

BOARD ORDER: MGB 094/10

FILE: 09/IMD-05

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

AND IN THE MATTER OF AN APPEAL brought pursuant to Section 690 of the Act by Rocky View County, respecting the adoption on September 28, 2009 of The City of Calgary Bylaw 24P2009, being a Bylaw to adopt a Municipal Development Plan.

BEFORE:

Members:

L. Patrick, Presiding Officer
T. Golden, Member,
R. Strauss, Member

Case Manager:

R. Duncan

This is the decision of the Municipal Government Board from a hearing held March 16, 17, and 18, 2009 respecting a claim of detriment by Rocky View County with respect to the passing of the City of Calgary Municipal Development Plan.

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EXECUTIVE SUMMARY

In this decision, the Municipal Government Board (MGB) is required to determine if the adoption of the City of Calgary (City) Municipal Development Plan (MDP) Bylaw #24P2009 is detrimental to Rocky View County (County). Section 1.3.2 is the only section of the MDP that is being disputed. This section acknowledges the 2006 Annexation Agreement reached by the City and the County but does not append a map showing the growth corridors for both municipalities. The County has appealed to have this map and some amending text included in the City's MDP.

The MGB conducted a preliminary hearing on November 27, 2009. During this hearing, the solicitors for the County and the City suggested a document exchange timeline and dates for the merit hearing.

The MGB commenced the merit hearing on March 17, 2010 pursuant to the instructions given during an earlier preliminary hearing. The issues before the MGB at the merit hearing were:

1. Has the County suffered or is it likely to suffer detriment caused by the uncertainty resulting from the City's MDP not including the conceptual growth corridors identified in the 2006 Annexation Agreement?
2. Has the exclusion of the Annexation Agreement conceptual growth corridors from the City's MDP impacted the relationship between the City and the County to the extent that it has caused or is likely to cause detriment to the County?

Position of the County

The County considers the 2006 Annexation Agreement to be a landmark agreement in that it demonstrated that the City had moved beyond the Unicity principle that framed the City's approach to planning for decades. The Agreement also recognized that the County was a major adjacent municipality that maintained its own development goals.

The Annexation Agreement identified a timeline for the completion of an update to the 1998 IDP. However, other planning priorities caused the County to shift its resources to other projects, which delayed the completion of the IDP process. Up to that point, County and City planning personnel had worked collaboratively on the IDP process. The County was taken aback to find that City had continued to work on the IDP project and had in fact developed a number of chapters while the County planning personnel had been reassigned.

Concurrent with the County's suspension of the IDP, the City completed its MDP. The County did not believe the City had to stop its MDP process until the completion of the IDP, but its expectation was that both documents had to conform to the Annexation Agreement. After reviewing a draft of the City's MDP, the County had a number of concerns. The matter was

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forwarded to the Intermunicipal Committee and all but one of the concerns, the inclusion of “Schedule A-2” map of the annexation agreement identifying the County’s growth corridors, were resolved by the municipalities. The County contended that the changes made to Section 1.3.2 of the City’s MDP to address the growth corridor issue were not satisfactory and filed this appeal.

During the hearing, the County submitted that the City’s MDP does not address future growth patterns as required by the *Municipal Government Act* (Act) because the 1998 IDP does not address the issues agreed to in the Annexation Agreement. The City has also failed and refused to include growth patterns in its MDP as required by the Annexation Agreement. The County maintained that the actions of the City have impacted the relationship between the two municipalities.

The County requested the MGB to order that:

- the City’s MDP acknowledge specific terms in the Annexation Agreement,
- the City’s MDP include a map to show the conceptual growth corridors, and
- the City’s MDP be required to reflect any refinements negotiated through the IMD process.

City’s Position

The City confirmed that it considers the Annexation Agreement to be a watershed agreement. The City identified that arrows are used in Schedule A-2 of the Annexation Agreement to show the conceptual growth corridors for both municipalities. The City submitted that the Annexation Agreement recognized the need to update the 1998 IDP. The IDP Review would further define the growth corridors for both municipalities. Unfortunately, the IDP process is incomplete, due to delays caused by both municipalities.

The City submitted that it has not breached the Annexation Agreement. The City identified that the Annexation Agreement does not specify the IDP process must be complete before the adoption of a MDP. After consulting with the County and amending the original, the City adopted its MDP on September 28, 2009. The City submitted that Section 1.3.2 of its MDP specifically acknowledges the Annexation Agreement and specifically identifies that the City will amend its MDP once both municipalities have revised and approved the IDP.

The City submitted that without the completion of the IDP, the growth corridors are conceptual and that the identification of the corridors in its MDP would have no legal effect outside the City’s boundary. The City contended that adopting growth corridors in its MDP would in effect fetter the legislative authority of Council with respect to the IDP adoption process. The City believes it is more efficient for it to amend its MDP after the completion of the IDP. This amendment methodology would not only allow the County to avail itself of the dispute

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resolution process identified in the Annexation Agreement, but would provide the County with an additional appeal opportunity as well as provide more public consultation opportunities.

The City requested the MGB to dismiss the County's appeal.

MGB Findings

In making its decision, the MGB first considered the scope of its jurisdiction. In this regard, the MGB finds that:

1. The MGB has the jurisdiction to hear the County's appeal of the City's MDP.
2. Section 1.3.2 is the only part of the MDP that is under consideration in the dispute before the MGB.
3. The City's MDP conforms with Section 632(3)(ii) of the Act.
4. It is not within the jurisdiction of the MGB to enforce the Annexation Agreement.

Having noted the scope of its jurisdiction, the MGB considered the issue of detriment. The MGB finds that:

1. The level of uncertainty claimed by the County due to the City's MDP not specifically including a reproduction of the map contained in "Schedule A-2" of the Annexation Agreement is not sufficient for the MGB to order a change to the City's MDP.
2. The detriment to the relationship between the City and the County caused by a disagreement as to the interpretation of the Annexation Agreement is not sufficient for the MGB to order a change to the City's MDP.

MGB Decision

The County's appeal is denied.

INTRODUCTION

In this decision, the Municipal Government Board (MGB) is required to determine if the adoption of the City of Calgary (City) Municipal Development Plan (MDP) Bylaw 24P2009 is detrimental to Rocky View County (County).

The County submitted that the Section 1.3.2 of the City's MDP does not include a map illustrating the long term growth corridors for both the City and the County as required by the 2006 Annexation Agreement. The County also submits that the wording of Section 1.3.2 weakens the terms of an existing Annexation Agreement, which harms the relationship between the two municipalities. The County provided the MGB with recommended amendments to the

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City's MDP that the County believes would remedy the dispute and requested that the MGB order the City to make these amendments.

The City of submitted that Section 1.3.2 of its MDP refers to both the Annexation Agreement and the map contained in "Schedule A-2" of the Agreement which shows the conceptual growth corridors of both municipalities. Section 1.3.2 also identifies that the City will amend the MDP to reflect the growth corridors after the completion of the review of the Intermunicipal Development Plan (IDP). The position of the City is that this conforms with the provisions of the 2006 Annexation Agreement and sufficiently addresses the concern of the County. The City contends the relationship between the two municipalities has not been harmed as a result of the adoption of its MDP. Therefore, the City submits the appeal has no merit.

