BOARD ORDER: **MGB 77/98**

FILE: **P97/IMD-01/02/03**

Sturgeon County Disputes with Edmonton, St. Albert and Morinville

Contents

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SECTION I - BACKGROUND TO THE APPEALS

IN THE MATTER OF THE *Municipal Government Act,* S.A. 1994, c.M-26, as amended ("the *Act*");

AND IN THE MATTER OF an appeal pursuant to Section 690 of the *Act* by the City of Edmonton, the City of St. Albert, and the Town of Morinville, respecting a Land Use Bylaw (LUB) and Municipal Development Plan (MDP) adopted by the County of Sturgeon (Sturgeon) on February 11, 1997.

BEFORE:

T. T. Helgeson, Presiding officer
W. Morgan, Member
V. Chatten, Member

This appeal is with respect to certain provisions in the MDP and LUB of the County of Sturgeon, being Bylaws 818/96 and 819/96, respectively, that have or may have a detrimental effect on the City of Edmonton, the City of St. Albert, and the Town of Morinville.

Upon notice being given to the interested parties, a hearing was commenced in the City of Edmonton, in the Province of Alberta, on May 2, 1997, which was then recessed and reconvened on June 18, and on July 24, then reconvened for the substantive hearing on September 8, 9, 10, 11, and 12, 1997, and finally closed on March 3, 1998.

BACKGROUND

On November 26, 1996, County of Sturgeon (County) gave first reading to Bylaw 818/96, adopting a new MDP, and Bylaw 819/96, its new LUB, both of which had been prepared pursuant to the provisions of the *Act.* In accordance with s.690(1) of the *Act*, the City of Edmonton (Edmonton) submitted comments in writing to the County on December 9, 1996, expressing its concerns regarding the new bylaws. On December 10, the County held a public hearing in connection with the bylaws. The City of St. Albert (St. Albert) then gave several written notices of its concerns to the County, on the 10 and 17 of December, 1996 and on January 17, 1997. The Town of Morinville (Morinville) provided notice of its concerns to the County on January 15, 1997. All three municipalities notified the County of their concerns prior to second reading of the bylaws, as required by s.690(1). The bylaws were given second and third reading by the County on February 11, 1997 and adopted on that date.

St. Albert filed an appeal with the Municipal Government Board, with notice to the County, on March 11, 1997, indicating the provisions of the MDP and LUB that might be detrimental to St.

Albert, and describing efforts made to resolve matters with the County. Edmonton and Morinville each filed their appeals with the Board with notice to the County on March 12, 1997, specifying those provisions of the bylaws they considered detrimental to them, and setting out the efforts they had made to resolve their concerns with the County. All three appellant municipalities filed their notices of appeal within the 30 day time limit under s.690(1), and in accordance with s.690(2) of the *Act*.

Pursuant to s.691 of the *Act*, the Board set the initial hearing date for May 2, 1997, to comply with the 60 day time period specified in s.690(1)(a To ensure those parties entitled to be heard under s.691(2) were made aware of the appeal and the pending hearing, the Board published notices in the *Edmonton Journal* on April 16 and 17, 1997, in the *St. Albert Gazette* on April 16 and 23, 1997, and in the *Morinville Mirror* on April 15 and 22, 1997. Prior to the hearing on the substantive issues held September 8 through September 12, 1997, the Board convened for administrative purposes on May 2, June 18, and July 24, 1997. During the course of these administrative sessions, certain preliminary questions respecting procedures, exchange of documentation, and legal interpretation were considered and ruled on by the Board.

LEGISLATION CONSIDERED

The Municipal Government Board considered the following legislation in making its decision in this appeal:

Sections 5, 617, 622 (1) , 622 (3), 632 (3), 690, and 691 of *Act*;

Section 11 of the *Subdivision and Development Regulation,* A.R. 212/95;

Section 44 of the *Planning Act*, R.S.A. 1980, c.P-9, as amended (since repealed)

Section 10 of the *Interpretation Act*, R.S.A. c.I-7, as amended.

SUBMISSIONS OF THE APPELLANTS

The City of Edmonton

1. Status of Discussions, City of Edmonton and the County of Sturgeon

From the time Edmonton filed an appeal in this matter, Edmonton staff and staff from the County have had numerous meetings in an effort to find a way by which Edmonton's concerns about the detrimental effects the Sturgeon MDP and LUB might have on Edmonton could be alleviated. On June 3, 1997, Edmonton Council approved the principles of an accord for intermunicipal

planning which, if implemented through changes to the County's LUB and MDP, would alleviate some of the Edmonton's concerns.

On June 17, 1997, these principles were considered by the County Council, who expressed concerns about one of the principles, which was that there should be an interMDP for the Sturgeon Valley area. When it was clear that this was the only issue that remained unresolved, Edmonton staff took a subsequent report to Edmonton Council asking that Council support a proposal for an area structure plan for Sturgeon Valley. Council gave its support for this alternative on July 29, 1997. Subsequently, on August 12, 1997, County Council indicated support for the full set of principles.

Efforts were then made to translate the principles of the accord into specific amendments to the MDP and LUB. On August 13, 1997, the County provided Edmonton with revised copies of the MDP and LUB for review. Edmonton had not, by the close of business on August 16, 1997, received any maps from the County to assist in analyzing the proposed amendments to the LUB and MDP. This fact, combined with a lack of time, prevented Edmonton from completing its review of the amendments. Consequently, Edmonton was unable to discuss any concerns arising from it with the County prior to the submission of arguments before the Board. Despite the fact that Edmonton and the County reached an accord on intermunicipal planning, the County refused to admit that appealed sections of its MDP and LUB have or might have a detrimental effect on Edmonton. Therefore, Edmonton submits the following argument for consideration by the Board.

2. New Planning Regime

When the *Planning Act* was repealed, the statutory requirements for regional plans vanished. Regional planning commissions, the watchdogs who ensured that regional planning was implemented and maintained, became extinct. As a consequence, regional planning became the responsibility of individual municipalities. This implied a high degree of intermunicipal cooperation and coordination. In this new planning regime, the Board has been given the role of arbitrator, and must ensure that municipalities recognize and respect their respective regional planning responsibilities.

