

BOARD ORDER: MGB 003/12

FILE: 10/IMD/002

THE MATTER OF THE Municipal Government Act being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN APPEAL brought pursuant to Section 690 of the Act by the Town of Okotoks, respecting the adoption by the Municipal District of Foothills on August 11, 2010 of Bylaw 25/2010, the Wind Walk Area Structure Plan.

BEFORE:

Members:

D. Thomas, Presiding Officer
T. Golden, Member
R. Irwin, Member
P. Mowbrey, Member
M. Vercillo, Member

Case Managers:

K. Lau
C. Miller Reade
D. Weber (Assistant)

This is the decision of the Municipal Government Board (MGB) from a hearing held June 6 to June 16, 2011, regarding an intermunicipal dispute respecting a claim of detriment by the Town of Okotoks (Town) after the adoption by the Municipal District of Foothills (MD) of the Wind Walk Area Structure Plan (ASP).

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EXECUTIVE SUMMARY AND OVERVIEW

Introduction

[1] This hearing concerns a dispute between the MD of Foothills and the Town of Okotoks over the Wind Walk Area Structure Plan (ASP). This ASP contemplates urban density development on a quarter section adjacent to the Town of Okotoks south of the Highway 7. The Town believed the ASP would have a detrimental effect upon it and appealed the ASP to the MGB under s. 690 of the Act. That section authorizes the MGB to repeal or amend a bylaw which, in its opinion, has or may have a detrimental effect on an adjacent municipality. In this case, the Board found the Town had presented insufficient evidence to demonstrate a reasonable likelihood of significant detriment. Accordingly, the MGB declined to repeal the ASP.

Issues and Arguments before the MGB

[2] At the merit hearing, the Town organized its case into nine issues where it argued the ASP has or may have a detrimental effect. These issues are discussed individually in detail in the body of the order, but can be grouped into the following three categories.

[3] First, the Town argued the ASP contravenes or is inconsistent with previous agreements between the Town and MD, including the Foothills – Okotoks Intermunicipal Development Plan (IDP) and recently signed Joint Planning Agreement (JPA). The following were alleged to be examples of detriment owing to inconsistency:

- The ASP contemplates urban development, whereas the IDP and JPA suggest that only traditional low density, rural style development will occur in the MD. According to the Town, this inconsistency creates uncertainty about planning in the region and constitutes detriment in its own right.
- By not following the planning documents consistently, the ASP reduces the documents' effectiveness and that of the Town's own MDP (the Legacy Plan) which adopted the IDP assumptions.
- The dispute resolution process within the IDP was not followed, leaving the Town with insufficient opportunity to resolve inconsistencies or discuss options prior to the ASP's adoption.

[4] Second, the Town submitted that the cumulative effect of the proposed ASP would place a strain on Town's infrastructure. Three distinct aspects were raised in this connection, including water resources (water, wastewater, storm water), transportation (congestion, and cost of additional infrastructure) and facilities and services (such as libraries, fire response, and community services).

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[5] Third, the Town maintained that the bylaw that established the ASP was not properly passed and was therefore invalid.

[6] The MD of Foothills and the Landowner both opposed the appeal, arguing that the Town has not shown detriment. In their submission, the ASP contemplates sustainable and responsible development which is both consistent with the existing and proposed uses for adjacent lands, and the IDP and JPA. The IDP and JPA anticipate growth in the area, and the ASP merely accelerates the process for a single quarter section. Contrary to the Town's assertions, the parties followed the dispute resolution process as outlined in the IDP and meetings were held with the Town to allow for its input.

[7] In addition, the MD and Landowner argued that the Town's concerns about water, wastewater and storm water are dealt with by measures in the proposal and, in any event, are matters more properly dealt with by Alberta Environment and the Alberta Environmental Appeals Board. Any need to upgrade infrastructure or services will be manageable and can be dealt with by way of agreements, partnerships and funding arrangements. Finally, both argued that the ASP's alleged invalidity is a matter for the Court of Queen's Bench.

Board Findings

[8] While there were some inconsistencies between the ASP and the IDP, the Town failed to show that this inconsistency created a reasonable likelihood of significant detriment to the Town. The ASP is a clear and comprehensive plan, and the land uses it contemplates are consistent with those occurring or proposed for adjacent lands in both municipalities.

[9] The addition of 1200 people residing in Wind Walk will inevitably have some impact on the Town's infrastructure if ultimately developed. However, any detrimental financial impact on the Town can be eliminated through the creation or expansion of existing cost sharing agreements. Cost sharing agreements have been used previously for other proposals near the Town. Other possible impacts can also be mitigated by cooperation between the Town, MD and the Landowner, who have a record of good communication concerning joint initiatives.

[10] Water, storm water and wastewater supply and management were three grounds initially raised as being beyond the scope of an intermunicipal dispute. While some issues relating to water are clearly for Alberta Environment and the Alberta Environmental Appeals Board, the potential for water treatment and servicing are also planning matters properly before the MGB.

[11] In this case, the potable water plan proposed credible sources of water which do not appear to have a significant effect on the Town's water supply. Furthermore the ASP includes a provision to ensure that development or subdivision would only proceed with an appropriate water source in place. The storm water management plan proposed by the Landowner

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incorporates mitigating measures to preserve water quality and avoid additional run off which might otherwise strain the Town's infrastructure. The Landowner also proposed options for off-site wastewater treatment that address the Town's original concerns about contamination through the potential mixing of waste and storm water.

[12] As with water infrastructure, transportation and fire services have been previously addressed by cost sharing agreements and partnerships between the two municipalities. The MGB expects these to continue. The Traffic Impact Assessment (TIA) prepared by the Landowner showed that there would be some impact, but the impacts would not have a significant effect on wait times or traffic flows in Okotoks. Response times for fire services in Okotoks will not be significantly impacted by additional population in Wind Walk. Any impacts that do occur can be resolved through agreements.

[13] With respect to community services and libraries, these have been previously managed by agreements between the Town and MD. The MGB expects these agreements and partnerships will continue to occur. Just as the MD residents use services within the Town, there are recreation facilities and other services located within the MD which are used by Town residents. Libraries, in particular, are provided through a regional library system to which both municipalities belong.

[14] With respect to the allegation that the bylaw was passed illegally, an application has already been filed with the Court of Queen's Bench and the MGB found that matter is better addressed by the Courts.

[15] As the MGB has previously observed, the amendment or repeal of municipal bylaws is an invasive remedy amounting to "legislative surgery". Such a remedy is appropriate only in cases where the harm to forestalled is both reasonably likely to occur and to have a significant impact on the appellant municipality should it occur. In this case, insufficient evidence was put forward to establish these conditions and the MGB declined to repeal the bylaw as requested by the Town.

PART A - BACKGROUND

1. Terms used in this Order

[16] Many disciplines rely on the use of jargon and acronyms for ease of handling common but lengthy discipline-specific terms. Alberta planning practice is no different, yet inevitably the use of acronyms distances the general reader from the subject. The MGB has compiled the key terms and acronyms used in this order in a convenient list for general reference.

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ASP – the Wind Walk Area Structure Plan, enacted by the Municipal District of Foothills as Bylaw 25/2010.

IDP – Intermunicipal Development Plan

IMC – Intermunicipal Committee

JDA – Joint Development Area

JPA – Joint Planning Agreement

JPI – Joint Planning Initiative

The Landowner – Alberta Foothills Properties Ltd.

The Legacy Plan – the Town of Okotoks' Municipal Development Plan

LUB – Land Use Bylaw

LUF – Land Use Framework

The MD – the Municipal District of Foothills

MDP – Municipal Development Plan

MTP – Master Transportation Plan of Okotoks.

PLUP – (or **LUP**) Provincial Land Use Plan

SSRB – South Saskatchewan River Basin

TIA – Traffic Impact Assessment

The Town – the Town of Okotoks

UPA – Units Per Acre

2. The ASP Approval Process

[12] The ASP contemplates development of 458 residential units, 80,300 square feet of commercial space, and a range of open space lands on 145 acres of undeveloped land. The lands are located immediately south of Highway 7, in the MD of Foothills. Highway 7 forms the south boundary of the Town of Okotoks. Adjacent to these lands is a previously approved rural commercial area called Gold Medal Development. Directly east of the parcel is an undeveloped quarter section, which lies between WindWalk and the Highway 2A Industrial Area Structure Plan.

[13] The chronology of events for this ASP is as follows:

- a. The site design for the ASP was prepared through a five-day public design charrette. The charrette was held in the Town from May 23, 2008 to May 27, 2008.
- b. In April 2009, the MD circulated the ASP to the Town. Pursuant to s. 3.1.4 of the IDP, the MD gave the Town 30 days to respond to the ASP before final approval. The Town requested an extension of time to provide a response, which the MD granted.
- c. On July 14, 2009, the Town requested that the MD postpone the ASP referral until the Joint Planning Initiative (JPI) between the MD and Town was completed. In that same month, the MD sent a letter to the Town advising that the ASP application would not be delayed pending completion of the JPI. The MD further offered to extend the 30-day time period for response to circulation until August 30, 2009.

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- d. On August 31, 2009, Town Council passed the following motion: “That the MD of Foothills be advised that the Town of Okotoks is opposed to the Wind Walk proposals...” The Town also submitted a letter of concern respecting the ASP application to the MD. The letter stated that the Town was opposed to the development.
- e. On September 3, 2009, the MD held a public hearing for the ASP. The Town attended, and advised the MD that the Town was opposed to the development.
- f. On January 18, 2010, the Joint Planning Agreement (JPA) was adopted by the MD and the Town.
- g. On January 26, 2010, the MD passed a motion to reopen the public hearing for the ASP. Notice was sent to the Town to notify them of the February 11, 2010 public hearing.
- h. On February 8, 2010, the Town requested the MD close the public hearing and repeal the ASP. The following day the Town submitted a letter of concern to the MD.
- i. On February 11, 2010, the second public hearing was held for the ASP and the February 9, 2010 letter of concern was noted by the MD.
- j. On February 24, 2010, an intermunicipal council meeting took place. The MD advised the Town that 1st reading had been given to the bylaw to adopt the ASP.
- k. On July 15, 2010, three motions respecting the ASP were passed by MD Council. These were that:
 - 2nd and 3rd reading of Bylaw 25/2010 (ASP) would be tabled until the MD received a formal response from the Town;
 - MD staff be authorized to send a letter to the Town requesting clarification of the Town’s position respecting surface water supply; and
 - The ASP would be on the agenda for the Council meeting scheduled for August 11, 2010.
- l. On August 9, 2010, Town Council passed the following motions:
 - The Town advises the MD that it does not support Phase I of the Wind Walk development prior to resolution of the Town’s concerns;
 - That Town Administration {be directed} to appeal the ASP to the MGB.
- m. On August 10, 2010, the Town sent an e-mail to the MD advising of the August 9, 2010 motions passed by the Town, and renewing its opposition to the ASP.
- n. On August 11, 2010, the MD Council gave 2nd and 3rd reading to Bylaw 25/2010.
- o. On August 12, 2010, Coreena Carr, Planner for the MD, confirmed that the MD Council had given 2nd and 3rd reading to the ASP on August 11, 2010 in an e-mail to Jeff Laurier, Senior Long Range Planner for the Town.

3. The Town’s Notice of Appeal

[14] Section 690(1) of the Act permits a municipality to file an appeal with the MGB if it is of the opinion that a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it.

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[15] The MGB received a notice of appeal of Bylaw 25/2010, a bylaw to adopt the Wind Walk ASP on September 9, 2010. The notice of appeal enumerated thirteen grounds for the appeal, which were written as follows:

1. The ASP facilitates premature conversion and fragmentation of a large continuous agricultural land holding and is therefore not consistent with the Provincial Land Use Policies (PLUP), the Land Use Framework (LUF) and the Foothills/Okotoks IDP [Sections 6.1(2) & (3) – LUP; Strategy 3 & 5 –LUF; Section 2.1.1, 2.1.2(1) IDP].
2. The ASP fails to take a cumulative effects approach to growth management particularly as it relates to the environment [LUF Strategy 3].
3. The ASP conflicts with the policy direction of the LUP and IDP with respect to potential conflicts with surrounding agricultural activities particularly the existing agricultural activity on the subject property [LUP Sections 6.1(1), (4); IDP Sections 2.1.1, 2.1.2(1)].
4. The ASP conflicts with Provincial direction that adjoining municipalities plan future land uses cooperatively and in a manner that respects the interests of both municipalities [LUP Sections 3.0(1) & (2); LUF Strategies 1 & 5].
5. Contrary to the IDP, Foothills passed the ASP without amending the IDP to allow residential development in this location. The IDP requires an amendment prior to Foothills proceeding with the higher-density residential development proposed in the ASP [MGA Sections 631(2)(a)(i), (ii); IDP Sections 1.4.1, 2.2.1, 2.2.2(4)].
6. Foothills has not secured a potable water license for the Wind Walk ASP. Foothills may allow a portion of the development to proceed utilizing a ground water supply and the remainder to proceed using a surface supply, neither of which have received preliminary or final approval from Alberta Environment [IDP Sections 2.2.2(1)(d),(f),(h); 2.2.2(4)(b)(c),(e)].
7. The proposed development may have a detrimental impact on drainage in the Sheep River [IDP Sections 2.2.1, 2.2.2(1)(d),(f),(h); 2.2.2(4)(b),(c),(e)].
8. The ASP contravenes the *Subdivision and Development Regulations* passed under the Act, as it includes a proposed wastewater treatment plant within 300 metres of proposed residential uses within the ASP and existing residential uses within the Town of Okotoks [Subdivision and Development Regulation, Alta. Reg. 43/2002, Part 2, Section 12(2)].

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9. There will be negative impacts on the regional transportation system. Foothills did not take into consideration the impacts of the ASP development on the regional transportation system as required under Section 2.2.2(1)(e) of the IDP [IDP Sections 2.2.1(e); 1.4.5; 2.2.2(1)(d)(e); 2.2.2(4)(b)].
10. The proposed development will have a detrimental impact on the provision of protective, recreational, social and cultural services by the Town [LUF Strategy 3; IDP Sections 1.4.4, 2.2.2(1)(h)].
11. Foothills approved the ASP without complying with the entire Dispute Resolution process set out in Section 3.3 of the IDP.
12. The proposed development violates the Joint Planning Agreement (“JPA”) adopted by the Town and the MD, specifically through establishing an urban settlement pattern rather than a distinct rural settlement pattern that is inconsistent with the historical growth rate of the lands surrounding Okotoks [JPA Sections 2.1(2)(4), 3.1(1),(2),(4),(6)].
13. Letters sent by Okotoks to the MD of Foothills express concern regarding the Wind Walk ASP.

[16] Pursuant to section 690(1)(a), a statutory declaration, signed by the Town’s Municipal Manager (Mr. Richard Quail) was provided. The statutory declaration stated that, consistent with the IDP passed by both municipalities, the Town had attempted to resolve the dispute through intermunicipal committee meetings.

[17] The MD of Foothills responded on September 28, 2010 with a statutory declaration, as required by section 690(3), signed by the Municipal Manager (Mr. Harry Riva Cambrin). The document stated that the two municipalities had been in discussions on the matter for two years and that attempts to negotiate a mutually satisfying solution had occurred both prior to the public hearing and further to the closing of the public hearing.

[18] The MGB sent notices of the appeal to all affected landowners and scheduled the merit hearing for June 6 to 16, 2011, pursuant to section 691 of the Act. This decision was communicated to the parties and confirmed in MGB Decision Letter DL 008/11, later amended by Board Order: MGB 021/11.

[19] On May 26, 2011, the developer amended its plan for wastewater disposal. The amended development plan proposed a wastewater pipeline from the ASP to the Town of High River’s wastewater treatment facility. The pipeline represented an alternative to the originally proposed and contested on-site wastewater facility.

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4. Intermunicipal Planning Documents

Intermunicipal Development Plan

[20] IDPs are statutory plans under the Act. Section 631(1) permits two or more councils to pass a bylaw to adopt an IDP pertaining to those areas of land lying within the boundaries of the municipalities, as they consider necessary. Under section 631(2)(a), an IDP may provide for the future land use within the area, the manner of and the proposals for future development in the area, and provisions relating to the administration of the plan. Pursuant to subsection (2)(b), an IDP must include a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that have adopted the plan, a procedure to be used to amend or repeal the plan, and provisions relating to the administration of the plan.

[21] In 1998, the administrations of both municipalities worked together on the “Town of Okotoks/M.D. of Foothills Intermunicipal Development Plan.” The IDP was approved by Town Council September 21, 1998, through Bylaw #51-98, and by MD Council September 24, 1998, through Bylaw 139/98. The IDP contains two parts: Statutory Plan Policies and Background. Part 1 includes a map of the areas covered by the IDP, and sets out the goals and policies for agriculture, residential, special areas (e.g. intermunicipal gateways), commercial industrial and institutional development, open space, transportation, utilities and servicing, plan implementation, plan administration, intermunicipal dispute resolution, and future growth and annexation. Part 2 provides the statutory and administrative background of the plan. This part includes the required element of the plan, the dispute resolution process, the adoption, amendment and repeal protocols, and other administrative procedures.

