

BOARD ORDER: MGB 068/10

FILE: 09/IMD-003

IN 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 City of Edmonton respecting the adoption on June 23, 2009 of the Parkland County Bylaw 20-2009, being the Parkland County Land Use Bylaw.

BEFORE:

Members:

J. Gilmour, Presiding Officer
W. Morgan, Member
J. Noonan, Member
R. Strauss, Member
P. Petry, Member

Case Manager:

R. Duncan

This is the decision of the Municipal Government Board (MGB) from a hearing held December 15 and 16, 2009, respecting a claim of detriment by the City of Edmonton (City) with respect to the passing of the Parkland County (County) Land Use Bylaw (LUB).

Member Paul Petry was unable to attend the hearing. Accordingly, the remaining four members heard and decided this appeal as a quorum pursuant to Sections 489 and 490 of the *Municipal Government Act* (Act).

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OVERVIEW

The MGB considered two main issues in this appeal. The first is whether including certain industrial uses as discretionary uses in the Business Industrial (BI) District of the County's LUB cause the City detriment when applied to two parcels of land adjacent to the west boundary of the City. The second is whether the districting of approximately 12 quarter sections of land as Country Residential (CR) adjacent to the west boundary of the City also causes the City detriment.

The City submits that the listed discretionary industrial uses in the BI District will most likely be approved and create nuisances and risk factors to adjacent land uses in the City. More particularly, the adjacent existing and planned residential areas within the western portion of the urban municipality will be affected. The City asks that the discretionary uses be deleted or additional development regulations be added to the BI District.

The County submits that the City has supplied no evidence to support their case. The County further submits that the purpose statement and regulations contained in the BI District provide sufficient protection to the City. Moreover, the County argues that its development rules are in fact similar, if not more stringent, than those used by the City, and that the City, in response to previous bylaw amendments, did not object to these uses. The County asks that this issue be dismissed.

With respect to the 12 quarter sections designated Country Residential (CR), the City generally claims that, in the absence of an Area Structure Plan (ASP) for the subject lands, detriment is caused to the City as it is unable to determine the impact of this CR development on servicing demands on the City. Specifically, the City will be unable to determine the impact on a major arterial road on the west side of the City. The City also claims detriment is caused by the fact that an up-to-date ASP has not been adopted for the subject area. This results in the plans for this area not being scrutinized by the Capital Region Board (CRB) within the context of the recently adopted *Capital Region Board Regulations*, Alta. Reg. 49/2008 (CRBR) and associated policies. As well, the ultimate planning for a major regional outer ring road could be compromised by the CR land uses, causing further detriment to the City. The City asks that the CR districting for the 12 quarter sections be repealed.

The County, on the other hand, submits there is no evidence to illustrate that the City is detrimentally impacted. The CR area will not require servicing from the City and the City has the full access authority to its major arterial road to control any traffic impact resulting from the relatively low density CR development expected in the area. The County points out that the location of the regional ring road is uncertain and recent studies show that the proposed CR area does not impact any future alignment. The County also submits that there is no legislative requirement for the CRB to review a land use bylaw and that it is not purposefully avoiding a review by the CRB of any new statutory plan. The County asks for the appeal to be dismissed.

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Section 690 of the Act requires the MGB to determine whether or not detriment exists to the City. If the MGB finds there is no detriment, it can dismiss the appeal. If the MGB finds there is detriment, it can repeal the disputed provisions or it can order an amendment to the disputed provisions in the County's LUB.

ORGANIZATION OF THIS DECISION

The following provides a general background that gives a short overview of the events leading to this appeal and a summary of the agreed upon facts. The remainder of the decision will be organized into three distinctive parts. Part I will address the issues related to the discretionary uses in the BI District. Part II will discuss the issues related to the 12 quarter sections districted CR in the County LUB. Part III will provide the summary and conclusion.

GENERAL BACKGROUND

In order to establish the context of this dispute, the following provides an overview of the notice of appeal, the planning framework and the regional planning framework.

The Notice of Appeal

Section 690(1) of the Act permits a municipality to file an appeal with the MGB if the municipality 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.

On June 23, 2009, the County passed Bylaw 20-2009, being the County LUB. In accordance with the requirements of section 690, the MGB received an appeal with respect to the County's LUB from the City on July 23, 2009. Included within the notice of appeal were ten grounds for the appeal. In its statutory declaration, the City indicated its willingness to negotiate with the County and pursue mediation as required by the Act.

On August 20, 2009, the County filed its statutory declaration in accordance with section 690(3) of the Act. The County indicated in its statutory declaration that mediation was not pursued with the City, nor was it viewed as possible for a variety of reasons.

No party raised any question about the jurisdiction of the MGB to hear this appeal or any preliminary matters questioning the perfection of the appeal before the MGB. In addition, there was no Ministerial Order pursuant to section 25 of the CRBR to direct the MGB to defer its consideration of the matter.

The MGB sent notices of the appeal to all affected landowners and on September 11, 2009, received agreement from the parties to hold a hearing on December 15 to 18, 2009, pursuant to

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section 691 of the Act. This decision was communicated to the parties and confirmed in MGB Decision Letter DL 116/09.

On November 24, 2009, the County adopted amending Bylaws 35-2009 and 36-2009, which addressed a number of the concerns and the grounds for appeal filed by the City. However, two key issues remained unresolved; the matter of the discretionary uses in the BI District and the redistricting of the 12 quarter sections of CR. Both these districts are located adjacent to the western boundary of the City.

The MGB commenced the hearing on December 15, 2009 and received submissions from the City and County and affected landowners. Prior to the start of the hearing, the MGB received no procedural or jurisdictional arguments.

The MGB adjourned the hearing in order to review all the material presented and determine if it had any other questions for the parties. The MGB declared the hearing closed on June 14, 2010 and proceeded to issue this decision.

The Planning Framework

This dispute requires the MGB to examine the relationship of various types of plans and the regional planning framework identified in the Act. Part 17 of the Act provides municipalities with the ability to use a number of planning methods and mechanisms. Division 4 of Part 17 provides for a variety of statutory plans including an intermunicipal development plan, a municipal development plan, and an area structure plan. Division 1 of Part 12 requires the MGB to act in accordance with any applicable *Alberta Land Stewardship Act* regional plans.

In this intermunicipal dispute, neither of the parties identified an applicable intermunicipal development plan which would impact the considerations and deliberations of the MGB.

Section 632 of the Act requires a municipality with a population of 3,500 or greater to prepare a Municipal Development Plan (MDP). Since the County has a population of over 3,500, a MDP is mandatory. Section 632 describes the content that must be included in a MDP. The MDP must address the future land use within the municipality as well as coordinate the land use, future growth patterns and other infrastructure with adjacent municipalities. Of importance in this appeal is the adoption of the County's new MDP, Bylaw No. 37-2007, adopted in September 2007. The MDP contains policies related to CR development and industrial and commercial development – the subject matters of this dispute.

Section 633 of the Act provides a municipality with the ability to undertake more detailed planning for an area than provided for in a MDP with the preparation and adoption of an ASP. In this appeal, the content of the various applicable ASPs in the County and the consistencies of these plans with the MDP are brought into question.

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Section 639 of the Act states “[e]very municipality must pass a land use bylaw.”

Section 640 of the Act directs that a land use bylaw must address the protection of agricultural operations, establish land use districts, identify a process for issuing permits and making decisions, and establish various development and subdivision standards. The adequacy of the provisions of the BI District and the appropriateness of districting 12 quarters of land without an updated ASP for the Woodbend - Gramina area are raised by the City.