The Board's predecessor, the Alberta Planning Board, took a narrow view of "detrimental effect" under s.44 of the *Planning Act*. This view was justified because the potential impact of a municipality's planning bylaws on its neighbours was limited by the regional plan, which protected the general interests of all municipalities in the region. In light of the recent changes to the planning legislation, and the spirit of cooperation the new legislation relies on, a narrow interpretation of detrimental effect is no longer appropriate. Bylaws that fail to recognize the regional context must be found to be detrimental to adjacent municipalities.

This new context must be recognized by the Board in defining detrimental effect. Under s.44 of the *Planning Act*, a municipality was able to appeal a statutory plan or LUB of an adjacent municipality if the council believed the bylaw "has or may have a detrimental effect within the boundaries of the first municipality." Only where the Planning Board found detrimental effect within the boundaries of the appellant municipality could it order the offending provision repealed or amended. The phrase "within the boundaries of the (appellant) municipality" does not appear in s.690 of the *Act.* The only words in s.690 that qualify the nature of the detrimental effect are the words "on it." It is submitted detrimental effect is not confined to a specific, concrete impact within the boundaries of the appellant municipality. Because of the difference in wording, the Board can direct the County to amend or repeal its bylaws if it finds there is detriment in a general sense.

3. General Detrimental Effects

(i) Lack of Consultation

A review of the interaction between the County and Edmonton during the period leading up to the adoption of the MDP and LUB will reveal that the County failed to engage in the kind of consultative process that is now a cornerstone of land use planning in the province. Virtually no consultation occurred during plan preparation. Once the County gave first reading to the plan and bylaw, Edmonton had only a short time to review and comment on them. This violated the spirit of s.636(1)(d) of the *Act.*

The County failed to respond to Edmonton's comments, and there was no meaningful discussion between the two municipalities. Edmonton's request to delay second and third readings of the bylaws so that concerns could be addressed was ignored. Edmonton was not sent a copy of the Policy Directions Discussion Paper containing information of the County's proposed directions, an oversight acknowledged by the County. There was only one meeting with Edmonton, although there were 31 meetings for ratepayers and interest groups.

The only opportunity for consultation between the two municipalities occurred late in the process. Once first reading is given to a planning bylaw, policies are set, and land use patterns established. Not allowing an adjacent municipality to participate at this stage is tantamount to denying it an opportunity to participate at all. This kind of approach is certain to result in a detrimental impact on all municipalities in a region. Neighbouring municipalities have a responsibility to each other to participate in the preparation of their respective MDPs so that their obligations under s.632(30(a)(iii) and (iv) of the *Act* can be fulfilled.

(ii) Non-Compliance with the *Municipal Government Act*

Section 622(3) of the *Act* requires that every statutory plan, LUB and action undertaken by a municipality must be consistent with the provincial Land Use Policies. The County failed to consider policies 2 and 3, requiring coordination, cooperation and communication between municipalities. By failing to make a meaningful effort to involve Edmonton in its deliberations, or even informing Edmonton of its direction on the new MDP and LUB, the County ignored the spirit and intent of the Land Use Policies, that is, to encourage the development of a new and collaborative era of intermunicipal planning.

Neither was Edmonton given an opportunity to discuss differences in interpretation of the Land Use Policies with the County prior to enactment of the bylaws, contrary to s.1.2 of the Land Use Policies, which provides that:

> "Municipalities and provincial departments and agencies are encouraged to consult with one another where questions on the spirit and intent of these policies arise during implementation."

This lack of communication is a lost opportunity by which Edmonton has suffered detriment.

Sections 632(3)(a)(i) through (iv) of the *Act* require that MDPs address future land use and the manner of and proposals for future development. The County's MDP fails to do this; it does not identify areas for future country residential, highway commercial, or new industrial parks, nor does it address coordination of land use, future growth patterns, infrastructure, and transportation with Edmonton. These deficiencies in the MDP have a detrimental effect on Edmonton.

4. Specific Detrimental Effects

(i) Defining An Appropriate Scope for Intermunicipal Planning

[Provisions that have a detrimental effect on Edmonton: MDP s.15, Policies 15.1 and 15.2; LUB, s. 2.5.1]

Under the aegis of the Edmonton Metropolitan Regional Planning Commission, there was a forum in which municipalities were able to explore regional and intermunicipal concerns. The elimination of regional plans and regional planning commissions should not be taken to mean that regional issues are to be ignored. It is now up to the municipalities to collaborate in finding a way to implement an effective substitute for regional planning. After the demise of the Edmonton Metropolitan Regional Planning Commission, the Alberta Capital Forum Ltd. was established as a vehicle for those municipalities in the Edmonton region who wished to discuss regional issues for their mutual benefit. The County does not participate in the Forum, hence the

County and Edmonton must develop other means to ensure intermunicipal cooperation. It is detrimental to both municipalities not to have these intermunicipal processes defined.

Simply defining a fringe area between the two municipalities, as suggested in the County's MDP, ignores intermunicipal concerns that extend beyond the fringe. Sound intermunicipal planning involves four key components: a "ribbon" of land along shared borders; transportation, service and other corridors; blocks of land which due to regional significance may extend beyond the ribbon, and regional assets whose maintenance and preservation concerns everyone in the region. The County's MDP and LUB have failed to consider these components and this will have a detrimental effect on Edmonton.

The fringe area policies in s.15 of the MDP fail to provide a means for Edmonton to have input with respect to proposed development in close proximity to Edmonton. Policy 15.1 provides for a 1/2 mile primary zone adjacent to urban municipalities, and a secondary zone extending a further 1 1/2 miles beyond the primary zone, but only in the secondary zone will proposals for subdivision, development and statutory plans and plan amendments be referred to neighbouring municipalities. The inability to review and comment on proposals in the primary zone will be detrimental to Edmonton. Policy 15.1(i)(b) seems to create an option for adjacent municipalities to have input by providing for a meeting on subdivision or development applications in the primary zone if the developer elects to rely on the option. However, the purpose of the meeting is not stated. The silence of the Policy on this issue is detrimental to Edmonton.

