.

(8) The Municipal Government Board's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.

691(1) The Municipal Government Board, on receiving a notice of appeal under section 690, must

(a) commence a hearing within 60 days of receiving the notice of appeal or a later time to which all parties agree, and

(b) give a written decision within 30 days of concluding the hearing.

(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of land that is the subject of the appeal.

Application

113 This Division does not apply to the annexation of land

(a) from an improvement district to another improvement district, or

(b) from a special area to another special area.

Restriction on annexation

114 No order that annexes land to a municipal authority may be made if the land to be annexed is not contiguous with the boundaries of the municipal authority.

Annexations of same land

115(1) A municipal authority may not initiate or proceed with more than one proposed annexation at any one time concerning the same land.

(2) A municipal authority may not initiate or proceed with a proposed annexation when the municipal authority is proceeding with an amalgamation, unless the annexation is of the type referred to in section 103(2).

Initiation of annexation

116(1) A municipal authority initiates the annexation of land by giving written notice of the proposed annexation to

(a) the one or more municipal authorities from which the land is to be annexed,

(b) the Municipal Government Board, and

(c) any local authority that the initiating municipal authority considers would be affected by the proposed annexation.

(2) The notice for an annexation must

(a) describe the land proposed to be annexed,

(b) set out the reasons for the proposed annexation, and

(c) include proposals for

(i) consulting with the public about the proposed annexation, and

(ii) meeting with the owners of the land to be annexed, and keeping them informed about the progress of the negotiations.

Direct negotiations

117 The municipal authorities from which the land is to be annexed must, on receipt of the notice under section 116, meet with the initiating municipal authority to discuss the proposals included in the notice and negotiate the proposals in good faith.

Report on negotiations

118(1) On conclusion of the negotiations, the initiating municipal authority must prepare a report that describes the results of the negotiations and that includes

(a) a list of the matters agreed on and those on which there is no agreement between the municipal authorities,

(b) a description of the public consultation processes involved in the negotiations, and

(c) a summary of the views expressed during the public consultation processes.

(2) The report must be signed by the initiating municipal authority and by the municipal authorities from which the land is to be annexed that are prepared to sign and must include a certificate by the initiating municipal authority stating that the report accurately reflects the results of the negotiations.

(3) A municipal authority that does not sign the report may include in the report its reasons for not signing.

Disposition of report

119(1) The initiating municipal authority must submit the completed report to the Municipal Government Board and send a copy of it to the municipal authorities from which the land is to be annexed and any other local authority the initiating municipal authority considers would be affected.

(2) If the initiating municipal authority indicates in the report that it wishes to proceed with the annexation, the report becomes the initiating municipal authoritys application for the annexation.

General agreement on proposed annexation

120(1) If the initiating municipal authority wishes the annexation to proceed and the Municipal Government Board is satisfied that the affected municipal authorities and the public are generally in agreement with the annexation, the Board must notify the Minister and all the local authorities that it considers would be affected by the annexation and anyone else the Board considers should be notified that

(a) there appears to be general agreement with the proposed annexation, and

(b) unless objections to the annexation are filed with the Board by a specified date, the Board will make its recommendation to the Minister without holding a public hearing.

(2) If no objections are filed with the Board by the specified date, the Board must

(a) consider the principles, standards and criteria on annexation established under section 76, and

(b) prepare a written report with its recommendations and send it to the Minister.

(3) If objections are filed with the Board by the specified date, the Board

(a) may investigate, analyze and make findings of fact about the annexation, including the probable effect on local authorities and on the residents of an area, and

(b) must conduct one or more hearings in respect of the annexation and allow any affected person to appear before the Board at a hearing.

No general agreement on proposed annexation

121 If the initiating municipal authority wishes the annexation to proceed and the Municipal Government Board is not satisfied that the affected municipal authorities or the public are in general agreement with the annexation, the Board

(a) must notify the Minister and all the local authorities that it considers would be affected by the annexation, and anyone else the Board considers should be notified, that there is not general agreement with the proposed annexation,

(b) may investigate, analyze and make findings of fact about the annexation, including the probable effect on local authorities and on the residents of an area, and

(c) must conduct one or more hearings in respect of the annexation and allow any affected person to appear before the Board at a hearing.

Notice of hearing and costs

122(1) The Municipal Government Board must publish a notice of a hearing under section 120(3) or 121 at least once a week for 2 consecutive weeks in a newspaper or other publication circulating in the affected area, the 2nd notice being not less than 6 days before the hearing.

(2) The Municipal Government Board may determine the costs of and incidental to a hearing and decide by whom and to whom the costs are to be paid.

(3) Section 502 applies to a decision of the Board relating to costs under this section.

Boards report

123 After one or more hearings under section 120(3) or 121 have been held and after considering the reports and representations made to it and the principles, standards and criteria on annexation established under section 76, the Board must prepare a written report of its findings and recommendations and send it to the Minister.

Contents of report

124(1) A report by the Municipal Government Board to the Minister under this Division must set out

(a) a recommendation on whether or not land should be annexed to the initiating municipal authority or other municipal authority;

(b) if it is recommending annexation, a description of the land, whether there should be revenue sharing and any terms, conditions and other things the Board considers necessary or desirable to implement the annexation.

(2) If the Board does not recommend that land be annexed in its report, the Board must provide the report to all local authorities that it considers would be affected by the annexation.

Annexation order

125 The Lieutenant Governor in Council, after considering the report of the Board, may by order annex land from a municipal authority to another municipal authority. 1994 cM-26.1 s125;1996 c30 s5

Annexation order without report

126 Despite sections 116 to 125, the Lieutenant Governor in Council, on the recommendation of the Minister, may by order annex land to a municipal authority. 1994 cM-26.1 s126;1996 c30 s6

Contents of order

127 An order to annex land to a municipal authority may

(a) require a municipal authority to pay compensation to another municipal authority in an amount set out in the order or to be determined by means specified in the order, including arbitration under the Arbitration Act,

(b) dissolve a municipal authority as a result of the annexation, and

(c) deal with any of the matters referred to in section 89.

Public utilities

127.1(1) In this section, utility agreement means an agreement approved by the Public Utilities Board in which a municipality grants a right to a person to provide a public utility in all or part of the municipality.

(2) An annexation of land does not affect any right under a utility agreement to provide a public utility on the annexed land unless the annexation order provides otherwise.

(3) This section does not apply to a right to provide a natural gas service if the right is subject to section 22 of the Gas Distribution Act. 1995 c24 s18;1998 c26 s13

Annexation refused

128 If an application for an annexation of land is refused, the Minister must notify the initiating municipal authority of the refusal and the initiating municipal authority may not make another annexation application concerning the same land for a period of one year after it receives notice of the refusal.

Judicature Act

8 The Court in the exercise of its jurisdiction in every proceeding pending before it has power to grant and shall grant, either absolutely or on any reasonable terms and conditions that seem just to the Court, all remedies whatsoever to which any of the parties thereto may appear to be entitled in respect of any and every legal or equitable claim properly brought forward by them in the proceeding, so that as far as possible all matters in controversy between the parties can be completely determined and all multiplicity of legal proceedings concerning those matters avoided.

1999 CarswellAlta 1829

End of Document

2007 CarswellAlta 2175
Alberta Municipal Government Board

Edmonton (City), Re

2007 CarswellAlta 2175, [2008] A.W.L.D. 4181, [2008] A.W.L.D. 4197, [2008] A.W.L.D. 4227

In the Matter of the Municipal Government Act being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act)

In the Matter of an Appeal brought pursuant to Section 690 of the Act by the City of Edmonton (City) respecting Bylaw 1-2007 adopted by Strathcona County (County) on May 29, 2007

D. Thomas Presiding Officer, J. Noonan Member, L. Lundgren Member

Judgment: November 1, 2007
Docket: MGB 130/07

Counsel: B. Sjolie, J. Grundberg, for County
P. Smith, for City

Subject: Public; Tax — Miscellaneous; Property; Municipal

Related Abridgment Classifications

Municipal law
XX Municipal tax assessment
XX.12 Practice and procedure on assessment appeals and objections
XX.12.c Jurisdiction and power
XX.12.c.ii Board or tribunal
Municipal law
XX Municipal tax assessment
XX.12 Practice and procedure on assessment appeals and objections
XX.12.d Procedural requirements
XX.12.d.iii Time for appealing
XX.12.d.iii.B Miscellaneous
Municipal law
XX Municipal tax assessment
XX.12 Practice and procedure on assessment appeals and objections
XX.12.g Miscellaneous

Headnote

Municipal law --- Municipal tax assessment — Practice and procedure on assessment appeals and objections — Jurisdiction and power — Board or tribunal
Municipal law --- Municipal tax assessment — Practice and procedure on assessment appeals and objections — Procedural requirements — Time for appealing — Miscellaneous
Municipal law --- Municipal tax assessment — Practice and procedure on assessment appeals and objections — Miscellaneous

Table of Authorities

Cases considered by *D. Thomas Presiding Officer*:

Babiuk v. Calgary (City) (1992), 133 A.R. 21, 4 Alta. L.R. (3d) 390, 95 D.L.R. (4th) 158, 12 M.P.L.R. (2d) 197, 1992 CarswellAlta 134 (Alta. Q.B.) — considered

Bell ExpressVu Ltd. Partnership v. Rex (2002), 212 D.L.R. (4th) 1, 287 N.R. 248, [2002] 5 W.W.R. 1, 166 B.C.A.C. 1, 271 W.A.C. 1, 18 C.P.R. (4th) 289, 100 B.C.L.R. (3d) 1, 2002 SCC 42, 2002 CarswellBC 851, 2002 CarswellBC 852, 93 C.R.R. (2d) 189, [2002] 2 S.C.R. 559 (S.C.C.) — considered

Bridgeland Riverside Community Assn. v. Calgary (City) (1982), 1982 CarswellAlta 82, 19 Alta. L.R. (2d) 361, 135 D.L.R. (3d) 724, 37 A.R. 26, 18 M.P.L.R. 180 (Alta. C.A.) — considered

Drayton Valley (Town), Re (1999), 1999 CarswellAlta 1829 (Alta. Mun. Gov. Bd.) — considered

Gettel Appraisals Ltd. v. Hinton (Town) (2001), 2001 CarswellAlta 2361 (Alta. Mun. Gov. Bd.) — referred to

Peterson v. Khokhar (2007), 78 Alta. L.R. (4th) 294, 2007 CarswellAlta 1136, 2007 ABQB 523, 45 C.P.C. (6th) 258, 424 A.R. 397 (Alta. Master) — referred to

SES Equities Ltd. v. Alberta (Linear Assessor) (2001), 2001 CarswellAlta 2335 (Alta. Mun. Gov. Bd.) — referred to

Sturgeon (County), Re (April 2, 1998), Doc. MGB 77/98 (Alta. Mun. Gov. Bd.) — distinguished

Tolofson v. Jensen (1994), [1995] 1 W.W.R. 609, 22 C.C.L.T. (2d) 173, 100 B.C.L.R. (2d) 1, 32 C.P.C. (3d) 141, 7 M.V.R. (3d) 202, 26 C.C.L.I. (2d) 1, 175 N.R. 161, 120 D.L.R. (4th) 289, (sub nom. *Lucas (Litigation Guardian of) v. Gagnon*) [1994] 3 S.C.R. 1022, 77 O.A.C. 81, 51 B.C.A.C. 241, 84 W.A.C. 241, 1994 CarswellBC 1, 1994 CarswellBC 2578 (S.C.C.) — considered

Statutes considered:

Interpretation Act, R.S.A. 2000, c. I-8

Generally — referred to

Municipal Government Act, R.S.A. 1980, c. M-26

s. 6(5) — referred to

Municipal Government Act, R.S.A. 2000, c. M-26

Generally — referred to

s. 488(1)(j) — referred to

s. 616(m.1) "mediation" — referred to

s. 617 — considered

s. 622(3) — referred to

s. 631 — referred to

s. 632(3)(a)(iv) — referred to

s. 690 — considered

s. 690(1) — considered

s. 690(2) — considered

s. 690(3) — referred to

s. 690(4) — referred to

s. 690(5) — referred to

s. 691 — referred to

s. 691(2) — considered

***D. Thomas Presiding Officer*:**

Section 1: Background to the Appeal

1. Overview

1 On May 29, 2007, the County passed Bylaw 1-2007, which repealed and replaced the County's Municipal Development Plan (MDP). The City, on the view that Bylaw 1-2007 is detrimental to it, filed an appeal under section 690 of the Act with the MGB, thereby staying the operation of parts and provisions of Bylaw 1-2007 claimed to be detrimental until the MGB determines the appeal.

2 The County raised a preliminary issue that the MGB did not have jurisdiction to hear the matter for the following reasons: the content of the Notice of Appeal does not comply with the legislation and so is a nullity, not all of the issues were mediated and one of the issues had already been resolved yet is now alleged to be detrimental. Further, a new issue is being raised in this appeal, which was not the subject of the mandatory mediation process.

3 The second issue that arose was a request by the City for an adjournment. The City requested that the hearing be adjourned until the sooner of the release of the Capital Region Integrated Growth Management Plan or January 31, 2008. The County opposed this request, arguing that the City did not meet either the circumstances set out in the MGB's Procedure Guide or the common law test for an interim injunction barring the MGB from taking further steps upon this appeal.