The disputed County LUB 20-2009 replaced the previous County LUB 15-00. When the County completed its new MDP, it set out to immediately update its LUB, which resulted in the 12 quarters of land located within in the Woodbend - Gramina Area Structure Plan being districted to CR. The County’s LUB also created and applied a BI District. Both of these districts are adjacent to the west boundary of the City and form the foundation of this intermunicipal dispute.

Regional Plan Framework

The role of the CRB, the Capital Region Growth Plan (CRGP) and the relationship to potential detriment was debated by the County and the City. The CRBR established a regional board of 25 municipalities in the Edmonton region, under Alta Reg. 48/2008, with the mandate to prepare a regional growth plan. Both the County and City are members of the CRB.

The CRBR established the organizational structure for the CRB, the required content for the CRGP, and a transitional process for reviewing statutory plans prior to the adoption of the CRGP. Subsequent to the adoption of the CRBR, the Minister issued Ministerial Order L:005/08 the Transitional Regional Evaluation Framework (TREF) to assist the CRB to evaluate any new statutory plan or an amendment to a statutory plan.

The City and County agree that a new land use bylaw or any amendment to a land use bylaw is not a statutory plan and is not subject to the review of the CRB. Considerable debate arose on whether or not an ASP should have been prepared prior to the 12 quarters of land being districted to CR development, thus requiring a referral to the CRB. The MGB’s analysis of this issue is contained in Part II of this decision.

On March 15, 2010, the Minister of Municipal Affairs (Minister) pursuant to section 13(1) of the CRBR approved the CRGP with an effective date of March 31, 2010. The CRGP was prepared in accordance with Alta. Reg. 17/2010, which also came into effect on March 31, 2010. Alta. Reg. 17/2010 was adopted under section 605 of the Act. Section 13(3) of this regulation states that the CRGP is not a regulation under the *Regulations Act*. The CRGP was not authorized under section 50 of the *Alberta Land Stewardship Act* (ALSA) and is, therefore, not a regional plan adopted under ALSA.

PART I USES IN THE BUSINESS INDUSTRIAL DISTRICT

Background

In order to determine if detriment exists with respect to the BI District, the MGB reviewed in detail the following key plans, bylaws and critical purpose statements and definitions.

The County MDP Bylaw 37-2007 establishes a number of land use policies related to industrial and commercial development. Policy 5.5 of the County MDP encourages new industrial development to locate in the Acheson Business Industrial Park and other designated business parks.

The County MDP also recognizes the development of an ASP for the Acheson Industrial Park. With respect to the potential detrimental industrial uses, the relevant statutory plan is the Acheson Industrial Area Structure Plan (AIASP), adopted in 1997. The AIASP is applicable to 16 square miles of land centered on Highway 16, 16A and Highway 60 adjacent to the western boundary of the City. The stated purpose of the AIASP is:

The purpose of the Acheson Industrial Area Structure Plan is to facilitate and direct long term industrial/commercial development of lands within this regional significant industrial/commercial area, while recognizing the integrity of other land uses in the area.

The AIASP defines industrial/commercial as follows:

Industrial/Commercial, which refers to a variety of light and medium industrial uses including, but not limited to, general industrial manufacturing/processing operations, industrial storage and warehousing companies and natural resource extraction/processing firms, as well as, general commercial uses which may include, but not limited to retail, contractor, automotive, recreational, business support, health care, commercial training and professional ventures.

The two parcels of land designated BI in the new County LUB 20-2009, which are the center of this intermunicipal dispute, are located at the eastern edge of the AIASP. The first parcel measures approximately 30 acres and the second parcel approximately 15 acres. These parcels are located south of the west extension of Stony Plain Road in the City and are adjacent to the west boundary of the City.

Immediately to the east of these BI Districted parcels, but within the City, are the Secord and Rosenthal neighbourhoods of the planned Lewis Farms Area Structure Plan. The Lewis Farms Area Structure Plan is designed to accommodate approximately 28,000 people. These areas are partially developed and planned as residential neighbourhoods. Also adjacent to the BI Districted

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lands is the City’s Winterburn Industrial Area Structure Plan which consists primarily of existing and planned industrial uses. One major residential use, the Westview Mobile Home Park, is located within the Winterburn Industrial Area Structure Plan. This mobile home park has a population of approximately 4,300 people and is located within 600 metres of the BI Districts. The City submits that the residential uses within these areas will be impacted negatively by the discretionary uses in the BI District.

It is noted that the predominantly residential lands in the City are separated from the BI Districts by 231 Street, a north/south arterial road, located within the City. Furthermore, there is a small planned commercial/business area in the northwest corner of the Lewis Estate Area Structure Plan.

Following the adoption of LUB 20-2009 and just prior to the December 2009 MGB hearing, the County passed several amendments to the LUB in Bylaws 35-2009 and 36-2009. These amendments reduced the number of concerns of the City. The remaining concerns focus on specific discretionary uses in the Business Industrial (BI) District and its related definitions. Illustrated below are the sections of the BI District and the associated definitions that are relevant to the remaining issues affecting this district. These include the purpose of the BI District, the relevant disputed discretionary uses and definitions as amended, all of which have been examined by the MGB.

Section 7 INDUSTRIAL

7.1 BI – Business Industrial District

1. Purpose

To accommodate a range of lower intensity industrial and commercial uses which may have outdoor storage or work activities, in fully serviced business and industrial parks and do not create any nuisance outside a building to ensure that the development is compatible with other non-industrial uses. For any development within this district, a high landscaping standard is required to improve the appearance of new industrial and commercial development throughout the County, including along high-visibility highways and County main roads.

2. Uses

PERMITTED	DISCRETIONARY	NOTES
	General Industrial Manufacturing/Processing	
	Industrial Storage and Warehousing	

MGB Note: For the purposes of the brevity of this written order, not all the list of permitted and discretionary uses have been quoted. Only those discretionary uses relevant to this dispute have been identified.

4. Development
 - e) Landscaping
 - (i) As required by the Development Authority, all required yards and all open spaces on the parcel, excluding parking spaces, on-site circulation, outdoor storage, display and service areas, shall be landscaped in accordance with the approved landscape plan.
 - (ii) Landscaping standards shall comply with Subsection 13.6 of this Bylaw

MGB Note: for brevity of this decision the complete content of section 13.6 of the Bylaw has not been repeated.

5. Other Development Regulations
 - d) Safety and risk assessment is an integral component of the industrial development permitting process. Where there are potential effects or risks associated with a proposed development, the Development Authority may require the applicant to retain a qualified professional acceptable to the Development Authority to provide a Risk Assessment Report of the proposed development. As added by Bylaw 35-2009.

The County's LUB, section 20, defines General Industrial/Processing and Industrial Storage and Warehousing as follows:

General Industrial Manufacturing/Processing means development principally associated with manufacturing, assembling, fabrication, processing and research/testing activities. Without restricting the generality of the foregoing, typical facilities would include plants involved with natural gas or its derivatives: pulp and paper products: stone, clay, glass, plastic, wood, rubber or metal products: cement or lime products: automotive assembly or fabrication.

Industrial Storage and Warehousing means development (including a security suite as defined by the Bylaw used solely for security purposes) used for either indoor or outdoor storage, warehousing, distribution or trans-shipment of raw materials, partially processed or finished goods, manufactured products, or equipment. Typical facilities would include pipe yards, heavy equipment service and storage, lumber yards, storage/warehousing compounds or distribution

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centres. Generally no additional processing would occur on site. (as amended by Bylaw 35-2009).