Section 690 of the *Municipal Government Act* (Act) requires the MGB to determine whether or not detriment exists to the County. If the MGB finds there is no detriment it then can dismiss the appeal. If the MGB finds there is detriment, it can repeal the disputed provision or it can order an amendment to the disputed provision in the City's MDP.

ORGANIZATION OF THIS DECISION

The following decision is organized into three sections. The first section provides a general background that gives a short overview of the events leading up to the merit hearing. The second section provides a summary of the submissions and presentations received by the MGB during the merit hearing. The third section identifies the MGB's findings, decision and reasons.

BACKGROUND

This section will provide information regarding the events leading to the merit hearing. This includes the statutory declaration and notice of appeal filed by the County, the statutory declaration filed by the City and the preliminary hearing.

COUNTY'S NOTICE OF APPEAL AND STATUTORY DECLARATION

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 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.

On September 28, 2009, the City adopted the MDP. The MGB received a notice of appeal and statutory declaration regarding the City's MDP from the County on October 27, 2009.

The statutory declaration filed by the County indicates that the Calgary/Rocky View Intermunicipal Committee (Intermunicipal Committee) met twice to discuss the County's concerns and that the municipalities were able to address most of these issues. However, the

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County requested that the City honour the Annexation Agreement “and include both the map contained in A-2 in Plan it Calgary as well as a policy that reflects that agreement”.

The County is of the opinion that the City’s MDP has or may have a detrimental effect on the County for the following reasons:

1. The County and the City negotiated and entered into an Annexation Agreement.
2. The City’s annexation was approved on August 1, 2007.
3. Schedule A2 of the Annexation Agreement identified conceptual growth corridors, being the corridors defined in the Annexation Agreement as corridors “which are recognized and respected by both the City and the Municipal District of Rocky View No. 44 (now known as Rocky View County) as representing fundamental future long term growth areas for both parties”.
4. The City and the County agreed to proceed to fully cooperate to ensure the terms and conditions of the Annexation Agreement were fulfilled.
5. In Schedule D of the Annexation Agreement, the City agreed to identify the conceptual growth corridors in their MDP.
6. Despite requests that the City include in the City’s MDP a policy incorporating the provisions of Schedule A-2 and Schedule D of the Annexation Agreement, the City failed to do so.
7. The failure by the City to include in the MDP the conceptual growth corridors as agreed upon in the Annexation Agreement is detrimental to the County and undermines the negotiation process mandated by the Act regarding annexations.

The notice of appeal states that the City has referenced the conceptual growth corridors in Section 1.3.2 of its MDP, but has failed to include a map which identifies the corridors. Furthermore, the text of the MDP misstates the parties’ agreement regarding the conceptual growth corridors identified in the Annexation Agreement that are to be included in the MDP and the IDP.

The County stated that it had filed this appeal in order to preserve its rights, but would continue to pursue other options, such as mediation and the dispute resolution process referred to in the Annexation Agreement, to resolve these matters.

CITY’S STATUTORY DECLARATION

In accordance with section 690(3) of the Act, the MGB received the statutory declaration from the City on November 27, 2009. The City states that it did not receive any formal request for mediation prior to the County filing an appeal to the MGB. The City contends that this, as well as not having had prior notice that such an appeal would be filed would constitute the reasons why it was not possible for the City to have participated in mediation with the County prior to the appeal being filed.

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PRELIMINARY HEARING

The MGB conducted a preliminary hearing on November 27, 2009. Due to the large number of landowners that could have had an interest in the matter, the MGB published hearing notifications in the **Calgary Herald**, **Calgary Sun** and **Rocky View Weekly**, newspapers circulating in the affected area, the weeks of November 9 and 16, 2009. During the preliminary hearing, the solicitors for the County and the City suggested a document exchange timeline and dates for the merit hearing. The MGB received no objection to these dates from any other party. MGB Decision Letters 141/09 and 003/10 confirm the oral decision of the MGB regarding the document exchange timeline and merit hearing dates. In addition to setting dates, the MGB also required the two municipalities to submit a report outlining the progress of their mediation prior to the first submission.

On February 1, 2010, the MGB received correspondence from the County identified that the two municipalities had engaged in mediation, but that the County was not optimistic that mediation would be successful. Correspondence from the City confirmed this opinion.

The MGB received the submission of the County on February 5, 2010, the response documentation from the City on February 22, 2010, and the rebuttal documentation from the County on February 26, 2010. MGB Decision Letters 141/09 and 003/10 required the City to submit its response by 12:00 noon on February 19, 2010. The MGB informed the County of the City's late submission and was informed by the County that it did not intend to raise a preliminary issue regarding the document exchange and the late filing of material.

APPLICABLE LEGISLATION

The following legislation was considered by the MGB during its deliberations regarding this matter.

Section 488(1)(j) of the Act gives the MGB the authority "to decide intermunicipal disputes pursuant to Section 690."

Section 488.01 of the Act requires that the MGB "must act in accordance with any applicable [Alberta Land Stewardship Act] ALSA regional plan."

Section 690(1) identifies that the municipality filing the appeal must have given written notice of its concerns to the adjacent municipality prior to second reading of a statutory plan and must file the appeal with the MGB within 30 days after the passing of the bylaw. Section 690(2) requires that the notice of appeal and statutory declaration sent to the MGB and the adjacent municipality:

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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.*

Section 690(3) states that upon receipt of a notice of appeal and statutory declaration the adjacent municipality must, within 30 days, submit a statutory declaration to the MGB stating:

- (a) the reasons why mediation was not possible, or*
- (b) that mediation was undertaken and the reasons why it was not successful.*

Section 690(5) requires that upon receipt of a notice of appeal and statutory declaration, the MGB must:

decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

- (a) dismiss the appeal if it decides that the provision is not detrimental, or*
- (b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.*

Part 17 of the Act provides municipalities with the ability to prepare and adopt plans and related documents.

Section 616(dd) identifies that a MDP is a statutory Plan.

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

Section 631 allows two or more municipalities to pass bylaws to adopt an intermunicipal development plan. Section 631(2)(b) states that this plan 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.*

Section 632 requires a municipality with a population of 3,500 or greater to prepare a Municipal Development Plan (MDP). Since the City has a population of over 3,500, a MDP is mandatory. Section 632 describes the content that must address the following:

- (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.*

Section 632 also requires that an MDP:

- (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 authorities, and*
- (f) *must contain policies respecting the protection of agricultural operations.*

Section 636(1) states that 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 authorities 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.*

Section 12 identifies that the bylaws of a municipality only apply “inside its boundary unless

- (a) *one municipality agrees with another municipality that a bylaw passed by one municipality has effect inside the boundaries of the other municipality and the council of each municipality passes a bylaw approving the agreement, or*
- (b) *this or any other enactment says that the bylaw applies outside the boundaries of the municipality.*

MERIT HEARING

The MGB commenced the merit hearing on March 17, 2010. Again, due to the large number of landowners that could have had an interest in the matter, the MGB published notifications for this hearing in the **Calgary Herald**, **Calgary Sun** and **Rocky View Weekly** the weeks of February 8 and 15, 2010.

Prior to the start of the hearing, the MGB received no procedural or jurisdictional submissions from any of the parties.

The MGB adjourned the hearing on March 18, 2010 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 August 10, 2010 and proceeded to issue this decision.

MERIT HEARING BACKGROUND

This intermunicipal dispute centres on Section 1.3.2 of the City’s MDP and how this section relates to the Annexation Agreement of 2006. The relevant Sections of the MDP and IDP are summarized below.