Joint Planning Agreement

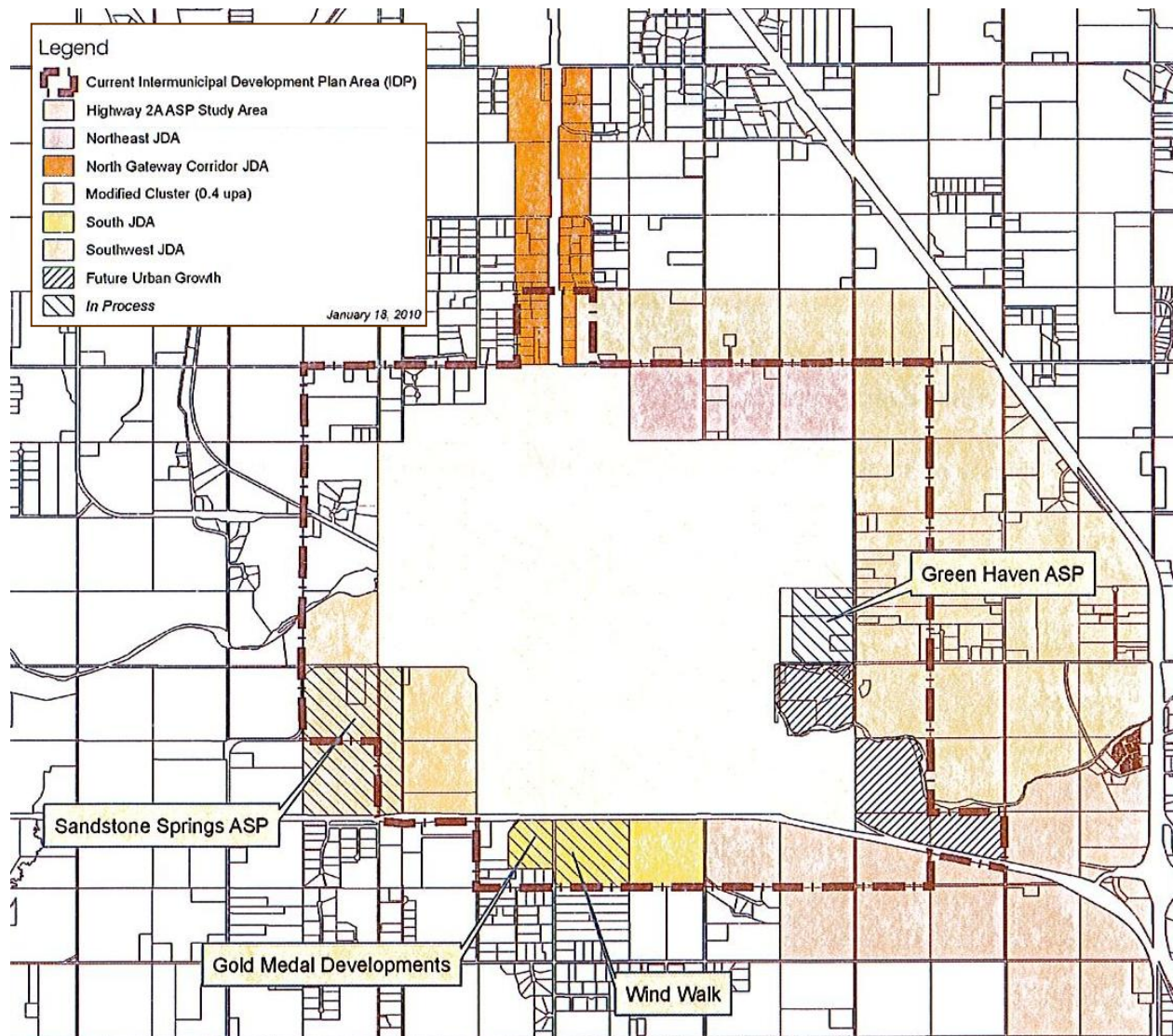
[22] After disputes were filed on other area structure plans in the intermunicipal fringe, the municipalities embarked on a Joint Planning Initiative in 2009. On January 18, 2010, both councils adopted the “MD of Foothills and Town of Okotoks Joint Planning Agreement” (JPA). The JPA has five parts: Agreement Framework, Development and Growth Management, Preconditions to Proceed, Next Steps, and Termination of Agreement. The attached map entitled the “Joint Development Management Strategy Area” shows the area covered by the agreement, the boundaries of the IDP, and area structure plans or concept plans that are either in process or adopted.

5. History of Development in the Fringe Area.

[23] At the time the Wind Walk ASP was passed, five other developments were planned and in various stages of development within the Town and MD’s intermunicipal fringe area as designated in the IDP. They are as follows: Green Haven, Sandstone Springs, Gold Medal, Highway 2A Industrial Area, and the North Gateway Corridor. The Green Haven and Sandstone

Springs developments were designated for residential use with their associated ASPs proposing density levels of 0.7 and 0.72 units per acre respectively. The Gold Medal, Highway 2A Industrial Area, and North Gateway Corridor developments were designated as rural commercial, industrial, and mixed commercial/ industrial areas, respectively. Of the three, only the latter had an associated ASP. The Green Haven, Sandstone Springs, and Gold Medal developments did not conform to the density requirements of the IDP. Notwithstanding this failure to conform, the Town did not request an amendment to the IDP.

Exhibit A Map Illustrating the Abridged Joint Development Management Strategy Area



6. Area Structure Plans

[24] Under section 633(1), a council may, by bylaw, adopt an area structure plan in order to provide a framework for subdivision and/or development of land. Section 633(2) requires that area structure plans describe the sequence of development proposed, the land uses proposed, the density of population proposed, the general location of major transportation routes and public utilities, and any other matters that council considers necessary for the area.

PART B – THE MEANING OF DETRIMENT

[25] Pursuant to section 690(5), if the MGB receives a notice of appeal and a statutory declaration under subsection (1)(a), it must, subject to any *Alberta Land Stewardship Act*, SA 2009, c A-26.8, regional plan, 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. The MGB may dismiss the appeal if it decides that the provision is not detrimental, or order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

[26] Detriment is not defined in the Act or its regulations, but the MGB has previously considered its meaning and the evidential burden that must be met by initiating parties. Although not bound by its previous decisions, the MGB finds it useful, in some circumstances, to use established meanings and thresholds. For s. 690 appeals, *The City of Edmonton, the City of St. Albert, and the Town of Morinville v. County of Sturgeon*, MGB 77/98 [*Sturgeon*] contains a thorough discussion of detriment.

[27] The meaning of detriment was discussed in the *Sturgeon* decision as follows:

The dictionary definition is straightforward enough. According to Webster's New World Dictionary, "detriment" means "damage, injury or harm" (or) "anything that causes damage or injury." This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as "nuisance" factors (page 44/84).

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another”. Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County’s MDP will result in detriment to them (page 44/84).

[28] The *Sturgeon* decision also noted the invasive nature of the remedy under section 690, which is not to be imposed lightly or in circumstances where detriment cannot be clearly identified or will not have a significant impact:

If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both **reasonably likely to occur**, and to have a **significant impact** on the appellant municipality should it occur (page 48/84; emphasis added).

There is also a functional or evidentiary component to the Board’s ability to direct an effective remedy under s.690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote (page 48/84).

[29] Similar points were made in the MGB’s recent decision in *Sunbreaker Cove v. Lacombe County*, MGB 007/11 [*Sunbreaker Cove*], with the MGB observing that there must be

evidence...of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact (at para. 71).

[30] Generally, the onus rests with the initiating party to show a detrimental effect rather than with the respondent to refute the allegation of detriment. In this case, the MGB weighed the evidence and submissions of the parties to determine if harm was reasonably likely to occur and

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if it would have a significant impact on the Town of Okotoks. Each of the issues were measured against this test.

PART C - PRELIMINARY MATTERS

Part I - Preliminary Hearings

[31] The MGB scheduled a preliminary hearing for October 8, 2010 to set dates for the exchange of materials. At that time, the MD questioned whether the following three grounds advanced in the original Notice of Appeal were properly before the Board, or whether they should be decided by the Alberta Environmental Appeals Board:

6. Foothills has not secured a potable water license for the Wind Walk ASP. Foothills may allow a portion of the development to proceed utilizing a ground water supply and the remainder to proceed using a surface supply, neither of which have received preliminary or final approval from Alberta Environment [IDP Sections 2.2.2(1)(d),(f),(h); 2.2.2(4)(b)(c),(e)].

7. The proposed development may have a detrimental impact on drainage in the Sheep River [IDP Sections 2.2.1, 2.2.2(1)(d),(f),(h); 2.2.2(4)(b),(c),(e)].

8. The ASP is in contravention of the MGA Subdivision and Development Regulations, as it includes a proposed wastewater treatment plant within 300 metres of proposed residential uses within the ASP and existing residential uses within the Town of Okotoks [Subdivision and Development Regulation, Alta. Reg. 43/2002, Part 2, Section 12(2)].

[32] For its part, the Landowner argued that several of the issues raised in the Town's Notice of Appeal relate to enforcement of the JPA (i.e. contract law) and, therefore, fall outside the scope of a section 690 appeal.

[33] These questions became topics for a second preliminary hearing on December 6, 2010 (and were raised once again at the beginning of the merit hearing). As explained fully in MGB 005/11, the MGB found that evidence concerning Grounds 6, 7 and 8 as well as evidence concerning compliance with the JPA could be relevant to the issue of detriment contemplated by section 690; therefore, it declined to rule out such evidence at that stage in the proceedings. However, the parties remained free to ask the Board to refuse to hear certain evidence as it was introduced if it appeared to be offered in support of a determination more properly made by the courts or the Environmental Appeals Board.

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Part II - Adjournment Request

Town's Position

[34] At the beginning of the merit hearing, the Town requested an adjournment to give its experts additional time to review and comment on reports provided by the MD and Landowner. These reports include the MD's amended water supply plan and wastewater management plan, which now contemplate involving High River to help with the necessary arrangements. They also include the Landowner's finalized Traffic Impact Assessment (TIA). While the MD's amended reports were exchanged on May 26, 2010, the Town only received the TIA the day before this hearing.

[35] In addition to these difficulties, the Landowner's "will say" statements were not detailed enough to give an accurate idea of the intended evidence; therefore, in the event the adjournment application was unsuccessful, the Town requested the Landowner be ordered to provide amended and more detailed will say statements.

MD's and Landowner's Position

[36] The MD and Landowner both opposed the adjournment request. They noted that the appeal had suspended the ASP and frozen all development. Nine months had elapsed since the appeal was launched and nearly ten since the passing of the ASP. Further delay would amount to a de facto win for the Town and could jeopardize financing for the developer.

[37] The MD and Landowner did not agree that the reports in question should come as a surprise to the Town. Water supply, water treatment and traffic have been subjects of discussion between the parties for many months and the ASP itself refers to the possibility of sourcing water from High River. Further, the suggestion that wastewater be processed in High River should not concern Okotoks greatly or require extensive analysis.

[38] The MD and Landowner expressed surprise that the Town had not submitted its own independent expert reports concerning difficulties with transportation and utilities to support its claim of detriment. In their view, the Town should have begun to procure expert reports in February, when its (former) counsel indicated such material would be gathered and presented.

[39] With respect to the TIA, some parts are not relevant to this appeal, since the Landowner commissioned it to fulfill the MD's approval conditions for the ASP. Also, the Landowner had expected the Town to undertake traffic counts to support its argument regarding detriment, as its former counsel indicated it would. Upon learning no such work had been undertaken, the Landowner commissioned the TIA to include traffic counts on relevant routes in Okotoks. It disclosed the traffic count numbers on its filing date, since these were available. The full report followed as soon as it was completed.

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Findings - Preliminary Issue

- The date of these hearings was established at the request of the Town to allow it to obtain reports.
- All parties had their materials prepared and the witnesses available to proceed.

Decision and Reasons - Preliminary Issue

[40] The Board's Procedure Guide contemplates adjournments in appropriate circumstances, including "where it would be just and practical to do so". In this case, the MGB weighed prejudice to the Landowner and MD that would result from further delay and disruption of the hearing schedule against potential impairment of the Town's ability to understand and answer the case against it.

[41] With these factors in mind, the Board concluded that the most just and practical process would be for the Landowner to provide detailed "will says" by the following morning, and to indicate the portions of the TIA to which its traffic expert would speak. In addition, the Board requested the Landowner to rearrange its witnesses so that the Town would have the maximum possible opportunity to review the relevant portions of the TIA. If these measures proved insufficient, the Town remained free to raise any concerns about its ability to respond once the Landowner finally presented its witness.

[42] The Board adopted a similar process to deal with the reports about water and wastewater; that is, it ordered the hearing to proceed, but left the Town free to point out anything at a future stage in the proceedings that called for an adjournment or for an opportunity to make additional submissions. In this way, the hearing proceeded with minimal disruption, but still allowed the Town a full opportunity to understand and respond to all of the evidence.

PART D - NONSUIT APPLICATION

[43] Having heard the Town's presentation and one of the MD's witnesses, the Landowner applied to have the appeal summarily dismissed on the grounds that the Town had not proved detriment as required by section 690.

[44] After hearing from the parties, the Board concluded that the Town had presented some evidence that, if believed and left uncontradicted, could potentially lead to a finding of detriment. Therefore, the Board dismissed the nonsuit application and proceeded to hear the balance of the evidence from the MD and the Landowner.

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PART E – ISSUES UNDER APPEAL

[45] The Town submitted a list of remaining issues in May 2011 that were later argued before the Board. The list articulated by the Town is as follows (omitting some of the grounds that appeared on the original Notice of Appeal):

1. Does the Wind Walk ASP contravene the express terms of the IDP?
 - a. If so, does contravention of the IDP have a detrimental effect on the Town?
2. Does the Wind Walk ASP contravene the express terms of the JPA?
 - a. If so, does contravention of the JPA have a detrimental effect on the Town?
3. Does the passing of the Wind Walk ASP cause planning uncertainty for the Town?
 - a. If so, is the planning uncertainty detrimental to the Town?
4. Does the ASP's proposed potable water plan pose a detriment to the Town?
 - a. Does the ASP's proposed water plan have a detrimental effect on the Town's water usage and availability?
 - b. Does the ASP's proposed water plan have a detrimental effect on the Town's ability to secure alternative water licenses?
5. Does the Wind Walk ASP, and the corresponding influx of population on the Town's boundary, have a detrimental effect on the Town with respect to transportation infrastructure and planning?
 - a. Does the ASP create undue and unplanned stress on existing roadways within the Town?
 - b. Does the ASP generate unanticipated and premature capital expenditures for the Town?
6. Does the ASP's storm water drainage plan pose a detriment to the Town?
7. Does the Wind Walk ASP, and the corresponding increase of population on the Town's boundary, have a detrimental effect on the Town's community services?
8. Does the ASP's amended wastewater plan have a detrimental effect on the Town?
9. Was the Wind Walk ASP passed illegally?
 - a. If so, does the illegality have a detrimental effect on the Town?

ISSUE 1: Does the ASP contravene the express terms of the Intermunicipal Development Plan and thereby cause detriment to the Town?

[46] As noted earlier, the Foothills-Okotoks IDP contains policies pertaining to residential, commercial and industrial land as well as provisions governing referrals and dispute resolution. It also contains policies to discourage premature use of agricultural land. The Town argued that the ASP contravenes all of these policies, thus causing detriment. For ease of reading, this section has been split into four sub-issues, reflecting the major points of argument in the Town's submission: residential, commercial, agricultural preservation and dispute resolution. Each will be discussed separately.

Sub-issue A: In Respect to Residential Development?***Town's position - Residential development***

[47] Mr. Steven Hanhart, Planner for the Town of Okotoks provided evidence on this matter. The IDP establishes an agreement that country residential development is to take place in the County and urban residential development is to occur in the Town. The Wind Walk ASP contemplates a dense urban development within the MD and thus violates the IDP. More specifically, the Town pointed to section 2.2 of the IDP, which it said is violated by the scale and type of development proposed in the ASP.

[48] Section 2.2.1 of the IDP indicates that:

The residential policies contained in this Intermunicipal Development Plan are intended to:

1. accommodate the forms of residential development within the Plan Area which have been agreed to for both respective municipalities, and
2. establish servicing limits for common municipal services (e.g. water, sanitary sewer).

[49] Section 2.2.2 of the IDP defines the form of residential development that is to take place within the MD under the heading Country Residential Development Policies:

1. Rural lands beyond current Town boundaries and Urban Growth Areas may further develop for country residential use according to the country residential policies of the M.D. of Foothills and this Intermunicipal Development Plan.
2. Country residential areas beyond current Town Boundaries and Urban Growth Areas will not be incorporated into the Town. Subdivision applications within designated areas of existing country residential development must address ultimate servicing requirements (e.g. water, sanitary).

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[50] The ASP lands fall beyond the current Town boundaries and Urban Growth Areas, where the IDP contemplates Country Residential development. It is evident that the type, scale, and density of development being proposed in the ASP does not meet the definition of country residential. Mr. Hanhart argued that servicing requirements were not fully established at the time of the ASP. In addition, the style of servicing has changed from strictly onsite servicing to a mixture of on- and off-site services, and most recently servicing appears to be coming from the Town of High River through an extension of services to the Aldersyde area.

[51] Mr. Hanhart noted section 2.2.4 defines the form of residential development that is to take place within the Town under the heading “Urban Residential Development Policies”:

2. Urban residential development within the Plan Area and under the jurisdiction of The Town of Okotoks shall be approved subject to the following:
 - a. conformity to Town policies affecting residential development;
 - b. prior approval of an area structure plan or community plan;
 - c. consideration of impacts on adjacent land uses within the M.D. of Foothills (i.e. applicants may be required to address impacts on lands within the M.D. of Foothills);
 - d. consideration of impacts on regional and intermunicipal transportation systems (i.e., the traffic impacts that development may have within the M.D. of Foothills);
 - e. consideration of environmental impacts (e.g., water quality, soil stability and natural areas); and
 - f. appropriate intermunicipal referral and consultation as provided for under section 3.1 of this Intermunicipal Development Plan.

[52] The ASP proposes an urban level of development in the MD, which is not contemplated by the IDP. Mr. Hanhart explained that density is a clear indicator as to whether a development can be characterized as either rural or urban. Even though the MD has been transitioning towards “smarter” rural development strategies, which have been generally accepted by the Town, the newer form of country residential development taking place in the MD remains clearly rural in character with dramatically lower densities than ASP’s proposed density of 3.27 units per acre (UPA).

[53] The Town concluded that the IDP makes no provision for urban style residential development within the MD portion of the plan area and that the evidence before the MGB clearly demonstrates that the ASP is not a country residential use as mandated by the terms of the IDP.

MD's Position - Residential Development

[54] Mr. Harry Riva Cambrin, who is the Chief Administrative Officer and Director of Planning for the MD, submitted that the language used in the IDP reflects the residential developments at the time of its adoption and does not contemplate or preclude developments such as contemplated in the ASP. The MD further stated that the ASP represents an evolution in its planning in that the ASP contemplates higher densities to allow for less consumption of agricultural land, which ultimately preserves natural capital.

[55] In its written argument, the MD argued that the IDP does not require an amendment for the ASP, because the IDP is silent on the issue of high density residential development being located in the MD. Both Mr. Riva Cambrin and the Municipal Planner, Ms. Heather Hemingway cited section 2.2.1 and 2.2.2(4) as describing the type of residential development that was within the municipalities in 1998, rather than dictating that those forms of development will be the only forms allowed. There are no policies in the IDP which prevent the MD from pursuing higher density residential development. Section 2.2.2(5) contemplates amendment of the IDP when new uses or significant changes in density or area are proposed for an existing ASP. Wind Walk does not fall into either of these categories.