County LUB 20-2009 includes a Heavy Industrial District and is relevant to the understanding of the organization of the County LUB and its application. The purpose of this district is as follows:

7.3 HI – Heavy Industrial District

1. Purpose

The purpose of the Heavy Industrial District is to provide for large scale industrial uses that due to their large land requirements and potential negative impacts such as noise, odour, risk of toxic emissions, fire or explosion hazard, are incompatible with other non-industrial land uses, but may be compatible with extensive agricultural operations.

The General Industrial Manufacturing/Processing and Industrial Storage and Warehousing uses categories are listed as permitted uses in this district. The application of this definition is disputed by the municipalities.

The applicable definition to heavy industrial uses in the County LUB is as follows:

INDUSTRIAL, HEAVY means a large scale manufacturing or processing facility requiring a license permit or authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy and Utilities Board or other federal or provincial approving authority. Without restricting the generality of the foregoing, these uses would generally be related to the oil and gas industry and would include for example: upgraders, plants for the manufacture of petroleum products, fertilizers, chemicals and the processing of natural gas and its derivatives. A heavy industrial use may require large amounts of land, energy, water and other natural resources in its operation. It may also have impacts that extend beyond the boundaries of the site, such as high volumes of heavy vehicle movement; potential for pollution of air, soil and water, or nuisance as a result of noise, smoke, dust, fumes, glare or humidity; or hazard arising from fire explosion, radiation or contamination.

The purpose of the Heavy Industrial district and the definition are examined and analyzed in the MGB's findings and reasons.

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Issues

The MGB must determine if detriment arises or may arise to the City as a result of the discretionary uses listed in the BI District, the associated definitions, the regulations in the BI District and the purpose statement. In order to decide this matter, the MGB must address the following sub-issues:

1. Does the purpose statement provide sufficient effective direction to the nature of the General Industrial Manufacturing/Processing and Industrial Storage and Warehousing uses that may occur in the BI District?
2. Are heavy industrial uses likely to occur in the BI District in relation to the two subject parcels adjacent to the City?
3. Will development within the City likely experience a variety of nuisances which cannot be mitigated by various buffering methods?

A summary of the positions and key evidence of the municipalities as well as the MGB's analysis, findings and reasons for each sub-issue is provided below.

Purpose Statement

Summary of City's Position and Key Evidence

The City submits that, even though the purpose statement includes a reference to the uses not creating a nuisance outside the building, the purpose statement is a guide only and is not legislative or regulatory in nature. The purpose statement is not reflected in any regulations within the BI District. In comparison, the City, in its land use bylaw, uses the method where it adds regulatory provisions such as the "General Performance Standards for Industrial Development."

The City emphasizes that a landowner would appeal a refusal from the Development Authority to the Subdivision and Development Appeal Board (SDAB) as the uses are listed as discretionary and, therefore, may be approved. As a result of the nature of the definitions in the Bylaw, the newness of the district, the lack of working experience and history with the definitions and district, as well as the fact that the uses are discretionary, the City concludes that the uses associated with a variety of nuisances will very likely be approved.

Summary of County's Position and Key Evidence

The County submits that the City is in fact ignoring the purpose of the BI District. The purpose is quite restrictive and clearly states that even if there is outdoor storage or work activities, these uses must not create any nuisance outside the buildings. This ensures that the development is compatible with adjacent non-industrial uses.

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The County did point out that it has had a land use bylaw for many years which also had purpose statements included in the districts. The County is familiar with how it evaluates a proposed use in relation to a purpose statement. As well, the nature of the purpose statements in the County's LUB is not unlike the nature of the purpose statements in the City's bylaws. In contrast to the City, the uses in the County's LUB are discretionary while the City has made general industrial uses permitted, which comes with a right to a permit. Discretionary uses, as listed in the County LUB, do not carry the right to a permit.

The City's main witness, admitted when questioned by the County, that the purpose statement would be a primary consideration by the County's Development Authority. The purpose statement for the BI District directs the consideration of those uses that do not have impacts offsite.

In addition, the City would have standing before the County's SDAB to raise any concerns with any proposed use appealed to that Board. The City has additional remedies to protect its rights and interests should it feel an inappropriate use is being considered. More importantly, the County's expert witness testified that in her experience, the County's SDAB has not ignored the purpose statements in the County's LUB.

MGB's Analysis, Findings and Reasons

The MGB does not find the submissions of the City persuasive regarding the role of the purpose statement in a land use bylaw district in general nor as specifically argued with respect to the role of the purpose statement in the disputed BI District. The City provided no authority to illustrate that purpose statements in a land use bylaw district or, specifically, in this BI District are not an integral part of the characterization of the types of uses that could be allowed as a discretionary use.

To the contrary, the MGB finds that the purpose statement is an integral element of the BI District and does, in fact, characterize and limit the types of General Industrial Manufacturing/Processing uses and the Industrial and Warehousing uses which could be permitted as discretionary uses in the BI District. The MGB is convinced by the County that the BI District must be read as a whole with careful attention to the purpose of the district and specifically to the introductory part of the purpose statement.

To accommodate a range of lower intensity industrial and commercial uses which may have outdoor storage or work activities, in fully serviced business and industrial parks **and do not create any nuisance outside a building** to ensure that the development is compatible with other non-industrial uses...
(MGB emphasis added)

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The purpose statement, read in conjunction with the landscaping standard in 7.1.4(e) and the requirement for a risk assessment in 7.1.5(d) of the BI District, provides a context to the limitations expected when the discretionary uses are considered in the district. The City's witness admitted that the County's Development Authority would give primary consideration to the purpose statement, which the MGB finds convincing. The MGB is not convinced by the submission and evidence of the City that the list of discretionary uses should be read literally and in isolation from the purpose statement and the other regulations in the BI District.

As well, the County established that its Development Authority does have previous experience with the use of purpose statements in past LUBs and that the newness of this LUB does not inhibit the manner in which the County's Development Authorities would examine whether or not to refuse a discretionary use. The MGB found the City's submission of the newness of the County LUB unconvincing.

Furthermore, under direct questioning from the MGB panel, the City's witness explained the intent of the BI District which was to limit the types of uses and to limit the impact these uses would have offsite. The City witness stated:

We consider that the uses should follow the intent of the district, so the uses that are listed should be compliant and possible to implement that there is no impact outside the building. (page 143, line 19 – 22 of transcripts)

Thus, the MGB comes to the conclusion that the purpose statement effectively eliminates the potential detriment described by the City. The purpose statement addresses the need for the discretionary uses in the BI District to be compatible with "non-industrial uses." The MGB interprets this reference to "non-industrial uses" to include adjacent residential uses both within the County and the adjacent City. The MGB also recognizes that the discretionary land uses will provide for a greater degree of scrutiny and this planning process should mitigate noise related nuisance associated with outside storage.

Heavy Industrial Uses

Summary of City's Position and Key Evidence

The City submitted that many of the uses included within the General Industrial Manufacturing/Processing land use definition have the same characteristics as the Heavy Industrial Uses listed in section 2.3 of the TREF and as thus should not be included in the definition.

Without restricting the generality of the foregoing, typical facilities would include plants involved with natural gas or its derivatives: pulp and paper products: stone, clay, glass, plastic, wood, rubber or metal products: cement or lime products:

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automotive assembly or fabrication. (extract from the definition of General Industrial Manufacturing/Processing in County LUB 20-2009).