2006 ANNEXATION AGREEMENT

Although a detailed description of the annexation process is provided in other parts of this report, a brief overview is provided below.

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The 2006 Annexation Agreement allowed land to be annexed from the County into the City. The Agreement was comprehensive in nature and identified such things as agricultural services, transportation, financial compensation and a program of intermunicipal planning. The development of this Agreement was a two year process that included an extensive amount of public consultation.

As part of the 2006 Annexation Agreement, a timeline was developed for the completion of an Intermunicipal Development Plan (IDP). The Agreement states:

2.12 The parties specifically acknowledge that the mutually agreed upon five (5) year review of the November 1998 MD of Rocky View/City of Calgary Intermunicipal Development Plan (the "IDP") was delayed as a result of the annexation process. The parties agree that no later than 120 days after the Effective Date of Annexation, the parties will commence a review of the IDP, which review will specifically deal with matters outlined in Schedule "D" attached hereto. The parties agree that they shall use reasonable efforts to finalize the IDP review, have the IDP in draft form and initiate the respective approval processes within 18 (eighteen) months after the IDP review commences

Schedule "D" of the 2006 Annexation Agreement identifies the following IDP review and planning principles:

For the purpose of this Agreement, the Conceptual Growth Corridor arrows for both the MD and The City as shown on Schedule A-2 are meant to establish, recognize and protect key growth directions for both municipalities which are to be identified in the Intermunicipal Development Plan (IDP) and Municipal Development Plans of both municipalities.

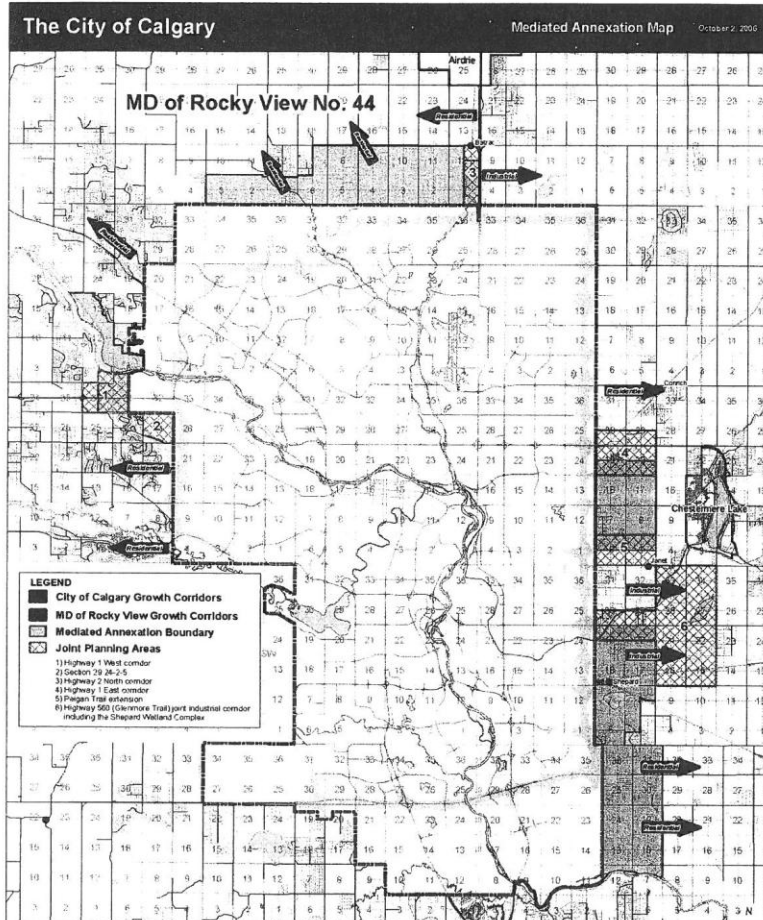
The IDP will establish more precise locations and timing of long term growth for both municipalities, policies concerning land use and development in those areas, and, in the case of both parties, future annexation provisions including impacts on future City annexations from impacting the MD's identified Conceptual Growth Corridors. For further clarity, the Conceptual Growth Corridors shall be governed by current MD land use policies, until such time as an IDP agreed to by both municipalities is in place that addresses the Conceptual Growth Corridors.

Part XIII of the 2006 Annexation Agreement outlines the dispute resolution process.

The Conceptual Growth Corridor arrows are shown as on Schedule "A-2" of the 2006 Annexation Agreement (see map below).

SCHEDULE "A-2"

MEDIATED ANNEXATION MAP



Source: 2006 Annexation Agreement: Municipal District of Rocky View No. 44 and the City of Calgary

The IDP adopted by both municipalities in 1998 has not been amended.

Simultaneous with the review of the IDP, the City directed that a new MDP be prepared. As part of the MDP process, the City undertook a variety of visioning and planning exercises which culminated in the adoption of the new MDP on September 28, 2009. Prior to adoption of the MDP, and in accordance with the Act and internal policies, the City submitted a draft plan to the County for comment. As a result of the comments from the County, Section 1.3.2 of the City's MDP was amended as follows:

The MDP acknowledges the 2006 November 24 Annexation Agreement between The City of Calgary and Rocky View County. In accordance with Schedules A-2

and D of that Agreement, the conceptual growth corridors identified for both municipalities are to be used as input to a review of the Intermunicipal Development Plan. Following approval of an IDP, 6 of the MDP will be amended to show new IDP boundaries and Calgary's future growth corridors.

ISSUES

The issues before the MGB at the merit hearing were:

1. Does Section 1.3.2 of the City's MDP create uncertainty for the County by not honouring the 2006 Annexation Agreement and not recognizing the conceptual growth corridors established within that Agreement? If so, does this uncertainty constitute detriment for the purposes of the Act?
2. Has Section 1.3.2 of the City's MDP impacted the relationship between the City and the County to the extent that it has or is likely to cause detriment to the County?

THE COUNTY'S POSITION

A summary of the County's submissions and presentations regarding the 2006 Annexation Agreement, the IDP Review Process, the City's MDP and other issues provided to the MGB during the merit hearing is provided below.

2006 Annexation Agreement

The testimony from Drew Hyndman, a planner with the County, provided an overview of the process used for the City's 2006 Annexation Application. He stated that the annexation process started in 2002 and was fairly contentious. Mr. Hyndman explained that up to that point the City had followed the Unicity concept, in which one municipality tries to control growth on its boundary so subsequently it can do periodic annexations to accommodate growth. At the start of the most recent annexation process, the Province urged the City and the County to attempt mediation. The two municipalities undertook 37 mediation sessions between September 2005 and October 2006. During these sessions, the County introduced other elements, such as certainty for the County's future growth. This reflected the interest-based negotiation approach that had been entered into by the two municipalities.

The County submitted that the Schedule "A-2" map within the 2006 Annexation Agreement used arrows to indicate areas it wanted to protect and that the City would recognize as the County's growth corridors. Mr. Hyndman confirmed that arrows were used in the 1998 IMD and that there was precedent for the municipalities to use this symbol in their intermunicipal planning documents. During questioning, he stated that the arrows did not determine distance, only the most appropriate direction.

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As part of the annexation process, a fairly extensive public consultation was undertaken. Mr. Hyndman stated that the map labelled Schedule “A-2” was used during the public consultation process and, with minor revisions to the annexation area, was presented as part of the City’s annexation application to the MGB.