Finally, there is no mention of referring applications for land use redesignations to adjacent municipalities. A redesignation in proximity to Edmonton could have a significant impact on the City. The need for consultation with respect to redesignations is particularly important in view of the County's practice of not redesignating land in advance of development proposals. A case in point is Sturgeon Valley, an area under pressure to expand country residential development. The only lands presently designated for country residential use in Sturgeon Valley are those already developed for that purpose. Edmonton will not even be notified in future of applications for redesignating lands in Sturgeon Valley unless Policy 15.1 is amended. Not being able to comment on such proposals would be detrimental to Edmonton.

These detrimental effects can be reduced or eliminated if the MDP and LUB are amended to provide for meaningful consultation between the County and Edmonton, and to deal with land uses in the Edmonton fringe area including the Sturgeon Valley Study Area, the South Sturgeon Study Area and a one mile strip along the boundary between Edmonton and the County. Amendments suggested for Policy 15 will help to obviate the detrimental effect. The proposed amendments will facilitate good communication and coordination of activities, thereby preventing many detrimental effects.

(ii) Cumulative Impacts of Country Residential Use

[Provisions that have a detrimental effect on Edmonton: MDP s.3, Multi-lot Country Residential Subdivisions, Policies 3.1, 3.2 and 3.3; LUB Ss. 6.24.1, 8,5,4(f) and (h), 8.6.4(e), 6.21.2(b), 6.21.3, 6.21.4, 6.21.5, and 6.21.6]

The sections cited above are detrimental because they lack the detail and specificity that would allow Edmonton to plan for the impacts of intensified country residential use on its boundaries. The MDP contains no projections on growth nor any policy for the amount, timing, or location of future country residential development. This absence of information is a detriment to Edmonton because there is nothing by which Edmonton can estimate the magnitude of impacts it will be subject to as a result of development in the Sturgeon Valley area. While an interMDP involving both the County and Edmonton would be preferable, an area structure plan that addresses the key issues and indicates the extent and pace of anticipated development would be better than the current vacuum of information. *Ad hoc* development in this area is no longer acceptable to Edmonton.

Although Policy 3.1 of the MDP requires an area structure plan be submitted prior to application for subdivision, the Policy fails to specify the region the area structure plan is to encompass. If the region included in the area structure plan is confined only to the area of the subdivision, the opportunity to plan comprehensively is lost. The likelihood of meaningful intermunicipal planning arising from a proposal for multi-lot country residential subdivision is limited given the fragmented ownership of land in Sturgeon Valley. The County should therefore take the lead in preparing an area structure plan for the Valley, involving both Edmonton and St. Albert, so that issues of regional concern can be coordinated. Without an area structure plan for the Sturgeon Valley, Edmonton will be detrimentally affected because it will be unable to plan effectively for development in areas of Edmonton adjacent to Sturgeon Valley. The potential for detriment will increase upon the expiry of Section 11, *Subdivision and Development Regulation* A.R. 212/95 (as amended), when Edmonton will have no protection from the impact of multi-lot country residential development on its borders.

These detrimental effects can be reduced or eliminated by amending the MDP to provide for consideration of the impact that further multi-lot country residential development might have on Edmonton, and preparation of a comprehensive area structure plan for the Sturgeon Valley area that addresses Edmonton's concerns related to ongoing piecemeal subdivision.

(iii) Protecting the Integrity of Major Transportation Corridors and Facilities

[Provisions that have a detrimental effect on Edmonton: MDP s.12, Transportation and Utilities, Policy 12.6; Section 7, Industrial, Policies 7.3, 7.7(iii) and 7.10(iii); and s.8, Commercial, Policy 8.1. Also the map of Future Land Use showing CFB Edmonton as a Special Area. LUB s.8.9,

Highway Commercial District; s.8.10, Industrial-Heavy District; and s.8.11, Industrial-Rural District]

The sections cited are detrimental to Edmonton because they lack the detail and specificity that would allow Edmonton to plan its major transportation corridors and facilities, taking into account the potential impacts on Edmonton of transportation corridors and facilities within the County, or potential demands on Edmonton's transportation corridors and facilites arising out of development within the County. There is a high degree of interaction between land use patterns and the nature of land uses, and the kind of transportation services required to serve such uses.

Roads in Edmonton do not end at the corporate limits, therefore transportation planning issues must be dealt with on a regional basis to protect rights-of-way for future expansion, development of truck routes to serve industrial areas, and ensure the free flow of heavy traffic. The *Municipal Government Act* requires, in Section 632(3)(iv), that MDPs address required transportation systems within the municipality and in relation to adjacent municipalities. The failure of the County's MDP to provide for this in a meaningful way is a detriment to Edmonton. The only way transportation systems in the County can be planned effectively is through consultation between the County and Edmonton. To date, no such consultation has occurred and there is nothing in the MDP that would indicate consultation will occur in the future. This is a detriment to Edmonton.

There is limited government funding for transportation, and it makes no sense for Edmonton to plan and budget for arterial extensions into the County if development in the County makes construction costs prohibitive. Timing and standards for the extension of arterial roadways such as 127 Street must be coordinated so that these roads are not built to serve a demand that does not exist. Conversely, if a road is built to carry commuter traffic and instead becomes a truck route, it will require more and earlier maintenance than if built to the appropriate standard to start with.

Edmonton submits that these detrimental effects can be reduced or eliminated if the MDP is amended to provide for policies that will encourage coordination of roadway and land use plans between the County and Edmonton. In lieu of a regional transportation plan, suggested amendments to MDP Policy 12, and the suggested change to Policy 15 will ensure that Edmonton is kept informed and has an opportunity to paticipate in land use decisions that may impact on Edmonton's transportation planning and the functioning of its transportation system.

(iv) Location of Industrial and Commercial Land Uses

[Provisions that have a detrimental effect of Edmonton: MDP**,** Section 7, Industrial, Policies 7.3, 7.7(iii), 7.10 and 7.11; Section 8, Commercial, Policy 8.1. LUB Ss. 6.20.5, 8.9.1, 8.93, 8.9.4(g) and (j)]

It is submitted that the provisions noted above are detrimental to Edmonton because they lack the detail and specificity to allow Edmonton to plan for the impact of intensified industrial or commercial land uses on its boundaries. The MDP sets out some general policies concerning characteristics of potential industrial sites but does not specify where new commercial or industrial development is going to be encouraged. The resulting uncertainty is detrimental to Edmonton.