It is this part of the definition within the County LUB that the City believes will result in uses which have both nuisance and risk factors located adjacent to the City's residential areas. Heavy industrial uses are uses which cause impacts off site and potentially cause detriment to adjacent properties. These uses are listed as discretionary uses in the current definition and may be approved by the Development Authority.

The recognition of these uses as heavy industrial by the TREF lends support to the claim of detriment. These heavy industrial land uses are not consistent with the AIASP. The BI District allows these uses as discretionary uses and, in the view of the City, heavy industrial uses will get approved adjacent to the existing and future residential uses located in the City.

TRANSITIONAL REGIONAL EVALUATION FRAMEWORK
For the CRB's Review of Statutory Plans

Heavy Industrial Use	Means a large scale industrial manufacturing or processing activity including but not limited to the following: Plants for the manufacture of petroleum products, pulp and paper products, stone, clay and glass products, cement and lime products, fertilizers or animal by products Plants engaged in the primary metal industry, metal processing, the processing of natural gas or its derivatives, or the manufacture of asphalt; and Gravel crushing facilities or incinerators
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The City acknowledged that some of the heavy industrial uses which are more noxious, such as lime, cement and petrochemical industries, would be limited by the requirement to obtain provincial approval. However, the City asserted that some heavy industrial uses would not require provincial approvals and these uses would have off site impacts that would fall solely to the discretion within the County's BI District.

The City submits that a risk assessment, which may be required by the County, emphasizes that troublesome industrial uses could be allowed in the district. A risk assessment is only discretionary and a persistent landowner or developer would argue for the use being approved without the risk assessment. The City concedes this is not unlike the situation that would exist in the City. However, the City has considerable more experience with these matters. Based on the types of uses presently existing on the borders of the City, the City is convinced that uses with nuisances are highly likely to be approved and will create detriment. This submission was supported by several letters entered as evidence which indicated the City's previous concerns with the types of uses being contemplated in the district.

Summary of County's Position and Key Evidence

The County submits that the AIASP has since 1997 contemplated the two categories of use in the area and that no inconsistency arises. As well, the 2007 MDP contemplated these types of uses and the previous Industrial Commercial Core (ICC) district applied in 2007 also anticipated these uses. At that time, the City did not object to those uses.

The AIASP does not allow heavy industrial uses within the plan area and no lands within the ASP area have been districted HI – Heavy Industrial. There is a specific district in the County LUB applicable to heavy industrial uses.

The County identified the various types of industrial uses adjacent to the mobile home park located in the City's Winterburn Industrial ASP. These uses are not unlike the uses to which the City is objecting. The County also illustrated, through questioning of the City's witness, that the referenced heavy industrial use, the manufacturing of petroleum products, would involve a provincial approval. The Act states that provincial approval prevails over any statutory plan, land use bylaw, subdivision or development decision. Therefore, this would be out of the control of the County.

The County submits the new BI District is more restrictive than the previous ICC district that applied to the subject parcels. The BI District requires any nuisance to be contained within a building. The County again submits that the purpose statement would restrict and qualify the types of uses that would be included in the BI District, again emphasizing the importance of the purpose statement.

The County submits that the City relies incorrectly on the last part of the General Industrial Manufacturing/Processing definition and omits reference to the introductory sentence which refines the types of uses to be considered.

...means development principally associated with manufacturing, assembling, fabrication, processing and research/testing activities...

The County submits that, as a result of the amending bylaws, any associated risk is mitigated with the inclusion of the requirement for a risk assessment. The County submits that the provisions in its bylaw are broader than that provided in the City's Bylaw and will cover a broader range of situations where there may be some element of risk. The inclusion of the risk assessment does not detract from the purpose statement of the district but is an additional safeguard.

Under testimony, the County witness explained that the first part of the definition would mean uses that would not involve initial processing, but would utilize already processed materials and further treat it. The County emphasized the limited number of parcels and size of the two subject

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parcels to which the BI District is currently being applied. Heavy Industrial District is not applied to the subject parcels.

MGB's Analysis, Findings and Reasons

The meaning of detriment enunciated in the MGB's Sturgeon County decision (MGB Board Order 77/98) provides the MGB with a foundation upon which to evaluate the arguments of the parties in this case.

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 examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as "nuisance" factors.

As well, the Sturgeon County decision emphasized that *"the harm to be forestalledis both reasonably likely to occur, and to have a significant impact on the appellant municipality"*. These principles provide the framework in which the MGB can examine the alleged detriment.

After carefully reviewing the evidence and argument of the parties, the MGB finds that the nature of the General Industrial Manufacturing/Processing discretionary uses are limited in scope by the purpose statement in the BI District, the definition itself, the regulations in the district and the size of the parcels. The MGB comes to this conclusion by examining the construct of the definitions in the County LUB, the nature and purpose of the Heavy Industrial District and the nature and purpose of the BI District. The MGB found the County's submission that the harm alleged would not reasonably happen persuasive.

The use categories General Industrial Manufacturing/Processing and Industrial Storage and Warehousing are listed as permitted uses in the HI – Heavy Industrial District, which has a very distinctive purpose statement that acknowledges that the uses considered within the definitions in the HI – Heavy Industrial District will have negative impacts offsite. This is in direct contrast to the purpose statement in the BI District.

Considering the first part of the definition of General Industrial Manufacturing/Processing which states "means development principally associated with manufacturing, assembling, fabrication, processing and research/testing activities" and the explanation of the County's witness on how this modifies the type of use to be considered in the district, the MGB is not convinced that the

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approval of such heavy industrial uses as described by the City are likely to be approved as discretionary uses on the two parcels of land that are the subject of this appeal.

The MGB also accepts the emphasis by the County that the subject parcels measure only 30 and 15 acres. The MGB finds it unlikely that heavy industrial uses of the scale that would have offsite impact would locate on this size of parcels in a location in such close proximity to non-compatible land uses. As the City witness testified, major industrial development with significant risk factors would require a set back of 1.5 km between the industry and any residential use (page 55, line 18 to 22 of transcripts). The MGB finds that the possibility of detriment to the City would be remote from these types of heavy industrial uses, given the size of the parcels and its location.

The MGB rejects the comparison of the City to the industrial uses referenced in the TREF and the uses referenced in the BI District. The BI District uses are distinctly limited by the scope and intent of the purpose statement. The references in the TREF are not. The references in the TREF are more applicable to the use classes listed in the context of the County's HI – Heavy Industrial District.

The MGB agrees with the County that the inclusion of the potential need for a risk assessment in Bylaw 36-2009 does not suggest that the discretionary uses will be more like heavy industrial uses and have offsite impacts. The BI District must be read in its totality with the limitations expressed in the purpose statement. The MGB agrees with the County that the inclusion of the potential for a risk assessment is an additional safeguard and acknowledges that this included as a response to the concerns raised by the City with respect to the LUB.

The MGB did not find the County's submission that the City should be limited in this appeal because the City did not appeal earlier bylaws to be relevant. The County could not point to any limitation in section 690 of the Act that limits an adjacent municipality from filing an appeal simply because they did not appeal in the past.

Industrial Storage and Warehouse - Nuisance Factors - Buffering

Summary of City's Position and Key Evidence

The City submits that since general industrial and industrial storage are listed as categories of use that are discretionary, it is likely that the possible uses within this category will be allowed. These uses have associated with it nuisance factors such as odours, smoke, pollution and noise. All these potential uses will negatively impact the neighboring land uses in the City, specifically the neighboring residential uses. This is the detriment.

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The City submits that, although it has industrial zones adjacent to the same area of concern, it does have additional regulatory provisions in its land use bylaw to eliminate the offsite impacts. This includes a General Performance Standard, which states:

all uses and activities, except those noted in clause (b) and (c) below, shall be located and carried on within an enclosed building.