The County believes that the 2006 Annexation Agreement was a land mark arrangement in that it demonstrated that the City had moved beyond the Uicity principle that framed the City’s approach to planning for decades. In the Agreement, the City recognized that the County was a major adjacent municipality and maintained its own development goals. The Agreement also established the basis of cooperative intermunicipal planning. The extensive negotiation and public input process undertaken jointly by the two municipalities laid out the “fundamental” growth priority areas for both the City and the County well into the future.

The County submitted that with the 2006 Annexation Agreement in place, the City was able to submit an application for annexation to the MGB that had the approval of both municipalities. The County believed that signing the 2006 Annexation Agreement provided certainty that would allow the two municipalities to prepare other planning documents and represented a new period of relations between the two municipalities.

Mr. Hyndman submitted that there was a good working relationship between the two municipalities as a result of the annexation. For example, a road maintenance agreement had been implemented. Landowners did express concerns regarding assessment and taxation, but generally things were working well.

The County submitted that the City’s growth corridors as identified in “Schedule A-2” of the Annexation Agreement are respected by the County in that, based on its current MDP, the County is not encouraging development in those areas. During questioning, it was confirmed that as a result of the Annexation Agreement, the County received compensation from the City for not allowing certain types of development on the boundary of the City.

IDP Review Process

Kyra McCardle, a planner with the County’s Policy and Land Use Department, stated that in accordance with the 2006 Annexation Agreement, an IDP process was started in order to develop more detailed policies. The terms of reference for the IDP was adopted by both Councils in January 2008. However, during that time the Calgary Regional Plan (CRP), the City’s MDP and the City’s transportation plan were moving forward. In addition, the County was also preparing its Rocky View 2060 document. Ms. McCardle stated that due to the uncertainty of what the IDP would look like after the CRP was adopted, the City requested a delay to the IDP process. Since Ms. McCardle was the planner assigned to the IDP project at the time she was assigned by the County to another planning project. At that point, the County did not have staff assigned to continue working on the IDP for a period of time. The County did not suppose the City had to

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stop its MDP process until the completion of the IDP, but it did expect that both documents had to conform to the 2006 Annexation Agreement. During questioning, Ms. McCardle confirmed that the IDP and MDP processes are different and stated that 2006 Annexation Agreement does not stipulate the order in which order these processes are to occur.

Unknown to the County, the City continued to work on the IDP while County staff was occupied with the CRP. After the adoption of the CRP, the County was dismayed to discover that the City had drafted a number of chapters for the IDP without the input of the County. This was a departure from the collaborative approach to the development of the IDP that had been used up to that point.

The City's MDP

Concurrent with the delay of the IDP process, the City continued with the development of its new MDP and circulated a draft to the County for review. The County commented that the draft plan appeared to not contain a reference to the growth corridors as required in the 2006 Annexation Agreement. These concerns were discussed at two Intermunicipal Committee meetings. A presentation regarding this matter was also made by the County at a public meeting held by the City regarding its MDP. As a result, the City adopted the MDP with an added section that contained the only a reference to the 2006 Annexation Agreement and the growth corridors in Section 1.3.2.

Upon review of the adopted MDP, the County determined that if Section 1.3.2 was not amended the County would experience both likely and immediate detriment.

The County does not understand why Schedule "A-2" map was not included in the City's MDP. The County submitted that the City has adopted statutory plans outside its jurisdiction. The Shepherd Industrial Area Structure Plan identifies road standards for a road which is within the County, identifies Range Road 284 as an arterial road and identifies pathways extending into the County. The City has also filed three appeals regarding County planning documents. Moreover, the County is concerned about the comments made by the City's Mayor regarding the implications of regional planning on the implementation of the 2006 Annexation Agreement. These factors have caused the County to question the City's intention to honour the 2006 Annexation Agreement. The County noted the City's contention that the 2006 Annexation Agreement cannot fetter a decision of City Council. According to the County, this contention highlights the detriment.

The County submits that the City has not honoured the 2006 Annexation Agreement by not identifying the County's growth corridors in the City's MDP. The County recognizes that the City has revised Section 1.3.2 of the MDP in an attempt to resolve the dispute. However, the County submits that the City has benefited by the 2006 Annexation Agreement because growth corridors have been established and certain areas within its jurisdiction are being recognized as

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protected. The County has taken steps to ensure this by including the Schedule “A-2” map in both its Rocky View 2060 strategic plan as well as in its draft MDP. Moreover, the County contends that it is more efficient for municipalities to settle controversial issues among themselves through negotiation. This reduces the adversarial nature of the negotiation process and leads to a more suitable resolution rather than solutions imposed by outside authorities.

The County asserts that while the City’s MDP recognizes the 2006 Annexation Agreement, the document states that the City will only use the conceptual growth corridors for “input”. Although Section 1.3.2 does indicate the City will amend the MDP after the completion of the IDP, the County argues that again there is no certainty this will actually happen. In the absence of a strong statement regarding the fundamental growth corridors, the County would be unable to conduct adequate planning processes. This would in turn impact rate payers and developers wishing to conduct business in the County. Moreover, Mr. Hyndman stated that not including the Schedule “A-2” map would in effect “dilute or water down” the Agreement.

The County submitted that the inclusion of Schedule “A-2” to the City’s MDP amendment would not be a unilateral act by the City. The growth corridors within the 2006 Annexation Agreement were agreed to by both municipalities. Although the City would not control development in the growth corridor, inclusion in its MDP would confirm the City’s future growth.

Other Issues

After this appeal was filed by the County, the two municipalities held three conciliatory sessions as well as four mediation sessions. The County submits that the dispute resolution process in the 2006 Annexation Agreement is not applicable to a bylaw and that is why paragraph 2.15 of the Agreement incorporates the IDP resolution process. The 2006 Annexation Agreement arbitration process is not binding and could be disregarded by the City. Moreover, the City has not asked for arbitration as required by the Agreement.

Since the approval of the annexation, the County has undertaken the Rocky View 2060 Growth Management Strategy. This strategic planning document was passed by County Council in June 2009. The County submitted that one important outcome of this document is “the improved definition of future development areas”. Mr. Hyndman explained that although this is not a statutory document, it was developed in a similar manner and provides the focal point for all future development in the County. All development applications are currently reviewed utilizing this document. The “Schedule A-2” map has been incorporated into this document and shows the growth arrows for both municipalities as well as some of the joint planning areas. The County also stated that it is in the process of updating its MDP and it is expected that a draft of this document will be before County Council on June 29, 2010. The County’s new MDP will be aligned with the Rocky View 2060 Growth Management Strategy.

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The County submits that Section 632(3)(iii) of the Act requires that an MDP address land use and future growth patterns within an adjacent municipality if there is no IDP. Although the 1998 IDP is still in place, it does not address these issues in terms agreed to by both municipalities in the 2006 Annexation Agreement. Moreover, the 1998 IDP provides that the statutory plans passed by either municipality prevail over the IDP.

The County submits that not including the map in “Schedule A-2” of the 2006 Annexation Agreement in the City’s MDP will be detrimental by seriously harming the relationship between the two municipalities. The Agreement represented a significant turning point in the relationship between the two municipalities. However, the comments of the City’s Mayor combined with the fact that the MDP does not recognize the growth corridors leads the County to believe there is a possibility that the Agreement will not be respected by the City. The County contends that this “erodes confidence in the process”, damaging the relationship between the two municipality and making future agreements on a variety of issues more difficult and less likely. Moreover, if other municipalities see that negotiated solutions are not honoured, they will be driven to confrontational proceedings as the only effective way to resolve contentious issues.