Major industrial and commercial land uses serve regional markets, not small local markets. Municipalities within a region must recognize and plan for commercial and industrial development together for the economic well-being of the region rather than the economic interests of individual municipalities. Large scale development requires a regional perspective. If Edmonton and the County established industrial or commercial nodes situated just across the municipal boundary from one another, the result could be detrimental to both municipalities if there was not enough demand to support both nodes in an economically viable condition. Eventually, both nodes might fail. Edmonton therefore suffers detriment if is it not consulted through the area structure plan process for the South Sturgeon Study Area. If both municipalities coordinated their efforts in a complementary way, successful and sustainable development might result on both sides of the boundary.

Policy 7 of the MDP is detrimental because of its lack of specificity. Because isolated heavy industrial activity appears to be supported by the County, Edmonton cannot plan within its boundaries to ensure that there will be adequate separation between potential heavy industrial development and possible incompatible land uses such as residential or institutional development. A 1,500 foot separation distance may not be sufficient. Edmonton has no assurance that if residential or institutional development takes place within its boundaries before development occurs in the County, that the County will consider the existing development in Edmonton in planning for future industrial development. The MDP does not deal with heavy industrial separation distances in a way that will protect land uses in Edmonton from the noxious qualities of heavy industry. This is a detriment to Edmonton.

These detrimental effects can be eliminated or reduced or eliminated if the MDP is amended to provide for preparation of a comprehensive area structure plan for the South Sturgeon Study Area. No specific amendments to the LUB, to deal with this issue are being requested at this time.

The detrimental effect to Edmonton arising from the silence of the MDP on the need to separate heavy industry from other uses can be obviated by an amendment to Policy 7 of the MDP to prescribe a minimum separation distance from nearby industrial uses in the County and the boundary of an urban municipality.

(v) Environmental Protection

[Provisions that have a detrimental effect on Edmonton*:* MDP, s.11, Environmental Protection, Policies 11.5, 11.7, 11l9 and 11.10; s.14, Nautral Resources, Policies 14.3 and 14.6. LUB: Ss. 6.9.9, 6.9.11, 6.15.1, 6.15.5 and 8.3.1, 8.3.2, 8.3.3, 8.3.4(a), (h) and (I)]

Environmentally sensitive areas of regional, provincial or national significance are, by definition, of intermunicipal interest. Envirionmentally sensitive areas of local significance may be of intermunicipal interest if the area lies within more than one municipality or near a shared boundary. There are a number of environmentally sensitive areas within the County that have been identified but whose recognition has not been mentioned in either the MDP or LUB Until this is done there is a potential that these areas will be destroyed, to the detriment of all Albertans.

Environmentally sensitive areas have been inventoried and identified within the County as a first step in the protection process. The MDP and LUB should contain policies to ensure that when development pressures impinge on environmentally sensitive areas, studies will be undertaken to ensure an appropriate form of protection is implemented. Otherwise, important and unique areas may be lost "by accident." Policy 11.5 of the MDP provides that an environmental impact assessment will be required for multi-lot residential developments where an area is considered "particularly environmentally significant" but it is not clear if the assessment will be required before an application for subdivision or development can be processed, nor does the plan indicate which areas might be considered "particularly environmentally significant." The plan fails to explain why other uses which might have at least as great an impact on environmentally sensitive area as multi-lot country residential will not be required to conduct an environmental impact assessment.

Edmonton submits that even where the MDP or LUB recognizes an environmentally sensitive area, the measures proposed for protection and preservation of the environmentally sensitive area are not sufficiently detailed to allow Edmonton to be certain that an important and unique area of the province will not be lost by accident. The County's MDP and LUB should be amended to deal comprehensively with the recognition, protection and preservation of environmentally sensitive areas.

The detrimental effects to Edmonton which arise from the failure of the MDP to follow through with protection and preservation of environmentally sensitive areas can be obviated by amendments to Policy 11 and Policy 14 of the MDP. Suggested amendments are intended to provide greater opportunity for good stewardship of environmental resources of value to the region as a whole by increasing the number of events that will trigger an environmental impact assessment. Edmonton's concerns with LUB Ss. 6.9.9 and 6.9.11, dealing with Natural Resource Extraction, will be obviated through the proposed amendment to Policy 14.6. Concerns with

LUB Ss. 6.15.1 and 6.15.5 (Bed and Breakfasts and Guest Ranches) are addressed through proposed amendment to Policy 11.5 and the new sub-policy proposed within MDP Policy 11. The proposed change to Policy 11.5 will help alleviate concerns with LUB s.8.3 (Agriculture-Nature Conservation District)

(vi) Fragmentation of Agricultural Land and Protection of the Agricultural Industry

[Provisions that have a detrimental effect on Edmonton: MDP, s.2, Agriculture, Policies 2.1, 2.2, 2.4, 2.5, 2.6; LUB, Sections 6.23.1, 8.2.2, 8.2.3, 8.2.4(a), 8.3.2, 8.3.3, and 8.3.4 (a) (Also sections 6.21.4, 6.21.5, 6.21.6 referred to previously)]

The provisions of the MDP and LUB are detrimental as they are not directed towards the prevention of the fragmentation of agricultural land. Although the goal of the MDP is stated as "To protect and allow for the enhancement of the valuable agricultural land resource, the agri-based economy and the rural life style", the policies of the MDP seem to contradict the goal by allowing multiple subdivisions in a quarter section, with parcels as small as 2.47 acres (1 hectare). In addition, there are 29 permitted and discretionary uses within the district suggesting that it is not reserved for agricultural activities and is not intended to truly protect the agriculture industry, but to function as more of a holding district.

Edmonton's policies with respect to preservation of agricultural land are much more restrictive. The different approaches of the two municipalities will lead to confusion for land owners who own land in both municipalities. The need for Edmonton and the County to work together to ensure a consistent approach for areas close to shared municipal boundaries should be addressed in the MDP.