The City submits that the uses considered detrimental in the BI District go far beyond what is anticipated in the AIASP. More specifically, the City raises the concern with uses that have substantial outdoor operations, such as pipe yards. The City's witness testified that pipe yards, vehicle or heavy equipment storage and lumber yards, and other like uses cause significant banging and clanging. The witness cited the problems the City has experienced with a very large pipe yard in the southeast part of the City. The use of a berm or fence does not mitigate this noise nuisance.

The City submits that there is insufficient buffering to mitigate against the nuisances associated with the variety of uses allowable under the general industrial and industrial storage categories. Because they are not certain that uses with nuisances or risk factors will not be approved, the City requests that a buffer zone be created by applying an overlay onto the BI District. The City emphasized that there is now only a 30 metre road right of way separating the BI Districts from the existing and future residential districts in the City.

Summary of County's Position and Key Evidence

The County cites previous MGB decisions which make it clear that the alleged harm must be likely to occur and have a significant impact on the City before detriment can be found. It is the County's submission that there is insufficient evidence to support the City's claim.

The County submits that there is adequate buffering in the form of mandatory landscaping and screening requirements in the BI District which will create a visual screen. With respect to noise nuisance, the County submits that the purpose statement provides adequate protection to deal with this factor.

Through the testimony of its expert witness, the County illustrated that 231 Street, located within the City, will act as a spatial buffer, reducing the impact of any nuisance factors. The City's witness confirmed for the County that the City uses arterial roads as a separation between industrial areas and residential areas. Specific reference was made to the separation provided by Stony Plain Road between the Winterburn Industrial ASP and the residential areas to the south. The County confirmed through questioning that 231 Street on the west boundary of the City would be a 30 metre right of way with a 1 metre berm and a 1.8 metre solid fence, as required in City's Lewis Estate Farms ASP.

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The County also had the City witness confirm that there is minimal buffering between the mobile home park and industrial uses in the Winterburn Industrial ASP, located within the City. The County submits that the use category Industrial Storage and Warehouse is similar to the use category General Industrial Uses with the City's Land Use Bylaw.

MGB's Analysis, Findings and Reasons

The MGB refers back to the purpose of the district when examining the question of nuisance factors associated with existing and possible disputed discretionary uses.

To accommodate a range of lower intensity industrial and commercial uses which may have outdoor storage or work activities, in fully serviced business and industrial parks and do not create any nuisance outside a building to ensure that the development is compatible with other non-industrial uses".

Even though outdoor storage or work activities may occur, the Development Authority must evaluate any proposed discretionary use in the context of the purpose statement, which states that approved uses "do not create any nuisance outside a building".

When examined in relation to the definition of the use category Industrial Storage and Warehousing and specifically the list of possible uses within the definition as cited below:

Typical facilities would include pipe yards, heavy equipment service and storage, lumber yards, storage/warehousing compounds or distribution centres.

The MGB accepts the submissions of the County that the Development Authority would temper its consideration of proposed uses based on the purpose statement of the district and that uses with a nuisance factor would not be likely.

The MGB also accepts the submission that the amendment to the definition of Industrial Storage and Warehousing in Bylaw 35-2009 reduces the probability of uses which would have nuisance factors associated with additional processing.

If nuisance factors do result from some of the uses within the disputed use categories, the MGB accepts that the buffering in place, the required buffering, the road noise attenuation and some of the non-residential uses will minimize any of the cited nuisance factors. Specifically, the MGB accepts the 30-metre road right of way as a typical transition between residential and low intensity industrial uses as a mitigating measure. The MGB further accepts that the existence of a 1-foot berm and the 1.8-metre high solid fence will also assist mitigating nuisances. Moreover, the process used to approve discretionary land uses will provide for a greater degree of scrutiny, which should mitigate the concerns about noise.

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The MGB examined the Lewis Estates ASP and the Second Neighborhood ASP and noted there is a small Commercial/Business area within the City at the intersection of Stony Plain Road and 231 Street. This will serve as a transition from the uses in the County's BI District to the residential uses in the north west corner of the Lewis Estate Farms ASP. This will further mitigate any potential nuisance factors.

The MGB finds the Landscaping Standards within the County's BI District will mitigate a large number of the nuisance factors identified by the City. These landscaping standards address the issue of outdoor storage, one of the major issues raised by the City. As well, the introduction of the risk assessment, as stated earlier, provides additional protection against undesirable uses in the BI District.

PART II COUNTRY RESIDENTIAL DISTRICTED LANDS

Background

The 12 quarter sections of CR land that are subject of this dispute are located south of the Stony Plain Indian Reserve No. 135, adjacent to the western boundary of the City, within the Woodbend - Gramina ASP. These lands are designated Country Residential Core in the County's MDP. The subject lands are designated agriculture in the Woodbend - Gramina ASP, but the County acknowledges that this ASP is outdated. The Woodbend - Gramina ASP identifies the permitted uses as extensive agricultural activities, concentrated horticultural uses and intensive livestock operations.

The relevant requirements related to the disputed matters for an ASP or outline plan for country residential development are established in Policy 3.1 of the County's MDP. Only the relevant sections of the policies are cited in order to ensure brevity.

- 1.1 Multi-parcel residential subdivisions shall comply with the provisions of an applicable Area Structure Plan (Map 3) or an Outline Plan for the entire ¼ section will be required. The Outline plan will include:
 - a) The location, dimension and boundaries of the ¼ section to be subdivided
 - b) The portions thereof of which the applicant proposes to register and **all subsequent stages;**
 - c) The location, area and proposed dimensions of all parcels, roads **and points of access to all proposed parcels;**
 - h) Proposed methods of handling **surface drainage** through preliminary storm water management;
 - i) Proposed methods of **on-site servicing** for potable water and sewage **(MGB emphasis added)**

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Policy 3.10 provides the relevant policy direction with respect to traditional country residential subdivisions as follows.

- 3.10 Traditional country residential subdivisions in the Country Residential Core Policy Area may be supported if all the following criteria are met.
- a) **Parcel size** is a minimum of 0.8 hectares (2.0ac) and a maximum of 4.0 ha (10.0 ac);
 - b) It can be demonstrated to the satisfaction of the County and Alberta Environment that each lot can be serviced with **onsite water well or cistern and a private sewage disposal system;**
(MGB emphasis added)

Section 633 of the Act provides a municipality with the ability to undertake more detailed planning for an area, when provided for in a municipal development plan, with the preparation and adoption of an ASP. The MGB analyzes these provisions in light of the submission by the City of the uncertainty in regard to the CR districting on the 12 quarter sections which the City establishes as the foundation for detriment.

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 the 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.

The Woodbend - Gramina ASP, adopted in 1984, is relevant to the CR issues raised by the City.

In the scheme of the Act, the land use bylaw functions as the implementing document of the policies set in the various statutory plans and establishes the development rights of specific parcels of land. The subject lands are districted CR - Country Residential District. The MGB examined the following relevant sections of the CR District.

5.1 CR – Country Residential District

1. Purpose

To provide for **traditional multi-parcel country residential** subdivision/development identified in a statutory plan for that use and related uses, including minor agricultural pursuits. Subdivision and development may be **serviced by private on-site systems.**

a) Parcel Area Requirement (for purposes of new parcel creation only)

(ii) Manufactured home, single wide and single detached dwelling shall have a **minimum parcel area of 0.8 ha (2.0 ac)** of contiguous developable land and a **maximum parcel area of 4.1 ha. (10.0 ac)** for a single parcel or multi-parcel residential subdivision, unless greater area is required to include shelterbelts, buildings or other improvements related to the residential component of a farmstead.