The County’s position is that the detriment caused by the City’s MDP is significant and that the only option available was an appeal under Section 690 of the Act. The County contends that although the 2006 Annexation Agreement does provide a dispute resolution mechanism, it is non-binding. Therefore, the County contends that this is the last opportunity available to the County for a third party intervention.

County’s Requested Relief

Based on the case made, that detriment was not only significant but likely, the County requested the MGB to order the following amendment to the City MDP:

- a. The MDP Acknowledges the November 24, 2006 Annexation Agreement Between the City of Calgary and Rock View County, In accordance with Schedule A-2 and D of that agreement, Conceptual Growth Corridors have been identified and agreed upon by both municipalities:
 - i. The City of Calgary and Rocky View County shall recognize the Conceptual Growth Corridors as outlined in the Annexation Agreement and reflected in Map XX (the City of Calgary MDP). These Conceptual Growth Corridors represent fundamental growth directions for both municipalities.
 - ii. The Conceptual Growth Corridors shall be evaluated and may be redefined through a future Intermunicipal Development Plan, to be prepared by both municipalities.

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- iii Subsequent amendments to Calgary's MDP may be required to reflect any refinements negotiated through the Inter-municipal Development Plan process

The County requested the MGB to order the amendment be made not later than 30 days after the Board Order.

THE CITY'S POSITION

The City's position is that the County's appeal is without merit. A summary of the City's submissions and presentations regarding the 2006 Annexation Agreement, the IDP Review Process, the City's MDP and other issues provided to the MGB for the merit hearing is provided below.

2006 Annexation Agreement

The City submitted that it has not breached the 2006 Annexation Agreement. Testimony from Tim Creelman, Coordinator for Intermunicipal and Regional Planning for the City, confirmed that the City considers the 2006 Annexation Agreement to be a watershed agreement. The annexation process took a considerable amount of time. He stated that in accordance with the Agreement, the two municipalities have been able to develop a road maintenance agreement and a joint intermunicipal development committee. In addition, the municipalities have been able to address the agricultural servicing issues as identified in the Agreement.

The City submitted that the 2006 Annexation Agreement identified conceptual growth corridors for both municipalities; however, the refinement was to occur through an IDP process. "Schedule A-2" of the Agreement used arrows to acknowledge the growth corridors for both municipalities. Schedule D of the Agreement identified that the IDP review would "establish more precise locations and timing of long term growth for both municipalities" and that a review would be conducted to "establish the timing and scope of development in Conceptual Growth Corridors".

The City submitted that the 2006 Annexation Agreement has a dispute resolution process that would provide the County with a mechanism to resolve this dispute. This process includes the submission of disputed interpretations of the Agreement to an independent mediation and, following that, to an Arbitration Committee. The City contends that the County is also in breach of the 2006 Annexation Agreement because it has not availed itself of this dispute resolution process.

IDP Review Process

The City confirmed that the existing IDP was adopted in 1998. The 2006 Annexation Agreement required a terms of reference with a projected timeline for the IDP Review to be completed

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within 120 days of the approval of the annexation. The City submitted that the IDP Review is required to refine and establish the actual growth corridors as well as the associated land use considerations. These matters would be subsequently included in the City's MDP. Initially, the IDP Review was to be completed by April 2009. Delays were caused by the Calgary Metropolitan Plan process and the completion of the Rocky View 2060 Growth Strategy. The City contends that both these documents are being used to assist with the IDP Review. The completion date of the IDP Review is now expected to be the third quarter of 2010.

The City submitted that it did not request the IDP process be delayed. However, despite the delays, the two municipalities have a first stage of a draft IDP. Matt Rockley, a Land Use Planner with the City working on the IDP Review, stated that the City has been committed to moving the IDP process forward and has always had staff resources allocated to this project. Mr. Rockley indicated that after Ms. McCardle was shifted from the IDP Review he informed her that he would continue to work on the project so they would not be so far behind. He does recall Ms. McCardle telling him that she was not pleased that the City had continued to work on the project without the County's input over the five months she had been reassigned. Mr. Rockley believes this was a misunderstanding. He explained that the intent of developing the IDP chapters in her absence had been to create a starting point for when the County could again begin to work on the IDP Review. He stated that the chapters he provided after Ms. McCardle returned to the IDP project were by no means the City's final wording for the IDP document. He indicated that since the return of Ms. McCardle, the two have been collaborating to complete the IDP project.

The City submitted that the growth corridor chapter of the IDP has not been completed. Both Mr. Rockley and Mr. Creelman indicated that generally the County and City staff are on the same page in terms of the corridors. A commitment has been made to the Intermunicipal Committee, which is comprised of politicians from both municipalities that the IDP Review will be done by the third quarter of 2010. It is expected that the City will be conducting a public hearing regarding the IDP on July 26, 2010. As a result of the completion of the IDP, the City will, in accordance with the 2006 Annexation Agreement and subject to Council approval, amend its MDP. The amendment to the MDP would also provide the County with another opportunity to address its concerns regarding the growth corridors and reduce the likelihood of significant harmful impacts on the County.

The City's MDP

The City submitted that as early as 1998 a City Council policy identified that a new MDP would be completed during 2006-2008. This effort resulted in "Plan It Calgary", the City's new MDP. During the consultation process for the City's MDP, the County expressed concerns because it did not incorporate the conceptual growth corridors from the Schedule "A-2" map in the 2006 Annexation Agreement. As a result, the City amended the MDP prior to its adoption. The City contends that Section 1.3.2 of its MDP allows the document to be amended to show future

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growth corridors once the IDP Review has been completed. The City's MDP was adopted by City Council on September 28, 2009 with an effective date of April 1, 2010.

The City submitted that it does not believe the MDP should consider growth outside its borders. This document deals with City's interests within its borders and emphasizes "smart growth" which reduces the need for the City to expand beyond its borders. The City contends that the regional land use planning process may affect the growth corridors of any municipality within the Calgary region. The City also stated that it has not revised its growth corridors since the signing of the 2006 Annexation Agreement.

During the hearing, Mr. Creelman identified that he assisted with the development of the wording for the amendment to Section 1.3.2 of the MDP and the use of the word "input". He explained that the 2006 Annexation Agreement identifies conceptual growth corridors and that the text following this states that the IDP process is to refine and establish these corridors. The amended Section 1.3.2 does not replicate the Agreement because the City believed that referencing this document in the amendment would address the concerns of the County. The City submits that until the completion of the IDP the arrows shown in Schedule "A-2" of the Agreement are conceptual and do not designate growth corridors or provide any precision in the affected area. Since the City's MDP is only concerned with the land within the City's boundary, the City believed it more appropriate to reference the maps in the 2006 Agreement rather than reproduce them in the City's MDP.

Mr. Creelman stated that use of the word "input" was not meant to diminish the importance of the growth corridor arrows. He also stated that by definition arrows are uncertain and do not provide much guidance to landowners. The Rocky View 2060 document was used as an example to show how the County has turned the arrows into something that provides more meaning. The City believes that the IDP Review is the way the two municipalities can turn the arrows of Schedule "A-2" into something more meaningful, giving more answers in terms of policy and providing more certainty.