2. Timelines

4 In December of 2004 the County began reviewing its MDP, which had been adopted in 1998. The City initially raised issues with the County's draft MDP in March 2006 and requested mediation to attempt to resolve these issues. The parties proceeded to mediation, but were unable to come to a resolution, with the exception of one issue which the County claims was resolved and the City claims was only conditionally resolved. After the unsuccessful mediation, the City received notice that the County was going to proceed with the second and third reading of Bylaw 1-2007 which would replace the existing MDP. The City gave the County written notice of its objections prior to the second reading of the Bylaw as required by section 690 of the Act.

5 Bylaw 1-2007 received third reading on May 22, 2007, and was endorsed on May 29, 2007. The City filed its Notice of Appeal on June 28, 2007. Section 690(1) of the Act requires that an intermunicipal dispute appeal must be filed within 30 days of the passing of the Bylaw. There is no dispute that the subject appeal was filed with the MGB within this timeline, along with the appropriate statutory declarations.

3. Mediation

6 Section 690(2) requires municipalities to explore the use of mediation. As a result, the parties engaged in mediation prior to the City filing this appeal. The goals of the mediation were expressed as follows:

- To demonstrate significant progress and likely success to the County by May 8, 2007
- Resolution of the issues by June 19, 2007
- Endorsement of the resolution by County Council by June 26, 2007
- To avoid the appeal process.

7 The four major issues under consideration in the mediation were:

- West of Highway 21 Area Concept Plan
- Areas north and south of Highway 14
- Heavy industrial separation and risk management

• Intermunicipal referral and notification processes.

8 On May 15, 2007 the County communicated two proposed amendments to the City in relation to the Transition Urban Reserve Policy Area. The County's position is that the amendments incorporated the changes the parties agreed upon during mediation; hence this issue was no longer in dispute at the time of the filing of the appeal. However, the City maintains that the amendments do not in fact reflect the mediated agreement, and that there is no resolution of this issue. None of the other issues that were mediated were resolved.

9 Appeal item number 6 deals with the establishment of new urban growth areas. The County argued that it was not notified of this item prior to the second reading of Bylaw 1-2007 and that this item was not the subject of mediation. Therefore it cannot be part of this appeal before the MGB even if the other appeal items are to be heard.

4. Capital Region Integrated Growth Management Plan

10 On June 12, 2007 the Province announced the terms of reference for a Capital Region Integrated Growth Management Plan (CRIGMP). The project is expected to result in a Regional Growth Management Plan and a Regional Growth Management Structure Development. According to the News Release, the scope of the Plan is as follows:

> This initiative will develop i) a regional growth management plan and ii) create a management structure to implement it.
>
> • The planning for core infrastructure and services will focus on economic development, utilities (water/ wastewater, waste management, electricity, pipelines, environmental management) and transport (railways, highways/roads, airports, public transit).
>
> • The social infrastructure and services to be reviewed include elements in the areas of workforce, housing, education, health care, emergency services, policing and social services.
>
> • The plan will integrate both the core and social infrastructure and services planning needs.

11 With respect to land use planning, the following elements are to be integrated:

• Assess current land use plans against likely growth scenarios, core and social infrastructure and service needs and environmental impacts.

• Develop an integrated land use plan

• Develop an implementation plan.

12 The Plan is to commence in June 2007 and be completed by January 2008. Implementation of the Plan is slated for spring 2008. The City requested an adjournment of the appeal hearing on the basis that this project will greatly affect and be greatly affected by the County's new MDP.

Section 2: Legislation

13 The MGB considered the following legislation in making its decision in this appeal.

Municipal Government Act

14 Section 488 of the Act sets out the MGB's jurisdiction to hear intermunicipal disputes.

> 488(1) The Board has jurisdiction
>
> (j) to decide intermunicipal disputes pursuant to section 690.

15 Section 690(1) of the Act provides that a municipality may appeal an allegedly detrimental statutory plan of an adjacent municipality to the MGB.

> 690(1) If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may, if it is attempting or has attempted to use mediation to resolve the matter, appeal the matter to the Municipal Government Board by
>
> (a) filing a notice of appeal and statutory declaration described in subsection (2) with the Board, and
>
> (b) giving a copy of the notice of appeal and statutory declaration described in subsection (2) to the adjacent municipality
>
> within 30 days after the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

16 Section 690(2) and (3) require both the appealing municipality and the other municipality to file statutory declarations regarding mediation.

> 690(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating
>
> (a) the reasons why mediation was not possible,
>
> (b) that mediation was undertaken and the reasons why it was not successful, or
>
> (c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.
>
> (3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating
>
> (a) the reasons why mediation was not possible, or
>
> (b) that mediation was undertaken and the reasons why it was not successful.

17 Section 690(4) and (5) provide that a statutory plan under appeal is of no effect from the time the MGB receives the Notice of Appeal until it makes a decision under subsection (5). Subsection (5) requires the MGB to determine if the statutory plan is detrimental to the appealing municipality.

> 690(4) When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).
>
> (5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may
>
> (a) dismiss the appeal if it decides that the provision is not detrimental, or

(b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

18 Section 616 defines terms used in Part 17 of the Act, including mediation.

616 In this Part,

(m.1) "mediation" means a process involving a neutral person as a mediator who assists the parties to a matter that may be appealed under this Part and any other person brought in with the agreement of the parties to reach their own mutually acceptable settlement of the matter by structuring negotiations, facilitating communication and identifying the issues and interests of the parties; ....

19 The MGB also reviewed the overall purpose of the planning part of the Act to identify the context and purpose in which section 690 is set.

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

20 Any action of the MGB must be consistent with the Provincial Land Use Policies.

622(3) Every statutory plan, land use bylaw and action undertaken pursuant to this part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Municipal Government Board must be consistent with the land use policies.

21 The Act provides for a specific type of statutory plan whose objective is to deal with intermunicipal planning issues. In this case however, there is no Intermunicipal Development Plan.

631(1) Two or more councils may, by each passing a bylaw in accordance with this Part or in accordance with sections 12 and 692, adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary.

(2) An intermunicipal development plan

(a) may provide for

(i) the future land use within the area,

(ii) the manner or and the proposal for future development in the area, and

(iii) any other matters relating to the physical, social or economic development of the area that the councils consider necessary,

and

(b) must include

(i) a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that have adopted the plan,

(ii) a procedure to be used, by one or more municipalities, to amend or repeal the plan, and

(iii) provisions relating to the administration of the plan.

22 In the absence of the existence of an intermunicipal development plan the Act provides that the municipal development plan must address these intermunicipal planning issues.

632(3) A municipal development plan

(a) must address

(iv) the co-ordination of land use, future growth patterns and other infrastructure with adjacent municipalities if there is no intermunicipal development plan with respect to those matters in those municipalities, ...

23 In hearing an intermunicipal dispute, the MGB must hear the appeal and make a decision within certain timelines. These timelines are set out in section 691, which also determines who must be notified of the Appeal, and who the MGB is required to hear in making the decision.

691(1) The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must

(a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and

(b) give a written decision within 30 days after concluding the hearing.

(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

Provincial Land Use Policies — Order in Council 522/96

24 The Provincial Land Use Policies provide direction as to the relationship between adjacent municipalities and efforts required to achieve intermunicipal planning.

3.0 Planning Co-Operation

Goal

25 To foster cooperation and coordination between neighbouring municipalities and between municipalities and provincial departments and other jurisdictions in addressing planning issues and in implementing plans and strategies.

Policies

26

1. Municipalities are encouraged to expand intermunicipal planning efforts to address common planning issues, especially where valued natural features are of interest to more than one municipality and where the possible effect of development transcends municipal boundaries.

2. In particular, adjoining municipalities are encouraged to cooperate in the planning of future land uses in the vicinity of their adjoining municipal boundaries (fringe areas) respecting the interests of both municipalities and in a manner which does not inhibit or preclude appropriate long term use nor unduly interfere with the continuation of existing uses. Adjoining municipalities are encouraged to jointly prepare and adopt intermunicipal development plans for critical fringe areas; these plans may involve lands which are in both of the adjoining municipalities.

3. Municipalities are also encouraged to pursue joint use agreements, regional service commissions and any other joint cooperative arrangements which can contribute to such intermunicipal land use planning.

Section 3: Issues

27 In order to decide this matter the MGB must examine the following issues and sub-issues.

Preliminary Issue: Notification

28 Who needs to be notified of the hearing dealing with the MGB's jurisdiction?

29 As a preliminary matter, the MGB first gave consideration to the need for notifying affected parties of the dispute regarding the MGB's jurisdiction to hear this appeal. Section 691(2) requires that an affected owner of land that is subject to an appeal must be notified.

30 The MGB found that further notification on the question of jurisdiction is not required until the MGB has determined that an appeal is properly before it and has delineated which lands are subject to the appeal.

Issue 1: Compliance of the Notice of Appeal with Section 690

1. Did the City's Notice of Appeal meet the criteria set out in section 690 of the Act?

a. Is the City's appeal void of reference to specific provisions in Strathcona Municipal Development Plan?

b. Does the City's appeal lack sufficient explanation as to the detriment claimed? Does the Notice of Appeal have to contain all the detailed argument and evidence of the City?

c. Were any of the matters in dispute resolved through mediation? Was the issue related to the Transitional Urban Reserve Policy Area resolved through mediation?

d. Is the issue of the "future urban growth centre in close proximity to the City of Edmonton boundary" a new issue? Can a new issue be heard on appeal?

e. Are the requirements for filing an appeal on an intermunicipal dispute substantive requirements or procedural requirements? If substantive, did the City's appeal meet the requirements? If procedural, did the City's appeal meet the requirements?

Issue 2: The Adjournment Request

2. Should the request for an adjournment be heard by the MGB in the absence of notice to affected landowners? Should affected landowners have the opportunity to speak to the request for an adjournment?

Section 4: Summary of the County's Position on Issue 1

Issue 1: Compliance of the Notice of Appeal with Section 690

Compliance with Section 690

31 The County submitted that the MGB's jurisdiction is created by, and limited to, the provisions in section 690 of the Act. This provision outlines five conditions precedent and two further statutory requirements that must be met before a valid appeal exists. In the County's view, the City did not meet the following mandatory requirements:

- The Notice of Appeal did not refer to specific provisions in the MDP;
- The Notice of Appeal did not state reasons why any provision was detrimental,
- The County did not receive written notice of the issue of "future urban growth centre in close proximity to the City of Edmonton boundary" prior to the second reading of the Bylaw and this issue was not mediated,
- The Notice of Appeal included an issue already resolved through mediation.

32 The County contended that the MGB should interpret section 690 strictly; arguing that where a right to appeal is purely statutory, jurisdiction to hear the appeal is contingent upon strict compliance with the legislation. In support of a strict interpretation of section 690, the County referred to the *Interpretation Act*, R.S.A. 2000, c. I-8 (*Interpretation Act*), *Bell ExpressVu Ltd. Partnership v. Rex*, [2002] 2 S.C.R. 559 (S.C.C.) and the MGB decision in *Sturgeon (County), Re* [(April 2, 1998), Doc. MGB 77/98 (Alta. Mun. Gov. Bd.)] (MGB 77/98). The County argued that these decisions supported its position that section 690 should be read in the context of the objective of the Act, which is to balance orderly development against individual rights and the public interest. Moreover, the draconian effect of launching an intermunicipal dispute appeal weighs in favour of a strict interpretation of the legislation.

33 The County also argued that there must be strict compliance with section 690, as its rules are substantive rather than procedural. In support, the County cited *Tolofson v. Jensen* (1994), 175 N.R. 161 (S.C.C.), which found that a statutory right should be considered a substantive right unless it is beyond question that the intent was to create a procedural right. The wording of section 690 is mandatory. The requirement to state the specific provision along with the reason why it is believed to be detrimental is substantive, as it goes to the very issues under appeal. Additionally, citing *Peterson v. Khokhar*, 2007 ABQB 523 (Alta. Master) in support, the County argued that where imperfect compliance goes to jurisdiction, the imperfection or irregularity cannot be cured.

34 The County maintained that substantial compliance was not sufficient. In support of this conclusion, it argued that there is no provision in the Act which would allow for substantial compliance, or compliance with some but not all of the requirements of section 690. In the County's view, if the Legislature had intended for substantial compliance to be sufficient, it would have included a provision to that effect.

35 Specifically in the context of municipal law, the County cited *Babiuk v. Calgary (City)* (1992), 133 A.R. 21 (Alta. Q.B.), for the proposition that the failure to meet mandatory requirements is not an irregularity, but is "substantial and fatal non-compliance" which invalidates the petition. The Court in Babiuk was considering section 6(5) of the former Act which dealt with a petition to the City of Calgary demanding a plebiscite.

36 In response to the City's contention that any imperfection in the Notice of Appeal was imperfect compliance and could be amended, the County distinguished the case of *Bridgeland Riverside Community Assn. v. Calgary (City)*, [1982] A.J. No. 692 (Alta. C.A.). In that case a new plan was submitted based on the input provided by stakeholders during the appeal process and the Court held that the amended plan for development was properly before the appeal board. Here, the issue is whether the Notice of Appeal met the mandatory requirements in the first place.

37 From these authorities, the County concluded that in order to have a valid Notice of Appeal, the applicant must comply strictly with all the mandatory requirements of section 690. *SES Equities Ltd. v. Alberta (Linear Assessor)* [2001 CarswellAlta 2335 (Alta. Mun. Gov. Bd.)] (MGB 003/01), *Sundre (Town) v. Mountain View (City)*, Board Order 539-M-88/89 *Gettel Appraisals Ltd. v. Hinton (Town)* [2001 CarswellAlta 2361 (Alta. Mun. Gov. Bd.)] (MGB 030/01), the

County argued that filing a Notice of Appeal that does not meet the statutory requirements within the limitation period results in the loss of the right of appeal.