[56] The MD further noted that while the Town now objects to the ASP based on its perceived contravention of the IDP, it did not object to three other proposed ASPs on similar grounds. These ASPs are adjacent to the Town (Green Haven ASP (1.32 UPA) on the east side of the Town, the Sandstone ASP (1.4 UPA) located on the west side of the Town, or the Gold Medal subdivision immediately to the west of the Wind Walk site). These ASPs were not subjects of IDP amendments and were resolved using servicing agreements.

[57] No parties dispute that country residential development, at the densities reflected in the 1998 IDP, is neither sustainable nor supportable given the 1996 Provincial Land Use Policies and the more recent Land-use Framework. Both encourage municipalities to increase densities in order to reduce the human footprint on the land. The MD emphasized that this sentiment is reflected in its MDP (adopted in 2010), and in the ASP.

[58] Ms. Hemingway specifically noted that its MDP contemplates that the majority of new development will be “communally serviced, compact, mixed use communities planned for the perspective of environmental social and economic sustainability.” In the MD’s view, the IDP does not contain any policies which prohibit the type of development contemplated in the ASP.

Landowner's Position - Residential Development

[59] The Landowner disputed the Town’s argument that the IDP requires country residential development on the subject site. The Landowner submitted that the IDP does not prohibit other forms of development. Two more recent plans, the MD of Foothills’ MDP and the Calgary

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Metropolitan Plan, have described country residential development as unsustainable. The IDP should not be interpreted to mandate an unsustainable form of development. While the “Urban Growth Areas” designated in the IDP do not include the subject parcel, the IDP does not prohibit urban growth in other areas.

MGB Findings - Residential

- Although the urban nature of the ASP is not contemplated in the IDP, there is no detriment.

MGB Reasons - Residential

[60] As noted by the Town, the IDP contemplates country residential development in the MD under section 2.2.1 and urban development in the Town under section 2.2.2. There are repeated references to the MD being associated with and limited to country residential development including:

2.2.2 “Rural land beyond current Town boundaries and Urban Growth Areas may further develop for country residential use according to country residential policies of the M.D. of Foothills and this Intermunicipal Development Plan.”

[61] The MD argued that because the IDP only mentions country residential and does not specifically exclude other forms of residential development, it does not prevent urban development within the MD. The MGB does not find this argument convincing. The fact that there are no provisions in the IDP for urban development suggests that such development was not contemplated at the time of its development and adoption. In this regard, the MGB notes there are specific provisions that contemplate expansion of country residential development, but even these require amendments to the IDP.

[62] The MGB reads the IDP as only permitting country residential development within designated areas, unless amendment to the IDP is made. The development densities proposed in the ASP indicate it is an urban residential development that does not meet the spirit of the policies contained within the IDP – at least until that document is amended.

[63] Having said this, the relevant issue is not merely whether the ASP complies with the spirit of the residential policies of the IDP, but whether its failure to comply is detrimental to the Town for the purposes of section 690. As noted in previous orders, failure to comply with an IDP or other bylaw is not necessarily detrimental to an adjacent municipality. As stated in *Sturgeon*:

“The Board does not agree with the proposition that simply because a MDP does not conform with the requirements of the Act or the Land Use Policies, detriment must necessarily result. Instead, the question the Board must address is whether the MDP will cause detriment...”(page 49 of 84)

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[64] In this case, the MGB sees no evidence that the residential component of the ASP's departure from the IDP results in detriment.

[65] First, it appears, based on the pattern of recent proposals in the IDP (Sandstone Springs, Gold Medal, and Green Haven) that the amendment provisions of the IDP have been disregarded frequently in recent years with no ill effects to either party. Planning issues in these cases have been resolved effectively through other means, and no reason was presented to explain why similar resolution could not be achieved in the case of Wind Walk. While the circumstances show that the IDP may be obsolete, they do not demonstrate that contravention of the IDP is a detriment to the Town.

[66] Second, while the higher density ASP represents a departure from historical development in the MD, legislation and past practice indicate that the MD is operating within its jurisdiction. As noted in *Sturgeon* (with which the Board still agrees):

There is no mention of a distinction between urban and rural in these policies, and it appears the intent is to allow all municipalities to participate on an equal footing in securing for themselves a wide variety of residential, commercial and industrial uses. In the view of the Board, the effect of the policies is to diminish the importance of traditional distinctions between urban and rural land use. A necessary corollary is that the location of commercial or industrial uses in rural municipalities will not ground an appeal where a complaint is based solely on anticipated erosion of an urban municipality's tax base (page 46 of 84).

[67] It is of course true that factors associated with urban style developments - such as transportation and servicing requirements - can result in detriment. These and other similar matters are examined in the balance of this Order. However, for the reasons expressed above, the MGB is satisfied that a breach of the IDP by the addition of an urban style development adjacent to the Town is not detrimental in and of itself.

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Sub-issue B: In Respect to Commercial Development?

Town's Position - Commercial Development

[68] The Town argued that, as with residential development, the IDP differentiates between rural and urban commercial development. Rural commercial development is defined in 2.4.1 in two basic forms: rural local commercial and rural highway commercial. In both cases, commercial development in the IDP area is to be concentrated in major nodes. The Town's Planner, Mr. Hanhart, described that under section 2.4.2(2), Rural Commercial, Industrial and Institutional Policy, a planned cluster of more than five rural commercial lots may require an ASP, subject to negotiation between the Town and the MD. However, he said that no negotiation had occurred during the ASP's development, which in his view contravened the IDP.

[69] Mr. Hanhart noted that the ASP proposes 80,300 square feet of commercial activity. In North America, the expected ratio of population to floor space is 35 square feet per capita. Mr. Hanhart asserted that, given the ASP's population at full development is 1,260 people, the amount of commercial floor space required to serve its population is only 45,000 square feet. With the excess square footage, the ASP's commercial area will adversely impact existing and planned commercial development in the Town by relying on Okotoks residents to sustain it. The commercial areas will compete with, and may divert, significant commercial activity away from the Town's business community. This will significantly compromise the Town's objective outlined in the Legacy Plan to achieve a balanced assessment base. The Legacy Plan, which is also the Town's MDP, targets a 22% non-residential assessment base. The Town has set aside sufficient lands within its planning documents to achieve this.

MD's Position - Commercial Development

[70] The MD acknowledged that the IDP requires an area structure plan to be prepared before commercial development may occur. However, it said that the ASP has fulfilled this requirement. Further, the commercial development does not contravene the IDP. In this regard, Ms. Hemingway stressed that the IDP does not limit the amount of commercial development.

[71] In response to the Town's concerns about competition between commercial developments in the MD and the Town, Ms. Hemingway stated that she is unaware of any policy, guideline, or directive that addresses this issue. There is no policy or regulation in place limiting competition between municipalities. Therefore, competition cannot be considered a detriment.

Landowner's Position - Commercial Development

[72] Both the Act and the Provincial Land Use Policies have removed the distinction between urban and rural municipalities. In *Sturgeon*, the MGB confirmed that “urban” municipalities do not have a monopoly on “urban” types of development. Given this finding, it would be inconceivable to read the IDP as restricting or limiting the MD to rural commercial development. Like country residential development, rural commercial development is an outdated form of commercial development that is not sustainable.

MGB Findings – Commercial development

- Although the ASP exceeds the IDP’s commercial provisions, there is no detriment.

MGB Reasons - Commercial development

[73] In keeping with the urban-rural distinction recognized in its residential development policies, the IDP contemplates only two types of commercial development within the MD, both of which are rural in character (“rural commercial” and “rural highway”). However, the IDP does not rule out larger commercial developments in the MD; rather, it indicates that an ASP may be required where a subdivision involves more than five commercial lots, subject to negotiation between the MD and the Town.

[74] In the Board’s view, the ASP probably does contravene the commercial provisions of the IDP. Certainly, section 2.2.4 appears to contemplate only “rural” type commercial development within the MD. Ambiguity in the wording of section 2.2.4(2) leaves some doubt as to the required “negotiation” to be triggered by subdivisions involving five or more rural commercial lots. A requirement for negotiation during the preparation of an ASP in respect of five or more commercial lots would be salutary and was most likely intended. It is true that the MD and landowner provided many opportunities for public input during the ASP’s preparation (for example, the charrette held in May 2008) and the Town could have participated in these; however, it does not appear that direct negotiation occurred between the Town and MD.

[75] Having said all this, potential breach of the IDP’s intent does not necessarily cause detriment for the purposes of a section 690 appeal. In this case, the Board finds insufficient evidence of detriment in this case for the following reasons - consistent with its earlier finding in the context of residential development.

[76] First, the area designated for commercial development in the ASP will form part of a commercial cluster that includes development in Gold Medal to the west and the Town’s commercial box stores on the north side of Highway 7. The proposed development is thus compatible with adjacent development.

[77] Second, as argued persuasively by the MD and Landowner, “urban” municipalities do not have a monopoly on “urban” types of development. While the Town is no doubt correct that commercial development in the MD will compete with similar development in the Town, this fact cannot be considered detrimental given the equal right of municipalities to pursue growth and development. Commercial competitiveness is not detriment. The Town itself is a regional economic centre, supporting a larger area that falling within its boundaries. That the ASP will also attract residents from the region and the Town is not in itself a persuasive ground of complaint. The same passage from *Sturgeon* quoted earlier in this order illustrates the diminished importance of the urban-rural distinction and the intent to allow municipalities to compete or participate on an equal footing in securing a variety of commercial or industrial uses.

[78] Third, the Town’s request assumes that repealing or amending the ASP to prevent competing commercial development will promote urban commercial development within the Town. However, this assumption was not backed by any persuasive evidence. There appears no reason to presume that the commercial development now planned for Windwalk could not relocate to other areas outside the Town, with similar implications for the mix of commercial property in its assessment base.

Sub-issue C: In Respect to Agricultural Protection?

Town’s Position - Agricultural Protection

[79] Mr. Hanhart gave evidence on this matter on behalf of the Town. The Town submitted that the Okotoks-Foothills IDP provides clear, mutually agreed, jointly beneficial, long term direction to protect agricultural lands within its plan area. The IDP’s goal of protecting agricultural lands is consistent with provincial direction in the Provincial Land Use Plan (PLUP) and Land Use Framework (LUF) encouraging municipalities to protect agricultural lands from premature conversion to other uses. Section 2.1.1 of the IDP demonstrates that the IDP specifically contemplated preservation of agricultural land through a twofold strategy -- that agricultural land should be; firstly, protected from premature development and; secondly, from inappropriate development.

[80] The Town stated that the responsibility for protecting agricultural lands from premature and inappropriate development is shared between the Town and the MD. Under section 2.1.2(1) of the IDP, which applies to lands within the MD, the MD should avoid premature development of agricultural lands within the Plan Area so as to allow such lands to continue to be used for agricultural purposes. In addition, Policy 2.1.3(1) required the Town of Okotoks to avoid premature conversion of agricultural land through the urbanization process.

[81] Mr. Hanhart expressed the opinion that these policies, which are consistent with urban and rural development policies elsewhere in the IDP, allow for staged and planned urbanization to occur over time within Okotoks and low intensity development within the MD. In addition,

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the lands are designated in the Agricultural District within the MD's LUB. The purpose and intent statement is "[t]o preserve agricultural lands for agricultural purposes and [allow] for a broad range of agricultural uses" (Policy 12.1.0). This is consistent with the MDP, which has the goal of conserving and protecting agricultural land. The Town maintained that the ASP prematurely removes an intact quarter section from agricultural use to a proposed use, specifically urbanization, which is not identified as a use of the lands in an IDP.

[82] The Town reported that it has urbanized approximately 783 ha (1,935 acres) of land between 1998 and 2011 in a compact and contiguous manner with existing urban areas. The MD approved a limited number of country residential parcels, primarily as infill within already fragmented parcels, preserving areas for agriculture in the MD's portion of the Plan Area. Mr. Hanhart estimated that the Town currently has an inventory of 245 ha (605 acres) of land already removed from agriculture to accommodate short and medium term growth. The Town relied on this planned growth model to demonstrate that a significant amount of capital has already been expended by developers within the Town. The lands are planned to accommodate growth pressures in a logical, planned manner that is consistent with the IDP. The ASP deviated from the IDP, PLUP, and LUF by prematurely removing an intact quarter section from agricultural use to urban residential.

[83] The MD's decision to remove one quarter section of land from agriculture puts undue pressure on surrounding landowners to abandon agricultural pursuits. In the Town's opinion, the ASP will likely create a domino effect facilitating the conversion of remaining agricultural lands along the south side of Highway 7 to uses other than agricultural, which will lead to a conflict between urban and agricultural activities. Mr. Hanhart asserted that the intent of the Town's urban growth boundary is to protect agricultural activity.

MD's Position - Agricultural Protection

[84] The MD submitted that premature conversion and fragmentation of agricultural land are regional concerns, not direct issues that are likely to cause detriment to the Town. The ASP is a comprehensive high-level development plan, which does not actually fragment the land. Citing *Grande Prairie (City) v. Grande Prairie (County)*, MGB 096/06, the MD submitted that development is premature when it is seemingly isolated and not connected to any existing plans or development. In contrast, the lands surrounding the subject site have or are in the process of being developed and the subject land is being comprehensively planned as a residential and commercial development. Further, the Town has stated it has no intention to annex this area as indicated by the IDP and JPA.

[85] The areas surrounding Wind Walk also show this is not an isolated parcel. The ASP lands are adjacent to Highway 7, directly south of the Town, east of an existing industrial development (Gold Medal), west of the Highway 2A Industrial ASP, and north of a country residential development. Mr. Riva Cambrin, Chief Administrative Officer and the Director of Planning,

described how a ravine area south of the ASP forms a physical separation from the country residential areas to the south. In addition, the land is not part of a larger agricultural holding, and a hay crop is currently produced on the lands.

[86] The ASP does not constitute premature development of the site; rather, it reflects the MD's MDP policy of having future development clustered around municipal centres with agricultural land remaining intact. This policy also aligns with Strategy Five of the LUF, which seeks to maintain agricultural land and reduce the footprint of human activities.

Landowner's Position - Agricultural Protection

[87] The Landowner framed the Town's argument about the preservation of agricultural land as follows: The ASP represents a premature conversion of agricultural land, and this conversion should not occur because the Town has already converted extensive amounts of agricultural land within its boundaries for development. The Landowner submitted that this argument is self-contradictory and that it is not supported by the MGB's decision in *Sturgeon*, where the MGB held that:

[t]he Land Use Policies do not appear to anticipate that each municipality will address the conservation of agricultural land in the same manner, but rather that each municipality is encouraged to design mechanisms suitable to its individual needs (page 41/84).

MGB Findings – Agricultural Protection

- The Wind Walk quarter section is better agricultural land.
- The ASP is out of phase with the IDP.
- There is insufficient evidence to determine that the ASP is detrimental.

MGB Reasons – Agricultural Protection

[88] The materials the Town presented with this appeal shows that the quarter section is CLI Class 2, which is better agricultural land. In addition, the IDP has the area denoted as 4th priority. These factors tend to support the argument that development is premature. On the other hand, the MD and Landowner's submissions make clear that development around the subject site is already taking place. Residential development has occurred to the south of the subject site and commercial development is occurring to its immediate west. It is also clear that other ASP and subdivision proposals have been agreed to nearby, and that proposed development will be contiguous with existing development in the Town. The quarter section is not part of any large agricultural undertaking and agricultural activities are mainly limited to hay production. Removal of this land from agricultural production has no direct impact on the Town. Finally, the Calgary Metropolitan Plan contemplates the site of the ASP as a growth area for the region. All

of these considerations show that development is contemplated for the area and that urbanization is already taking place. In light of these circumstances, the MGB finds this application does not represent premature conversion.

[89] The Board notes, incidentally, that there is a distinction between general arguments about what may or may not represent optimum planning and arguments about detriment specific to the Town. While premature conversion of agricultural land - if shown – may constitute less than optimum planning in a general sense, it would not necessarily show a particular detrimental effect on the Town. Further evidence showing how loss of agricultural land is detrimental to the Town would be required in order to justify the MGB’s interference with a municipal planning document.

Sub-issue D: In Respect to Dispute Resolution?

Summary of Town’s Position - Dispute Resolution

[90] Mr. Hanhart argued that the MD did not comply with the IDP’s dispute resolution procedures. In particular, it failed to mediate when agreement on the ASP proved impossible as contemplated by the Strategy for Effective Communication and Conflict Resolution (Step Four – Mediation) of the IDP. Furthermore, at its August 11, 2010 council meeting, the MD’s council and the development team went “in-camera”. Following the “in camera” session, council returned to the public portion of the meeting and gave second and third reading to the ASP. In the Town’s view, this procedure improperly excluded the Town from contributing to the ASP process and violated the IDP provisions for dispute resolution.

Summary of MD’s Position - Dispute Resolution

[91] The MD reported that the Town failed to respond to several requests for consultation between April and July of 2010. Mediation was initiated in December 2010; however, no resolution was achieved. Mr. Riva Cambrin also argued that the MD followed the IDP intermunicipal consultation and dispute resolution requirements as follows:

1. Section 3.3 of the IDP states that Stage 1 of the intermunicipal dispute resolution process requires circulation of the proposed document to the Town for review and comment. This was satisfied in April of 2009 when the MD referred the ASP to the Town for review and comment.
2. Under Stage 2, a municipality may refer the proposal to the Intermunicipal Committee (IMC) for review. The Town requested the ASP be referred to the IMC. The IMC discussed the ASP at a number of meetings from February 24 to June 29, 2010. The IMC minutes show that meaningful consultation occurred. The MD submitted that the referral occurred and that the review took place.

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3. Where no consensus is reached after an IMC review, Stage 3 requires both councils to establish their position on the proposal. The MD submits that both councils completed this step.
4. The MD described that both Stage 4 (Mediation Process) and Stage 5 (Appeal Process) are discretionary. The parties did not undertake the mediation process prior to the MD Council giving third reading to the ASP bylaw. The MD made numerous attempts to engage the Town in meaningful discussions. However, the Town did not consider a position other than complete refusal of the development. The MD reported eight key dates in which consultation was attempted.
5. It is open to the respondent municipality to pass a bylaw to implement the proposal before undertaking mediation. At that point, Stage 5 becomes available – which involves an appeal to the MGB. The appeal process itself provides an opportunity for mediation.