The City contends that the 2006 Annexation Agreement does not state that either of the municipalities must delay completing a MDP until the IDP is complete, only that ultimately both the IDP and the respective MDPs are to identify the established growth corridors. The City believes that it is more efficient to complete the IDP Review and then amend the MDP. Moreover, the consultation process required for amendments to statutory plans will afford opportunities for public participation in the IDP and MDP process.

The City submitted that the MDP is a statutory plan that contains many policies that tend to be more general and establishes the framework and priorities for further analysis. The City contends that it can not legally or effectively adopt growth corridors in its MDP for lands outside its boundary until an IDP is adopted by both municipalities. Mr. Creelman stated that the City does not have any other way to deal with its growth interests except through an IDP. He identified that

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the County has the luxury of dealing with their growth interests within its own boundaries and with its own ratepayers. Mr. Creelman explained that in the development of the County's Rocky View 2060 document, the County did not provide a copy to the City for comment. The City had been informed that this document was to solicit input from County residents. During questioning he did confirm that a copy was provided to the Intermunicipal Committee, but was never formally provided to the City in accordance with the Agreement.

Other Issues

From the City's perspective, the relationship between the municipalities has not been impaired. Examples of this provided by Mr. Creelman included continuing meetings of the Intermunicipal Committee to address development and subdivision issues. The work on the IDP, though delayed, was progressing and nearing adoption as the planning staff from both municipalities continue to meet. As an example of direct cooperation, it was noted that an earlier draft of the MDP was circulated to the County and that the City received a number of comments from the County. Other than the one issue, all the concerns identified by the County were addressed. Moreover, the City amended Section 1.3.2 in an attempt to also resolve this matter.

The City submits that the 2006 Annexation Agreement does establish a relationship between the two municipalities. The City disagrees that it has dishonoured the Agreement. The City contends that there is a difference of opinion as to the interpretation of the Agreement and stated that if it is in breach of contract an appeal to the MGB under Section 690 of the Act is certainly not the forum to deal with this type of issue.

The City submits its MDP conforms with Section 632(3)(a)(iii), which requires a MDP to address the coordination of land use, future growth patterns and other infrastructure with adjacent municipalities if there is no IDP. The City contends that the explicit acknowledgement of the 2006 Annexation Agreement and Schedule "A-2" of that Agreement in Section 1.3.2, which concerns the coordination of land use and future growth patterns of the municipalities, "addresses" these issues.

The City contends that the 2006 Annexation Agreement cannot require the City to amend its MDP. The City argues that this would in effect fetter City Council's legislative authority in respect of the approval process of an IDP and subsequent amendments to the MDP. This would be void as against public policy. The Supreme Court of Canada has affirmed that municipalities "must be free to amend or alter their bylaws as circumstances dictate" (Pacific Nation Investments Ltd. V. Victoria (City), 2000 CarswellBC 2441 at para 56 (S.C.C.); 2 S.C.R 919). The City identified that Section 12.07 of the Agreement confirms that the Agreement is not to fetter either municipal Council in "the exercise of its jurisdiction".

City's Requested Relief

Calgary requests that the MGB dismiss the appeal as being without merit.

FINDINGS

In making its decision, the MGB found it useful to first consider the scope of its jurisdiction. In this regard, the MGB finds that:

1. The MGB has the jurisdiction to hear the County's appeal of the City's MDP.
2. Section 1.3.2 is the only part of the MDP that is under consideration in the dispute before the MGB.
3. Section 2.3.2 of the City's MDP conforms with Section 632(3)(ii) of the Act.
4. It is not within the jurisdiction of the MGB to enforce the 2006 Annexation Agreement.

Having noted the scope of its jurisdiction, the MGB considered the issue of detriment. The MGB finds that:

1. The level of uncertainty claimed by the County due to the City's MDP not specifically including a reproduction of map contained in "Schedule A-2" of the 2006 Annexation Agreement is not sufficient for the MGB to order a change to the City's MDP.
2. The detriment to the relationship between the City and the County caused by a disagreement as to the interpretation the 2006 Annexation Agreement is not sufficient for the MGB to order a change to the City's MDP.

DECISION

The County's appeal is denied.

REASONS

SCOPE OF JURISDICTION

The MGB found it useful to consider the scope of its jurisdiction before making findings about whether or not the City's MDP has or may have a detrimental effect on the County.

Jurisdiction

The MGB finds that it has the jurisdiction to hear the appeal from the County regarding the City's MDP. Section 488(1)(j) of the Act identifies that the MGB has the jurisdiction to "decide intermunicipal disputes pursuant to Section 690". Section 690(1) allows a municipality to file an appeal if in its opinion a statutory plan or amendment of an adjacent municipality has or will

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have a detrimental effect. The City is located adjacent to the County and the County is appealing the City's MDP, which is a statutory plan as defined by Section 616(dd) of the Act.

The MGB acknowledges Section 488.01 of the Act requires the MGB to act in accordance with any ALSA regional plan. The MGB notes that there is no ALSA plan for the region in which this appeal has been filed.

Section Under Consideration

The notice of appeal and statutory declaration filed by the County on October 27, 2009 identifies a number of concerns regarding the City's MDP. However, through negotiation and mediation, the two municipalities were able to reach agreement on all but the growth corridor issue. As a result, the submissions of the municipalities related only to the concern regarding Section 1.3.2.

City's MDP Section 1.3.2 and Section 6.3.2(3)(iii)

The MGB finds that the Section 1.3.2 of the City's MDP conforms to the Act in regard to Section 632(3)(a)(iii) which requires a MDP to address "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". The MGB heard that there is an existing IDP in place that was adopted by the two municipalities in 1998. Section 631(2)(b)(ii) of the Act requires an IDP to include "a procedure to be used, by one or more municipality, to amend or repeal the plan". Section 3.2.1.4 of the 1998 IDP addresses this requirement and states:

After the expiration of five years from the date of final approval of this Intermunicipal Development Plan, either municipality may serve notice of termination and, one year after the service of such notice of termination, this Intermunicipal Development plan shall no longer continue to be in force or effect.

The MGB finds no evidence that either municipality has served a notice of termination in accordance with Section 3.2.1.4 of the 1998 IDP. The 2006 Annexation Agreement and the IDP Review Terms of Reference indicate that the two municipalities would make reasonable efforts to develop a draft and initiate the respective approval processes within 18 months after the start of the IDP process. Although this identifies that both municipalities recognize the need for a review of the IDP and that they have taken steps to advance this project, neither municipality has served notice that they are repealing 1998 IDP. Therefore, the MGB finds that there is an IDP in place.

The MGB acknowledges that due to the 2006 annexation, the 1998 IDP is no longer current. The MGB notes that the Act does allow the municipalities to change and amend their bylaws. Moreover, Section 3.2.2 of the 1998 IDP states that the document "may be amended from time to

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time subject to the agreement of both Municipal Councils”. Again, this is accordance with Section 631(2)(b)(ii) of the Act

Although Section 638 of the Act requires statutory plans to be consistent with each other, it provides no guidance as to the timing or process for this alignment. The MGB heard that the two municipalities have a plan that will move them towards the adoption of a new IDP. Until such time as the new IDP is adopted or either of the municipalities serves notice of termination, the MGB finds that the 1998 IDP is still in effect. Therefore, the MGB finds that City’s MDP does not need to address the future growth patterns identified in Section 632(3)(a)(iii) in order to conform with the Act.