No Specific Provisions

38 The County remarked that the Notice of Appeal does not point to any specific provisions in the MDP. The County noted that the Legislature had made certain changes to the legislation regarding the launching of an intermunicipal dispute. One of these was the inclusion of the word "provision", which is used both in defining the requirements of the Notice of Appeal, and in determining the powers of the MGB, but was not used in the corresponding sections of the previous legislation. For example, the MGB may now find that a *provision* of a statutory plan is detrimental. The purposeful inclusion of this word indicates the intention of the Legislature to require an applicant to list the specific provisions it objects to in its Notice of Appeal. The City did not do so in its Notice of Appeal, and thus did not comply with the mandatory requirements of section 690.

39 The County pointed out that if the City's intention was to appeal the entire MDP, the appeal would be irrational. The County's border extends forty kilometres east of the City where it could not possibly have a detrimental effect on the City. If, on the other hand, the City intended to appeal specific provisions of the MDP, then it failed to articulate which provisions it is appealing. This failure renders the Notice of Appeal a nullity.

No Detriment

40 The County maintained that the Notice of Appeal does not identify the detriment to the City arising from the impugned MDP. Instead, the Notice of Appeal raises speculative concerns of a vague and uncertain nature. Quoting the MGB decision in *Sturgeon (County), Re* (MGB 77/98) as authority for the test of what constitutes a detriment, the County demonstrated that the threshold test for detriment had not been met.

41 In addition, the County argued that the City's appeal was premature as there is provision in the new MDP for a joint planning study in which the City will have ongoing opportunities to resolve issues that arise from the MDP.

42 The County alleged that the City's real reason for filing the appeal was to prevent the County's MDP from coming into effect until after the CRIGMP is completed, and not because the newly adopted MDP has a detrimental effect on the City. In the County's view, this is an abuse of process.

New Issue on Appeal

43 The County argued that the issue of "future urban growth centre in close proximity to the City of Edmonton boundary" was new to the Notice of Appeal. A provision can only be appealed under section 690 if there has been written notice to the municipality before second reading of the Bylaw and if there has been an attempt to mediate the issue. In this instance, the County had not received the required notice nor mediated the issue. The County argued that allowing the issue to be heard would be prejudicial to the County since it had not had the ability to address this concern either prior to the passing of the Bylaw or through mediation.

44 In response to the City's use of *Drayton Valley (Town), Re* [1999 CarswellAlta 1829 (Alta. Mun. Gov. Bd.)] (MGB 018/99) as authority for the proposition that a new issue can be raised on appeal, the County submitted that the issue of whether mandatory mediation was a prerequisite to the appeal was not considered in that decision. Additionally, that decision considered the previous legislation which did not require mediation. Thus, the case is not determinative of the issue in this case.

45 The County argued that section 690 should be read in conjunction with the intent of the Legislature. One of the purposes of the Act is to allow democratically elected officials to govern. Here the County has passed the MDP through its elected officials. Allowing the City to amend its Notice of Appeal after the fact is to interfere with the democratic process without allowing an opportunity for redress. Here, the City is attempting to raise a new issue - one that has

not been considered by Council. To allow this issue to be heard would circumvent the democratic process, by-passing Council.

46 The County took the position that the Notice of Appeal could not be subsequently amended, as was suggested by the City. That argument is discussed below.

Issue Resolved Through Mediation

47 The County argued that the City was barred from raising Issue One (Transition Urban Reserve Policy Area), as it had already been resolved through mediation. The County pointed out that the City's own documents confirm that issue was resolved. The resolution of the matter was contingent upon two text amendments to the MDP which, according to the County, were made. To allow this issue to be heard, in the County's view, would be contrary to the intent of the Legislature and an abuse of process.

Section 5: Summary of the City's Position on Issue 1

Issue 1: Compliance of the Notice of Appeal with Section 690

Specific Provisions

48 The City submitted that a review of the Notice of Appeal in its entirety shows that the City did list the provisions in the MDP along with the detriments caused by these provisions. In response to the County's contention that it is necessary to list specific provisions, the City countered that there is no specified form for the Notice of Appeal and as a result, the entirety of the document should be reviewed to determine whether the requirements have been met. Additionally, some of the City's objections to the County's MDP involve a *lack* of provision in the MDP. Clearly, in such cases no provision can be enumerated.

49 In response to the County's assertion that no geographic limits were specified in the Notice of Appeal, the City stated that geographic limits are not a mandatory requirement under section 690. Further, the geographic limits can be derived from the areas under dispute that are outlined in the Notice of Appeal.

Description of Detriment

50 In the City's view, the County's objection with respect to whether or not the Notice of Appeal described the alleged detriment to the City goes to the merits of the matter rather than whether a detriment was alleged. The County's submissions on this issue centred on whether the City would meet the test for detriment that has been determined by the MGB. The Notice of Appeal states the detriment to the City caused by the MDP, which is sufficient to meet the requirements of section 690.

New Issue on Appeal

51 In response to the contention that the issue of new urban growth centres is a new issue not dealt with in mediation and thus is not validly part of this appeal, the City noted that its letter of February 7, 2007 specifically raised the matter of new urban growth centres, and that their location and impact was to be part of the Joint Planning Study by the parties. Moreover, this was a matter for which the City had sought mediation.

52 Mediation was expected to extend until June 19, 2007, but was prematurely terminated without addressing all issues. Similarly, the Joint Planning Study has not continued or addressed this issue. Given the timing of the County's new MDP, the City has been obliged to file the appeal on all issues for which they have given notice that have not been resolved.

53 The City submitted that the MGB should follow its decision in Re Town of Drayton Valley (MGB 018/99). This decision, although before the amendment to the MGB to require mediation, determined that the legislation does not limit an appeal to the issues set out in a letter of concern. It must be presumed that the Legislature was aware of the Drayton

Valley decision when amending the Act, yet chose not to amend the Act to require that appeals be limited to issues set out in a Notice of Appeal. Thus, the fact that an issue was not mediated does not mean that it cannot legitimately be appealed if set out in the Notice of Appeal.

Mediated Issues

54 With respect to Issue One which the County claims was resolved through mediation, the City asserted that no resolution had taken place. The City explained that a tentative agreement was reached on this issue, but that it was conditional on the adoption by the County of two text amendments. These amendments, along with other changes agreed to during mediation, were not adopted by the County; thus the issue remains unresolved. Moreover, the City took the position that this issue was not being mediated in isolation from other issues and should not be so isolated in the context of this appeal. The conditional resolution was a compromise made by the City in anticipation of continuing mediation and continual give and take on other issues. If the City had known that the County intended to cut mediation off before other issues could be dealt with there would have been no agreement, whether conditional or unconditional, on this issue. Although the Act mandates mediation, it does not go so far as to limit the issues that can be raised on appeal to those that are not successfully mediated.

Strict vs. Liberal Interpretation of Section 690

55 The City stated that in filing this appeal it was protecting its rights by complying with the mandatory deadline for filing, a right specifically provided by the Act. The City raised legitimate concerns about the effect of the County's MDP on the CRIGMP, which is a relevant consideration for the MGB. This does not amount to an abuse of process.

56 The City concluded by stating that while its position is that it has fully complied with section 690, the County's objections to the Notice of Appeal amount to no more than imperfect compliance with section 690. In the absence of incurable prejudice, imperfect compliance does not nullify the Notice of Appeal. In support of this argument, the City quoted from *Bridgeland Riverside Community Assn. v. Calgary (City)*, [1982] A.J. No. 692 (Alta. C.A.). For the Notice of Appeal to be considered a nullity, the prejudice must result from a defect in the Notice of Appeal, not from the appeal itself. Any prejudice alleged by the County as resulting from the stay of the MDP would be caused by the appeal itself, not by any defect in the Notice of Appeal. The County has failed to show how any defect in the Notice of Appeal prejudices the County. Further, while the City recognizes the MGB's concern with the draconian effect of the appeal, in this case the County already has an MDP. This situation is distinguishable from that in *Sturgeon (County), Re* (MGB 77/98), as the effect of an appeal is not to leave the County with an inoperable planning system. Any concerns the County has with the Notice of Appeal are properly addressed through the provision of particulars, and will be addressed through the MGB's disclosure process.

Section 6: The Parties' Positions on Issue 2

57 The City and County agreed that the adjournment request should not be heard until all affected landowners had been notified of a hearing date.

Section 7: Findings

58 Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B, the MGB finds the facts in the matter to be as follows.

1. The Notice of Appeal sufficiently identifies provisions of the MDP under dispute.

2. The Notice of Appeal sufficiently identifies detriment alleged to be suffered by the City as a result of the MDP.

3. Mediation or attempted mediation is a mandatory requirement under section 690(1) of the Act, but failure to mediate one issue under appeal, where mediation has been sought but not effected prior to the mandatory deadline for filing an appeal, does not preclude the MGB from hearing that issue.

4. Whether the Transitional Urban Reserve Policy Area was settled in mediation or was conditionally settled as one part of an overall intended settlement is an issue reviewable by the MGB.

5. The affected landowners have the right to notice of the adjournment request. Section 691(2) requires notification to an affected landowner of any proceedings once an appeal is before the MGB.

Section 8: Decision

59 On September 21, 2007 the MGB issued an oral decision rejecting the argument of Strathcona County that the MGB lacked jurisdiction to hear the intermunicipal dispute filed by the City of Edmonton. This confirms the directions from the decision on September 21, 2007.

1. The Notice of Appeal filed by the Applicant City of Edmonton complies with section 690 of the Act and the MGB has jurisdiction to hear this appeal.

2. The adjournment request is postponed until October 18, 2007 at 9:00 a.m.

3. The County is to provide the MGB with a list of affected landowners. The MGB will notify the affected landowners of the October 18, 2007 hearing by regular mail.

4. Notice of the October 18, 2007 hearing will also be posted by advertisement in the County's local newspaper.

5. If the adjournment request is denied, the merit hearing will proceed on December 6, 7, 12 and 13, 2007 at a location to be determined. The exchange dates will be as follows:

a. Submission of the City of Edmonton on November 1, 2007;

b. Submission of the County of Strathcona and Affected Landowners on November 14, 2007;

c. Rebuttal of the City of Edmonton on November 30, 2007.

All submissions are due at the MGB offices at 4:30 p.m. on their due dates.

Section 9: Reasons

60 On September 21, 2007 the MGB issued an oral decision rejecting the argument of Strathcona County that the MGB did not have jurisdiction to hear the appeal filed by the City of Edmonton. This order provides the reasons for this decision.

Notification of September 21, 2007 Hearing

61 After receiving the notice of appeal filed by the City of Edmonton, the MGB received the response of Strathcona County challenging the jurisdiction of the MGB to hear the appeal. The MGB then provided notice to the City and County that on September 21, 2007 it would hear their arguments with regard to the question of jurisdiction raised by the County.

62 If the MGB had ruled in favour of Strathcona County, no further notice to any affected landowner would have been required and the appeal would have not proceeded any further. Since the MGB has accepted jurisdiction over the appeal, notices to affected landowners have and will be provided at each further stage during the appeal process.

63 This does not preclude any other party who may wish to raise a jurisdictional question from doing so at any of the future hearing dates.

General Overview

64 In general, Strathcona County urges the MGB to take a strict compliance approach to the interpretation of Section 690. The MGB is not convinced by the County's arguments that such an approach would achieve the purposes of the Planning Part of the Act and specifically section 690. In the Sturgeon County Dispute (MGB 77/98) the MGB explored the question of jurisdiction and the scope of an appeal pursuant to section 690 of the Act in considerable depth. The legislative history of the evolution of section 690 is documented in MGB 77/98, and need not be repeated in these reasons. The MGB focuses instead on the conclusion that was reached at that time, which is reproduced below:

> Clearly, the scope of appeal, broad to begin with under s. 44 of the Planning Act, has been further broadened by s. 690, in both geography and time. This enhancement of the jurisdiction of the Board, enabling it to look beyond municipal boundaries for detrimental effect, would appear to be an appropriate adjustment to the legislation, commensurate with the phasing out of regional planning in the province.

65 Notwithstanding, this previous decision, the MGB re-examined the purpose of the Planning Part of the Act in relation to section 690, the purpose of section 690 itself, the Provincial Land Use Policies and the arguments of the parties. The argument of Strathcona County did not convince the MGB that it should abandon the broad approach taken in MGB 77/98. In interpreting section 690, the MGB also focussed on the purpose and intent of the Planning Part of the Act as expressed in section 617. Section 617 states that the purpose of this part is to "...achieve the orderly, economical and beneficial development, use of land and patterns of human settlement...without infringing on the rights of individuals for any public interest except to the extent that it is necessary for the overall greater public interest." This statement of intent shows the delicate balance that planning seeks to achieve between the public interest and individual rights. The use of land can have long term impacts, not only on the environment and infrastructure within the municipality, but also within adjacent municipalities. While recognizing the autonomy and right of every municipality to engage in its own planning processes, the Legislature also recognizes that these planning processes can have significant impacts on neighbouring municipalities. In the absence of any regional planning system, section 690 offers the last opportunity for an adjacent municipality to protect itself from a perceived detriment resulting from neighbouring planning decisions and creates the last forum in which alleged inter-municipal planning issues can be debated and disputes resolved by an independent adjudicator. While the initiation of an appeal pursuant to section 690 is a serious matter, loss of the right to appeal provided by that section is no less serious.