[92] Mr. Riva Cambrin submitted that the MD met all consultation and dispute resolution requirements and, therefore, did not contravene the IDP provisions under this heading.

[93] The MD stated that a breach of the IDP is not inherently detrimental. While the Town has argued that such a breach creates a presumption of detriment, there is no support for this claim. The MD specified that the MGB's role is not to enforce the IDP, but rather to determine whether the ASP is detrimental to the Town. The MD submitted that even if the IDP had been breached (which is not the case) the Town has not suffered detriment or demonstrated that detriment will result.

Summary of Landowner's Position - Dispute Resolution

[94] The Landowner asserted that the IDP mediation process was substantially followed by the MD. All stages of the IDP process were followed. It is difficult to see how this alleged procedural irregularity has caused detriment to the Town, given the unsuccessful mediation and the Town's continued contrary position to the development, regardless of its merit.

[95] As noted by the MD, a breach of the IDP is not inherently detrimental. The Landowner cited *Sturgeon* and *Sunbreaker Cove* as cases where the MGB found no detriment despite a conflict between planning bylaws and statutory plans. The Landowner also agreed with the MD that the Board's role is not to enforce the IDP, but rather to determine whether the ASP is detrimental to the Town. Further, even if the IDP was breached, the Town suffered no detriment as a result.

MGB Findings – Dispute Resolution

- The MD did not contravene the intermunicipal consultation and dispute resolution requirements under the IDP.
- The Town had an opportunity to provide input.
- The MD’s actions during the dispute resolution process did not constitute detriment.

MGB Reasons - Dispute Resolution

[96] When two municipalities develop an intermunicipal development plan, section 631(2)(b) of the Act requires that it include a procedure to be used to resolve or to attempt to resolve any conflict between the municipalities that have adopted the plan.

[97] This provision was written into the Act in 1995. In *Sturgeon*, the MGB commented that consultation means “a full, fair, and formal opportunity for input but does not mean a veto” (page 69/84).

[98] In this case, the IDP includes both a provision for making land use decisions (which is the optional content) as well as the required content that includes a procedure for dispute resolution. As noted by the MD, the dispute resolution procedure has five stages including a final stage where, if the parties are not in agreement, the municipality that is to make a land use decision in the IDP area would complete third reading of the bylaw, and the other municipality could appeal the bylaw to the MGB. This stage is undertaken only after the other stages of the dispute resolution process have failed to generate agreement.

[99] The MGB accepts the April 2009 letter as beginning of Stage One of the IDP dispute resolution process. After several months and discussion at intermunicipal committee, the Town received additional time to respond to the ASP. The discussion at intermunicipal committee fulfilled Stage 2 of the process. Discussions at both councils fulfilled Stage 3. From the evidence presented at the hearing, it was clear that each municipality understood the other’s position: in short, the Town did not support the ASP and the MD did.

[100] Mediation was suggested, but not entered into, so Stage 4 was not completed. However, Stage 4 of the IDP dispute resolution process is discretionary in the sense that both parties must agree to enter into mediation prior to third reading. In this case, the MD’s view was that despite extensive discussion, both sides had fixed positions and mediation would not be successful. This view appears reasonable under the circumstances. Therefore, it was open to the MD to force Stage 5 by proceeding to second and third reading and then waiting for notice of a section 690 appeal. The MGB observes that the section 690 appeal process itself involves further opportunity for mediation, which was not effective in this case.

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[101] The MGB concludes that although the MD and Town had somewhat different expectations of the dispute resolution process – particularly with respect to mediation – the process was nevertheless completed. More accurately, it was advanced to Stage 5 for completion through the section 690 appeal process. The actions of the MD caused no detriment to the Town, which had many opportunities for discussion and input. The dispute resolution process could not delay the MD’s adoption of the ASP indefinitely.

[102] In reaching this conclusion, the MGB makes no finding as to whether the Town’s decision to hold an “in camera” meeting prior to second or third reading was appropriate. The Board simply observes that the parties had many opportunities to communicate both before and after the bylaw passed, and enjoyed a relatively communicative relationship. The MGB sees no detriment arising from the dispute resolution process.

ISSUE 2: Does the ASP contravene the express terms of the Joint Planning Agreement and thereby cause detriment to the Town?

Town’s Position

[103] The Joint Planning Agreement (JPA) was executed in January 2010, prior to the MD’s adoption of the ASP. The JPA was intended to create a long term integrated management strategy to facilitate successful joint planning. The Town listed several sections of the JPA that were violated by the MD passing the ASP:

- Section 2.1(2), which requires the lands within the Joint Development Area be jointly planned by the two municipalities;
- Section 2.1(4), which requires the municipalities to work together to achieve efficient development while maintaining a “small town” character for the Town and a “rural” character for the MD;
- Section 2.1(12), which limits residential growth within the Development Management Strategy Area to historical MD growth rates; and
- Section 3.1(4), which requires that development applications within the Development Management Strategy Area be reviewed within the context of the JPA’s development strategy.

[104] Mr. Hanhart submitted that the ASP was not jointly planned and that the process used by the MD to adopt the ASP was passed contrary to the provisions of the JPA.

[105] The Town anticipated that it would be able, upon passage of the JPA, to openly discuss the ASP and jointly plan for the area in a manner more consistent with the definitions set out in the JPA. This line of reasoning is supported by the February 9, 2010 letter from the Town’s Mayor, Bill McAlpine, to Reeve Roy McLean of the MD. In the letter Mayor McAlpine wrote

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that the upcoming IDP amendments and associated joint plans must occur prior to site specific proposals such as The ASP. The letter stated:

These comprehensive planning processes cannot be fettered by planning approvals for site specific applications. The key purpose of upcoming IDP amendments and four anticipated joint plans is to determine appropriate land uses, densities and servicing strategies for the four Joint Development Areas in a comprehensive integrated manner that will subsequently guide proposals for individual land holdings such as the subject lands. A clean slate is required for lands within NW-16-20-29-W4M and other lands surrounding Okotoks at this time to move forward with review and adoption of the amendments to the IDP in 2010 and a joint plan for the South JDA.

Given the above, Council for the Town of Okotoks on February 8, 2010 passed the following motion: "The Town of Okotoks requests that the MD of Foothills:

- close the public hearing for the Wind Walk proposals upon consideration of the recently adopted Joint Planning Agreement;
- quash the Wind Walk ASP [File # 09 R 040] and Land Use Redesignation [File # 09 R 041] applications; and
- advise the applicant to resubmit proposals for the subject lands upon completion of IDP amendments expected in late 2010 with amendments if necessary to ensure consistency with the amended IDP.

[106] The Town anticipated that once the JPA was signed, the ASP could be discussed in that context and a determination made if the population projections and servicing requirements were adequately covered. Instead, the MD maintained it could not discuss the ASP, because the public hearing was still open. The Town asked the MD to close the public hearing and defeat second and third reading of the bylaw, but that did not occur. Finally, the Town advised the MD in writing that it objected to the ASP and would pursue an appeal to the MGB.

MD's Position

[107] The MD agreed that the JPA designates the area where the ASP is located as a Joint Development Area (JDA); however, it pointed out that the JPA anticipates commercial development for the area and does not set out defined densities or land uses under section 2.1(13). Both Mr. Riva Cambrin and Ms. Hemingway also stressed that the ASP was already well underway when the JPA was developed and adopted. Further, MD Council received and considered information on the JPA when it re-convened the public hearing in February 2010.

[108] The ASP does not violate the residential growth projections set out in Table 1 of section 2.1(12). The MD has been pursuing different types of the residential development over the last

several years, which have moved toward a more sustainable and efficient type of development. When built out, the population of approximately 1,200 persons in 458 units is within the projected growth and development of Table 1 of the JPA.

[109] The MD did not agree with the Town's argument that the MD violated the JPA by adopting the ASP despite the Town's objections and by not working jointly with the Town to plan the Wind Walk lands. The MD remarked the Town has no interest in pursuing joint planning for the Wind Walk ASP and wishes simply to veto it. Mr. Riva Cambrin submitted that the MD had attempted to engage in good faith negotiations with the Town, but the Town has refused to enter into bona fide negotiations; this left the MD with no option but to proceed with the ASP.

[110] Finally, the MD argued that because the JPA is a contract and not a statutory plan, the MGB has no jurisdiction to enforce its provisions or mediate over them. The MD cited *Rocky View v. City of Calgary*, MGB 094/10, for the proposition that even if the MD contravenes the provision of the JPA, the onus is still on the Town to establish detriment.

Landowner's Position

[111] The Landowner framed the Town's argument as twofold: 1) the JPA mandates country residential development within the MD, while the ASP - which falls into the JPA area - allows for much greater density; 2) the MD breached the JPA by passing the ASP because the Town was opposed to it.

[112] The Landowner argued that the first argument must fail because the JPA is at best ambiguous with respect to the ASP area contained on the map found on page 13 of the JPA and whether it is exempt from consideration under thins JPA as it is one "in process".

[113] The second argument must fail because the Town does not have a 'veto' over MD development proposals. Even in the context of the government's duty to consult with First Nations groups, arguably the highest level of duty to consult, there is no 'veto' (*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511). The Landowner also cited *Sturgeon* for the proposition that consultation means a full, fair, and formal opportunity for input, but does not mean 'veto.'

[114] The Landowner argued that, if anything, it is the Town who has contravened the JPA by failing to enter into bona fide negotiation or consultation on the ASP. Various consultants engaged by the Landowner contacted the Town for information; however, telephone calls and requests for information went unanswered in some cases, while in others very little information was provided. This, the Landowner posited, contravenes the JPA.

[115] Finally, the Landowner agreed with the MD that – as noted in *Rocky View* - the JPA is not a statutory plan, but rather a contract and is, therefore, outside the MGB’s jurisdiction.

MGB Findings

- The ASP does not appear to contravene the terms of the JPA.

MGB Reasons

[116] The JPA is an agreement intended to facilitate discussions about development in the Development Management Strategy Area, which encompasses both the Town and a large swath of surrounding MD lands. Unfortunately, the parties appear to have developed different expectations as to how the JPA applies to the area under dispute.

[117] The Wind Walk ASP is shown in Appendix B of the JPA as part of one of a number of JDAs, which section 1.6 defines as areas that require “additional evaluation of appropriate land uses, densities and servicing strategies”. Section 2.1(3) clarifies that JDAs are to be “planned together which will define future development and may include location, land use, density limits ... and associated servicing requirements as well as responsibilities (both hard and soft services)”. At first sight, these provisions could be taken to support the Town’s view that the JPA intended further consultation on proposed density and land uses for Wind Walk.

[118] On the other hand, the Appendix also shows Wind Walk as one of four “in process” areas, which form parts of various JDAs. Section 3.1 addresses the other three “in process” areas specifically, but is silent as to Wind Walk. Thus, while the precise intent of the JPA with respect to Wind Walk is unclear, its demarcation as “in process” suggests its status as an area where detailed plans are already underway was intended to be recognized (In this connection, the Board recognizes that section 3.1(4) addresses “development applications in process”; however, since the ASP is not a development application, this section sheds limited light on the JPA’s application to Wind Walk).

[119] At the very least, it is clear that both municipalities were aware of the ASP throughout the negotiations for the JPA. Given the advanced stage of the ASP and the extensive discussions and consultation that had already occurred between the developer, MD Council, Town and the general public, it is reasonable to conclude that the JPA was not intended to require the parties to enter into yet further extensive consultation concerning the ASP. Similarly, without specific language to the contrary, it would be unreasonable to believe that the entire charrette and consultation processes already undertaken for the Wind Walk ASP were intended to be subject to a further intermunicipal planning document. The more reasonable interpretation is that the “in process” Wind Walk ASP is simply to be taken into account when planning the less well defined portions of the various JDAs.

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[120] Alternatively, if the MGB is incorrect and the JPA required further joint review of the Wind Walk ASP, the Town provided little evidence that the claimed contravention resulted in detriment for the purposes of section 690. Simple failure to comply with an agreement does not necessarily imply detriment any more than failure to comply with a statutory plan. As noted in *Sturgeon* (page 50 of 84):

The Board does not agree with the proposition that simply because a MDP does not conform to the requirements of the Act or the Land Use Policies, detriment must necessarily result.

[121] As observed earlier in this Order, the Town has already had many opportunities for discussion and input into the ASP. The Town provided insufficient evidence to show how failure to engage in further review pursuant to the JPA has resulted in any significant detriment.

ISSUE 3: Does the ASP create planning uncertainty and thereby cause detriment to the Town?

Town's Position

[122] In efforts to ensure sustainability objectives are achieved, the Town has undertaken numerous studies under its MDP, the Legacy Plan. These studies represent a significant expenditure of resources and are premised on the Town's finite growth model. The Town expressed that the introduction of the ASP challenges key assumptions of the Legacy Plan and compromises all of the Town's long term planning investment. If a small town is permitted to develop on the edge of the Town, significant forethought and regional planning is required by municipalities who deliver services. Care must be taken to ensure that there is no adverse impact on service delivery to residents of Okotoks and the small population within the immediate vicinity of the Town.

[123] In addition, Mr. Hanhart indicated that violation of the intermunicipal planning documents deteriorates the relationship between the municipalities. If the MD is allowed to contravene these documents, it renders meaningless any intermunicipal planning and cooperation as contemplated by the Land Use Policies and by previous Board decisions. The Town believed that discussion about the ASP was going to occur after the municipalities entered into the JPA, however, that was not the case. Instead, the MD advised that since the ASP was in progress it was not included in discussions about the JPA.

[124] In previous MGB decisions, effects such as uncertainty and the deterioration of intermunicipal relationships and cooperation can constitute detrimental effect. The evidence before the MGB clearly establishes detriment to the Town. Mr. Hanhart referred to the IDP and JPA, and their overall scheme to assist the joint planning of developments within the

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intermunicipal fringe. The Town asserted that the MD acted unilaterally and blatantly in contravention of the intermunicipal planning documents. The Town is placed in a worse position than if there were no intermunicipal planning arrangements. If the MD can step outside of the planning agreements whenever they want, the Town is left with no certainty whatsoever. The resulting uncertainty surrounding intermunicipal planning has a detrimental effect on the Town.

[125] Mr. Hanhart submitted that that ASP contravenes the urban growth portion of the IDP (sections 3.4.1-3.4.3), thereby jeopardizing the Town's long term planning. The IDP explicitly shows which lands in the MD (at the time the IDP was adopted) are to be annexed into the Town for urbanization. The ASP is clearly ad hoc urbanization and its associated population density and growth detrimentally affect long term planning (e.g. services and infrastructure) made by the Town under its MDP (the Legacy Plan) and the IDP. The Town stressed that the IDP is a long term plan that requires mandatory review in 2017. Its intent was to provide planning stability for the Town, allowing planning for servicing and infrastructure upgrades over the life of the plan.

[126] The IDP recognizes the potential for amendment within the 20-year plan horizon, yet no amendment to the IDP was sought by the MD or developer. This creates an atmosphere of perpetual uncertainty, whereby the Town never knows what new development may occur on its outskirts or how those developments will alter the Town's service delivery. Mr. Hanhart requested the MGB to suspend approval of the ASP and require the plan to be negotiated under the IDP and the JPA.

[127] Mr. Hanhart also referred to section 638 of the Act, which states that all statutory plans adopted by a municipality must be consistent. The Town submitted that its Legacy Plan (MDP) is consistent with the IDP, but that the ASP is not. The Town relied on this section to demonstrate that there is an expectation of conformity with the IDP, whilst non-conformity creates uncertainty.

[128] Mr. Hanhart and Mr. Oness both stated that because the MD has approved the ASP, the Town has no option but to plan as if the development will proceed. This requires the Town undertake future planning to accommodate the impacts of the ASP. This includes hard and soft services such as fire and emergency services, recreational services, transportation and roadway infrastructure, and storm water drainage.

[129] Secondly, Mr. Berzins submitted that the approval of the ASP without confirmation of water creates planning uncertainty - as there may be insufficient water to allow development to proceed - yet the Town is forced to plan for infrastructure expenditures to accommodate the ASP. It argues that the adoption of the ASP without confirmation of water supply is premature, and as a result it must carry out additional is capital planning that may never be required.

[130] Mr. Hanhart drew the Board's attention to the seven strategies set out in the Province's 2008 Land Use Framework to implement effective regional planning and growth management.

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Strategy 3 incorporates cumulative effects management into regional planning and contemplates two types of cumulative effects from development: cumulative effects of individual developments and cumulative effects of multiple developments.

[131] The individual developments subsection of Strategy 3 addresses the multiple impacts that an individual development has on its surroundings (e.g. land, air, water, etc.). If built, the ASP will affect numerous aspects of the Town which have been comprehensively planned to manage growth. The Town specifically pointed to the ASP's impact on the Town's Legacy Plan (growth model). Under the Legacy Plan, all infrastructure within the Town was planned based on a finite growth model. The addition of the ASP will exceed the capacity thresholds of the Town's core services (fire, recreation, library, roads, and storm water drainage) and, as a result, will detrimentally impact the sustainability and growth management of Okotoks and the surrounding region. Mr. Hanhart concluded his submission on Strategy 3 by opining that the MD decision to grant the ASP has not taken a cumulative effects approach and is, therefore, inconsistent with provincial direction under the LUF.

[132] Mr. Hanhart continued that the second type of cumulative effect identified in the LUF is the effect that multiple developments, if not properly planned, will have on their surroundings (e.g. land, water, and air). The ASP, if permitted to be built, will encourage the 'build it as they come' syndrome, thereby signalling to the development community that there is a way to bypass the Town's long term Legacy Plan, the statutory framework of the IDP, and basic fundamental land use economics as driven by planning policy.

[133] The Town specifically identified the proposed water source as a cumulative effects issue. The Town stated, in reference to the proposed pipeline from High River through Aldersyde that if implemented, would provide a separate water source to all lands south of Highway 7. The Town emphasized that this would ultimately pressure the development of this area in the same manner and in similar densities to the ASP, thereby creating a cumulative effect on the Town. Mr. Oness stated that the MD and the developer have not adequately budgeted for the cost and maintenance of the pipeline. The future cost might be borne by the Town itself.

MD's Position

[134] The MD pointed out that the ASP is outside of the Town's jurisdiction and that, although its associated growth will impact the Town, planning matters fall within the authority of the MD. Both Mr. Riva Cambrin and Ms. Hemingway asserted that the progression from traditional country residential development, which is not sustainable, towards more efficient high density development serviced by communal servicing represents consideration of cumulative effects by limiting the amount of agricultural lands, watershed lands, aspen parklands, water bodies and riparian areas that are impacted by residential development as contemplated by the LUF and PLUP.