(iii) For all other Permitted and Discretionary Uses, including multi-parcel residential subdivision, the parcel density requirement shall be determined by the Subdivision Authority.

(MGB emphasis added)

Throughout the debate on this issue, the parties refer to the adequacy or inadequacy of the information provided at the time of subdivision assisting the City to determine the impacts of future subdivisions.

The *Subdivision and Development Regulation*, Alta. Reg. 43/2002, section 4, requires a subdivision applicant to provide specific information regarding their proposed subdivision, including a conceptual scheme that relates to future subdivision of adjacent lands. The County refers to this scheme as an outline plan.

Application

4 (1) The owner of a parcel of land, or a person authorized by the owner of a parcel of land, may apply for subdivision of that parcel of land by submitting a complete application for subdivision to the appropriate subdivision authority.

*(2) A complete application for subdivision consists of
(e) a conceptual scheme that relates the application to future subdivision and development of adjacent areas;*

The Act requires that all statutory plans must be consistent with each other.

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

In this appeal, the issue of consistency between County statutory plans, specifically consistency between the new MDP and the Woodbend - Gramina ASP and the relevancy of potential inconsistency with respect to potential detriment has been raised by the City.

At the time of the passing of the County's LUB, the CRBR was in force. It requires a municipality to submit a statutory plan to the CRB for approval.

Capital Region Board Regulation AR 49/2008

21 (1) Until the Capital Region Growth Plan takes effect, statutory plans to be adopted by a participating municipality that meet the criteria set out in the Framework must be submitted to the Capital Region Board for approval.

The Act defines statutory plan and land use bylaw as

616 In this Part,

(k) "land use bylaw" means a bylaw made under Division 5 and a bylaw made under the Historical Resources Act.

(dd) "statutory plan" means an intermunicipal development plan, a municipal development plan, an area structure plan and an are redevelopment plan adopted by a municipality under Division 4

The municipalities agree a land use bylaw is not a statutory plan as defined in the Act, thus any new land use bylaw, specifically the County's new LUB, did not have to be referred to the CRB.

Issues

The MGB must examine the following specific issues raised by the parties:

1. Does the lack of referral to the CRB result in detriment to the City or was this detriment foreseen in the structure of the legislative scheme?
2. Is there uncertainty in the districting of the 12 quarters of land to CR which creates detriment for the City of such degree that the MGB should intervene in the bylaws of the County?

3. Does the redistricting of the 12 quarters to CR interfere with the development of an outer ring road to the extent that detriment occurs to the City to such degree the MGB should intervene in the bylaws of the County?

Inconsistent Statutory Plans/Referral to CRB

Summary of City's Position and Key Evidence

The City identified the inconsistency between the Woodbend – Gramina ASP and the County's MDP. The County recognizes this inconsistency and says it will rectify the matter when resources are available to prepare an updated Woodbend – Gramina ASP. The City submits that:

To state the resources are not sufficient does not negate the detriment suffered by the City and should not justify the amendment of only the land use bylaw; without reflection of the effect on coinciding statutory plans.

The City submits that the Act is clear on the necessity for statutory plans to be consistent. The City further submits that by not updating the Woodbend – Gramina ASP, referral to the CRB is avoided by the County. A review at the CRB would address a large number of legitimate planning issues, such as the fragmentation of agricultural lands, the alignment of development with the region's priority growth areas, and coordination of development with major regional transportation corridors. These factors, if not addressed, cause detriment to the City.

The City acknowledges that the MGB has no authority to refer a matter to the CRB; however, the MGB can direct that the redistricting of the 12 quarters be repealed or stopped. This direction would force the County to undertake the proper planning steps of preparing an updated ASP for the subject lands. This would result in a proper review by the CRB when the ASP is submitted as required under the CRBR.

The City disagrees with the argument of the County that since the Woodbend - Gramina ASP is out of date, the County's MDP should be considered the primary policy document directing land use and development in the area essentially ignoring the Woodbend - Gramina ASP which still is an adopted bylaw. The City says there is no law to support this view of the planning scheme in the County.

Summary of County's Position and Key Evidence

The County submits that the Woodbend - Gramina ASP is no longer current as it was adopted in 1984. The County indicated that their MDP identified this area as CR in June of 2007 and, prior to that, the lands in the previous plan were designated Country Residential Future since 1998. The City took no action to appeal the 2007 MDP. The MDP is the most current planning policy for the subject area. As a result, the CR District applied to these lands is consistent with the

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current MDP. The County argues that the City cannot claim detriment now when the City did not previously appeal the MDP.

The County acknowledges that the MDP identifies the Woodbend - Gramina ASP as needing review and update; however, due to the resources being assigned to other priority planning projects, like the CRGP, the review of the ASPs in the County has not taken place yet. The County indicated that the City has not updated some of its outdated planning bylaws due to other planning priorities and lack of sufficient resources (e.g. Winterburn Industrial Area).

The County submits that it has not breached any of the provisions of the CRBR since a new land use bylaw or a land use bylaw amendment are not required to be referred to the CRB. As well, there is no legal requirement in the Act to prepare and adopt an ASP.

The County further submits that the redistricting of the lands to CR is not inconsistent with the CRBR or the CRGP Addendum. The policies in the more current MDP provide the same requirements or more detail than the outdated Woodbend - Gramina ASP.

MGB's Analysis, Findings and Reasons

The MGB finds that the City is attempting to have a referral to the CRB indirectly when the course of action cannot be pursued directly. The City and County agree that a new land use bylaw or amendments to a land use bylaw were not referable to the CRB under the CRBR and the TREF. The MGB, after reviewing the CRBR and TREF, agrees with this conclusion. Section 21 of the CRBR only references the referral of a statutory plan and Section 3 of the TREF makes no reference to the referral of a new land use bylaw or amendment to a land use bylaw to the CRB.

Capital Board Regulation AR 49/2008

21 (1) Until the Capital Region Growth Plan takes effect, statutory plans to be adopted by a participating municipality that meet the criteria set out in the Framework must be submitted to the Capital Region Board for approval.

The Act does not include a land use bylaw within the definition of a statutory plan.

616 In this Part

(k) "land use bylaw" means a bylaw made under Division 5 and a bylaw made under section 27 of the Historical Resources Act.

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(dd) “statutory plan” means in intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4

During the course of the hearing, the City submitted that the lack of referral in the CRBR and TREF was an oversight or an error. One of the first presumptions in statutory interpretation is that the legislators understood what they were doing and provided clear direction. The legislation speaks clearly for itself and makes no reference to the referral of a land use bylaw or amendment thereto in the CRBD or TREF.

The MGB must presume that the legislator foresaw the possibility of planning concerns or detriment arising where a land use bylaw was passed without an area structure plan and decided not to include these circumstances as part of the referral during the transition period of the CRB. In the view of the MGB, the allegation of detriment caused by a lack of referral has been disposed of by the legislative scheme. The MGB does not perform a legislative role and cannot change statutes or associated regulations. If the City disagrees with the legislation, it must pursue the matter in another arena.