66 In this context, the MGB finds that the strict compliance approach to interpreting section 690 suggested by the County does not further the purposes described above in light of the specific facts of this case. The principle of statutory interpretation enunciated in *Bell ExpressVu Ltd. Partnership v. Rex*, [2002] 2 S.C.R. 559 (S.C.C.), states that words are to be read contextually and in their grammatical and ordinary sense and *in harmony with the scheme and objects of the Act and the intent of the Legislature*. As outlined above, the impact of an MDP on adjacent municipalities can be significant and long term. Given the gravity of the potential consequences, the Act provides for a dispute resolution mechanism that attempts to balance the interests of all parties. To read the Act narrowly and technically is to ignore the greater context of planning and the context of that scheme in the current legislation. The MGB notes that planning differs from other areas under the MGB's jurisdiction; in particular, tax assessment. Several MGB decisions submitted by the County in support of strict compliance are assessment appeals. Tax assessment, however, resides in a very different legislative context from that of planning. The MGB has noted in previous decisions that the Act mandates that assessments be completed on a yearly basis. Hence, the related legislated timeframes contemplate a yearly cycle. Given this context, the MGB in the past has concluded that the intent of the Legislature is for strict compliance with those timeframes to ensure that the municipalities can meet their mandate for yearly assessments. It should be noted that even in an assessment context, the MGB has permitted appeals to proceed when there is substantial compliance. The loss of the right to appeal is significant, and interfering with the right to appeal should not be done lightly.

67 In planning, the context is entirely different. While tax assessment has a significant impact on the party assessed and the municipality's operating budget for the particular year, planning has wide spread and long term effects. Equally, the effect of an appeal setting aside certain planning bylaws or provisions in bylaws could have a significant impact. The

MGB finds that it is appropriate to read each provision with regard to this fine balance and thus prefers a broad and purposive approach to a narrow and technical one.

68 The MGB is of the view that this conclusion is also supported by an examination of the Provincial Land Use Policies Order in Council 522/96. Section 622 (3) of the Act requires that the MGB act consistently with these policies. Policies 1, 2 and 3 place considerable responsibilities on neighbouring municipalities to achieve intermunicipal cooperation in land use planning initiatives. The MGB was not convinced that refusing jurisdiction on the grounds of the strict compliance approach argued by Strathcona County would be consistent with these policy directives. To eliminate the final opportunity to achieve the intermunicipal cooperation sought by the Provincial Land Use Policies, albeit in an adversarial context, would not be consistent with these Policies.

69 The Act provides neighbouring municipalities with a number of planning tools to achieve the objectives of intermunicipal cooperation. The first significant planning tool is the "Intermunicipal Development Plan", but the parties have not availed themselves of this significant opportunity. The Act requires that in the absence of such a planning tool, the local Municipal Development Plan must address intermunicipal planning issues and establish a process whereby a neighbouring municipality (Edmonton) can raise its concerns to Strathcona and mediation can be engaged in to resolve disputes. It is clear that Edmonton provided Strathcona with notices of its concerns and mediation was used in this case. Unfortunately, the results were not satisfactory to Edmonton. Accordingly, Edmonton exercised its right to access the final forum in which the problem could be resolved: a hearing before the MGB.

70 The MGB agrees with Strathcona that the appeal filed must be focused and provide sufficient explanation of detriment and provide an indication of what parts of the Bylaw or provision or provisions are related to that detriment. However, the MGB was not convinced that the City's Notice of Appeal was void of an explanation of detriment or failed to identify the provision(s) from which detriment was alleged to result. The MGB now examines these matters in the following part of its reasons.

Identification of Specific Provisions

71 The MGB finds that the Notice of Appeal set out issues with enough detail that it is clear from reading it which provisions in the MDP are alleged to be detrimental. To conclude that the word "provision" in the legislation must mean enumerated sections or clauses is an overly restrictive interpretation, especially in light of the fact that there is no prescribed form of appeal. The word "provision" can also be read to mean something that is "provided for". So, for example, if an MDP made provision for an Industrial Fringe Area, there could be several clauses or sections that dealt with that "provision". Common sense dictates that so long as the challenged clauses can be readily identified from the provisions listed in the Notice of Appeal; the requirement of 690(2) is met. While the Notice ideally should set out specific clauses in the impugned bylaw, on the facts of this particular case the impugned provisions are sufficiently identified. The MGB examined each issue in the Notice of Appeal reproduced below and observed as follows:

> 1. The Transition Urban Reserve Policy Area does not specify any particular land uses. The MDP gives a vague definition of the possibilities of this area that are unsatisfactory to the City of Edmonton. This will create uncertainty with relation to future land uses that are adjacent to the City of Edmonton.

72 There is sufficient direction in the above statement to communicate to the MGB and the County the provisions under appeal and the nature of the issue being raised. The MGB concludes from the above statement that the provisions under appeal are all those included within the Transition Urban Reserve Policy.

> 2. The area termed "Rural/Urban Transition Policy Area" does not specify particular land uses but the growth management objectives reference "the inclusion of **higher density cluster development** that will include mixed use residential components". This conflicts with other policies that require "transitioning between urban development in the City of Edmonton and the **less densely developed lands** and /or environmentally sensitive lands **within this policy area**. The subject area abuts the Transportation and Utility Corridor and is only 0.5 miles from Edmonton's east

boundary. These conflicting references to density impede the City in planning for any potential impacts because the land use, both type and intensity is uncertain.

(Emphasis in original)

73 The MGB is also satisfied that reason two provides sufficient reference to the provisions within the Rural/ Urban Transition Policy Area. The MGB does not find the reference to be ambiguous. Rather, it is directed to specific provisions.

3. The Agriculture - Small Holdings Policy Area does not protect the Beaver Hills Moraine located further east as it claims due to the amount of land fragmentation still allowed. This Policy Area will allow for prematurely fragmented lands which will have the effect of hindering future land use planning of the City of Edmonton.

74 Again the MGB is satisfied that reason 3 is directed at the provisions of the Agriculture - Small Holdings Policy Area. It is clear to the MGB which provisions are referenced.

4. The MDP does not address the issues of separation and transition between the City of Edmonton's existing and planned heavy industrial area in Clover Bar and potential incompatible development in Strathcona County. This may mean that heavy industrial lands within the City of Edmonton boundary may not have an adequate transition zone within the Strathcona County boundary and may thus may be precluded from achieving the intend use for which they have long been planned.

75 This statement does not identify a specific set of provisions but instead identifies an absence of provisions. The MGB follows the reasoning set out in MGB 77/98 (the Sturgeon dispute) in which the MGB concluded that detrimental impact was the result of the totality of the plan or bylaw. As well, MGB 77/98 speaks to the problem of addressing detriment when there is an absence of provisions:

It seems only reasonable that if the detriment can be expunged by amending the plan or bylaw through adding a new provision rather than repealing existing provisions, then that remedy is one the Board should have recourse to. (p. 51, MGB 77/98)

76 MGB 77/98 concluded, and the MGB agrees, that detriment may have to be resolved by addressing a lack of provisions. The provisions of a bylaw can be insufficient to address specific intermunicipal planning issues that are anticipated to impact the neighbouring municipality because the land is located adjacent to it. This further convinces the MGB that the narrow and technical approach urged by the Strathcona would not achieve the objects of the Act and the Provincial Land Use Policies, that is, the resolution and achievement or orderly land use patterns.

5. Intermunicipal referral arrangements that were thoroughly negotiated were changed unilaterally. This will mean that the City of Edmonton may not be allowed to meaningfully participate in future decisions.

77 Although the above does not list the specific clauses in the Bylaw that address referrals, it is clear to the MGB that the reference is to all provisions addressing referral arrangements.

6. Despite the announcement from the Province of Alberta directing a Capital Region Integrated Growth Management Plan, the MDP locates a future urban growth center in close proximity to the City of Edmonton boundary. The effect would be an avoidance of the possible future Growth Management Plan to be implemented.

78 Again the MGB finds sufficient reference to provisions in reason number 6 of the appeal. Number 6 is directed to those provisions that deal with future urban growth centres.

79 Having reviewed in detail all six points of the filed appeal, the MGB agrees with the County that the appeal does not reference specific clauses in the MDP. However, there is sufficient detail in the Notice of Appeal to direct the MGB,

Strathcona County and any affected landowners to the provisions with which the City is concerned. The MGB is satisfied that the level of detail provided for in the six reasons for appeal is sufficient to meet the requirements for section 690.

80 The MGB would also like to note that the parties have been in discussions and mediation regarding these issues for some time. Without speaking to the issue that the County alleges is new to this appeal, the County should be familiar with the City's concerns. Details and argument about the issues will come through disclosure. Thus, this interpretation of section 690 results in no prejudice to the County.

Detriment

81 The MGB disagrees with the County regarding whether or not the City has alleged detriment. It appears that the County is disputing the validity of the allegations of detriment rather than the issue of whether detriment is alleged at all. In order to appeal to the MGB, section 690 stipulates that a perceived detriment to the appealing municipality must be stated in the Notice of Appeal. There is no language that suggests a threshold test to determine whether the detriment is valid; it is enough that the appealing municipality allege detriment. In this case, the Notice of Appeal does allege perceived detriment. In reason 1, the detriment alleged is that of "uncertainty with relation to future land uses". Reason 2 alleges that "These conflicting references to density impede the City in planning...". Similarly, in reason 3, it is alleged that the Agriculture — Small Holdings Policy Area will "have the effect of hindering future land use planning". A plain reading of the Notice of Appeal shows that the detriments alleged are uncertainty in the City's planning, as well as impeding and hindering the City's planning and growth. "Uncertainty, "impeding" and "hindering" all have negative connotations that could be considered detrimental; however, in deciding this issue, the MGB is not commenting on whether "uncertainty", "impeding" and "hindering" actually are detriments. The MGB notes that in *Sturgeon (County), Re* (MGB 77/98), the MGB found that "uncertainty" was a type of detriment that could be alleged.

Issue Resolved through Mediation

82 In relation to the County's position that Issue One was resolved through mediation, it is evident from the submissions of parties that there is no consensus as to whether this issue was actually resolved. The City was of the opinion that it was still a live issue and, as such, had the right to list it in its Notice of Appeal. Further, the City stated that the conditional resolution was a compromise that the City made in anticipation that the mediation would continue and other issues would be resolved through mutual give and take. The City drew the MGB's attention to the fact that the County refused to continue with mediation before the other issues could be dealt with, and argued that it would be unfair to allow the County to take advantage of having done so by barring this single issue from being heard with the others on appeal. The MGB sees merit in the City's argument. In the face of conflicting evidence as to whether this issue was resolved or conditionally resolved or remained ultimately unresolved, and in recognition of the fact that mediation is a process of mutual compromise in which one party can be unfairly disadvantaged if the process is abruptly truncated, the MGB finds that all issues relative to Bylaw 1-2007 that are the subjects of dispute between the parties, without exception, should be thoroughly examined in this appeal.

Issue on Appeal not Mediated "New Issue".

83 While the MGB agrees that mediation is a mandatory requirement under section 690, the MGB does not agree with the County that the failure to mediate a single issue in the Notice of Appeal prohibits the MGB from hearing that issue. The County made a number of submissions regarding the intent of the Legislature in amending this legislation to include the requirement to mediate. Included in these submissions were several extracts from Hansard, as well as other policy documents. While all of these sources concur that the intent was to require mediation between the parties before launching an appeal with the MGB, none of these sources, including section 690 itself, speaks to the mediation of specific issues.

84 Section 690(1) permits a municipality to launch an appeal with the MGB if it "is of the opinion that a statutory plan...has or may have a detrimental effect on it", has given notice to the municipality before second reading of the bylaw

and "is attempting or has attempted to use mediation to resolve the matter". It further requires the applicant to provide a statutory declaration stating "a) the reasons why mediation was not possible, b) that mediation was undertaken and the reasons why it was not successful, or c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal." It does not follow from the requirement for a statutory declaration regarding mediation that the Notice of Appeal is restricted to mediated issues only.

85 With respect to the lack of notice, it is clear from the evidence that the County knew of the City's concerns regarding future urban growth centres prior to the second reading of Bylaw 1-2007. The MGB notes that the letter of February 7, 2007 raised concerns over the location and impact of new urban growth areas and sought their inclusion in mediation. That mediation was interrupted or that the Joint Planning Study did not move resolve this concern cannot stand as a bar to raising it as an issue in an appeal, given the statutory deadline for filing the appeal. The City has fulfilled the requirement of section 690(1) by filing a statutory declaration explaining why mediation was not successful. Given that there is no provision limiting the Notice of Appeal to mediated issues, the MGB finds that the so called "new issue" is properly before it.

86 The MGB again turns to examining the interpretation of section 690 in the context of the whole of the Act, the Planning Part of the Act and the Provincial Land Use Policies.

> 617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> > (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
> >
> > (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

87 In order to achieve the purpose of the Planning Part of the Act the MGB is convinced that it must examine the appeal filed by the City of Edmonton in its totality. The purpose as it is set out anticipates a difficult task involving a sensitive balancing of interests as acknowledged in previous MGB decisions. Such a task is better served by a broad, purposive interpretation of section 690.

88 This is not be confused with a fact scenario where an appealing municipality provides no notice of concern prior to second reading of a bylaw or introduces a whole slate of new concerns after mediation has been attempted, effectively blindsiding the responding municipality. Such conduct would clearly be an abuse of process and outside the boundaries established within section 690 of the Act. After reviewing the totality of the City of Edmonton statutory declaration and the six statements the MGB is satisfied that there has been neither mischief nor abuse of process.

Issue 2: Adjournment Request

89 The MGB finds that the affected landowners should receive notice of the adjournment request, and have the ability to speak to it. Section 691(2) of the Act states that the MGB does not have to give notice to, or hear from, anyone other than the appealing and affected municipalities and the owner(s) of the land(s) affected by the appeal.