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[135] The MD submitted that there is nothing in the complaint before the MGB that will cause actual detriment to the Town. The MD once again cited *Sturgeon*, whereby the MGB did not accept the argument that mere non-compliance with the Land Use Policies is a detriment in and of itself. Rather, actual detriment must be shown. The MD noted that it was the Town, and its approach to the ASP that violated section 3.02 of the Provincial Land Use Policies, which mandates that the interests of both municipalities must be respected and that planning must be carried out in a manner that does not inhibit or preclude appropriate long term uses. The MD reiterated that the Town's position on the ASP was that it should not occur; therefore, it was the Town that failed to respect the interests of both municipalities.

[136] Furthermore, Strategy 3 of the LUF states that a cumulative effects management approach will be used in regional plans. The LUF does not mandate a cumulative effects management approach in either the current ASP or local planning documents.

[137] The MD noted that in its MDP, adopted in 2010, residential development policies had changed to encourage cluster residential and hamlet residential as the preferred form of residential development. The ASP is consistent with the direction of the MDP. Mr. Riva Cambrin also noted that the Calgary Metropolitan Plan had contemplated a population of 40,000 to 50,000 in the vicinity of Okotoks. The previous mayor of Okotoks, Mr. McAlpine, had suggested that the Plan recognize the ASP in this population projection. Mr. McAlpine had also speculated that if Okotoks could secure water licenses, that it might consider annexing the ASP in the future. Mr. Riva Cambrin noted that this comment was made in passing and reflected Mr. McAlpine's thoughts and was not a motion of Town Council.

[138] In a discussion in the May 2010 IMC meeting, Mr. Riva Cambrin on behalf of MD council, had suggested a range of options for discussing the ASP, and had put three options on the table to discuss the ASP. The first was entering into mediation, the second was arbitration and the third was that both municipalities sit down and undertake a joint planning process for the ASP. Mr. Riva Cambrin noted that the two councils discussed the development and instead opted to have a meeting with the developer. Further discussion about dispute resolution did not occur. The meeting with the developer did occur on June 24, 2010 and questions were asked by both councils.

[139] The MD stated that the municipalities have a history of working together on regional projects and continue to have cost sharing and mutual aid agreements on hard and soft infrastructure. The historical partnership is not in jeopardy. Both municipalities are part of a housing foundation, a regional services commission, and are members of the Marigold Library system. Along with the Town of High River, the municipalities have been working on the Highway 2A Industrial Area Structure Plan and the Town and MD cooperate on a number agreements and cost sharing arrangements including fire services agreements, mutual aid agreements and recreation agreements.

[140] Mr. Riva Cambrin maintained that the primary impediment to cooperation on this ASP was the Town's objection to the development as a concept, rather than to some specific aspect of the development. The MD cited the Town's previous actions, which indicate that the Town was looking for extensive involvement or a veto over the MD's planning. The MD referred to *Sturgeon, Drayton Valley v. Brazeau County*, MGB 181/99, and *Edmonton v. Strathcona*, MGB 098/08, for the proposition that consultation, cooperation, and coordination between adjoining municipalities means a full fair and formal opportunity for input. The MD remarked that this does not mean a veto or extensive involvement in planning

Landowner's Position

[141] The Landowner stated during its non-suit application that the presence of uncertainty does not show detriment, since uncertainty is an inherent part planning for future unknown events in unknown circumstances. It also cited *Rocky View County*, MGB 094/10, to support its view that no detriment occurred as a result of planning uncertainty. In that case, the County claimed that a breach of an annexation agreement with the City of Calgary would degrade faith in intermunicipal negotiations; however, the MGB found that argument to be without foundation. It held that while disagreement and the adversarial nature of section 690 disputes can strain the relationship between municipalities for a time, ultimately elected officials will continue to act in the public interest. The Landowner submitted that similarly in case now before the Board, planning uncertainty and the potential straining of intermunicipal relations are not detrimental to the Town.

MGB Finding

- The adoption of the ASP may cause some planning uncertainty; however, the link between uncertainty and detriment was not established.

MGB Reasons

[142] It is self evident that certainty facilitates planning while uncertainty introduces complexity into the planning of any municipality. One cannot plan in a void of information. For this reason, the Act requires certain municipalities to adopt MDPs and facilitates joint planning between neighbouring municipalities by providing for IDPs.

[143] It is equally self evident that plans and planning documents must be able to respond to changing circumstances. Similarly, municipalities are autonomous and retain authority to change their planning priorities, provided they do so responsibly without imposing undue hardship or detriment on neighbouring municipalities. Planning is an iterative process and a mere change in plan – even one that does not conform to previously shared plans - does not necessarily cause planning uncertainty or significant detriment to a neighbouring municipality.

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[144] Both the MD and the Town have developed MDPs to help guide future planning. These are documents over which each municipality retains authority and which each may adjust to reflect changing circumstances. Indeed, the MD has recently improved and updated its MDP. For its part, the Town has established a clear and unique planning vision in its Legacy Plan. This plan is a comprehensive document that defines how and where the Town intends to pursue growth within limitations imposed by scarce water resources. The Legacy plan has been successful in helping both the Town and the MD perform land planning.

[145] Historically, the Town and MD have co-operated effectively to develop joint planning documents - notably the IDP and JPA. They have also communicated effectively where proposals for new localized plans are inconsistent with the aging IDP. With the exception of Wind Walk, the two municipalities have succeeded in establishing processes to come to mutually acceptable solutions. The proposed plans for Gold Medal, Sandstone Springs and Green Haven are examples of such co-operation.

[146] As noted previously, Wind Walk is inconsistent with the spirit of the IDP, which envisions mainly rural development within the MD. It also clashes with the Town's well established vision of restrained urban development within its boundaries and rural or country residential development on adjacent land in the MD. However, while the ASP is undoubtedly inconsistent with the Town's vision for development on land adjacent to its boundaries, the Board does not accept that it introduces significant planning uncertainty. The ASP is clear and well articulated. Its planned land uses are consistent with the uses of adjacent land in the Town. As will be outlined in other sections of this order, the services provided to the ASP are also largely independent of the Town – so impacts on the Town's planning are unlikely to be extensive. Finally, the Board observes that the Town currently has no plans to annex the area for different uses.

[147] Nor does the MGB accept that the MD's approval of the ASP illustrates unpredictable planning behavior or shows that the well established co-operative and communicative relationship between the Town and MD is in any danger. On the contrary, the parties have a record of reaching mutually acceptable solutions where possible. While disagreement remains in the case of Wind Walk, the two municipalities have enjoyed a communicative relationship and the Town has had many opportunities for comment. Going forward, it appears that the JPA will provide a new framework for joint planning and may soon form the basis of an amended IDP. Under these circumstances, the Board finds no reasonable likelihood of significant detriment owing to planning uncertainty in the wake of the ASPs approval.

ISSUE 4: Does the ASP's proposed potable water plan cause detriment to the Town by affecting:**Sub-issue A: The Town's water usage and availability?*****Town's Position***

[148] Mr. Bill Berzins, a principal of Fossil Water Corporation, presented evidence on behalf of the Town. Mr. Berzins was previously the Chair of the Bow River Basin Council and currently assists clients in a number of areas including securing water licences. Mr. Berzins explained that water resources are scarce in the subject area and there are significant demands on existing resources. At this point, there is insufficient information available to determine whether there are sufficient potable water resources to support Phase I or subsequent phases of the ASP. Approval of the ASP without a proper investigation into the availability of sufficient potable water constitutes detriment, as does failure to determine whether the ASP development will affect the overall availability of water resources for the Town and broader region.

[149] The Town advised that both municipalities obtain their water supply from two sources: the Sheep River/High River system, and ground water. These rivers have had a moratorium placed on water licenses. Further, the Town is concerned that the groundwater sources proposed will be accessing the same aquifer used by the Town in its shallow wells located in the north east part of the Town adjacent to the Sheep River. With the approval of the ASP, the MD has endorsed an urban style development concept without considering the detrimental effects that this decision will have on the availability of water. Before taking this step, there should have been confirmation that the proposed water sources do not impact the availability and security of water resources for the Town. The Town noted that one reason it entered into the JPA was to ensure there would be sufficient water resources for its proposed and approved developments.

[150] Although the ASP's water license application for groundwater extraction has been submitted to Alberta Environment, it does not comply with the requirements of the *Alberta Land Stewardship Act*, because it includes neither an impact assessment nor a groundwater management plan. Furthermore, Mr. Berzins opined that the application is not complete, because the groundwater supply identified will likely require treatment owing to the presence of dissolved solids and elevated hardness. There is no indication how this water will be treated. As all drainage from the ASP flows through the Town, additional pollutant loading is expected in the overland drainage channel in the Town and further downstream in the Sheep River. All of these considerations show the ASP is detrimental to the Town's sustainability model.

[151] The Landowner has also planned insufficiently to deal with shortages owing to potential errors in its assumptions about aquifer yield and per capita consumption, or owing to drought or decreases in the aquifer over time. Any shortage would impact the Town's water supply, because

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the Town will face public pressure to make up shortfalls. This lack of planning is once again detrimental to the Town.

[152] In response to questions by the Landowner, Mr. Berzins contended that the water consumption in the region is higher than figures presented by the Landowner which were pulled from the EPCOR website. The climate is different in Okotoks, which is in the grassland region, than that of Edmonton which is in the parkland region. The Town's emphasis on sustainability occurred before there licensing restrictions on the South Saskatchewan River Basin (SSRB), not as a result. The Town has been actively seeking licenses to augment its current licenses so that its growth model can be sustained. As some of the current licenses are junior licences, the Town believes that they ought not to rely on these licenses if they can secure senior licenses.

[153] The Town is also concerned about the proposed supplementary water source from the Town of High River, via a pipeline extension from the Aldersyde industrial area. Mr. Berzins stated that the use of water from the Highwood River will increase the amount drawn from the Highwood River by the Town of High River. And, he argued, there would be a risk of failing to meet in-stream objectives downstream of the diversion from the Highwood Management Plant. Currently, the Highwood River assimilates effluent that is extremely high in phosphorous (12.0 parts per billion) compared to other locations such as the Town of Strathmore at (0.81 parts per billion). This situation would worsen with additional water and wastewater being treated through the Town of High River's system. The proposed diversion from the Highwood River may also be contrary to the South Saskatchewan River Basin Water Management Plan and Highwood Management Plan. These factors suggest that this proposed alternate source cannot be relied upon.

MD's Position

[154] The MD reiterated its view that water issues are not properly before the MGB in a section 690 appeal; rather, they are properly decided by Alberta Environment and the Environmental Appeals Board.

[155] It also indicated that in accordance with sections 6.4.3 and 6.4.5 of the ASP, the necessary LUB redesignation (amendment) which would permit Phase I and II of the Wind Walk development to proceed will not receive third reading from Council until the developer has secured all necessary Alberta Environment licenses and approvals with respect to water supply. The water licensing and approval process ensures the Town will not experience any detrimental effect from water shortages.

[156] The MD highlighted that although drought in the region is a possibility, there is no reason to suggest that the Town would be responsible for providing some of its water surplus to the development to meet any shortfalls. This alleged detriment is too remote and outside the jurisdiction of the Town.

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Landowner's Position

[157] The Landowner submitted that it is considering three sources of potable water for the ASP: service by well; service from High River via pipeline; and inter and intra basin licenses. The Landowner acknowledged that water licences would have to be procured from Alberta Environment before any of the above three sources could be used.

[158] The Landowner brought to the MGB's attention that Phase I of the ASP will be serviced by a ground water well and that testing has shown that sufficient water is available. The Landowner noted that the well tests met Alberta Environment standards.

[159] The Landowner also presented the MGB with expert testimony from Dr. Nielsen, a hydrogeologist with Stantec. Dr. Nielsen's testimony demonstrated that the proposed water well will draw from a different hydrological stratum than those that the Town currently uses, and would, therefore, not affect the Town's water supply. Dr. Nielsen also noted that if the ASP only used ground water for Phase I, that would account for 67% of the ground water capacity of the aquifer, and if water conservation measures such as storm water irrigation and/or xeriscaping were used the residential, commercial and civic use of Phase I would only be 45% of the capacity of the aquifer.

[160] Dr. Nielsen concluded his presentation by stating that Alberta Environment has deemed the application for the ground water well complete under the *Water Act*. The ASP has proven ground water capacity that is sufficient to service all three phases of the development. These ground water sources have no hydraulic connection to surface water nor are they under the influence of surface water. In addition, testing has proven that the cumulative effects of withdrawing at full capacity are within accepted standards and guidelines of Alberta Environment.

[161] Evidence was also given by Tom Gilliss, an engineer with MPE Engineering, for the Landowner about the potential for extending water and wastewater services from the Highway 2A Industrial Area Structure Plan at Aldersyde. The services to Aldersyde originate in the Town of High River. Extension of a water and wastewater line to the ASP would involve construction of 6.4 kilometres of pipeline and would cost approximately 20 million dollars. Mr. Gilliss understood that the pipeline was being constructed by way of a public and private partnership. There had been discussions during the development of the Highway 2A Plan about the need to service the area and High River and the MD had agreed that servicing would occur through the High River System. Upon questioning, Mr. Gilliss noted that the ASP was currently considered as the only client on the line, but that that the partners could connect other developments to the line if capacity was available.

[162] Based on the above testimony, the Landowner concluded that since the ASP lands are outside of the Town's boundaries and since the potable water solutions proposed in the ASP do

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not impact the Town's water supply, the Town will not be impacted by these solutions. Furthermore, in the case of prolonged drought, water use from the proposed well could be reduced so as to not exceed the aquifer's capacity. As such, the Town's claim of detriment is too remote.

MGB Findings

- Phase I of the ASP is serviceable by an aquifer not used by the Town of Okotoks.
- There are alternative plans for water servicing to the ASP through extension of service from the Highway 2A Industrial Area Structure Plan or through the acquisition of other water licenses.
- The ASP does not cause detriment to the Town's ability to secure an adequate water supply.

MGB Reasons

[163] There is no question that licensing and approvals concerning water and wastewater are within the province of the Environmental Appeal Board. Such matters are not for the MGB to decide, since the MGB's expertise lies in land development and planning rather than engineering and hydrogeology. Having said this, it is equally clear that the availability or potential for water and wastewater servicing are matters at the core of municipal and development planning. Similarly, actions taken in one municipality concerning water and wastewater servicing can have detrimental effects on a neighbouring municipality and its development if undertaken improperly or without adequate consideration for the neighbouring municipality's needs and aspirations. These matters are thus highly relevant in a section 690 appeal.

[164] In this case, one of the Town's concerns is that water scarcity in the region means the development contemplated by the ASP will have a detrimental effect on the water supply that the Town needs for present and future development. It is also concerned that development with insufficient planning for contingencies such as drought and insufficient consideration of local climatic influences may force the Town to supplement the ASP's supply from its own resources at some point in the future. For these reasons, it says the ASP should not have been passed at least until further work has been done to ensure the Town's water supply will not be detrimentally affected.

[165] In the Board's view, these legitimate planning concerns have been answered convincingly by evidence from the MD and Landowner, and especially by the testimony of Dr. Nielsen, who – as a hydrogeologist - has expertise in the area of groundwater and aquifers. The MD and Landowner indicated that they plan to service Phase I of the ASP using a groundwater source. Further, Dr. Nielsen's report indicates that the aquifer in question is adequate to supply Phase I. Dr. Nielsen also testified that the aquifer proposed for the ASP is not connected to any of the aquifers currently used by the Town. The MGB accepts this evidence and concludes there that

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there is most likely a source of water for the ASP Phase I that is distinct in its hydrogeology and can be drawn from without any detrimental effect on the Town.

[166] In reaching this conclusion, the MGB did not overlook the report submitted from another hydrogeologist, Dr. Fennell. Though he did not testify in person, his written comments on the Nielsen report were presented by Mr. Berzins. Dr. Fennell's report recommends further testing before development takes place to ensure long term sustainability of the proposed groundwater resource. However, as pointed out by Dr. Fennell, the tests carried out to date suggest a viable water source is likely available and there are as yet no contradictory studies. In the Board's view, the work undertaken to date provides a reasonable basis to proceed to the ASP stage. In this regard, the Board notes that an ASP is still a relatively high level planning document and leaves scope for further studies at later stages prior to subdivision or development.

[167] In addition to Dr. Nielsen's report, the evidence of Mr. Gilliss established that there are alternate plans for water servicing in relation to phases II and III. For example, there is a potential for extending services from the Highway 2A Industrial Area Structure Plan, or there may be other licenses on the Sheep or the Highwood Rivers that have already been secured by the Landowner.

[168] The evidence of Dr. Nielsen and Mr. Gilliss are sufficient to show that the Landowner and MD have considered questions concerning water availability and servicing and the potential effects on the Town in enough depth to warrant passing the ASP under appeal. As noted above, it is not the Board's role to establish whether licensing and approvals should be granted, and the MGB makes no comment as to whether the Environmental Appeals Board may or may not find deficiencies in this regard. However, from a land planning perspective, the Board is satisfied that planning for water servicing has progressed to the point where it is appropriate to pass the ASP now under appeal and that no detriment to the Town has been shown. Finally, the MGB observes that the ASP contains policies which require the Landowner to secure water supplies prior to the approval of any phase of the development. Thus, the ASP includes an appropriate safeguard to ensure that development will not occur if it transpires that - contrary to current expectations - a sufficient water supply cannot be secured.

[169] Related concerns for the Town include competition for potable water licenses and the impact wastewater servicing arrangements will have on the Town's ability to plan future development. These topics are addressed in subsequent sections of this Order.

Sub-issue B: The Town's ability to secure alternative water licenses?

Town's Position

[170] The Town submitted that the lack of water in the Okotoks/MD region is a serious concern for the Town. In addition, it does not feel that a sustainable water supply has been secured for the

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ASP. Mr. Berzins has been contracted by the Town since 2006. Since then the Town, with the assistance of Mr. Berzins, has identified and has been actively contacting license holders in the Bow River Basin, in order to ensure that the Town has adequate water supplies for its population. There is no evidence to suggest that there is an inventory of licenses within the Sheep and Highwood River basins available for transfer to the ASP to satisfy its water requirements. The Town is concerned that this will contribute to a situation like the Balzac Mall, in which development approvals were granted in advance of securing a water supply, to demonstrate the untenable position that is created when approvals precede the confirmation of a secure water supply. Using Balzac as an example, the price of securing a water licence went from \$5,000 dollars to \$7,500 dollars per acre foot due to the eleventh hour efforts to secure water for the partially completed development.