Even after the passing of the CRGP, the MGB has no role to play with respect to conformity with the CRGP. Section 16 of the CRBR prohibits a municipality from taking specific actions, including the passing of a bylaw. However, the CRBR does not give the MGB the authority to enforce these provisions. It states the following:

16(1) Despite any other enactment, no participating municipality shall take any of the following actions that conflict with the Capital Region Growth Plan:

- (a) undertake a public work, improvement, structure or other thing;*
- (b) adopt a statutory plan;*
- (c) make a bylaw or pass a resolution;*
- (d) enter into a municipal agreement.*

The CRBR also directs municipalities to bring statutory plan and bylaws into conformity with the CRGP. If the statutory plans and bylaws are not brought into conformity by the date specified by the Minister, the statutory plan and bylaws are deemed to be invalid. As yet, the Minister has not identified this date. Regardless, the CRBR does not appear to contemplate a role for the MGB to require changes to the bylaw to ensure consistency.

18 (1) The council of a municipality shall amend every statutory plan and bylaw as necessary to conform with the Capital Region Growth Plan no later than the date specified by the Minister.

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(2) If the council of a participating municipality fails to amend a statutory plan or bylaw in accordance with subsection (1), the statutory plan or bylaw is deemed to be invalid to the extent that it conflicts with the Capital Region Growth Plan.

The MGB must confine its role to that specified in section 690 of the Act. The MGB is not convinced by any evidence or argument in this appeal that it should stray from the conclusion reached in MGB 77/98 – Sturgeon County Dispute (Sturgeon County Dispute).

In the Board’s view, this means that identifying the potential for detriment is the essence of the jurisdiction conferred on the Board by s. 690.

The MGB must resist the temptation to become the planning authority as reinforced by the statements in the Sturgeon County Order.

The Board’s mandate does not include acting as a “regional planning commission” or to taking on the duties and functions of a planning authority.

With the adoption of the CRBR, this direction becomes even more acute. The MGB must exercise its section 690 role in a manner that gives harmonious meaning to the Act and the CRBR, without usurping the role of the CRB yet undertaking the direction required of the MGB in section 690.

690(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...

The MGB is aware of section 25 of the CRPR which gives authority to the Minister of Municipal Affairs (Minister) to direct the MGB to defer consideration of a matter related to land within the Capital Region. In this appeal, there has not been any direction from the Minister for the MGB to defer this matter.

The MGB accepts the submission of the County that the preparation of an ASP is discretionary based on the wording in section 633 of the Act “..... a council may by bylaw adopt an area structure plan”. The MGB accepts that the County’s MDP directs the review of the Woodbend - Gramina ASP and the County, in its testimony, acknowledges that the plan must be updated. That being said, resources have been directed to other more pressing planning matters. Municipalities are autonomous bodies which set their priorities accordingly. Evidence at the hearing illustrated that both municipalities have a few outdated plans and bylaws which need attention. The MGB cannot come to the conclusion put forward by the City that there was wilful intent to avoid referral to the CRB. The MGB does not conclude detriment based on these facts. Furthermore, the County, pursuant to section 18 of the CRBR, still faces the challenge of having

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to amend every statutory plan, including the Woodbend - Gramina ASP and its LUB, to conform with the CRGP. The MGB refrains from commenting on the issue of conformity with the CRGP Addendum in order to avoid prejudice to that separate process.

The MGB draws a parallel from the Sturgeon County decision:

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.

In this case, the MGB turns its thinking and analysis directly to whether or not the redistricting of the 12 quarters does cause detriment. The MGB examined the other submissions of the parties with regard to the detriment claimed by the City.

The MGB notes that during its deliberation of this appeal, the Minister approved the CRGP in accordance with the CRBR. Alta. Reg. 17/2010 came into force on March 31, 2010. Section 13(3) of this regulation states that the CRGP is not a regulation under the *Regulations Act*. The MGB considered its role in relation to section 488.01 of the Act which states that the MGB “must act in accordance with any applicable ALSA regional plan”. The CRGP was not authorized under section 50 of ALSA and is, therefore, not a regional plan adopted under ALSA.

Uncertainty

Summary of City’s Position and Key Evidence

The City argues that redistricting the 12 quarter sections to a CR District, without the adoption of an updated ASP for the area, results in uncertainty for the City which causes detriment. An updated ASP for the area would provide detail as to the ultimate size of the population in the area, the required utility servicing for the area, the major transportation and drainage routes. The result of the County’s action is haphazard development, which is detrimental to the City.

The City emphasizes the importance of an ASP as a planning tool in the scheme and hierarchy of planning mechanisms provided for in the Act. The ASP is the primary tool for developing detailed plans for an area. An ASP is the only recognized planning tool in the Act that provides for the planning of a part of a municipality.

The City submits that the development of an outline plan at the time of subdivision is insufficient to provide the overall detail for planning. The City stated that there could be as many as 12 different outline plans that could take place in any time frame. The result of not having an ASP is that the City does not have a complete picture of future growth nor the ability to assess the impacts in its totality.

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The County skipped a step and did not update its Woodbend - Gramina ASP. It went directly to amending the LUB districts. Updating the Woodbend - Gramina ASP first would have provided the required amount of detail and information for the City to analyze the impact of future development on its operations and plans. Proper planning principles are not being followed and will not allow the City to ultimately determine the long term effects on the City. An ASP for the subject lands would provide the City with the detail that it requires to undertake future planning within its boundaries, including making strategic decisions with respect to intersection, arterial road design, access considerations, and drainage and utility strategies.

The City acknowledges that the area will be CR; however, because of the lack of an ASP and insufficient planning detail for the area, the City is unable to determine the impact on its operations and plans. This uncertainty creates a detriment to the City.

Summary of County's Position and Key Evidence

The County submits that there is sufficient information in the County's 2007 MDP and the CR District to provide the City with a clear understanding of the nature of the development that will occur on the subject 12 quarters. Both planning documents identify the area as CR with parcel sizes in the range of two to ten acres. It is a very low intensity use that is being planned for the area. On site private servicing (water and sewer) is directed for the subject area in the MDP. The County states that development in the area will not be "ad hoc" since it is directed by the provisions of the MDP and eventual outline plans or additional ASP(s), as required.

The County contends that the City's concerns with respect to this area are more remote. The City admits that this is not an area in which urban growth is projected to occur and admits that it has no annexation plans for the area. In addition, there is no intent to have this area serviced by the City and if the City did receive a request to provide water and/or sewer service, the City is in full control over whether it would provide these services. The City is also in full control to permit or refuse access to the adjacent roadway. Detriment is not created by the mere fact that the public from the CR area may drive on this adjacent roadway. At the time of subdivision, the County's MDP and LUB require the submission of an outline plan that provides further information on the proposed development. The City would have access to any such outline plan as part of the subdivision circulation process.

The County submits that the City did not file an appeal with respect to the MDP designation of CR for the area dating back to 1998 and they did not appeal when the designation was confirmed in the 2007 MDP. Therefore, the City's claim for detriment should be rejected.

MGB's Analysis, Findings and Reasons

In the Sturgeon County decision, the MGB stated that detriment can show its face in many forms.

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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. Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighboring municipality to plan effectively for future growth.

In this appeal, the City's alleged detriment falls into the latter category. The City admitted that the subject 12 quarters are not part of any future annexation area and, therefore, detriment is not claimed within the context of the City growing into a fragmented CR area. However, the question remains whether detriment may occur as a result of the fragmentation of land adjacent to the City as it may impact the question of certainty and servicing expectations.

The MGB, after reviewing the County's MDP and the CR District, find there is little ambiguity or uncertainty with respect to the subject lands. The MDP clearly designates the 12 quarters of lands as Country Residential Core and the CR District has as a purpose "to provide for traditional multi-parcel country residential subdivision/development identified in a statutory plan." The MGB was convinced by the arguments and evidence of the County that the City does not face uncertainty with respect to the development which will occur on the subject 12 quarters. In fact the City admits it understands that the use is CR. The MGB concludes that the land use for the area is sufficiently addressed and no detriment should arise.