The possibility of an intensive livestock operation being allowed in close proximity to an urban boundary may result in detriment to Edmonton. While the LUB and the MDP both suggest that intensive livestock operations within a 1/2 mile distance of an urban boundary will not be permitted, the Animal/Bird Regulations and the Intensive Livestock Operation Regulations in the LUB would permit a sizable concentration of animals to be kept on lands within the 1/2 mile distance. This apparent contradiction is a detriment to Edmonton.

The MDP policy that allows two residential lots to be subdivided from each quarter section will, over time, result in fewer and fewer locations and expansion opportunities for intensive agriculture, especially livestock operations. Livestock production and associated value-added processing industries are major growth sectors in the regional economy. Policies which limit the realization of this potential are detrimental to Edmonton. No specific amendments are suggested for Policy 2 of the MDP.

(vii) Determining a Process for Effective Intermunicipal Planning

[Provisions that have a detrimental effect on Edmonton: MDP, s.16]

Section 16 of the MDP is detrimental because it fails to recognize that implementation and amendment of the MDP will require consultation not only with residents of the County but with Edmonton and the rest of the County's neighbours as well. Unless s.16 is amended to include a commitment by the County to consult with its neighbours, amendments to the MDP or LUB may suffer the same fate as the bylaws adopting the LUB and MDP. If consultation occurs early in the process, input will be more effective and may provide the foundation for a relationship that will enable the County and its neighbouring municipalities to act collaboratively and proactively.

The lack of initiative on the part of the County in communicating with its neighbours in the past causes concern that the County may not share the same level of commitment to intermunicipal planning as Edmonton. Formal recognition of its commitment by the County would ameliorate Edmonton's concerns. The silence of the MDP on the issue of non-adversarial resolution of conflicts between the County and its neighbours is a detriment to Edmonton. Providing a policy dealing with conflict resolution in the MDP would help the County and its neighbours avoid loss of time and money in complex appeals before the Board.

A concern regarding the adequacy of the intermunicipal consultation process between Edmonton and the County is at the heart of Edmonton's appeal of the provisions of the County's MDP and LUB. Amendments proposed to Policy 15 (Fringe Areas) will alleviate detriment to Edmonton, and if Policy 16 is amended as suggested, detriment will be further alleviated. These amendments will lay the foundation for more productive intermunicipal planning.

The City of St. Albert

1. The Factual Background

St. Albert has a population of approximately 47,000. The areas of St. Albert slated for residential development are adjacent to the boundary of the County. St. Albert is a comprehensively planned community with a general municipal plan, area structure plans (required for new subdivisions) a LUB, and engineering standards for storm and sanitary sewers, water mains, roads, curbs and sidewalks. Managing growth is critical for a well planned community, and in St. Albert new residential development is required to be contiguous with other development.

The County, on the other hand, is a rural community, with agriculture as its dominant land use and economic base. The County surrounds St. Albert on its western, northern and eastern boundaries. The County used to have policies that discouraged country residential development, but over time the County has been under pressure to permit country residential development in

proximity to St. Albert. Recently a number of institutional uses have also been approved on St. Albert's boundary.

In 1994, St. Albert and the County began working toward a joint planning process with appointment of a Joint Planning Committee. Committee discussions continued through June 1996 and included consideration of an inter-municipally planned fringe zone. Efforts at joint planning were terminated by the County in September of 1996. At the same time, the County was working on its new MDP. Background discussion papers contemplated more intensive industrial, commercial and country residential use in proximity to St. Albert. In the public hearings and in submissions to the County, St. Albert strenuously supported effective urban fringe planning to ensure coordination and prevent land use conflicts.

The County Council disregarded its consultant's recommendation and the entreaties of St. Albert, and adopted the MDP with no effective mechanism for coordination of land use, future growth patterns and infrastructure with St. Albert and other adjacent municipalities. The absence of an effective fringe policy was reflected in the County's new LUB, which has no urban fringe zone to mitigate or prevent land use conflicts, thus setting the stage for this appeal. St. Albert filed its notice of appeal before the Municipal Government Board on March 11, 1997.

From the first scheduled hearing date before the Board, St. Albert and the County have worked to negotiate a form of order that will alleviate the concerns of St. Albert with respect to detrimental effects. The County's MDP may have a detrimental effect on St. Albert because it creates the potential for intensification of subdivision and development in the fringe zone along the boundary between the two municipalities without coordination of land uses, future growth and infrastructure.

2. Analysis of MDP Policies

(i) Agriculture

[Provisions that have a detrimental effect on St. Albert: MDP, Policy 2.8]

The sole concern St. Albert has with the County's agricultural policy is that it fails to recognize that specially tailored fringe policies are needed to minimize land use conflicts between intensive agriculture and urban residential communities.

(ii) Multi-Lot Country Residential

[Provisions that have a detrimental effect on St. Albert: MDP, Policy 3.2]

While the County's old general municipal plan gave rural and agricultural uses pre-eminence, the new MDP expressly recognizes the right to create and develop residential subdivisions. One of the objectives set out s.3, "Multi-lot Residential Subdivisions," is to "provide a diversity of residential land use options, in locations proximate to service and employment centres." As a service and employment centre, St. Albert now faces the prospect of expanded multi-lot country residential and residential uses along its boundary. In fact, the County's Policy Directions Discussion Paper specifically acknowledged that the St. Albert fringe is the prime candidate for country residential growth.

Multi-lot country residential development that is not coordinated with St. Albert's planning scheme will cause traffic problems, sanitary sewer problems; risks of ground water contamination, fragmented parcels (making integration into the urban fabric difficult, if not impossible), and problems integrating rural servicing patterns, development standards and infrastructure.

(iii) Industrial Land Uses

[Provisions that have a detrimental effect on St. Albert: MDP, Policies 7.3 and 7.12; LUB, s.8.2.3]

The provisions of the MDP in conjunction with the LUB operate to allow development of "agricultural industrial" development in close proximity to St. Albert. Policy 7.3 provides that new industrial parks will be located adjacent to significant provincial highways, notably Highway 2. Section 8.2.3 of the LUB provides for "Agricultural Industrial Use" as a discretionary use immediately adjacent to St. Albert. Agricultural industrial uses in close proximity to St. Albert that are not coordinated with the St. Albert planning scheme will cause the following forms of detriment: traffic problems; environmental problems, including noise, odor, dust and ground water contamination; land use incompatibility with urban residential neighbourhoods, and rural development standards that are incompatible with urban development standards.