[171] The Town pointed to the testimony of Mr. Berzins, who stated that the Highwood and Sheep Rivers are subject to the South Saskatchewan Water Management Plan and are hampered by limited water license availability. The Town has a mixture of senior and junior water licenses and is trying to secure additional senior licenses. Mr. Berzins explained that in a time of drought, only senior licenses are allowed to continue to draw water. Currently the Town needs to obtain additional licenses, as previously their past practice was to apply only when a licence was needed. When the moratorium on water licences was introduced on the South Saskatchewan River Basin, the Town was left at a disadvantage.

[172] At the current time, the Town needs to secure more licences for areas of the Town which are not yet developed. Because the ASP will consume some of the available license capacity, or may be competing for the same licenses, it puts the ASP (and the MD) into direct competition with the Town. The ASP will have an immediate (and arguably irreversible) impact on the water license market by increasing market valuations. This, in the Town's appraisal, is detrimental to Town's growth model.

MD's Position

[173] The MD did not make extensive submissions on this topic, but supported the Landowner's position that competition between municipalities is insufficient to ground a finding of detriment.

Landowner's Position

[174] The Landowner reframed the Town's argument as saying, in effect, that the approval of the ASP before the water license is issued creates planning uncertainty. The Landowner submitted that this position fails to recognize that numerous approvals must be obtained for planning, and there is no specified order in which they must be obtained. While each approval is necessary, none is sufficient on its own for a development to proceed. The Landowner stated that concerns over another "Balzac Mall" are unfounded as the ASP specifically states that the

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requisite development permits will not be granted until a potable water source is located, and a licence granted by Alberta Environment.

[175] In response to Mr. Berzins' testimony about the potential for competition and increased prices for water licences, the Landowner noted that none of this evidence had been given under seal as expert evidence. Further, Mr. Berzins presented nothing to support a conclusion that the Landowner is looking for licenses on the Sheep River or that the ASP would interfere with licences on the Sheep River. In contrast, the Landowner's witnesses, Dr. Neilsen and Mr. Gilliss, stated that the water sources were distinct from the Town's and were not licences on the Sheep River. The Landowner also expressed the opinion that Alberta Environment and the Environmental Appeals Board have jurisdiction over water licences, not the MGB. It concluded by stating that the Town had not provided substantive evidence demonstrating that the ASP is detrimental to the Town's ability to secure alternative water licenses.

MGB Findings

- The ASP's proposed water plan does not have a detrimental effect on the Town's ability to secure water licences.

MGB Reasons

[176] The Town raised concerns over the ASP's ongoing search for water licenses in the South Saskatchewan River Basin (SSRB), arguing that its entrance into the water "market" poses a competitive risk in terms of price and availability. However, the MGB does not see its role as the judge of who should get access to water resources and at what price. The natural increase in demand for resources that follows in the wake of responsible development is not a detriment for the purposes of section 690. Otherwise, every new development would pose some degree of detriment to every existing development. Undoubtedly, water licenses within the SSRB are limited. Nonetheless, competition created by the Landowner's search for additional water licenses for the Wind Walk development is not an issue specific to the Town. Competition for water licenses in the SSRB is a regional issue. There may well be other parties in competition for regional water licenses who are not involved in this appeal. In the Board's view, competition that may be created by the development contemplated in the ASP cannot be considered detrimental to the Town under these circumstances.

[177] The Town also raised a concern that the ASP now leaves the door open for development to proceed without securing adequate water servicing. The MGB believes this concern is ill founded, since the subject land remains zoned as "Direct Control" (Policy 4.1.5) and the ASP is explicit that no development permit will be approved by the MD until a water source has been secured.

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[178] Having said this, the Board notes that it is not responsible for weighing the adequacy or compliance of water licensing applications, but rather for determining whether a statutory plan and the proposals within it are detrimental to an adjacent municipality. The ASP states that water licenses are required and the Landowner has taken significant steps toward fulfilling this requirement in a responsible fashion. These steps include listening to the Town's concerns, investigating a groundwater source, applying for the license, and investigating the extension of services from an adjacent area. Though few details were provided, the Landowner also appears to have secured an additional license and offered to share it with the Town. The Board finds no evidence of significant detriment to the Town under these circumstances.

ISSUE 5: Does the ASP's storm water management plan cause detriment to the Town?

Town's Position

[179] Mr. Berzins provided evidence on stormwater drainage through his presentation on sustainable water planning. The Town noted that existing storm water from the ASP flows into and through the Town on its way to the Sheep River. The ASP's design concept for storm water continues this system with all storm water discharging into the Town's storm water collection system before being discharged into the Sheep River. After development, more water will flow off of the ASP lands, leading to a greater volume of water discharging into the Town. This will result in prolonged periods of greater flow and more frequent high flow events for the Town. Historically, flooding has been a major issue for the Town. The ASP will increase the occurrence of flooding and impact the Town's ability to dispose of its storm water.

[180] When onsite wastewater treatment was proposed, the Town had significant concerns with the potential for cross connections between the wastewater treatment facility and the storm water drainage system. During significant storm events, more nutrients are discharged. The additional volumes and possible pollutants from the ASP's stormwater facilities would then be discharged into the storm system and ultimately into the Sheep River. This would decrease the Town's ability to obtain additional water licenses, because the overall water quality would decrease. Mr. Berzins indicated that the ASP's stormwater management plan should be tied to the Town's to ensure that stormwater is managed and does not contribute to additional flooding or contamination in the Sheep River.

MD's Position

[181] The MD submitted that pursuant to section 6.2.4 of the ASP, a detailed storm water management plan must be prepared at the subdivision stage to the satisfaction of the MD, Alberta Environment, and Alberta Transportation before the subdivision authority will grant the subdivision approval. That storm water management system must incorporate, where feasible

and practical, the best management practices as outlined in Alberta Environment's Guidelines for Storm Water Management in Alberta.

Landowner's Position

[182] The Landowner argued that Mr. Berzins' concerns about storm water management are unfounded given that detailed engineering of the storm water facilities are a condition of subdivision approval. Since stormwater management arrangements would be included in a subdivision approval, they would be the subject of a development agreement and would be required to comply with Alberta Environment guidelines and approval.

[183] Mr. Dennis Westhoff, the engineer who prepared the storm water management plan for the ASP, also presented evidence on the proposed stormwater management plan. Mr. Westhoff indicated that the ASP's Drainage System Concept Plan has three objectives: to minimize impacts on the Sheep River watershed with respect to water quality and quantity; to preserve natural flow patterns where feasible; and to incorporate low impact development strategies, including water reuse systems.

[184] The plan intends to use a naturalized drainage system that will retain water above ground level where feasible and provide an opportunity for natural processes such as filtration, sedimentation and infiltration to enhance water quality. This system will minimize, detain and retain post development run off volumes close to their source to simulate predevelopment flows. Mr. Westhoff concluded by stating that the plan is designed well above Alberta Environment standards.

[185] Given the current proposal for piping the wastewater for treatment in the Town of High River, cross connection between the storm and waste water systems are eliminated.

MGB Findings

- The evidence does not show the proposed storm water drainage plan will have a detrimental effect on the Town.

MGB Reasons

[186] The MGB was presented with three arguments of detriment concerning the ASP's storm water drainage plan: the potential mixing of wastewater and storm water runoff; the amount of storm water runoff from the Wind Walk development; and the quality of storm water runoff from the Wind Walk development through the Town.

[187] The original wastewater plan proposed that the ASP would have an on-site wastewater facility. However, in light of the Town's concerns, an alternate proposal has been advanced to

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have wastewater treated in the Town of High River. The MGB accepts Mr. Westhoff's evidence that the plans for this system have been amended by the developers so that only storm water will be held onsite. With wastewater being taken off site, there is no opportunity for mixing. This alleviates the Town's first concern.

[188] The MGB also accepts Mr. Westhoff's testimony that the proposed storm water system will include retention ponds and incorporate various strategies to manage the stormwater onsite. Mr. Westhoff indicated that under the proposed storm water management system, the Wind Walk site will not produce appreciably more runoff than the undeveloped quarter. As no contradictory evidence was presented by the Town, the MGB finds that the storm water plan will not result in detriment owing to the quantity of storm water running through the Town. This alleviates the Town's second concern.

[189] With respect to quality of water runoff, Mr. Westhoff indicated that the proposed storm water plan not only removes the possibility of mixing storm water with wastewater, but also incorporates opportunities to apply natural processes to water runoff such as filtration, sedimentation and infiltration. These processes are designed to enhance water quality. Again, as no contradictory expert evidence was presented by the Town and the MGB finds that the storm water plan will not result in detriment owing to the amount or quality of storm water running through the Town.

ISSUE 6: Does the ASP's wastewater plan cause detriment to the Town?

Town's Position

[190] The proposed wastewater pipeline extension from the ASP to the Town of High River would be detrimental to the Town of Okotoks for several reasons that were explained by Mr. Berzins. He first cited a Statistics Canada study, which demonstrates that the required expenditures for municipal utility or water assets are growing at a much greater rate than revenue coming from the sale or taxation of serviced properties. The resulting gap between expenditures and revenues creates pressure on municipalities and the province to provide repair and replacement funding. The detriment caused by the ASP, as stated by Mr. Berzins, is that at some point there will be competition for limited infrastructure funding between the MD and Town.

[191] Mr. Berzins also explained that the SSRB is under a management plan because of a shortage of water. As such, use of water, quality of return flow and nutrient balance within the river basin must all be considered carefully. Under the cumulative effects approach to sustainable management, municipal use of a river system and the ability of that river system to take up nutrient load is critical to the overall water supply's sustainability.

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[192] The Town of High River system takes water from the Highwood River, which is located on the Bow River sub-basin. The High River wastewater treatment plant then discharges through Frank Lake, which is on the Oldman River system. The effect is to transfer water out of the Bow River system, thus reducing the quantity of water available in the Highwood River below the confluence of the Sheep and Bow Rivers. This stretch of river is already vulnerable due to dissolved oxygen excursion. An additional reduction in the total quantity of water will further reduce the river's ability to assimilate nutrient loading and storm water in-flows during extreme events.

[193] Piping wastewater to High River will also mean increasing the flow of wastewater to the High River treatment facility. This facility has been ordered to upgrade in order to handle even its current capacity; therefore, adding the ASP wastewater will only compound the problem. Since the High River wastewater treatment plan discharges into Frank Lake it the proposed ASP wastewater plan will also increase the nutrient load into the lake, making it less able to treat water. With water that contains more nutrients being discharged into it, the overall assimilative capacity of the SSRB will be reduced. Thus, when the Town looks for transfers or approvals under APEA, it will be constrained by the reduction in the quality and quantity of water downstream the Highwood River.

[194] Finally, Mr. Berzins noted that aerosols may be released into the air in the operation of the pipeline, which travels over a long distance.

MD's Position

[195] Both Mr. Riva Cambrin and Ms. Hemingway noted that in accordance with sections 6.4.3 and 6.4.5 of the ASP, the necessary Land Use Bylaw re-designation, which would permit Phase I and II of the ASP development to proceed, will not receive third reading from MD Council until the developer has secured all necessary Alberta Environment licenses and approvals with respect to water supply, treatment, and distribution.

[196] The MD further noted that on May 9, 2011, Council for the Town of High River passed a resolution directing its administration to negotiate a new water and waste water service agreement with the MD, which would include servicing of the Wind Walk development. The MD submitted that water and wastewater servicing from the Town of High River fully addressed any of the Town's concerns. The reason that these concerns were addressed was that originally, the ASP was to be serviced by an onsite sewage treatment plant. The Town was concerned about the proximity of the onsite sewage treatment plant to the storm water system. One of the concerns relayed by the Town was that the stormwater system would discharge into the Town's storm water system and then into the Sheep River. The Town was also concerned about proximity of the onsite sewage treatment plant to both domestic ground water wells within the MD as well as the interim communal water supply proposed for Phase I.

Landowner's Position

[197] The Landowner presented testimony from Tom Gilliss, MPE Engineering Ltd., concerning the development of a water and wastewater pipeline from Highway 2A Industrial Area Corridor ASP (Aldersyde) to the subject lands in the ASP. The origin of the servicing to Aldersyde is the Town of High River. If the servicing were extended, an upgrade to High River's water and wastewater system would be required. Using High River would create a sub-regional servicing strategy, which would have the capacity for future developments. Like an "anchor tenant" or catalyst, the ASP could initiate regional co-operation on water and wastewater resources. A public-private partnership would provide economic benefits to the MD and the Town of High River as there are government grants available for intermunicipal infrastructure projects.

[198] The Landowner responded to the Town's concerns that there will be a higher surcharge to cover operating and maintenance costs for these utilities by stating that infrastructure costs between the MD and developer are outside the Town's jurisdiction. The *Sturgeon* decision established that effects on land near, but not within a municipality's boundaries, could be detrimental to the municipality, but only in areas where annexation is impending. The Town has stated that it does not intend to extend its boundaries south of Highway 7. The infrastructure costs contemplated by the extension of services to the ASP from the Town of High River should not concern Okotoks, and the proposed wastewater plan is not a detriment to the Town.

[199] With respect to Mr. Berzins' testimony, the Landowner emphasized that the evidence was not given over his seal as a professional engineer, and he did not testify as an expert; further, his conclusions about the gap between utility revenues and capital expenditures were speculative and remote. Although he testified that the developer's search for and potential acquisition of a water licence might interfere with the Town's ability to procure licences and might raise the cost of a given water licence, Mr. Berzins did not show that the ASP was looking for, or interfering with, licences on the Sheep River. Finally, the Landowner reiterated that Alberta Environment and the Environmental Appeals Board have jurisdiction over water licences, not the MGB.

MGB Findings

- The proposed wastewater treatment options demonstrate no likelihood of detriment to the Town.

MGB Reasons

[200] The Landowner's plan for development under the ASP is that waste water from the Wind Walk lands will flow through the MD and be treated by the Town of High River, circumventing the Town. Previous plans for the Wind Walk development included an on-site waste treatment facility, which may have had an impact on the Town, but these plans have now been scrapped by

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the Landowner. Other concerns which the Town raised about Wind Walk's waste water do not show a detriment to the Town. Some issues relate to speculative future competition between municipalities. Some relate to general issues of water quality within the river basin, but do not quantify a specific detrimental effect on the Town and will be dealt with more effectively by other tribunals with different expertise, such as the Environmental Appeals Board. The Town also raised the matter of waste water aerosols, but the evidence on this last issue can best be categorized as speculative; further the matter of release of aerosols is also a pipe line design concern that may be brought up with the appropriate authority.

[201] As indicated above, competition between municipalities is not typically a detriment for the purposes of s. 690 of the Act. Here, the Town says that it will face undue competition for infrastructure funding as a result of the cost of the ASP's waste water treatment plan. The Town expects funding competition to intensify in 20 to 30 years, believing that the cost of building and improving treatment facilities will increase. The Town's hypotheses about costs and funding decades from now is speculative and the effects too remote to support a finding of detriment for the purposes of this appeal. As stated in *Sturgeon*, an appellant should be able to point specifically to how an area structure plan, such as the ASP, will impact a municipality and to what effect. The MGB continues to agree with this statement. Evidence before the Board does not demonstrate that infrastructure cost underfunding with certainty (as a result of the ASP or otherwise). Additionally, the Board notes that the Town did not present convincing evidence to support Mr. Berzins' claim that either the Town of High River's waste treatment facility was overloaded or, were this to be the case, that upgrading the facility would have any impact on the Town.

[202] The Town's water presentation illustrated for the MGB the complex nature of water in the SSRB, including the linkages between sub-basin transfers and the future impact this might have for the region. Although the MGB appreciated the presentation, it observes that while the Sheep River flows through the Town, the rest of the basin is downriver from the Town's boundaries. The *Water Act*, RSA 2000, c W-3, sets out the framework for water management, including water flow, as a sphere of provincial responsibility. Waste treatment matters are also a provincial concern under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12. Beyond addressing matters outside of the Town's boundaries, the Town's evidence regarding regional water concerns as a result of water use by the ASP are too remote to prove a detriment to the Town. Parenthetically, the same or greater water use could be planned in a municipality where the Town would have no right of appeal before the MGB on the basis of a detriment to the Town. Such regional environmental concerns may be dealt with more appropriately by other authorities such as the Environmental Appeals Board.

ISSUE 7: Does the ASP's effect on the Town's transportation and infrastructure planning cause detriment to the Town by creating undue and unplanned stress on existing roadways, and requiring unanticipated and premature capital expenditures?

Town's Position

[203] Mr. Marley Oness, the Municipal Engineer for the Town of Okotoks, provided evidence about detriment to the transportation and infrastructure services posed by the ASP. He explained that the Town relied heavily on the Legacy Plan when planning its transportation and infrastructure needs. The Legacy Plan contemplated a defined urban growth boundary, with steady lower density growth on its fringe and in the region generally. The Town's utility and transportation infrastructure has been planned and built consistent with the population figures, servicing capacity and the land base anticipated in The Legacy Plan. Its Master Transportation Plan (MTP) was also established with these assumptions in mind.

[204] If development contemplated by the ASP proceeds, the additional traffic will strain the Town's roadway and traffic infrastructure. According to Mr. Oness, there is already traffic congestion at various intersections on the Northridge/Southridge Drive route (formerly Highway 2A). Congestion along this route is exacerbated by a railway crossing, which the Town has attempted to deal with by developing 32 Street on the east side of the Town. This route includes a second river crossing and a grade separation from the railway. In developing this solution, the Town did not analyze the implications of the ASP on the existing transportation routes, because it relied on information set out in the Legacy Plan.

[205] In reviewing the Traffic Impact Assessment (TIA) submitted by the developers, Mr. Oness indicated there will be additional congestion at four intersections rather than the two identified in the TIA. The congestion will result in a situation where a vehicle may wait for up to three lights at an intersection if a train were to pass through at rush hour. In addition, Mr. Oness noted that the ASP has only a single point of entry/exit, which is not conducive to efficient circulation or a strong transportation network required for a healthy urban community.