90 It is clear that the landowners that are affected by this appeal did not yet receive notice of the request for an adjournment. As these parties are required to receive notice and be given the opportunity to be heard, the MGB finds that adjournment issue cannot be heard until all parties have been properly notified. Thus, the hearing of the adjournment request will be postponed until October 18, 2007. The County will provide the MGB with a list of affected landowners.

The MGB Secretariat will notify the affected landowners of the October 18, 2007 hearing by mail. Additionally, an advertisement will be placed in the County's local newspaper to ensure notification of all affected landowners.

91 In the event that the adjournment request is denied, the MGB finds it expedient to schedule hearing and exchange dates for the merit hearing. After consultation with the parties, the MGB orders that the merit hearing will take place December 6, 7, 12 and 13, 2007 at a location to be determined. Submission dates will be as listed in the Decision portion of this Order.

92 No costs to either party.

APPENDIX "A"

APPEARANCES

NAME	***CAPACITY***
B. Sjolie	Legal Counsel for the County
J. Grundberg	Legal Counsel for the County
P. Smith	Legal Counsel for the City

APPENDIX "B"

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:

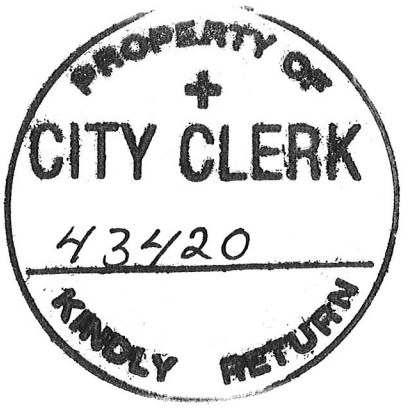
NO.	***ITEM***
1	September 7, 2007 submission by the County — *Preliminary Jurisdictional Issue: Invalidity of Edmonton's Appeal*
2	September 14, 2007 response by the City — *Preliminary Jurisdictional Issue: Invalidity of Edmonton's Appeal*
3	September 18, 2007 rebuttal by the County — *Rebuttal to the Edmonton's Response to Strathcona's Submission Re: Preliminary Jurisdictional Issue*
4	September 7, 2007 submission by the City — *Disclosure of the City of Edmonton in support of an Application to Adjourn or Postpone Hearing of its Appeal of Strathcona County Bylaw 1-2007, the Strathcona Municipal Development Plan*
5	September 14, 2007 response by the County — *Response to the City of Edmonton's Adjournment Request*
6	September 18, 2007 rebuttal by the City - *Reply of the City of Edmonton to Submissions Strathcona County in Opposition to the Application of the City of Edmonton for a Postponement of the Merits Hearing*
7	*Strathcona County — Municipal Development Plan Bylaw 1-2007*
8	June 28, 2007 letter from the City - *Re: City of Edmonton Notice of Appeal of Strathcona Municipal Development Plan*
9	June 29, 2007 letter from the City - *Re: Counsel for the City of Edmonton — Appeal of Strathcona County Municipal Development Plan*
10	July 9, 2007 letter from the MGB - *Re: Notice of Appeal — Intermunicipal Dispute Strathcona County Bylaw 1-2007 Strathcona County Municipal Development Plan*
11	July 17, 2007 letter from the County (J. S. Grundberg) - *Re: Edmonton's Notice of Appeal filed respecting Strathcona's MDP (1-2007)*
12	July 26, 2007 letter from the County (J. S. Grundberg) — *Re: Edmonton's Notice of Appeal filed respecting Strathcona's MDP (2007-01).* The County's Statutory Declaration
13	July 27, 2007 letter from the County (J. S. Grundberg) — *Re: Edmonton's Notice of Appeal filed respecting Strathcona's MDP (2007-01*) informing the MGB that legal counsel for the two parties "are endeavoring to come to an agreement with respect to a proposed schedule."
14	August 3, 2007 letter from the County (J. S. Grundberg) — *Re: Edmonton's Notice of Appeal filed respecting Strathcona's MDP (2007-01)* "to advise of Strathcona's position respecting procedural issues."
15	August 7, 2007 letter from the City (P. Smith) — *Re: MGB Appeal — City of Edmonton v. County of Strathcona MDP Bylaw 1-2007* to clarify the geographical areas referred to in the City's Notice of Appeal.

16 August 8, 2007 letter from MGB — *Re Intermunicipal Dispute — Section 690 Municipal Government Act Strathcona County Bylaw 1-2007, Strathcona County Municipal Development Plan* advising the municipalities of the August 24, 2007 Hearing.

17 *MGB Decision Letter 136/07* confirming "the oral instructions of the MGB from the preliminary hearing held on August 24, 2007".

18 August 24, 2007 *Preliminary Hearing Transcripts*

19 September 19, 2007 letter from the City (B. Sjolie) — *Re: Intermunicipal Dispute — Section 690 Municipal Government Act Strathcona County Bylaw 1-2007 Strathcona County Municipal Development Plan* issues to be raised "prior to the hearing on September 21, 2007".



THIS AGREEMENT first written as of the 8th day of June, 2010.

BETWEEN:

ROCKY VIEW COUNTY
A Municipal Corporation in the Province of Alberta
(the "County")

- and -

THE CITY OF CALGARY
A Municipal Corporation in the Province of Alberta
(the "City")

-and-

MACDONALD BEARSPAW PROPERTIES LTD.
A body corporate authorized to carry on business in the Province of Alberta
("Macdonald")

Tri-Party Agreement

RECITALS

WHEREAS on February 9, 2010, Council for the County adopted Bylaw C-6855-2009, being a bylaw amending Section 10 of the Bearspaw Area Structure Plan to include the Watermark at Bearspaw Conceptual Scheme, and Bylaw C-6854-2009, being a bylaw amending the County's Land Use Bylaw, both for the Watermark at Bearspaw development proposal by Macdonald ("Watermark");

WHEREAS the Bearspaw Area Structure Plan amendment allows an option for treated wastewater to be discharged through an infiltration bed into Watermark's stormwater system which ultimately discharges into the Bearspaw Reservoir upstream of the City's two raw water intakes (the "Reservoir Discharge Servicing Option");

WHEREAS on March 4, 2010, the City's Administration filed an appeal with the Municipal Government Board ("MGB") pursuant to Section 690 of the ***Municipal Government Act*** against Bylaws C-6854-2009 and C-6855-2009 based upon two claimed detriments: the Reservoir Discharge Servicing Option and the transportation impacts on the City; resulting in mediation between the County and the City;

AND WHEREAS the County, the City and Macdonald have reached a negotiated solution, which they intend to document in the form of this Tri-Party Agreement in order to establish a basis from which the goals of the negotiated solution can be implemented both effectively and efficiently;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements contained herein, the parties hereto covenant and agree each with the other as follows:

Parts I and III of this Agreement are binding all three parties; **Part II** of this Agreement is binding on only the County and the City.

Part I

DEFINITIONS

- **Downstream Discharge Servicing Option:** this servicing option comprises treated wastewater effluent discharging into a sanitary sewer pipe extending from the Watermark development to the Bow River, based upon one of the alignments as generally illustrated in Schedule "A", Option Nos. 1-6 or any combination thereof. The minimum downstream distance from the Bow River raw water intake (Intake No. II) from any portions of the modeled mixing zone of the treated wastewater discharge must be greater than 100 meters

- **Reservoir Discharge Servicing Option:** this servicing option comprises treated wastewater effluent discharging into an infiltration bed in Watermark which then permeates into Watermark's stormwater ponds with an ultimate discharge into the Bearspaw Reservoir at the location set out in Macdonald's March 2009 application to Alberta Environment, as illustrated in **Schedule "B".**

Wastewater Servicing

Upon execution of this Agreement:

1. **All parties to this Agreement will pursue the Downstream Discharge Servicing Option** as the preferred servicing option for the Watermark development.

2. The City will withdraw both its Section 690 appeal of County Bylaw Nos. C-6854-2009 and C-6855-2009 to the Municipal Government Board and its Statement of

Concern to Alberta Environment relating to the Reservoir Discharge Servicing Option within fourteen (14) days of execution of this Agreement by all parties.

3. Macdonald will continue to seek and endeavour to obtain approval of the Reservoir Discharge Servicing Option from Alberta Environment.

4. The County will apply for and will proceed in a diligent and timely manner to obtain from Alberta Environment and any other relevant regulatory bodies all necessary statutory, regulatory and other approvals for the Downstream Discharge Servicing Option. Macdonald will provide any and all information, consents, approvals or authorizations reasonably required by the County for the purpose of making the foregoing application. The City and Macdonald will submit letters of substantive support for the County's applications to Alberta Environment and any other relevant approving authority.

5. The County will own all the facilities associated with the Downstream Discharge Servicing Option. In addition, the County will be responsible for operations of the Downstream Discharge Servicing Option and facilities at the time of Construction Completion Certificate issuance.

6. The City and Macdonald will provide ongoing substantive support for the County's application to Alberta Environment for the Downstream Discharge Servicing Option including substantive support during any public consultation process and/or during discussions arising from any Statements of Concern as a result of the application.

7. Subject to Paragraph 9, as a necessary requirement of the Downstream Discharge Servicing Option, the City will provide to the County, at no cost, a right of way ("ROW") in, through, under and across City owned lands between the Watermark development and the Bow River to permit implementation of the Downstream Discharge Servicing Option. The City agrees that it will promptly execute and deliver or make or cause to be made and delivered all right of way agreements, transfers, deeds, plans, agreements and documents as may be required or deemed necessary by the County to fully implement the ROW provided that the ROW, pipeline and all related infrastructure:

    1. are sized to a diameter not less than that required to handle a minimum of 2600 cubic meters average daily flow as per Alberta Environment's Standard of Practice;
    2. are designed to meet all City engineering standards reasonably applied;

3. has sufficient width to permit construction and maintenance of the treated wastewater pipeline;
4. are located as determined by engineers acting on behalf of the County.

8. If construction of the pipeline between Watermark and the Bow River crosses land which is not owned by the City, then Macdonald will be responsible to negotiate and acquire that portion of the ROW in a diligent and timely manner for the County. The City agrees to support such negotiations in accordance with Section 72 of the ***Municipal Government Act, R.S.A. 2000 Chapter M-26***.

9. Any applicable application fees for the City processing and approving the ROW will be borne by Macdonald. The City agrees that the maximum application fee amount charged will be $5,000.00.

10. Macdonald agrees that the subdivision application for the Watermark development and any applicable Development Agreement will reflect the parties' intentions with respect to wastewater servicing for the Watermark development as outlined in this Agreement. In particular, Macdonald agrees that the subdivision application for Watermark will propose the following in relation to wastewater servicing:

    a) Wastewater servicing for Watermark development may be provided in one of two ways:
        i. Downstream Discharge Servicing Option will be the required servicing option if either a) Alberta Environment approval for this servicing option is obtained within 18 months of the date that the initial application for the Downstream Discharge Servicing Option is submitted by the County, or by such a later date as determined by Macdonald or b) Macdonald's application for the Reservoir Discharge Servicing Option is refused by Alberta Environment; or
        ii. If approval has been obtained from Alberta Environment for the Reservoir Discharge Servicing Option, the Reservoir Discharge Servicing Option will be the required servicing option if Alberta Environment approval for the Downstream Discharge Servicing Option is not obtained within 18 months of the date that that the initial application for the Downstream Discharge Servicing Option is submitted by the County or by such a later date as determined by Macdonald.

11. County administration agrees to support Macdonald's subdivision application for the Watermark development insofar as the subdivision application conforms with Paragraph 10.

12. Assuming a prior Alberta Environment approval of the Reservoir Discharge Servicing Option, if eighteen (18) months elapse after the date that the initial application for the Downstream Discharge Servicing Option is submitted by the County to Alberta Environment without approval by Alberta Environment for the Downstream Discharge Servicing Option, then Macdonald can commence discharge of treated effluent in accordance with the Reservoir Discharge Servicing Option. The City will acknowledge and accept the implementation of the Reservoir Discharge Servicing Option.

13. The parties agree that there shall be no discharge of treated effluent pursuant to the Reservoir Discharge Servicing Option prior to the expiry of the 18 month period set out in Paragraph 12. However, insofar as the wastewater gathering system and wastewater treatment plant are the same in both the Downstream Discharge Servicing Option and the Reservoir Discharge Servicing Option, then subject to prior approval of the Reservoir Discharge Servicing Option by Alberta Environment and all other necessary approvals and permits required by Macdonald or the County, Macdonald may commence the construction of the wastewater gathering system and wastewater treatment plant prior to the expiry of the 18 month period.

14. If the Downstream Discharge Servicing Option is approved by Alberta Environment, the City consents to the County discharging into the sewer pipe leading to the Bow River a maximum volume of treated effluent, at any point in time, consistent with a volume which would be generated by users with an Average Daily Flow as per Alberta Environment's Standard of Practice of 2,600 cubic metres.. City consultation is required should the County want to apply to Alberta Environment for approval to discharge volumes in excess of this maximum average daily limit.

PART II

Regional Impacts Study

WHEREAS the County and the City recognize that existing and future land uses can impact the hard and soft infrastructure of surrounding municipalities. These land uses can have short and long term impacts that may be financial in nature;

WHEREAS gaining a comprehensive perspective of the impacts in this regard will necessarily require a broad process that involves all municipalities in the Calgary region;

AND WHEREAS The Calgary Metropolitan Plan has identified this issue to be addressed as part of the implementation process for the Plan. It is recognized that a regional study of this nature may require time to unfold and potentially involve municipalities that are both members and non-members of the Calgary Regional Partnership. Nonetheless, both the County and the City agree to work in good faith to support and expedite the work needed to address cross boundary financial impacts of development.