(iv) Commercial Land Use

[Provision that has a detrimental effect on St. Albert: MDP, 8.1]

The Commercial Policy of the MDP contemplates broadening the County's economic base through the encouragement of "new large retail format stores" with "different locational requirements". St. Albert is concerned that this is a precursor to "big box retail" on its boundary. The MDP Background Report specifically contemplates "big box" retail in proximity to urban centres. Big box retail located on or close to Highway 2 access to St. Albert will detrimentally affect traffic flows into and within St. Albert unless its planning is coordinated with St. Albert and the costs of additional traffic control borne by the County.

(v) Fringe Areas

[Provisions that have a detrimental on St. Albert; MDP, Policies: 15.1 and 15.6.]

The fringe zone contemplated by Part 15 of the MDP is deficient in the following respects:

- It contemplates "interim measures," whereas the *Municipal Government Act* requires measures to effectively "coordinate land uses, future growth patterns and other infrastructure". This is dangerous as permanent uses and subdivisions with long term consequences will result from interim measures in land use planning.

- Within the half mile primary zone "future intensified land use and land use patterns" are contemplated. When coupled with the policies on country residential, industrial and commercial development, this is particularly ominous for St. Albert.

- There is no effective mechanism for land use coordination with St. Albert if the County chooses to proceed under Policy 15.1(1)(a) of the MDP. The County is able to unilaterally determine whether a subdivision or development can proceed without the necessary information to analyze the impact on affected urban landowners and without taking St. Albert's concerns into account. If the County decides to proceed under 15.1(1)(b), the most St. Albert can expect is an opportunity to meet with representatives of the County and the proponent. Their is no obligation to consider or mitigate detrimental effects with St. Albert.

- There is no obligation in the "primary zone" to refer statutory plans and statutory plan amendments to adjacent urban municipalities for review and comment (there is such an obligation in the "secondary zone").

- There is no opportunity to review and comment on amendments to the LUB.

There is no effective mechanism for land use coordination in the MDP. Uncoordinated subdivisions and intensified land use on St. Albert's boundary will cause the following detrimental effects:

- The City of St. Albert strives through its planning process to achieve a well planned community. *Ad hoc* urban development detracts from the creation of an internally cohesive community.

- St. Albert bars "leap frog development" and requires new residential development to be contiguous or close to existing development. Short-term development beyond the fringe of St. Albert that is incapable of being integrated into its planing process detracts from the establishment of a solid urban fabric.

- St. Albert imposes urban infrastructure standards on all subdivision and development through the City of St. Albert Municipal Engineering Standards. It would be incongruous to allow adjacent land to be developed at intensities approaching urban densities on the immediate boundary of the urban area, but under less stringent rural development standards. This will lead to conflicts with respect to dust, increased traffic, disputes over sewage handling, and aesthetic concerns regarding water towers.

3. Analysis of the LUB:

The provisions of the LUB that have a detrimental on St. Albert:

(i) Absence of Urban Fringe, and Incompatible Land Use

St. Albert's key concern with the LUB is that it does not provide an urban fringe to assist in preventing land use conflict and intensified development on the County's shared boundary with St. Albert. The main land use zoning adjacent to the St. Albert is AG (agricultural), which allows a significant number of permitted and discretionary uses that may conflict with urban residential land uses if located in close proximity. Although the A-NC (agricultural-nature conservation) District affects a smaller area of the boundary, it contains many of the same conflicting uses such as intensive livestock operations.

(ii) Scope for Country Residential Subdivision

St. Albert is concerned that the permitted forms of dwelling - single detached dwelling and mobile home units - could form the basis for a country residential subdivision if either the parcel density regulations were ineffective, or were waived in the subdivision or development process.

(iii) Fragmentation of Parcels

With respect to the parcel density regulations, there is concern about a "drafting gap" that could render them ineffective. The regulations restrict the number of parcels that can be subdivided out of an "unsubdivided quarter". It does not deal with what happens to land once it is subdivided. This gap may allow a greater subdivision density to be achieved than was intended. Effective long term municipal planning cannot be achieved when there is premature fragmentation of land. Parcels must be maintained in large blocks until ripe for development. At worst, fragmented ownership can result in sterilization of land.

4. Discussion of Selected Detrimental Effects

(i) Groundwater Contamination

The part of the fringe area north of Villeneuve Road has an extremely high water table. Groundwater flowing into St. Albert's Red Deer subdivision is charged from this water table. The groundwater poses a problem for the subdivision, requiring sump pumps that discharge the water into the streets. Because of this problem, the use of rural-standard sewage disposal techniques in the area poses a risk of groundwater contamination. Other uses, such as intensive livestock operations, institutional uses and gas processing plants also pose a risk.

(ii) Traffic Problems

The intensification of institutional, residential and other uses on the St. Albert fringe will result in increased traffic into and through St. Albert, especially on St. Albert Trail, which was not designed to handle increased traffic from this area.. St. Albert trail is presently operating above capacity at several intersections. Increased traffic cannot be accommodated without increased congestion that can be alleviated only with increased capital expenditure.

(iii) Economic Impacts

Failure to plan for the long term ultimately results in the need either to overleap scattered country residential and institutional development, or to retrofit it with urban-standard services at significant cost. Alternatively, if development proceeds based on the expectation it will have access to St. Albert's infrastructure, St. Albert will suffer economic detriment unless there is coordination, with an appropriate share of costs being borne by the new development.

If St. Albert's infrastructure is used by County residents, it will reach capacity sooner and require expansion and upgrading sooner. Unless there are intermunicipal agreements in place, St. Albert will bear an inordinate share of the costs. Intensification of development on the urban fringe gives rise to expectations of access to urban services. The cost of delivering these services includes not only the marginal cost of actually delivering the service, but the costs of maintaining an adequate capacity for total and peak demands, as well as the capability to respond to increased demand. No approval for such development should be given in the absence of integrated planning and cost sharing.