[206] The Town also pointed to the evidence of Mr. Glen Pardoe, who also reviewed the Landowner's TIA and is the professional engineer who updated the Town's MTP in 2008. Mr. Pardoe raised three notable points. First, the TIA did not model a major intersection at Riverside Gate and Southridge Drive near the ASP. This omission meant there could be a congested area not identified by the TIA. Further, because of the traffic around this area from Elizabeth Street, the main street in the Town, there could be an overlap between traffic queuing for both intersections. The second point was that the proportion of commuter traffic coming from the ASP and traveling through the Southridge/Northridge Corridor to Calgary might be overstated. Related to this was the potential that a commercial development in the ASP area might affect the traffic pattern, particularly, if a business such as a coffee bar with a drive through were to be

located adjacent to the Highway. In Mr. Pardoe's view, the analysis presented by the Landowner did not seem to account for this type of business. The final point was that the traffic queues along Northridge and Southridge Drive might increase if traffic from the ASP used that route through Okotoks rather than the new route and bridge constructed on 32nd Street.

[207] Based on advice from Mr. Pardoe, the Town observed that the increased traffic generated by the ASP will cause traffic to move over to the 32nd Street route earlier than anticipated. Increased traffic over the 32nd Street bridge will likely force an expansion much earlier than previously anticipated under the MTP. Further, because the development is located in the MD, the developer cannot be subject to the Town's offsite levy bylaw. Therefore, the Town would experience additional costs for growth which it cannot recover.

[208] The ASP also undermines the Town's relationship with its developers who have paid off-site levies for infrastructure upgrades. The off-site levy bylaw may require adjustment if there are additional costs to services covered by the bylaw as a result of new users from the ASP. These additional costs will have to be borne by the development community within the Town. The Legacy Plan and the MTP set out the framework of transportation and infrastructure upgrades within Okotoks. In turn, the Town uses this information to develop and review its off-site levy bylaw, which is used to help fund the upgrades. If transportation upgrades are required ahead of the timelines in the MTP, Okotoks residents will have to bear the unanticipated cost of the improvements.

MD's Position

[209] The MD submitted that the Town has not presented the Board with substantive evidence (e.g. a TIA) in support of its concerns that the increased density proposed by the ASP cannot be supported by the Town's road system. To this, the MD referred to the *Sturgeon* decision, whereby the MGB held that "there is a direct relationship between land use and transportation needs" (page 64/84). The MD concluded by expanding on the above proposition, stating that road capacities are an issue in places with growing populations and that specific evidence of detriment (e.g. TIA), and not just generalized effects, must be presented before the MGB can uphold an appeal.

[210] The MD agreed that the ASP would generate traffic that would use roadways in the Town. However, the Town would not bear the sole burden of financing improvements. Mr. Riva Cambrin submitted that the MD has a long history of contributing to the Town's infrastructure (such as roads) and soft services. The MD intends to continue to share costs. Since the adoption of the JPA, both municipalities have been working together to craft a comprehensive Master Cost Sharing Agreement. Section 2.1(9)(d) of the JPA specifically contemplates roads and transit under the Master Cost Sharing Agreement. Furthermore, the MD submitted that infrastructure costs for roadways are often split between municipalities, the province, and the federal government.

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[211] Section 5.2.3 of the ASP requires the developer to prepare a TIA identifying any off-site road improvements. The MD could, therefore, request the developer to expand the scope of the TIA to include additional impacts of Southridge Drive in the Town. If improvements were required on roads which served the ASP, including Southridge Drive, those improvements would be performed at the cost of the developer in accordance with the ASP. These costs could be included in the MD's off-site levy bylaw or by an agreement for oversizing under section 651 of the Act.

[212] Previously, the MD has resolved the Town's concern over use of the Town's infrastructure by MD residents through servicing agreements. Mr. Riva Cambrin specifically cited the Sandstone Springs development as an example. On June 9, 2010, both parties entered into a servicing agreement, which addressed cost sharing for sewer utilities as well as upgrades to Big Rock Trail and Southridge Drive. The MD indicated that a similar approach could be taken for the ASP.

Landowner's Position

[213] The Landowner referred to *Sunbreaker Cove* for the proposition that the evidence used to establish claims of detriment must be of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact on the initiating municipality. The Landowner submitted that the Town has not completed a TIA to support its claim that the ASP will impact the Town's infrastructure, and has not provided evidence to support a claim of detriment.

[214] The only TIA before the Board was prepared by Mr. Jay Magus, a professional engineer with expertise in the area of transportation. Mr. Magus explained that the initial TIA was required by Alberta Transportation given that the north and easterly boundaries of the parcel occupied by the ASP are highways. Repeated requests to the Town for additional information and data went unanswered, so both the initial and the updated TIA were based on information in the Town's MTP.

[215] Mr. Magus stated that four intersections near the ASP were identified and the traffic patterns modeled using traffic simulation software. There are areas which will experience additional traffic from the ASP; however, these impacts can be mitigated by upgrading roadways and signaling and by altering traffic flow during different times of the day. In response to questions from the Town about queuing and implication of the railway crossing, Mr. Magus indicated that the Town's MTP that could be amended to accommodate additional traffic by changing traffic signal length, or by adopting other traffic measures. The Landowner also noted that upon questioning, Mr. Pardoe confirmed there is no comparison between the queuing anticipated by the ASP and the kind of queuing that occurs in Calgary.

[216] Finally, the Landowner disagreed with the Town's position that the ASP might result in an unfair financial burden being placed on its residents or business. The Landowner supports the idea of paying its proportional share of additional costs if it is shown that the Town's transportation system will be affected. It is also willing to pay for upgrades at essential intersections in the Town as a result of traffic generated by the ASP. Some upgrades were already identified by Mr. Magus in preparing the TIA, including a lane adjustment at Milligan Drive.

MGB Findings

- The evidence does not show that addition of the ASP and the corresponding influx of population on the Town's boundary will create undue stress on the Town's existing roadways.
- The evidence does not show that the increase in traffic will create unmanageable capital expenditures.
- If there are additional costs, these may be entered into an agreement to cover the proportionate share of the improvements.
- The Town, MD and Landowner have options that all parties are willing to explore to address the potential impacts of the ASP on traffic and any additional resulting costs for infrastructure.
- The evidence did not show the ASP would result in detriment owing to increased stress on traffic infrastructure in Okotoks.

MGB Reasons

[217] The strongest evidence received concerning the impact that the ASP would have on the Town's transportation infrastructure was the Landowner's TIA. This evidence shows that based on current traffic patterns within the Town, the ASP would have a nominal impact on the Town's traffic patterns, even during peak hours (at which time the TIA projects a 30% chance of waiting for two light sequences at certain intersections). Mr. Pardoe, the Town's witness, hypothesized that some intersections not included in the study may be affected by Wind Walk; however, no TIA was prepared to quantify those effects, although the Town had many months to prepare one and even made representations to the effect that it would. In the Board's view, the determinative evidence on traffic impacts remains the Landowner's TIA and it does not show that road congestion will get significantly worse. As the Landowner noted, this is a similar circumstance to the one in *Sunbreaker Cove*: the Town has not provided evidence to support a claim of detriment in regards to traffic congestion to the Board's satisfaction.

[218] Aside from traffic congestion, the Town also raised concerns relating to funding. One such concern is that the future residents of Wind Walk will benefit from Town infrastructure without paying for it. Another is that the Town may be compelled to make unanticipated and premature additional capital expenditures. Having advanced these concerns, however, the Town

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presented no evidence other than anecdotal testimony to confirm what additional costs the Town may face as a result of potential development at Wind Walk. For example, it did not submit its Offsite Levy Bylaw or other information about how offsite levies were collected in other cases and how the funds so collected were used. The Town could have extrapolated from such information to estimate the offsite levies that might be charged to the ASP if it were it within the boundaries of the Town, and to detail the expected loss of revenue and addition to expenditures.

[219] Similarly, no evidence was presented to detail the Town's infrastructure budget, the capital projects and their timetable anticipated as a result of the ASP, the estimated costs that could be assigned to Wind Walk, nor the proportion of these costs that could be attributed to the proposed population of 1,200. In summary, there is insufficient evidence before the MGB to show detriment owing to a strain on or additional costs to build or maintain infrastructure as a result of the ASP.

[220] Finally, the Board observes that the Town and the MD have a history of developing cost sharing agreements. In this case, the Landowner has also represented at the hearing that it is willing to pay its "pro-rata fair share" of the cost of traffic impacts. Accordingly, the MGB is confident that if it is determined at a future date what effects ASP may have on traffic in the Town, these effects may be accommodated by measures that the Town, MD and Landowner can implement through existing infrastructure or by agreement and cost sharing, if new infrastructure is needed.

ISSUE 8: Does the ASP's effect on the Town's community services cause detriment to the Town?

Town's Position

[221] Mr. Oness, on behalf of the Town, submitted that it has carried out significant long range planning for community services under the Legacy Plan. Its capital planning for facility and service requirements were based on the growth projections and patterns contained within the IDP. Both Mr. Oness and Mr Hanhart noted that since 1998, the Town has made over 120 million dollars in capital expenditures and upgrades based on the Legacy Plan. The unanticipated addition of the ASP and its increase in population will render the assumptions of the Legacy Plan incorrect. As a result, the Town is concerned it may have to spend more money in two areas: (1) to redo its long range planning to accommodate the ASP's population and (2) to upgrade community facilities to accommodate increased users. These additional capital expenditures are detrimental.

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The Town's Soft Service Delivery

[222] In its written submission, the Town reiterated that if the MD is permitted to make "one-off" arbitrary and unilateral decisions, the growth patterns and assumptions used by the Town would be rendered useless. In an effort to quantify the increased cost of services that would result from the ASP, the Town referred to its "Cost of Community Services Analysis" prepared in August of 2009 by Harold Johnsrude Consulting Inc. Taking into account the costs reported there (including fixed costs and variable costs per person) as well as the fact that certain costs such as water and sewer will not be used by Wind Walk residents, the Town submitted that the population represented by the ASP will account for \$289,200 of cost increases.

Fire

[223] Mr. Oness outlined the Town's concerns over the provision of fire services. Based on the information provided in the ASP, it appears that a reduced standard of fire protection is proposed from that required by urban municipalities. The ASP proposes water flows and storage for fire protection well below the recommended levels. The capacity proposed is more typical of rural development where there is a significant distance between buildings. As there is a mutual aid agreement between the municipalities, the proposed water storage and flow would impede the Town's ability to provide fire services to the development and endanger its first responders.

[224] The development would also increase the Town's fire service area (travel distance and response time) as a result of the need for additional fire inspections, fire prevention activity, EMS calls, and the potential for additional motor vehicle collision response. These challenges would act as a detriment to the level of fire service and protection currently in the Town and the MD.

Library

[225] Mr. Oness raised concerns over the impact this ASP would have on the Town's library services. The Town's library was expanded in 2005 to accommodate the Town's growing population, consistent with the Legacy Plan. It was not constructed to accommodate the expansion of the MD. Currently, 22% of library patrons are MD residents who do not contribute funding towards the maintenance and operating costs of the building. The additional population generated by the ASP would mean a larger percentage of the patrons coming from the MD, using library resources and this is a detriment to Town residents.

Recreation Capacity/Growth Impact

[226] Mr. Oness and Mr. Hanhart argued that changes in density and population will impact the Town's provision of recreation and leisure services. Planning, design, and construction for the newly expanded indoor recreation facilities were based on principles found within the IDP and

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did not anticipate the ASP. There is currently minimal space in existing facilities to accommodate an increase in participants beyond existing population projections. Overcrowding in lessons, activities, and structured sport leagues would have a detrimental effect on the quality of the programs and the value of the participants' experience. An increase from the anticipated future population projections would require a completed re-work of all master planning for recreation and leisure services and facilities, which cannot be accommodated in Town boundaries.

MD's Position

[227] The MD argued that the Town has not substantiated its allegation that the ASP will have a detrimental effect on its ability to provide "soft services." While other MGB decisions have recognized that social or economic arguments can form the basis of detriment, it has never found detriment on this ground. By way of example, the MD cited Grande Prairie, where the City argued that providing soft services to County residents had an economic impact on the City that amounted to detriment. The MGB did not accept this line of argument. In its reasons, it noted that the County contributed to the cost of soft services provided by the City. The MGB also noted that populations are mobile, that use of services flows in both directions between the municipalities, and that plans were in place for provision of future County facilities for use by both municipalities' residents. The MD also cited *Sturgeon*, where the MGB held:

Residents in all municipalities are very mobile, and the Board is not prepared to intervene in the methods of allocating servicing costs and revenue sharing. This is a matter to be negotiated by the municipalities themselves (page 62/84).

[228] The MD noted that it has a long history of contributing to the cost of the Town's soft services and that it fully intends to continue to share costs with the Town. Since the adoption of the JPA, the Town and the MD have been working together to craft the comprehensive Master Cost Sharing Agreement. Section 2.1(9) of the JPA specifically contemplates cost sharing for emergency and protective services, school sites, library, medical services, economic development/business services, cemetery, recreation, family and community support services, social services, seniors housing, affordable housing, and other cultural and community facilities.

[229] Insofar as the MD contributes reasonably to the funding of soft services, this complaint does not demonstrate detriment to the Town. Mr. Riva Cambrin reported that the MD has been a significant contributor to regional projects and is a member of the Foothills Foundation and Foothills Regional Services Commission. The MD and Town have been parties in various cost sharing agreements in the past, are parties to current cost sharing agreements, and are currently engaged in the negotiation of a comprehensive Master Cost Sharing Agreement, which includes a Fire Services Agreement. Currently, under a recreation cost sharing agreement, the MD provides \$433,500 to the Town to assist in the operations of facilities within the Town. In some cases, the MD has also taken a debenture for recreation facilities within Okotoks. The MD also

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noted that the Town from time to time imposes user fees for the purpose of cost recovery for soft services especially for library and recreation facilities. With specific reference to the Okotoks Public Library, there is a “non-resident” membership, and a higher fee is charged.

[230] The MD also noted Town residents use facilities in the MD just as residents of the MD use Town facilities. For example, Mr. Riva Cambrin noted that the MD is building a new arena to the north of the Town. Prior to opening, ice time is 60% booked by Town residents. The Town and the MD also worked together to construct the Regional Field House and the ASP contains a variety of facilities and amenities that the MD anticipates will be used by Town residents.

[231] Finally, the MD explained that it is the Town’s decision to provide most infrastructure services to the MD. If the Town is unable or unwilling to provide services to the new development, the MD and the Developer will have to address this issue.

Landowner’s Position

[232] The Landowner argued, citing *Sunbreaker Cove* that it is insufficient in a section 690 appeal to simply assert that the ASP will result in an increased demand for services because of the location of the proposed development and that neither the Landowner nor the MD will contribute to their costs.

[233] Rather than providing evidence, the Town has presented unsubstantiated claims that do not consider many factors, including the regional nature of some services, the benefit of intermunicipal networks and agreements, economies of scale, contributions made by the MD to the Town’s services, and services (e.g. school and playing fields) that will be offered to the Town as a result of this development. The Town also provided insufficient evidence to back its predictions concerning demand on services from Wind Walk residents. For example, the Town assumed that all of the residents in the ASP will use the library services, whereas only half of the Town’s residents currently use the library. The MGB decision in *Grande Prairie* demonstrated that that cross-use of facilities between municipalities and cost sharing arrangements mitigate arguments of detriment as they pertain to soft services.

MGB Findings

- The location of the ASP is still within the regulated fire response times.
- The ASP does not affect the Town’s ability to provide community services, and no detriment was shown.
- Any operational costs may be resolved under existing or proposed servicing agreements.

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MGB Reasons

[234] The Town argued three specific areas of community service will be affected detrimentally by adding the ASP on its fringe: fire service delivery, library services, and recreation services. While each of these matters is considered below.

Fire and Emergency Services

[235] The Town argued that providing fire service to the ASP would present a financial burden, lower service levels, increase response times, and reduce the ability to plan for future development. Fire services are addressed in the Town and MD's joint Fire Services Agreement. The Town and MD are developing a Master Cost Sharing Document, which includes provision for fire services. This document is also contemplated under section 2.1(9)(e) of the JPA. In the Board's view, these two agreements, the Fire Services Agreement and Master Cost Sharing Document, will ensure that adequate fire service levels are maintained and that the Town is compensated for additional services to the ASP.

[236] The Town provided a map detailing emergency response times from its existing fire station and the south fire station, which is currently under construction. The map illustrates that responders can reach the lands that include the ASP within 4.5 minutes from the south fire hall (Woodhaven). The provincial standard for response time is less than 10 minutes from the initial call to deployment at the scene. It is unclear to the MGB how this ASP differs from other recent fringe area proposals which also fall within the response area. The Board sees little evidence to base a finding that the additional residents contemplated for Wind Walk will extend current response times.

[237] Mr. Hanhart expressed concern that approval of the ASP and subsequent extension of water and sewer services would trigger further applications regarding areas on the Town's periphery – for example, on the quarter section to the east of the ASP. He suggested such applications could jeopardize the Town's ability to plan for future fire services and that additional population in these areas would impact response times, especially if one of the two routes over the Sheep River become blocked. In the Board's view, difficulties that may arise from future applications are speculative at this point in time. Furthermore, Mr. Hanhart and Mr. Riva Cambrin noted in response to questioning that if they should arise, these issues can be discussed and dealt with through the Fire Services Agreement or under a mutual aid agreement. The Board is confident these mechanisms are adequate to resolve future planning and response time issues and will ensure standards under the *Safety Codes Act* are met.

Library Services

[238] Under section 2.1(9)(h) of the JPA, library services are contemplated for cost sharing between the Town and MD. As the ASP is included in within the JPA, it appears that additional

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costs incurred by the Town because of library users residing in the ASP may be offset through a cost sharing agreement. The MD and Landowner also advised that the Town's library is designated as a regional library, suggesting service to non-Town residents is intended. In addition, the parties also agreed that the Library's fee structure includes a higher fee for non-resident members. Non-resident fees are often charged to help recover additional costs of providing services otherwise paid for by property taxes. For all these reasons, the Board sees no detriment to the Town from use of library services by residents of the ASP.