Enforcement of the 2006 Annexation Agreement

The MGB accepts that the 2006 annexation was contentious and acknowledges the submissions of both municipalities that a considerable amount of time and resources were expended in the development of what the City and the County consider to be a landmark agreement. This clearly demonstrates the effort made by both municipalities to attain the level of cooperation envisioned by the Act and the Alberta Provincial Land Use Policies. However, the MGB finds that it is not within its jurisdiction to enforce the 2006 Annexation Agreement. Section 690(5) of the Act clearly identifies that the MGB “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”. Although the County relies heavily upon the Agreement to argue the detriment, the Agreement is not a statutory plan or a land use bylaw. The City properly suggested that the MGB hearing is not the place to consider a possible “breach of contract”. The MGB finds that it is not within its jurisdiction to mediate the Agreement. At the outset the MGB places no weight on the contention that the 2006 Annexation Agreement has been diluted or watered down as submitted by the witness for the County. In this decision the 2006 Annexation Agreement is used as a guide as to the existing level of certainty afforded the County and to determine if the MDP has resulted in harm.

The MGB notes that the 2006 Annexation Agreement contains a dispute settlement process to resolve interpretive issues. Part XIII provides a system for municipalities to resolve issues related to the “interpretation, application or operation of certain provisions” of the Agreement and other remedies may be available. As previously indicated, the MGB does not have jurisdiction over the 2006 Annexation Agreement and any comments in this regard in no way intended to prejudice or have a bearing on any non-MGB process.

DETRIMENT

Although the MGB finds that the City’s MDP conforms with Section 632(3)(a)(iii) of the Act, the MGB recognizes that a statutory plan may be adopted in accordance with the Act and still cause detriment to an adjacent municipality. The County argued that this detriment occurred

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because of the uncertainty resulting from the City's MDP not including the Schedule "A-2" map and because of the harm that the exclusion of this map will have on the relationship between the municipalities. A brief discussion of the parameters used by the MGB when considering detriment in the past is followed by the MGB's analysis of the issues.

Previous Detriment Parameters

Recognizing that the MGB is not bound by its previous decisions, this panel of the MGB notes that the MGB's Sturgeon County decision (MGB Board Order 77/98) identified several parameters to be considered when evaluating a claim of detriment that have proven useful in previous appeals.

The MGB recognizes that the power to force municipalities to change policies in a statutory plan should not be exercised lightly. The MGB accepts that a statutory plan approved in accordance with the Act has received professional, intermunicipal and public scrutiny prior to being adopted by a municipality. MGB Board Order 77/98 identified that the MGB:

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."

The MGB's authority is limited to determining if detriment arises to one municipality from the action of an adjacent municipality in adopting a statutory planning bylaw. In MGB Board Order 77/98, detriment was found to mean:

"damage, injury or harm" of a kind that portends serious, substantive results.

The meaning of detriment enunciated in the MGB Board Order 77/98 provides a foundation upon which to evaluate the arguments of the parties. This order states:

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.

MGB Board Order 77/98 found that detriment can be less tangible. Detriment does not necessarily have to be physical, it may also include the impact of less tangible issues like social

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or economic impact to a municipality. However, it was emphasized that “the harm to be forestalled ...is both reasonably likely to occur, and to have a significant impact on the appellant municipality”. Moreover, the Order cautioned that detriment “must be determined in the context of probability, causality and effect, then weighed in the balance of municipal autonomy and individual rights”.

The MGB is still satisfied that the principles stated in MGB 77/98 provide a useful framework in which the MGB can examine the alleged detriment.

Uncertainty

The MGB finds that the arrows used in the 2006 Annexation Agreement “Schedule A-2” map do not afford certainty for planning purposes. The MGB heard that these arrows are conceptual in nature and, while showing the general growth corridors for both municipalities, are subject to refinement in the IDP that is being developed by the two municipalities. The MGB accepts the statement from the County that these arrows do not determine distance, only the most appropriate direction. This is confirmed by the fact that Schedule “D” of the 2006 Annexation Agreement only provides a general description of the growth corridor areas identified by the arrows of the Schedule “A-2” map. Neither the Schedule “A-2” map nor the Schedule “D” text identify the parcels of land within the growth corridor. Section 2.12 of the 2006 Annexation Agreement acknowledges the need to update the 1998 IMD and Schedule “D” of the 2006 Annexation Agreement identifies that the IDP will “establish more precise location and timing of long term growth for both municipalities”. The MGB concludes that the inclusion of Schedule “A-2” would provide no greater certainty for the County than currently exists.

The MGB was not convinced that the wording of Section 1.3.2 of the City’s MDP is a significant departure from the 2006 Annexation Agreement. The MGB accepts that Section 1.3.2 specifically “acknowledges” the 2006 Annexation Agreement, references both the map contained in “Schedule A-2” as well as the Schedule D “IDP Review and Planning Principles” of the Agreement. Moreover, Section 1.3.2 states that after the completion of the IDP the City will amend Map 6 of the MDP “to show new IDP boundaries and Calgary’s future growth corridors”. The MGB concludes the adoption of the IDP by both the City and the County will increase the certainty for both municipalities in terms of land use planning and development matters in their boundary areas by solidifying the growth corridors. Moreover, the MGB finds that due to the comprehensive nature of the 2006 Annexation Agreement there is likely an advantage in a reader having the entire document before them when considering development and land use planning matters.

The MGB finds that the term “input” in Section 1.3.2 of the City’s MDP to be reasonable. An IDP can be, and often is, a more comprehensive statutory planning document that addresses a more specific series of issues than addressed in a MDP. Major among the issues may be growth corridors, but issues of phasing, servicing, transportation, the environment and others can be

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addressed. To develop the agreed to policies of an IDP will necessitate input from many sources including the Agreement which the City's MDP stipulates must be done. The MGB concludes that the objection to the word "input" reflects a too narrow a view of the IDP policy document and its role in the continuing intermunicipal planning process.

The MGB does not accept that identifying the County's growth corridors in the City's MDP would fetter the discretion of City Council. Section 632(3)(c) states and a MDP:

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

The MGB concludes that the City could have identified the growth corridors identified by the Schedule "A-2" map in its MDP as a development constraint that may impact development in land within the City's jurisdiction adjacent to its boundary. The City chose not to include the map. A Council can amend a bylaw to address changing circumstances. Including the map in the City's MDP as a policy or strategy would not have been fettering the discretion of City Council in relation to the IDP approval process, but may have required an additional action by the Council in the future. While this may have resolved the dispute prior to the start of the merit hearing, the MGB is reluctant to order a change to a statutory plan of a municipality based on a decision that is discretionary by the Act.

The MGB does not agree that the inclusion of the Schedule "A-2" map as printed in the 2006 Annexation Agreement would have been a unilateral action by the City and not keeping with the spirit of collaboration. Both municipalities agreed to the growth corridors during the annexation negotiations and it has already been established that the growth corridor arrows in this map are general in nature. The MGB heard that the City has adopted other statutory plans with provisions that extend beyond its boundary. The County has included the Schedule "A-2" map in its Rocky View 2060 document.