NOW THEREFORE THE CITY AND COUNTY AGREE AS FOLLOWS:

1. The County and the City agree to participate with other regional partners in a regional study that addresses the range of impacts on surrounding municipalities.

2. A Terms of Reference should be prepared and accepted by all regional partners. The study should include economic impacts as well as impacts related to all hard and soft infrastructure.

3. The County and the City agree to share proportionally with all other participating regional partners in the cost of the study including potential consulting costs.

4. Assuming acceptance of the results of the study by the participating regional partners, the participating regional partners may negotiate a cost sharing agreement.

PART III

General

1. Notice

Unless otherwise specified within this Agreement, any notice, communications or request to be given to the parties shall be in writing and delivered by personal delivery or registered mail addressed to such party at the following address:

As to the City (by mail): Wolf Keller, Director Water Resources
City of Calgary, The Water Centre, #412
625 – 25 Avenue SE
Calgary, Alberta T2G 4K8

As to the County: Robert Coon
Chief Administrative Officer
Rocky View County
911 – 32 Avenue NE
Calgary, Alberta T2E 6X6

As to the Developer: Ronald D. Lanthier
Executive Vice-President
Macdonald Bearspaw Properties Ltd.
11th floor, 938 Howe Street
Vancouver, BC V6Z 1N9

And

Robert J. Macdonald
President
Macdonald Bearspaw Properties Ltd.
11th floor, 938 Howe Street
Vancouver, BC V6Z 1N9

or at such address as either of the parties may from time to time advise the other in writing by notice. When notices, communications or requests made in connection with this Agreement are delivered:

(i) by personal delivery, they are deemed received on the date of delivery; and
(ii) by registered mail, they are deemed received three (3) days after posting.

2. The parties hereby acknowledge and agree that every obligation or duty imposed upon them under this Agreement shall constitute a covenant, whether expressed as covenant or not.

3. Nothing in this Agreement shall relieve the parties from compliance with all applicable municipal bylaws, laws or regulations established by any other government body that may have jurisdiction over the Lands or activities thereon.

4. The numbers, headings, subheadings, paragraphs, subparagraphs, and associated numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

5. This Agreement shall be construed with all changes in number and gender as may be required by the context.

6. If more than one entity constitutes the parties, parties and all words pending thereon shall be read and construed in the plural instead of the singular, in which case the covenants shall bind the entities severally as well as jointly.

7. Every provision of this Agreement by which the parties are obligated in any way shall be deemed to include the words "at the expense of the parties" unless the context otherwise requires.

8. References herein to any statute or provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

9. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" or "including but not limited to" do not precede such list or reference.

10. All covenants and conditions contained in this Agreement shall be severable, and should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

11. This Agreement does not constitute a development permit nor any other permit issued by the City or Rocky View County.

12. Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of the parties, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

13. This Agreement shall be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns, provided that in the case of an assignment, the assignee has first provided an assumption agreement to the City and Rocky View County.

14. No party may assign nor transfer this Agreement or the rights and privileges hereby granted without the prior written consent of the other parties (which consent may not be unreasonably withheld). Together with any request for such consent, the assignor must provide the other parties with the proposed assignee's written confirmation that the assignee is familiar with the terms of this Agreement and agrees to be bound by the terms of this Agreement.

15. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta and the parties irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have hereunder affixed their respective corporate seals and signatures by duly authorized representatives, as of the date above first written.

APPROVED	
As To Content	
Director Lupp	MGx
As To Form	
LAW (Solicitors)	DEM

THE CITY OF CALGARY

MAYOR

ACTING CITY CLERK

JUN 0 8 2010

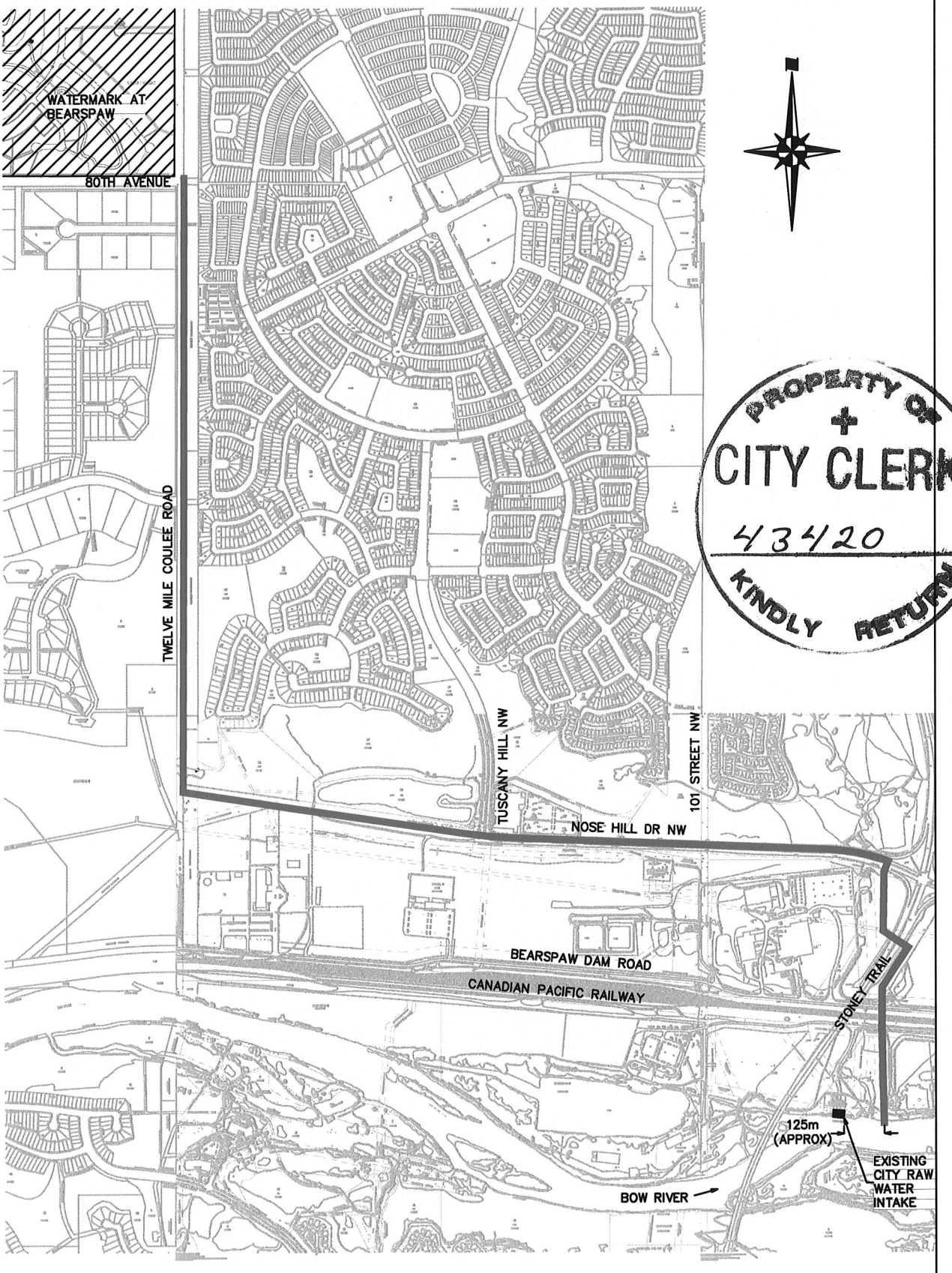
ROCKY VIEW COUNTY

REEVE

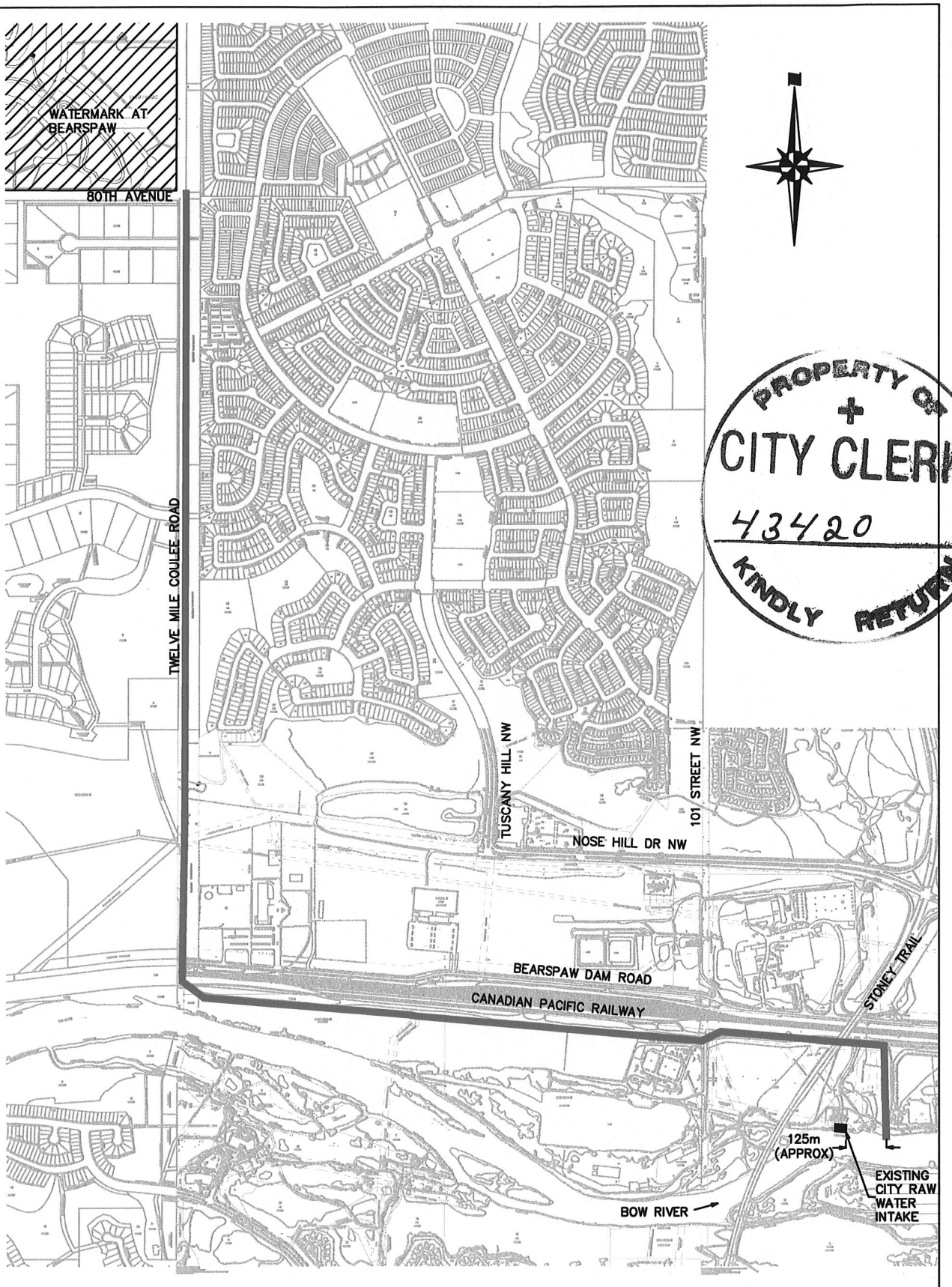
MACDONALD BEARSPAW PROPERTIES LTD.