Recreation Services

[239] Under section 2.1(9) (l) and (q) of the JPA, recreation and other cultural and community facilities are contemplated for cost sharing between the Town and MD. Both municipalities also have a long-standing history of cooperation and have demonstrated an appreciation for the need to cost-share local and regional recreational and cultural services. One example of a recent cost sharing arrangement is the Regional Field House, which is scheduled to be built in the MD to serve both Town and MD residents. Mr. Oness also confirmed that the MD has compensated the Town for the use of its recreation facilities and services by residents. Under a recreation cost sharing arrangement, a lump sum of \$433,500 was paid by the MD to the Town in 2011. In light of this history, the MGB is confident that successful arrangements can be reached to offset any additional costs that may be incurred by Town.

[240] Finally, while the Town stated that its recreation services are at capacity, it did not provide details as to how approval of the ASP would affect use. For example, it did not establish a baseline for service presently provided and show how this might change with a proportion of the Wind Walk residents using Town services. It is evident that not all of the future residents of the ASP will use the recreation facilities within the Town; similarly, Town residents can use both Town and regional facilities. In short, the Town did not provide enough evidence to demonstrate the detriment alleged.

Conclusion

[241] The Board observes that the population contemplated for ASP will fall within the projected growth in the JPA. Similarly, it does not exceed the population outlook for the MD; rather, it represents an acceleration of those growth projections in one node. In the Board's view, the ASP's residents will not significantly affect the Town or MD's ability to provide effective services. For all of the reasons described above, the MGB sees no detriment to the Town from use of emergency, library or recreational services by residents of the ASP.

ISSUE 9: Is the ASP invalid because it was passed illegally and thereby cause detriment to the Town?***Town's Position***

[242] The Town argued that the MGB has the power to decide questions concerning the validity of bylaws, as recently confirmed by the Court of Queen's Bench in (*Calgary (City) v. Canadian Natural Resources Limited*, 2010 ABQB 417). Further, it claimed that the MD held an "in camera" meeting after the public hearing but before third reading of the ASP. This procedural irregularity rendered the ASP invalid and resulted in planning uncertainty detrimental to the Town.

MD's Position

[243] The MD noted that the Town's argument concerning the potential illegality of the ASP was not contained in its Notice of Appeal. Further, it argued the MGB is not the proper forum to address questions concerning whether the ASP is illegal or invalid as a result of in-camera meeting(s) between the MD and the Landowner. Rather, section 536 of the Act provides that the validity of a bylaw can be challenged by making a judicial review application to the Court of Queen's Bench, which is where this matter should be decided.

Landowner's Position

[244] The Landowner also argued that the MGB is not the correct venue to address the procedural validity of the Bylaw. Two cases were cited to support this position: *Mather v. Gull Lake*, 2007 ABCA 123 [*Mather*], and *Sunbreaker Cove*. In *Mather*, the Alberta Court of Appeal considered the role of administrative tribunals in determining the validity of municipal bylaws. The Court stated at paragraph 21:

If Mather seeks to challenge the validity of the bylaw, he cannot do so by appeal to the SDAB. The SDAB must comply with the bylaw then in effect and has no power to declare the bylaw invalid.

[245] In *Sunbreaker Cove* a summer village had made an allegation of procedural defect. The MGB stated at paragraph 64:

The MGB makes no finding as to the validity of the bylaw. Jurisdiction to declare a bylaw invalid for flawed process is given not to the MGB but to the Alberta Court of Queen's Bench.

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[246] The Landowner also highlighted that sections 536 and 537 of the Act provide for an appeal to the Court of Queen's Bench.

MGB Finding

- The MGB makes no finding as to the validity of the bylaw.

MGB Reasons

[247] The MGB must often consider questions of law including - from time to time - questions about the validity of legislation. Most commonly, this type of question arises when the Board is called upon to apply a bylaw or regulation, but is faced with an argument from a party before it that the regulation (or one of its provisions) is invalid. Since the MGB may not apply invalid laws, it must determine whether the impugned provisions are valid before applying them (*Calgary (City) v. Canadian Natural Resources Limited*, 2010 ABQB 417 at para. 86).

[248] The question now before the Board is of a much different character. The MGB has not been asked to apply an ASP of suspect validity. Rather, the Appellant argues that it will suffer detriment owing to invalidity of an ASP. To cure this detriment, it says the MGB should repeal the bylaw using its power under section 690. In the MGB's view, this would not be an appropriate use of the section 690 power. The MGB's role under section 690 is to repeal or amend bylaws which it finds are detrimental to another municipality - not to repeal bylaws which it finds to be invalid owing to a flaw in the way they were passed. That role properly belongs to the courts, as recognized by section 536 of the Act:

536(1) A person may apply by originating notice to the Court of Queen's Bench for

- (a) a declaration that a bylaw or resolution is invalid, or
- (b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.

(2) A judge may require an applicant to provide security for costs in an amount and manner established by the judge.

[249] The MGB understands that the Appellant has already made a section 536 application, which appears the appropriate route to address the question of validity in this case.

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PART F – DECISION AND SUMMARY

[250] The Town of Okotoks has an award-winning and well-articulated municipal development plan called the “Legacy Plan”, linking the Town’s growth to the water licensing capacity of the Sheep River. Developed in 1998, the Legacy Plan establishes a maximum population for the Town and sets out a process and a schedule for developing and rehabilitating infrastructure to serve that identified population. From a corporate planning perspective, the Legacy Plan is a combination of a long range planning document and a strategic plan that makes its readers aware of the Legacy Plan’s philosophy and the direction in which the Town wishes to proceed.

[251] The MD of Foothills, on the other hand, recently adopted a municipal development plan that is more traditional in Alberta. The MD’s MDP carries the same weight as the Town’s Legacy Plan, but it does not appear to be as integrated or as comprehensive, probably due to the larger land base and the different characteristics of the MD of Foothills. The MD has, in other circumstances, allowed statutory plans or concept plans, which support further subdivision, development and construction of residential neighbourhoods near or adjacent to other urban municipalities. In the past, a plan such as this would be the precursor to the development of a hamlet or an urban municipality, not an adjunct to an existing urban municipality.

[252] The quarter section containing the Wind Walk ASP is identified in both the Okotoks’ and MD of Foothills’ intermunicipal development plan and their joint planning agreement as an area for growth and further study. While the Wind Walk ASP’s proposal is out of phase (4th priority), it is contemplated as an area where growth might occur and the MD has chosen to speed the process by passing the ASP, after significant public input and consultation.

[253] Since the premise of the Town’s Legacy Plan is to structure growth and development to a defined population, the addition of a neighbourhood on the periphery of the Town will have some impact. However, what the MGB observed after hearing the matter is that while this impact might have some effect on the Town, no clear evidence was shown to establish a causal link between the ASP and a likelihood of significant detriment. Without evidence to establish such a finding, the MGB can find no reason to interfere with the ASP which has been adopted by the MD of Foothills council.

[254] Going forward, the MGB notes that the ASP is a relatively big picture document and that construction – if it occurs at all – will not commence for some time. Other approvals will be necessary before any activity occurs on the site, leaving considerable scope for further discussions between all parties about the implications of this ASP. The MGB was encouraged by the willingness and ability of these two municipalities to work together and is confident that, together with the Landowner, they can discuss and resolve their remaining differences.

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[255] The appeal of the Town is dismissed.

Dated at the City of Edmonton, in the Province of Alberta, this 25th day of January 2012.

It is so ordered.

No costs to either party.

MUNICIPAL GOVERNMENT BOARD

(SGD.) D. Thomas, Presiding Officer

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APPENDIX "A" – APPEARANCES

NAME	CAPACITY
G. Ludwig	Counsel for the Appellant (Town of Okotoks)
B. Dell	Assistant Counsel for the Appellant (Town of Okotoks)
E. Sands	Witness for the Appellant (Town of Okotoks)
S. Hanhart	Witness for the Appellant (Town of Okotoks)
M. Oness	Witness for the Appellant (Town of Okotoks)
B. Berzins	Witness for the Appellant (Town of Okotoks)
G. Pardoe	Witness for the Appellant (Town of Okotoks)
J. Klauer	Counsel for the Respondent (Municipal District of Foothills)
L. MacFarlane	Assistant Counsel for the Respondent (Municipal District of Foothills)
H. Riva Cambrin	Witness for the Respondent (Municipal District of Foothills)
H. Hemmingway	Witness for the Respondent (Municipal District of Foothills)
H. Ham	Counsel for the Affected Landowner (AB Foothills Properties Ltd.)
J. Sykes	Assistant Counsel for the Affected Landowner (AB Foothills Properties Ltd.)
T. Gilliss	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
G. Nielsen	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
D. Westhoff	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
S. Atkins	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
J. Floyd	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
J. Magus	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
G-C. Carra	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
D. Atkins	Observer
D. Brezsnyak	Observer
C. Carr	Observer
T. Dabrowski	Observer
L. Hodson	Observer
J. Laurien	Observer
J. Laycraft	Observer
A. Mar	Observer
M-C. McIntosh	Observer
D. Patterson	Observer
R. Quail	Observer
B. Robertson	Observer
D. Skorenki	Observer
L. Spilak	Observer

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V. Tran Observer
L. Wasylenko Observer

APPENDIX "B" – DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:

NO	ITEM
1A	Letter to MGB from Town of Okotoks (Sept. 9/10)
2R	Letter to MGB from Municipal District of Foothills No. 31 (Sept. 28/10)
3A	Submission of the Town of Okotoks (A-1)
4R	Argument of the Municipal District of Foothills No. 31 (R-1)
5R	Authorities of the Municipal District of Foothills No. 31 (R-2)
6R	Materials of the Municipal District of Foothills No. 31 (R-3)
7L	Argument of Alberta Foothills Properties Ltd. (S-1)
8L	Rebuttal of Alberta Foothills Properties Ltd. (S-2)
9A	Legal Submission of the Applicant (The Town of Okotoks).
10A	Wind Walk Appeal: Submission on the Impact of Foothills August 11, 2010 ASP On the Town of Okotoks - Includes Dr. Sands' "Will Say" Statement
11A	Wind Walk Appeal: Submission on the Impact of Foothills August 11, 2010 ASP On the Town of Okotoks – Supplementary Documents
12R	Respondent Municipal District of Foothills No. 31 Legal Brief
13R	Municipal District of Foothills No. 31: Book of Authorities Volume I of II
14R	Municipal District of Foothills No. 31: Book of Authorities Volume II of II
15R	Municipal District of Foothills No. 31: Evidentiary Submissions
16L	Alberta Foothills Properties Ltd.: Memorandum of Argument
17L	Landowner Authorities
18L	Landowner Materials
19L	Amended Wind Walk Traffic Impact Assessment
20L	Sanitary Sewer Servicing Study
21L	Water Network Analysis
22L	Wind Walk – The Smart Community
23L	Cumulative Effects Evaluation, Wind Walk Project
24L	Master Drainage Plan, Wind Walk Project
25A	Town of Okotoks Rebuttal Brief: Legal Argument
26A	Town of Okotoks Rebuttal Brief: Planning
27A	Town of Okotoks Rebuttal Brief: Services
28A	June 2, 2011 - Email from Okotoks Counsel
29L	AB Foothills Properties Ltd. Expanded "Will Say" Statement
30L	Traffic Impact Assessment
31A	2008 Aerial Photograph of Town of Okotoks
32R	Map ASPs for Green Haven Estates and Sandstone Springs

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- 33A PowerPoint: Sustainable Water Supply Wind Walk Appeal
- 34L Rocky View County – Proposed Bragg Creek Wastewater Treatment Plant (Approval Application 001-267306)
- 35A Town of Okotoks Transportation Plan: Final Report (2002)
- 36L Peppertree Apartments Ltd. Represented by Canadian Valuation Group and William A.C. Rowe, Barrister & Solicitor, Appellant v. City of Edmonton, Respondent (Non-Suit Motion)
- 37L *Lor-al Springs Ltd. v. Ponoka County Subdivision and Development Appeal Board*, 2009 ABCA 299. (Non-Suit Motion)
- 38L *Emeric Holdings Inc. v. Edmonton (City)*, 2009 ABCA 65. (Non-Suit Motion)
- 39L AB Foothills Properties Ltd. Non-Suit Application
- 40A *Ironside (Re)* in response to non-suit motion.
- 41L Curriculum Vitae of Dr. Nielsen
- 42L Environment Canada: Average (International) Daily Domestic Water Use
- 43A Wind Walk TIA Addendum Transportation Review
- 44L E-mail Invitation from Gian-Carlo Carra re: Wind Walk Charrette (May 23-27)
- 45L Meeting Summary: Town of Okotoks Developers' Meeting
- 46A Wind Walk Appeal: Impact of Wind Walk ASP On the Town of Okotoks (PowerPoint Hardcopy)
- 47L Tom Gilliss PowerPoint Presentation
- 48L Grant Nielsen PowerPoint Presentation
- 49L Dennis Westhoff PowerPoint Presentation
- 50L Seth Atkins PowerPoint Presentation
- 51L Jim Floyd PowerPoint Presentation
- 52L Jay Magus PowerPoint Presentation
- 53L Gian-Carlo PowerPoint Presentation
- 54R *Water Act*, RSA 2000, c W-3
- 55R Alberta Environmental Appeals Board Decision: *Donkersgoed and all v. Director, Southern Region, Environmental Management, Alberta Environment*, re: *Douglas J Bergen & Associates Ltd.* (20 December 2010, Appeal No. 10-003, 005 & 006-D (A.E.A.B.))
- 56R *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)*, 2003 ABQB 456.
- 57L *Assessment Complaints and Appeals Regulation*, Alta Reg 238/2000
- 58L *Colledge v. Calgary (Subdivision and Development Appeal Board)*, 2010 ABCA 34
- 59 October 8, 2010 Transcript
- 60 December 6, 2010 Transcript
- 61 June 6, 2001 Merit Hearing Transcript (Volume 1)
- 62 June 7, 2001 Merit Hearing Transcript (Volume 2)
- 63 June 8, 2001 Merit Hearing Transcript (Volume 3)
- 64 June 9, 2001 Merit Hearing Transcript (Volume 4)
- 65 June 10, 2001 Merit Hearing Transcript (Volume 5)

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- 66 June 13, 2001 Merit Hearing Transcript (Volume 6)
- 67 June 14, 2001 Merit Hearing Transcript (Volume 7)
- 68 June 15, 2001 Merit Hearing Transcript (Volume 8)
- 69 June 16, 2001 Merit Hearing Transcript (Volume 9)

APPENDIX "C" – LEGISLATION REFERRED TO IN THIS ORDER:

Municipal Government Act, RSA 2000, c M-26

Application to the Court of Queen’s Bench

536(1) A person may apply to the Court of Queen’s Bench for

- (a) a declaration that a bylaw or resolution is invalid, or*
 - (b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.*
- (2) A judge may require an applicant to provide security for costs in an amount and manner established by the judge.*

Procedure

537 A person who wishes to have a bylaw or resolution declared invalid on the basis that

- (a) the proceedings prior to the passing of the bylaw or resolution, or*
 - (b) the manner of passing the bylaw or resolution*
- does not comply with this or any other enactment must make an application within 60 days after the bylaw or resolution is passed.*

Validity relating to public participation

538 Despite section 537, a person may apply at any time

- (a) for a declaration that a bylaw is invalid if*
 - (i) the bylaw is required to be put to a vote of electors and the vote has not been conducted or if the bylaw was not given the required approval in such a vote,*
 - (ii) the bylaw is required to be advertised and it was not advertised, or*
 - (iii) a public hearing is required to be held in respect of the bylaw and the public hearing was not held,*

or

- (b) for an order requiring a council to pass a bylaw as a result of a vote by the electors.*

Definitions

616 In this part

- (b) “development” means*
 - (i) an excavation or stockpile and the creation of either of them,*
 - (ii) a building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land,*

- (iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or*
- (iv) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building;*

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 of and the proposals for future development in the area, and*
- (iii) any other matter 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.*

Municipal development plan

632(1) A council of a municipality with a population of 3500 or more must by bylaw adopt a municipal development plan.

(2) A council of a municipality with a population of less than 3500 may adopt a municipal development plan.

(3) A municipal development plan

(a) must address

- (i) the future land use within the municipality,*
- (ii) the manner of and the proposals for future development in the municipality,*
- (iii) 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,*
- (iv) the provision of the required transportation systems either generally or specifically within the municipality and in relation to adjacent municipalities, and*
- (v) the provision of municipal services and facilities either generally or specifically,*

(b) may address

- (i) proposals for the financing and programming of municipal infrastructure,*
- (ii) the co-ordination of municipal programs relating to the physical, social and economic development of the municipality,*

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- (iii) environmental matters within the municipality,*
- (iv) the financial resources of the municipality,*
- (v) the economic development of the municipality, and*
- (vi) any other matter relating to the physical, social or economic development of the municipality,*

(c) may contain statements regarding the municipality's development constraints, including the results of any development studies and impact analysis, and goals, objectives, targets, planning policies and corporate strategies,

(d) must contain policies compatible with the subdivision and development regulations to provide guidance on the type and location of land uses adjacent to sour gas facilities,

(e) must contain policies respecting the provision of municipal, school or municipal and school reserves, including but not limited to the need for, amount of and allocation of those reserves and the identification of school requirements in consultation with affected school boards, and

(f) must contain policies respecting the protection of agricultural operations.

Area structure plan

633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.

(2) An area structure plan

(a) must describe

(i) the sequence of development proposed for the area,

(ii) the land uses proposed for the area, either generally or with respect to specific parts of the area,

(iii) the density of population proposed for the area either generally or with respect to specific parts of the area, and

(iv) the general location of major transportation routes and public utilities,

and

(b) may contain any other matters the council considers necessary.

Statutory plan preparation

636(1) While preparing a statutory plan a municipality must

(a) provide a means for any person who may be affected by it to make suggestions and representations,

(b) notify the public of the plan preparation process and of the means to make suggestions and representations referred to in clause (a),

(c) notify the school boards with jurisdiction in the area to which the plan preparation applies and provide opportunities to those authorities to make suggestions and representations,

(d) in the case of a municipal development plan, notify adjacent municipalities of the plan preparation and provide opportunities to those municipalities to make suggestions and representations, and

(e) in the case of an area structure plan, where the land that is the subject of the plan is adjacent to another municipality, notify that municipality of the plan preparation and provide opportunities to that municipality to make suggestions and representations.
(2) Subsection (1) does not apply to amendments to statutory plans.

Plans consistent

638 All statutory plans adopted by a municipality must be consistent with each other.

Intermunicipal disputes

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.

(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.

(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

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- (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.*

Board hearing

- 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.*