The nature of traditional multi-parcel country residential subdivision/development is enunciated within the MDP and the CR District. The density of development is fixed by the minimum and maximum parcel sizes of two and ten acres as directed in the MDP and implemented in the CR District (section 3 a)(ii). The MDP (policy 3.10 c) and the purpose of the CR district direct "Subdivision and Development may be serviced by private on-site systems" resulting in minimal, if any, utility servicing demands on the City. The provision of the major public utilities of water and sewer are therefore addressed. The County witness confirmed the low intensity of CR projected for this area.

The MGB finds it possible, from these parameters, for an adjacent municipality, like the City, to be able to analyze the impact of the potential development that may be generated. The statements of the City witness were unconvincing in this regard. As well, the County's witness persuaded the MGB that development on the 12 quarters of land would proceed at a relatively low CR density because of the topographic and soils limitations generally found in the Woodbend – Graminia area and typical of previous development in the area. The MGB concludes that density of development has been addressed, at least in a general fashion.

Examination of the maps, presented at the hearing and available to the City, reveal a typical rural road pattern, setting the parameters for the transportation routes within and adjacent to the City. The CR development occurs within the context of this road pattern and is not uncertain. The

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MGB accepts that the City is and will be in full control of access points to 215 Street within the City and can allow or limit access as required. In the absence of any expert witness with transportation planning expertise or transportation studies to show how difficult it would be to develop the designs and intersections for 215 Street without additional information regarding the Woodbend - Gramina area, the MGB finds the City's submissions on this matter unpersuasive.

Although the provision of an outline plan on a subdivision by subdivision basis has some limitations, the MGB was convinced by the County that useful additional information on traffic patterns, street layouts, drainage and future subdivision schemes would assist the City in planning for any associated impacts.

Outer Ring Road

Summary of City's Position and Key Evidence

The City submits that the 12 quarter sections redistricted to the CR District are in the path of one of the options for an outer ring road. The path of the ring road in this area was identified in the County's MDP, which illustrated a possible route through these 12 quarter sections. The City does concede that a specific alignment for the outer ring road is not known but still claims that the fragmentation of this area creates a high degree of uncertainty, which will have a detriment on the City.

The premature fragmentation of lands in the path of the outer ring road will increase the cost and complexity of implementing a needed piece of the regional infrastructure. Although these costs are not direct to the City, the indirect detriment is of major concern to the City. The fragmentation of lands in the path of the ring road may result in the complete reconsideration of the ring road which would dramatically impact the traffic patterns in the City, force the ring road into the City boundaries and cause uncertainty to landowners.

Summary of County's Position and Key Evidence

The County submits that the reference to the outer ring road in the MDP is only conceptual and stresses that the need for the land in this area and the ultimate location of the ring road is as yet unknown. The most recent study of the potential path of the outer ring road prepared by Alberta Transportation (AT) illustrates a very broad path which, to a large extent, misses most of the 12 quarters.

The County also emphasized that the broad path outlined in the most recent AT study cuts through the City of Spruce Grove, areas of country residential north of the City and north of the City of Spruce Grove, as well as southwest of the City.

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MGB's Analysis, Findings and Reasons

Based on the evidence presented, the MGB finds the route of the outer ring road to be uncertain and, at best, the outer ring road may only be impacted by a very small portion of the CR districted lands in question. The MGB accepts the submission of the County that any detriment to the City due to the location of the outer ring road is remote. The impact on the City of future outer ring road decisions is no different than that which will be experienced in other areas of the region where the outer ring road path intersects with existing and future urban growth and existing and future country residential development in the region. The City was unable to present convincing evidence that future CR development in the lands in question would impact a specific alignment of the outer ring road to the extent that would necessitate the MGB to interfere in the County's LUB districting.

PART III SUMMARY AND CONCLUSIONS

As stated in Sturgeon County decision:

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.

After all submissions from all parties, the MGB cannot come to the conclusion in this case that the harm alleged by the City is reasonably likely to occur and is of such significant impact that the MGB should order the requested legislative surgery. The MGB was not convinced that the purpose statement in the BI District, the associated landscaping and screening standards, and the potential for risk assessments would not appropriately direct compatible discretionary uses adjacent to the City, considering the nature of the existing and future buffering proposed in the area and the adjacent land uses.

In addition, the Sturgeon County decision states:

Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment.

As stated in the analysis of a number of the issues, the MGB found the information submitted to be insufficient to convince it that there was a reasonable likelihood of detriment to the City. This specifically applied to the alleged impacts of the CR districting on City roads and the outer ring road. A number of broad allegations were made but were not sufficiently supported by evidence to convince the MGB to intervene in the autonomy of the County to pass its LUB. In the spirit

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of past MGB decisions on intermunicipal disputes, the appellant municipality must provide convincing evidence to the MGB such that the municipal autonomy should be curtailed.

This decision, unlike the Sturgeon County decision, faced the challenge of determining the relationship of an MGB decision pursuant to section 690, the authority and role of the CRB and the discretion provided for in the Act for a municipality to adopt or not adopt an ASP. The MGB is satisfied that it properly examined the City's challenge related to detriment within the construct of Section 690, is providing the proper harmonious perspective to the CRBR and the discretion afforded municipalities in the Act.

The appeal of the City is dismissed.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 15th day of June 2010.

MUNICIPAL GOVERNMENT BOARD

(SGD.) J. Gilmour, Presiding Officer

APPENDIX "A" – APPEARANCES

NAME	CAPACITY
C.J. Ashmore	Solicitor for the Appellant (City of Edmonton)
J.C. Johnson	Solicitor for the Appellant (City of Edmonton)
M. Clarke	Witness for the Appellant (City of Edmonton)
S.C. McNaughtan	Solicitor for the Respondent (Parkland County)
S. Armstrong Buttrey	Witness for the Respondent (Parkland County)
A. McCully	Witness for the Respondent (Parkland County)
Robert Horton	Affected Landowner

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

NO.	ITEM
Exhibit 1A	City Statutory Declaration dated July 22, 2009
Exhibit R2	County Statutory Declaration dated August 20, 2009
Exhibit M3	Decision Letter 116/09 dated October 16, 2009
Exhibit M4	MGB Hearing Notification letter dated November 7, 2009
Exhibit P5	Correspondence from O. Workum received November 18, 2009
Exhibit P6	Correspondence from O. Workum received November 18, 2009
Exhibit A7	City/County Negotiation Report date November 19, 2009
Exhibit A8	City Submission dated November 12, 2009
Exhibit P9	Correspondence from T. Nobleg received November 16, 2009
Exhibit R10	County Response dated November 26, 2009
Exhibit P11	Correspondence from D. Purewal received November 26, 2009
Exhibit P12	Correspondence from B. Horton received November 26, 2009
Exhibit A13	City Rebuttal received December 3, 2009
Exhibit R14	Bylaw for Lewis Estate Farms
Exhibit R15	Excerpt of County Bylaw
Exhibit R16	Edmonton Land Use Appeal Zoning Map
Exhibit R17	Parkland County 2007 MDP Land Use Concept Map
Exhibit R18	Figure 8.0 Development Concept Lewis Estates
Exhibit R19	Excerpt Woodbend - Gramina ASP
Exhibit R20	CRB Motion on Regional Ring Road
Exhibit R21	Regional Transportation Infrastructure Map