(iv) Social Detriments

St. Albert is designed to be a cohesive community. Unless adjacent communities are planned in coordination with St. Albert, the cohesion will tend to break down. Unless fringe development is integrated with St. Albert's land use pattern, there is a risk of social polarization and division.

"Ex-urban" growth is often lacking in a sense of community, causing friction when non-residents use services and infrastructure they do not pay for.

(v) Failure to Plan Intermunicipally as Detrimental *Per Se*

Under Part 17 of the *Act*, municipalities directly control intermunicipal planning. In the absence of an intermunicipal development plan, the MDP becomes the instrument that coordinates land use, future growth patterns and infrastructure with an adjacent municipality. S. 632(3) of the *Act* establishes intermunicipal planning as a mandatory component of a MDP:

> A municipal development plan
>
> a) *must address*
>
> iii) *the coordination of land use, future growth patterns and other infrastructure with adjacent municipalities* if there is no intermunicipal 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.*
> (Italics added)

This obligation to coordinate intermunicipal planning is reinforced by the Land Use Policies adopted by Cabinet under s.622(3) of the *Act*. Under s.622(3), all statutory plans and LUBs must be consistent with the policies. These provide, *inter alia*:

> It is therefore important that municipal and provincial planning efforts utilize consistent approaches and pursue a high level of cooperation and coordination. (p.1) …
>
> 3.0 PLANNING COOPERATION
>
> Goals
>
> To foster cooperation and coordination between neighbouring municipalities and between municipalities and provincial departments and other jurisdictions in addressing planning issues and in implementing planning strategies.
>
> Policies
>
> 1. Municipalities are encouraged to expand intermunicipal planning efforts to address common planning issues, especially where valued natural features are of interest to more than one municipality and where the possible effect of development transcends municipal boundaries.

2. In particular, adjoining municipalities are encouraged to cooperate in the planning of future land uses in the vicinity of their joining municipal boundaries (fringe areas) respecting the interest of both municipalities and in a manner which does not inhibit or preclude appropriate long term use nor unduly interfere with the continuation of existing uses. Adjoining municipalities are encouraged to jointly prepare and adopt intermunicipal development plans for critical fringe areas. These plans may involve land which are in both of the adjoining municipalities." (p.4)

4.0 LAND USE PATTERNS

Goal

To foster the establishment of land use patterns which *make efficient use of land, infrastructure, public services and public facilities;* which promote resource conservation, which enhance economic development activities; which minimize environmental impact; which protects significant natural environment; and which contribute to the development of healthy, safe and viable communities.(Italics added)

Policies

1. municipalities are encouraged to establish, on a municipal *and on an intermunicipal basis*, land use patterns which provide and appropriate mix of agricultural, residential, commercial, industrial, institutional, public and recreational land uses *developed in an orderly, efficient, compatible, safe and economical manner* ". . (p.6) (Italics added)

In the old planning regime under the *Planning Act*, general plans did not deal with intermunicipal matters; they were the responsibility of the Regional Planning Commissions. Regional plans provided planning control on a regional level, including fringe area planning. In the context of the obligation in s.630(3) of the *Act* to provide for intermunicipal coordination of planning matters, it is detrimental *per se* for the County's MDP to be without an effective mechanism for coordinating land uses, future growth patterns and infrastructure.

5. Suggestion for an Order That Will Mitigate the Detriment

The Board should make an order directing the County to amend its MDP and LUB in a way that will ameliorate detriment to St. Albert as follows:

Proposed MDP amendments:

- Agriculture, s.2.8: to recognize that in some circumstances intensive livestock operations should be located further than the minimum separation distance from an urban community.

- Multi-Lot Country Residential, s.3.2: to recognize that if there is to be new multi-lot residential subdivisions they must take place in the context of intermunicipal planning in the fringe zones.

- Industrial, ss. 7.3 and 7.12: to recognize that location of industrial zones in the fringe should reflect the intermunicipal planning process contemplated by s.15.

- Fringe Areas, s.15.6: to recognize that intermunicipal coordination is necessary in the fringe area.

- Sections 15.6(i) through (v): to reiterate the subdivision restrictions set out in the agricultural zone, to prevent excess fragmentation of agricultural lands in the fringe zone.

- Sections 15.6(vi) through (ix): to require referrals to St. Albert of for proposed subdivisions, discretionary use development applications, land use reclassifications and LUB amendments and area structure plans.

- Sections 15.6(x) and (xi): to work in conjunction with the obligations in Policies 3.1 and 7.5 requiring area structure plans for the development of multi-lot country residential subdivisions and industrial parks.

- Sections 15.6(xii) and (xiii): to ensure cooperation regarding municipal boundary changes in case St. Albert proceeds with a new major arterial on its west boundary.

Proposed LUB amendments:

Amendments to the LUB are intended to achieve the following objectives:

- To reduce risk of land use conflict. The St. Albert fringe provides an area tailored to deal with the coordination of land uses and future growth, in which the range of permitted and discretionary uses allowed in the general agricultural district has been appropriately adjusted, thereby mitigating potential land use conflicts relating to major home businesses, airports, intensive livestock operations, kennels, agricultural industrial uses, institutional uses and gas processing plants. Through the use of definitions that excluded “grouped country residential” development, groups of residential dwellings (approved as a permitted use) cannot be converted into country residential subdivisions through variance of lot density regulations. Existing institutional and intensive livestock operations in the St. Albert fringe are “grandfathered” through “S-DC” zoning.

- To prevent unanticipated fragmentation of large parcels of land. The wording in the LUB leaves a question as to whether there would be any restrictions on further subdivision once a parcel was subdivided. The restrictions in s.8.2.4 speak only of limitations on "unsubdivided parcels," apparently without consideration of standards for subdivided parcels.

- To ensure that appropriate referrals are made. The provisions dealing with referrals in ss. 2.5.1, 2.8.3 and 3.3(b) will be amended to ensure that appropriate notice if provided to adjoining municipalities. In addition, a number of consequential amendments are to be made throughout the LUB to recognize landowners' rights and obligations in the Ag zone also apply to the fringe zone.