The MGB finds that the process outlined by the City to adopt its MDP is reasonable. The MGB heard from both parties that Schedule "D" of the Agreement does not specify the sequence of the adoption of the IDP and MDP. Section 638 of the Act identifies that all the statutory plans must be consistent with each other; however, the Act does not provide any guidance as how this should occur. Therefore, the timing and sequencing of any amendments to a statutory plan is at the discretion of the municipality. The MGB heard that the City will amend its MDP after the adoption of the IDP. The MGB accepts that the City will use the process it believes is most efficient to ensure these statutory plans are consistent.

The MGB notes that the main addition requested by the County to the City's MDP is the direct reproduction of the map in Schedule "A-2" of the 2006 Annexation Agreement. At best, the remaining text paraphrases the annexation agreement possibly introducing confusion to what was

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originally accepted. The MGB finds that the remedy proposed by the County has no effect on certainty and is so similar to the existing Section 1.3.2 of the City's MDP that it is not moved to order a revision to adjust the City MDP.

Intermunicipal Relationship

Like uncertainty, detriment caused by deteriorating relations between adjacent municipalities is "less tangible and more remote". Regardless, the MGB must be convinced that the detriment claimed is both substantive and likely to occur. However, the impact of an event on the relationship between two adjacent municipalities is highly subjective and, therefore, difficult to determine. Little weight should be given to arguments that relate to individuals or departmental anecdotes as this gives no actual indication on how the municipalities are conducting affairs.

Relations between Municipalities

The MGB is not convinced that the adoption of Section 1.3.2 of the City's MDP has or will substantially impair the relations between the two municipalities.

The MGB understands the term "relationship" as used by the County to be the ability of the County to discuss and implement current and future intermunicipal planning activities with officials and staff of the City. The MGB recognizes that the success of intermunicipal planning depends on the cooperation and interaction of a number of municipal representatives at both the administrative and political level. Intermunicipal relationships are often defined by the issues at hand as well as the behaviour of the people representing their organizations. Some issues will be less controversial than others and easier to deal with. The MGB has already acknowledged that the 2006 Annexation Agreement was contentious and took quite a while for the two municipalities to complete. The efforts by the two municipalities after the annexation have resulted in the development of a road maintenance agreement and the provision of agricultural services by the County to lands now within the City. The MGB heard no evidence to believe these cooperative planning related activities would cease and impact the current relations between the two municipalities. Moreover, a process to review the IDP and solidify the growth corridors has been established and is moving forward. Again, the MGB has no reason to believe this future oriented intermunicipal planning process will not continue. The MGB does accept that the two municipalities may be more precise when establishing the "locations and timing of long term growth for both municipalities" as identified in Schedule "D" of the Agreement when developing the new IDP, and the increased detail may assist the parties by helping them to avert misinterpretation in the future.

The MGB finds the presentation of the County with respect to the detriment of relationship anecdotal and likely more simplistic than the actual systems of cooperation that occur on a regular basis. Municipal relationships are by nature a series of complex understandings among many participants within each municipal organizational structure that evolve over time. To

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determine the relationship status in the area of planning, the MGB looks to the formal steps in the process. Prior to the annexation the two Councils established an inter-municipal committee with apparent broad authority to hear issues of mutual concern. The MGB notes that, although not without challenges, a process to update the 1998 IDP is proceeding. The County received the City's MDP, identified a number concerns and the two municipalities were able to negotiate the resolution to all but one issue. The County is in the process of completing its new MDP and it is expected that this document will be referred for comment to the City. Although the City has filed appeals regarding bylaws adopted by the County, these appeals have by and large been resolved by the municipalities. The MGB heard nothing to lead it to believe that development and subdivision procedures have not been largely successful. The MGB received no submissions to indicate that the City's MDP or the relationship between the two municipalities has or will be detrimental to County landowners within the growth corridor. During the hearing, witnesses for both municipalities characterized the relationship between the two municipalities as being good. All of these intermunicipal interactions demonstrate a reasonable level of cooperation. Again, the MGB has no reason to believe these cooperative intermunicipal planning activities will cease.

The Act contemplates there will be times when a municipality is not in agreement with a statutory plan or land use bylaw of its municipal neighbour. Section 690 of the Act allows municipalities to file an appeal with the MGB in these cases. The MGB accepts that the adversarial nature of an intermunicipal dispute hearing can cause some difficulties between the parties. The MGB notes that both the City and the County have availed themselves of this by filing appeals.

The MGB finds no basis to the argument that other municipalities will lose faith in the negotiation process with the City if they see that the City is not honouring the 2006 Annexation Agreement. As stated previously, the MGB does not have the jurisdiction to enforce the Agreement. However, the MGB notes that the County can access the court system to enforce the contract. The MGB was provided with no evidence to confirm that the City's relationship with other municipalities in the region would be diminished as a result of this dispute.

The MGB agrees that it is preferable for municipalities to resolve matters at the local level. This allows the municipalities to retain control over their own destiny. However, in this case the City and the County were not able to resolve this issue and an appeal was filed with the MGB. The MGB acknowledges that the adversarial nature of a hearing can be stressful for the parties and may impact how they interact with each other for a time. Regardless, the MGB is confident that the professional and elected officials of both municipalities will continue to seek opportunities for mutually beneficial intermunicipal planning that is in the public interest.

BOARD ORDER: MGB 094/10

FILE: 09/IMD-05

SUMMARY

In summary the MGB has determined that the adoption of the City's MDP has not significantly changed the various intermunicipal planning processes and level of cooperation established by the two municipalities. It is not clear that any detriment has occurred due to the City's adoption of Section 1.3.2 of its MDP. If some minor detriment has been realized, the MGB finds that it is not substantial enough to meet the criteria that would cause the MGB to order a change to the City's MDP. Moreover, the MGB is not convinced that the adoption of Section 1.3.2 of the City's MDP has or will substantially impair the relations between the two municipalities.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 11th day of August 2010.

MUNICIPAL GOVERNMENT BOARD

(SGD.) L. Patrick, Presiding Officer

APPENDIX "A" - APPEARANCES

NAME	CAPACITY
Sheila McNaughtan	Reynolds Mirth Richards & Farmer LLP, Solicitor for the Rocky View County
Kyra McCardle.	Planner, Rocky View County
Drew Hyndman	Planner, Rocky View County
Brand Inlow	City of Calgary, Law Department
Tim Creelman	Planner, City of Calgary
Matt Rockley	Planner, City of Calgary

APPENDIX "B" - DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB

NO.	ITEM
Exhibit 1	October 27, 2009, Statutory Declaration from Rocky View County
Exhibit 2	November 27, 2009, Statutory Declaration from the City of Calgary
Exhibit 3	MGB Decision Letter 141/09 issued December 21, 2009
Exhibit 4	MGB Decision Letter 003/10 issued January 12, 2010
Exhibit 5	February 1, 2010 Progress Report from Rocky View County
Exhibit 6	February 1, 2010 Confirmation of Progress Report from City of Calgary
Exhibit 7	February 5, 2010 Submission of Rocky View County
Exhibit 8	February 18, 2010 Response by the City of Calgary
Exhibit 9	February 26, 2010 Rebuttal by County
Exhibit 10	March 10, 2010 correspondence from Rocky View County regarding a possible preliminary matter
Exhibit 11	March 10, 2010 "Will Say" correspondence from County
Exhibit 12	March 11, 2010 CV for Kyra McCardle
Exhibit 13	March 12, 2010 CV for Matt Rockley