RONALD LANTHIER

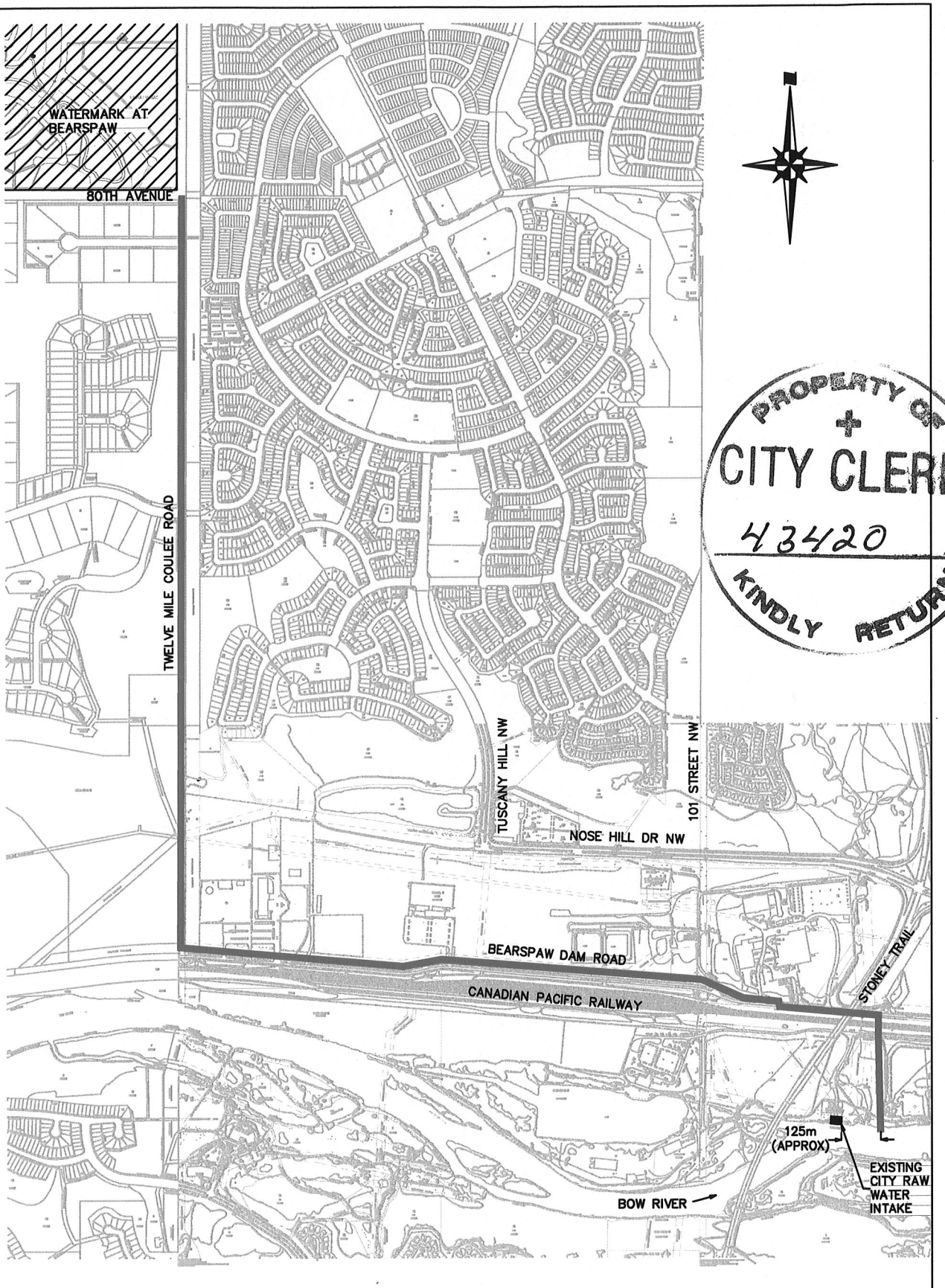
SCHEDULE "A"



PROGRESSIVE ENGINEERING LTD.	DESIGN ---	SCHEDULE A TO TRI-PARTY AGREEMENT	SCALE NTS
	DRAWN BOM		SKETCH NO 1
	DATE 2010-05-02	OPTION 1	
	FILE NO 29000		

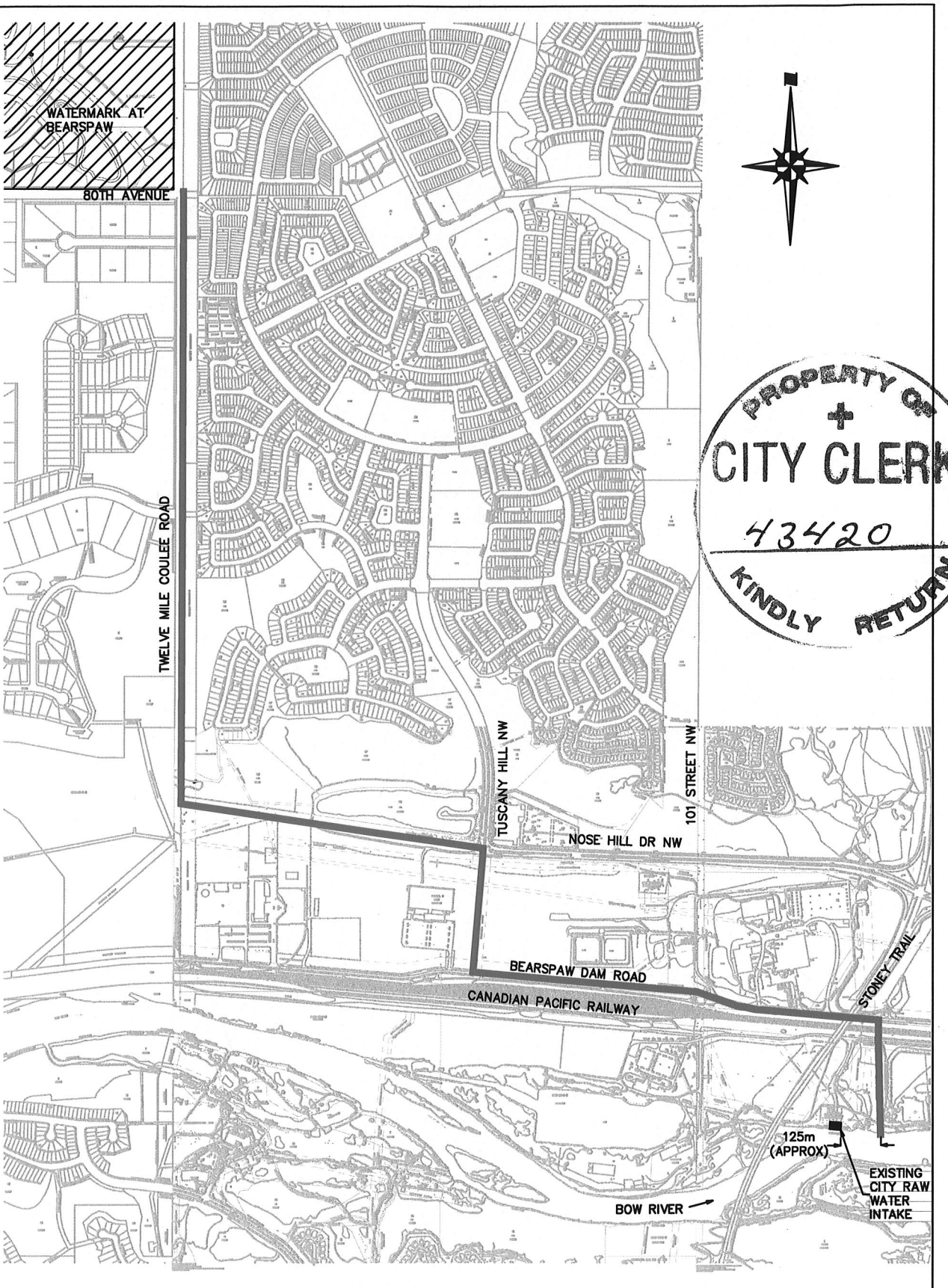


PROGRESSIVE ENGINEERING LTD.	DESIGN ---	SHEDULE A TO TRI- PARTY AGREEMENT	SCALE NTS
	DRAWN BOM		SKETCH NO 2
	DATE 2010-05-02		
	FILE NO 29000	OPTION 2	

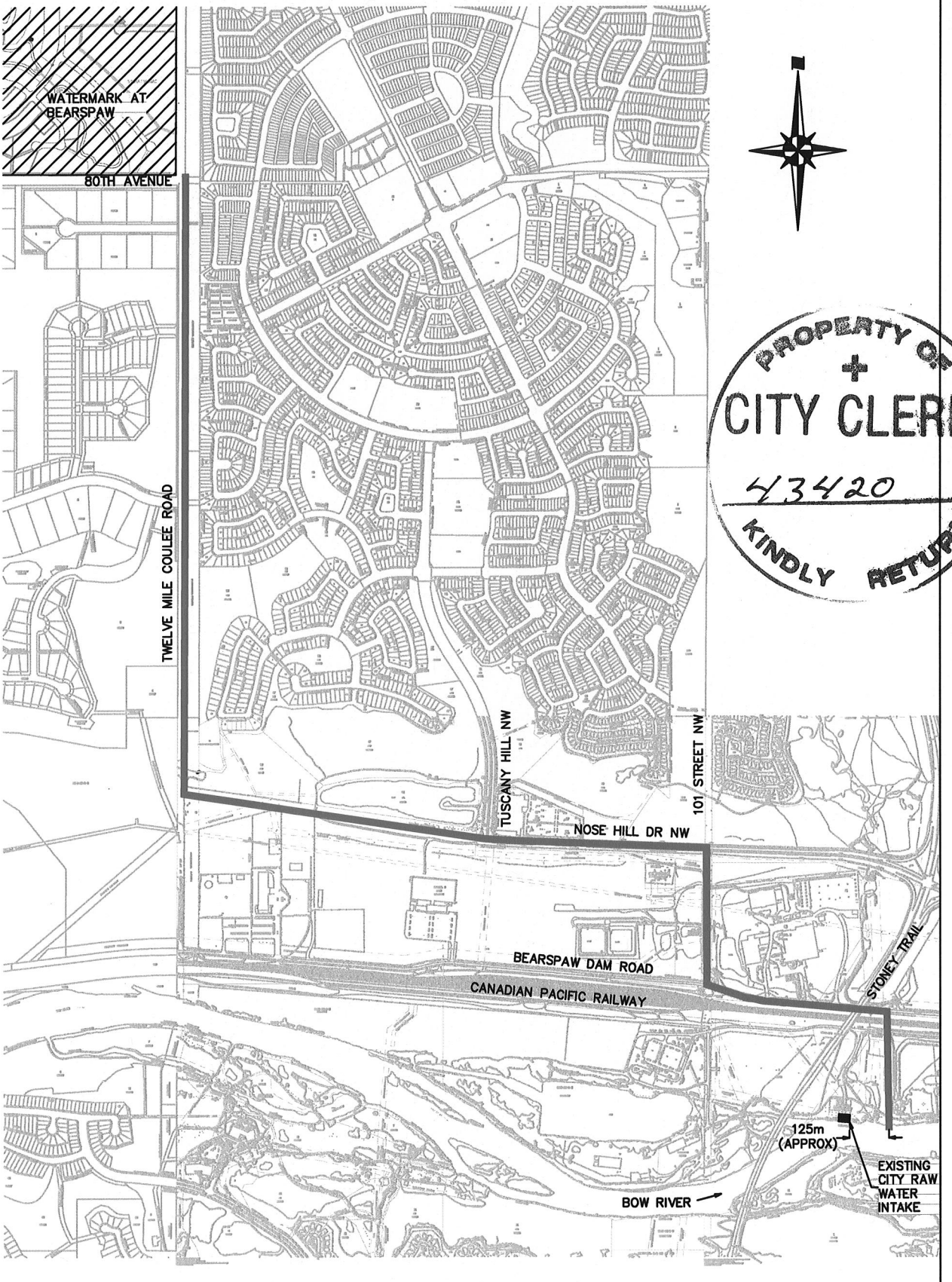


Plot Date: Jun 03, 2010 - 10:47:33am Plotted by: ghan
P:\29000\2\20\E Design\29000-Sanitary Outfalls Options Plan View.dwg XREFS: 29000-base.dwg; 29000-UG BASE.dwg; 29000-Legd 3TM.dwg

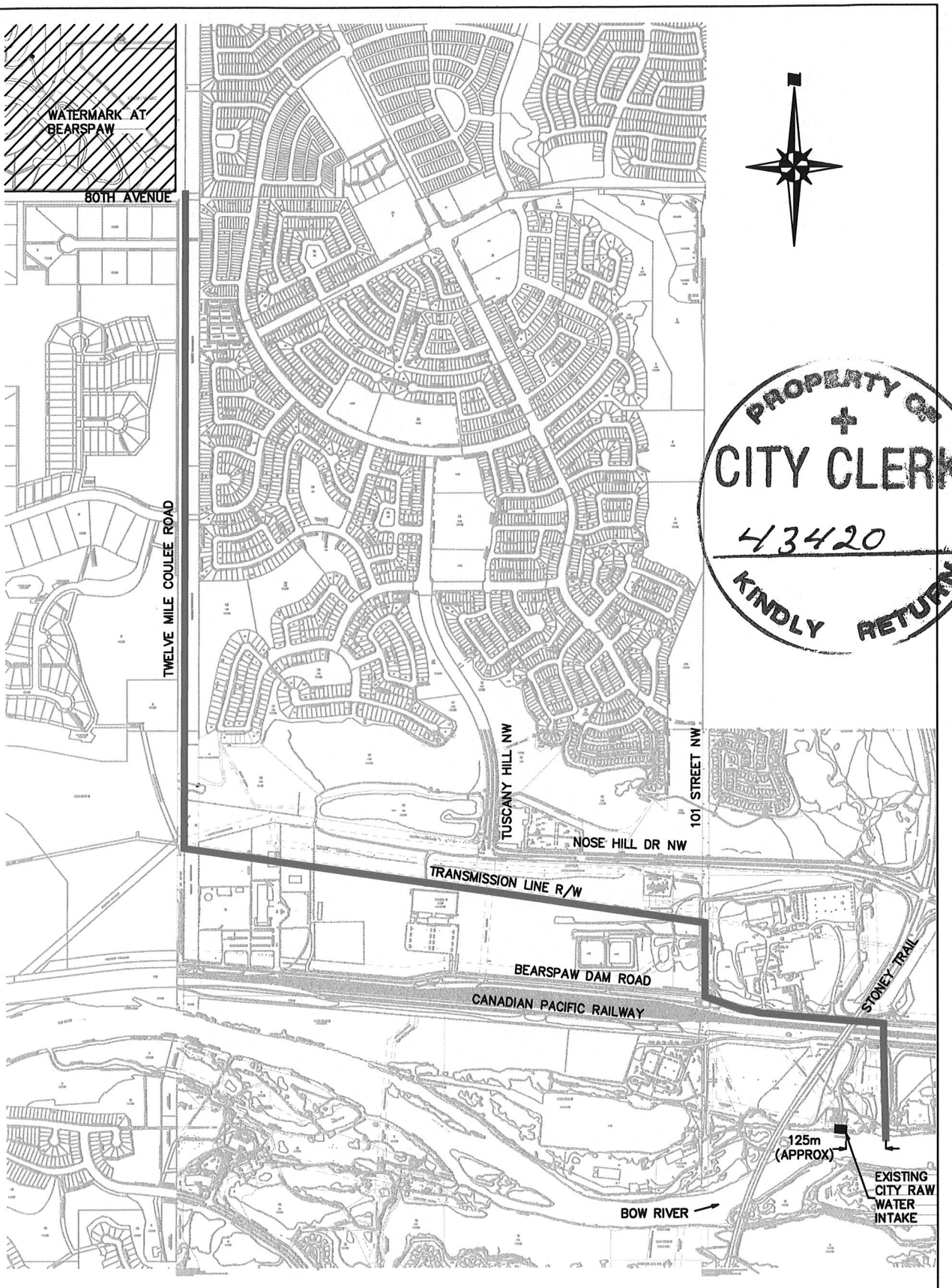
PROGRESSIVE ENGINEERING LTD.	DESIGN ---	SCHEDULE A TO TRI-PARTY AGREEMENT	SCALE NTS
	DRAWN BOM		SKETCH NO 3
	DATE 2010-05-02		
	FILE NO 29000	OPTION 3	



PROGRESSIVE ENGINEERING LTD.	DESIGN ---	SCHEDULE A TO TRI-PARTY AGREEMENT	SCALE NTS
	DRAWN BOM		SKETCH NO 4
	DATE 2010-05-02	OPTION 4	
	FILE NO 29000		



PROGRESSIVE ENGINEERING LTD.	DESIGN ---	SCHEDULE A TO TRI-PARTY AGREEMENT	SCALE NTS
	DRAWN BOM		SKETCH NO 5
	DATE 2010-05-02	OPTION 5	
	FILE NO 29000		



Plot Date: Jun 03, 2010 - 10:48:43am Plotted by: glhan
P:\29000\2\20 VE Design\29000-Sanitary Outfalls Options Plan View.dwg XREFS: 29000-base.dwg 29000-UG BASE.dwg 29000-Legal 3TM.dwg

PROGRESSIVE ENGINEERING LTD.	DESIGN ---	SCHEDULE A TO TRI-PARTY AGREEMENT	SCALE NTS
	DRAWN BOM		SKETCH NO 6
	DATE 2010-05-02		
	FILE NO 29000	OPTION 6	

(Consolidated up to 53/2018)

ALBERTA REGULATION 187/2017

Municipal Government Act

OFF-SITE LEVIES REGULATION

Table of Contents

Definitions

1 In this Regulation,

(a) "facilities" includes the facility, the associated infrastructure, the land necessary for the facility and related appurtenances referred to in section 648(2.1) of the Act;

(b) "infrastructure" means the infrastructure, facilities and land required for the purposes referred to in section 648(2)(a) to (c.1) of the Act;

(c) "levy" means an off-site levy referred to in section 648(1) of the Act;

(d) "stakeholder" means any person that will be required to pay the levy when the bylaw is passed, or any other person the municipality considers is affected;

(e) "transportation infrastructure" means the infrastructure and land referred to in section 648(2)(c.2) required to connect or improve the connection of a municipal road to a provincial highway.

AR 187/2017 s1;53/2018

Application generally

2 A municipality, in establishing a levy

(a) for the purposes of section section 648(2)(a) to (c.1) of the Act and any land required for or in connection with these purposes, must apply the principles and criteria specified in sections 3, 4 and 5,

(a.1) for the purposes of section 648(2)(c.2) of the Act and any land required for or in connection with these purposes, must apply the principles and criteria specified in sections 3, 3.1, 4, 5 and 5.1,

(b) for the purposes of section 648(2.1) of the Act, must apply the principles and criteria specified in sections 3, 4, 5 and 6, and

(c) for the purposes of section 648.01 of the Act, must apply the principles and criteria specified in sections 3, 4, 5 and 7.

AR 187/2017 s2;53/2018

General principles

3(1) Subject to section 3.1, the municipality is responsible for addressing and defining existing and future infrastructure, transportation infrastructure and facility requirements.

(2) The municipality must consult in good faith with stakeholders in accordance with section 8.

(3) All beneficiaries of development are to be given the opportunity to participate in the cost of providing and installing infrastructure, transportation infrastructure and facilities in the municipality on an equitable basis related to the degree of benefit.

(4) Where necessary and practicable, the municipality is to coordinate infrastructure, transportation infrastructure and facilities provisions with neighbouring municipalities.

(5) Notwithstanding anything to the contrary in this Regulation, the levy is of no effect to the extent it directs the Government of Alberta to expend funds, to commit to funding transportation infrastructure or arrangements to undertake particular actions or to adopt particular policies or programs.

(6) A municipality cannot compel an applicant for a development permit or subdivision approval to fund the cost of the construction of infrastructure, transportation infrastructure or facilities to be funded by a levy beyond the applicant's proportional benefit.

(7) A municipality and an applicant for a development permit or subdivision approval may enter into an agreement whereby the applicant agrees to fund the entire cost of the construction of infrastructure, transportation infrastructure or facilities to be funded by a levy, subject to terms and conditions agreed to by both parties.

(8) An agreement made under subsection (7) may include provisions for the reimbursement of the cost incurred or payment made in excess of the applicant's proportional benefit of the infrastructure, transportation infrastructure or facilities together with interest calculated at a rate fixed by the municipality for the amount of the cost of the infrastructure, transportation infrastructure or facilities until all land in the benefiting area for the specific infrastructure, transportation infrastructure or facilities is developed or subdivided.

AR 187/2017 s3;53/2018

Transportation infrastructure — general principles

3.1(1) The municipality, in consultation with the Minister responsible for the *Highways Development and Protection Act*, is

responsible for defining the need, standards, location and staging for new or expanded transportation infrastructure.

(2) All transportation infrastructure constructed must adhere to the standards, best practices and guidelines acceptable to the Minister responsible for the *Highways Development and Protection Act* and are subject to that Minister's approval.

AR 53/2018 s5

Levy Bylaws

Principles and criteria for determining methodology

4(1) A municipality has the flexibility to determine the methodology on which to base the calculation of the levy, provided that such methodology

(a) takes into account criteria such as area, density or intensity of use,

(b) recognizes variation among infrastructure, facility and transportation infrastructure types,

(c) is consistent across the municipality for that type of infrastructure, facility or transportation infrastructure, and

(d) is clear and reasonable.

(2) Notwithstanding subsection (1)(c), the methodology used in determining the calculation of a levy may be different for each specific type of infrastructure, transportation infrastructure or facility.

AR 187/2017 s4;53/2018

Principles and criteria for determining levy costs

5(1) In determining the basis on which the levy is calculated, the municipality must at a minimum consider and include or reference the following in the bylaw imposing the levy:

(a) a description of the specific infrastructure, facilities and transportation infrastructure;

(b) a description of each of the benefitting areas and how those areas were determined;

(c) supporting studies, technical data and analysis;

(d) estimated costs and mechanisms to address variations in cost over time.

(2) The municipality may establish the levy in a manner that involves or recognizes the unique or special circumstances of the municipality.

(3) The information used to calculate the levy must be kept current.

(4) The municipality must include a requirement for a periodic review of the calculation of the levy in the bylaw imposing the levy.

(5) There must be a correlation between the levy and the benefits to new development.

AR 187/2017 s5;53/2018

Additional principles and criteria to apply to transportation infrastructure

5.1(1) In calculating a levy imposed pursuant to section 648(2)(c.2) of the Act, the municipality must take into consideration the following:

(a) supporting traffic impact assessments or other applicable technical studies;

(b) statutory plans;

(c) policies;

(d) agreements that identify

(i) the need for and benefits from the new transportation infrastructure,

(ii) the anticipated growth horizon, and

(iii) the portion of the estimated costs of the transportation infrastructure that is not covered by the Crown that is proposed to be paid by

(A) the municipality,

(B) the revenue raised by the levy, and

(C) other sources of revenue;

(e) any other relevant documents.

(2) In addition to the principles and criteria set out in sections 3, 3.1, 4 and 5, the additional criteria set out in subsections (1), (3) and (4) apply when determining a levy for transportation infrastructure.

(3) Once the need for transportation infrastructure has been identified by a municipality in consultation with the Minister responsible for the *Highways Development and Protection Act*, the municipality

(a) must determine the benefitting area, and

(b) must base the benefitting area on a reasonable geographic area for the use of the transportation infrastructure.

(4) A levy under this section must apply proportionally to a benefitting area determined under subsection (3).

AR 53/2018 s8

Additional principles and criteria to apply to s648(2.1) facilities

6(1) In calculating a levy imposed pursuant to section 648(2.1) of the Act, the municipality must take into consideration supporting statutory plans, policies or agreements and any other relevant documents that identify

(a) the need for and anticipated benefits from the new facilities,

(b) the anticipated growth horizon, and

(c) the portion of the estimated cost of the facilities that is proposed to be paid by each of

(i) the municipality,

(ii) the revenue raised by the levy, and

(iii) other sources of revenue.

(2) In addition to the criteria set out in subsection (1), the principles and criteria set out in sections 3, 4 and 5 apply when determining a levy for the facilities referred to in section 648(2.1) of the Act.

(3) The municipality has the discretion to establish service levels and minimum building and base standards for the proposed facilities.

Additional principles and criteria to apply to s648.01 intermunicipal off-site levies

7(1) In calculating a levy imposed on an intermunicipal basis pursuant to section 648.01 of the Act, each participating

municipality must use a consistent methodology to calculate the levy and each bylaw imposing the levy must

(a) identify the same specific infrastructure, transportation infrastructure and facilities,

(b) identify the same benefitting area across participating municipalities for the specific infrastructure, transportation infrastructure and facilities, and

(c) identify the portion of benefit attributable to each participating municipality within that benefitting area.

(2) In addition to the criteria set out in subsection (1), the principles and criteria set out in sections 3, 4 and 5 apply when determining an intermunicipal levy referred to in section 648.01 of the Act.

(2.1) In addition to the criteria set out in subsection (1), the principles and criteria set out in sections 3.1 and 5.1 apply when determining an intermunicipal levy for transportation infrastructure referred to in section 648(2)(c.2) of the Act.

(3) In addition to the criteria set out in subsection (1), when determining an intermunicipal levy referred to in section 648.01 of the Act for facilities referred to in section 648(2.1) of the Act, the principles and criteria set out in section 6 apply.

AR 187/2017 s7;53/2018

Consultation

8(1) The municipality must consult in good faith with stakeholders prior to making a final determination on defining and addressing existing and future infrastructure, transportation infrastructure and facility requirements.

(2) The municipality must consult in good faith with stakeholders when determining the methodology on which to base the levy.

(3) Prior to passing or amending a bylaw imposing a levy, the municipality must consult in good faith on the calculation of the levy with stakeholders in the benefitting area where the levy will apply.

(4) During consultation under subsections (1), (2) and (3), the municipality must make available to stakeholders on request any assumptions, data or calculations used to determine the levy.

AR 187/2017 s8;53/2018

Annual report

9(1) The municipality must provide full and open disclosure of all the levy costs and payments.

(2) The municipality must report on the levy annually and include in the report the details of all levies received and utilized for each type of facility and infrastructure within each benefitting area.

(3) Any report referred to in subsection (2) must be in writing and be publicly available in its entirety.

Levy Bylaw Appeals

Who may appeal

10 Pursuant to section 648.1 of the Act, any person who is directly affected by a bylaw imposing a levy for a purpose referred to in section 648(2.1) of the Act may submit a notice of appeal to the Municipal Government Board.

AR 187/2017 s10;53/2018

Appeal period

11 An appeal must be submitted to the Municipal Government Board within 30 days of the day on which the bylaw imposing the levy was passed.

Form of appeal

12(1) A notice of appeal under section 10 must

(a) identify the municipality or municipalities that passed the bylaw that is objected to,

(b) identify how the appellant is directly affected by the bylaw that is objected to,

(c) set out the grounds on which the appeal is made,

(d) contain a description of the relief requested by the appellant,

(e) where the appellant is an individual, be signed by the appellant or the appellant's lawyer,

(f) where the appellant is a corporation, be signed by an authorized director or officer of the corporation or by the corporation's lawyer, and

(g) contain an address for service for the appellant.

(2) If a notice of appeal does not comply with subsection (1), the Municipal Government Board must reject it and dismiss the appeal.

Consolidation of appeals

13 Where there are 2 or more appeals commenced in accordance with section 10, the Municipal Government Board may

(a) consolidate the appeals,

(b) hear the appeals at the same time,

(c) hear the appeals consecutively, or

(d) stay the determination of the appeals until the determination of any other appeal.

No stay of levy

14(1) The municipality may continue to impose and collect a levy even if the bylaw imposing the levy is subject to an appeal under section 10.

(2) During the appeal period or pending the determination of an appeal of the bylaw imposing the levy by the Municipal Government Board, any levy received under that bylaw by the municipality must be held in a separate account for each type of facility.

(3) The municipality must not use levy funds received while the bylaw imposing the levy is subject to an appeal under section 10 until the appeal has been determined by the Municipal Government Board.

Sale of Facilities

Consultation on proposed sale

15 The municipality must engage in public consultation prior to the sale of any facilities constructed using levy funds.

Proceeds of sale

16 The proceeds of the sale of a facility constructed using levy funds must be used for the purpose for which the levy was originally collected.

Repeal

17 The Principles and Criteria for Off-site Levies Regulation (AR 48/2004) is repealed.

Coming into force

18 This Regulation comes into force on the coming into force of sections 104, 105 and 131(b) of the *Modernized Municipal Government Act* and section 1(60)(a) of *An Act to Strengthen Municipal Government*.