The Town of Morinville

1. Detrimental Effects Generally

Section 690 of the *Municipal Government Act*

Critical to the interpretation of s.690 is the meaning of the word "detriment." This was addressed by the Alberta Court of Appeal in *City of Lloydminster* v. *Alberta Planning Board et al.* Although the case arose under s.44 of the old *Planning Act*, that provision was substantially the same as s.690 of the present *Act.* In their decision in *Lloydminster*, the Court of Appeal concluded that detrimental effects were not limited to land use planning matters, i.e., it was sufficient that the action complained of "may have some detrimental effect." It is submitted that the conclusion to be drawn from the *Lloydminster* case is that any detrimental effect comes within the scope of s. 690.

An Appellant need not demonstrate an actual "detrimental effect." Section 690(1) allows for an appeal where a statutory plan or land-use bylaw "has or may have" a detrimental effect. The scope of the provision therefore goes beyond actual detrimental effects. Statutory plans and land-use bylaws, addressing as they do future uses, give rise to "potential" detrimental effects. Because of this, any detrimental effects would almost inevitably be prospective in nature, otherwise s.690 would be ineffectual.

Morinville acknowledges that potential detrimental effects should not be too speculative in nature. It is submitted that it is those detrimental effects that are reasonably possible that come within the purview of s.690. Consequently, one must examine the consequences or effects arising from a particular bylaw. It is obvious that s.690 is intended to provide a remedy where a planning bylaw has an actual or potential adverse impact on an adjoining municipality. This is clearly the reason for s.690, and if the section is to be given any meaning, the imputed bylaw must be examined in terms of its potential consequences. It is further submitted that the

consequences of a bylaw must be examined in terms of both its specific provisions and its omissions, for the simple fact that consequences flow from omissions as well as provisions.

The test under s.690 is whether the "bylaw" has or may have a detrimental effect. The reference to a bylaw establishes the scope for detriment effect in that all of s.690 must be read in the context of s.690(1), including the word "provisions" in s.690(5). Further, it is submitted that the authority of the Board to direct remedies must be interpreted in this context.

2. Specific Detrimental Effects

(i) Industrial Development

{Provisions that have a detrimental effect on Morinville: MDP, Policies 7.2, 7.3, 7.7 7.8 and 7.10; LUB, Part 6.0, (General Regulations), s.6.20 (Industrial Uses), Part 8.0 (Land Use Districts), s.8.10 (Industrial - Heavy District)]

With provisions for the approval of new rural industrial parks and isolated rural industrial developments throughout the rural area, the distinctive roles of "urban" and "rural" municipalities will be eroded. Morinville is concerned that its important role as an agricultural service centre within the region will be diminished and that future opportunities for economic development within Morinville will be adversely affected. There will also be additional strain upon urban services by this type of development within close proximity to Morinville's boundary.

The visual impact of the development of new industrial parks along Highway 2 and Secondary Highway 642 will detract from the aesthetic value of these important transportation corridors, and adversely affect the efficient and safe flow of traffic. There is no requirement in the LUB for an area structure plan for industrial development near primary or secondary highways.

According to the LUB, heavy industrial uses may be separated by only 1,500 feet from the boundaries of an urban centre. Approval of Heavy Industrial uses outside the area zoned for it in the LUB creates potential for excessive and unnecessary costs that will have to be borne by Morinville in resolving future land use conflicts. Such costs could be avoided or minimized if these uses were located in areas appropriately zoned for them.

(ii) Commercial

{Provisions that have a detrimental effect on Morinville: MDP, Policy 8.1; LUB, Part 8 (Land Use Districts), s.8.9 (Highway Commercial District)}

No direction is given as to where these kind of uses may locate in the County, whether under the Highway Commercial Land Use District or any other District in the MDP. "Warehouse sales" is listed as a discretionary use. Morinville's concerns are therefore the same as its concerns respecting the location of new rural industrial parks and isolated rural industrial developments.

(iii) Fringe Area

[Provisions that have a detrimental effect on Morinville: MDP, Policies 15.1(i) and (ii), and 15.2].

These policies provide for a 0.5 mile "primary zone" adjacent to the boundary of urban municipalities in which subdivision and development will be somewhat restricted and a further 1.5 mile "secondary zone" which will be used as the limit within which all subdivision, development and planning proposals will be referred to respective urban municipalities for review and comment. Policy 15.2 provides for cooperation between the County and its urban neighbours in negotiating intermunicipal agreements.

The limitations on the extent of the urban fringe surrounding Morinville will hamper Morinville's ability to plan for long term growth. Consequently, Morinville will be unable to plan effectively for and coordinate future land use or provide for infrastructure on lands adjacent to its boundary with the County. Rural residents adjacent to Morinville will use and come to rely upon urban services. Without being able to provide meaningful input with respect to rural development adjacent to its boundaries, Morinville will be restricted in its ability to plan for and maintain transportation and other services within its boundaries.

The interim nature of the MDP's Fringe Areas Policies results in uncertainty respecting fringe development over the short term, and substantially limits Morinville's ability to cooperate with the County in providing input into the planning and approval process. Short term decisions will result in the establishment of precedents in response to unplanned development pressures, unwarranted fragmentation of land, and the approval of development that will be premature in light of future agreements that may be put into place.

(iv) Intensive Livestock Operations

[Provisions that have a detrimental effect: LUB, Part 6 (general regulations), s.6.23 (intensive livestock operations)]

These provisions permit intensive livestock operation to locate as close as 1/2 mile from the boundary of an urban municipality. This proximity will lead to unnecessary and excessive costs arising from the resolution of future land use conflicts.

3. Remedy Requested

Morinville respectfully requests that the Municipal Government Board:

(i) make a finding that Bylaws 818/96 and 819/96, as originally passed by the County, have or may have a detrimental effect on Morinville; and

(ii) order the County to amend Bylaws 818/96 and 819/96 to incorporate the proposed settlement reached between Morinville and the County.

SUBMISSIONS OF THE LANDOWNERS

Dale Maynard Industries Inc. and 702602 Alberta Ltd.

1. General

(i) Position of the Landowners

The goal of the landowners is to ensure that the County bylaws do not prejudge development proposals or preclude timely consideration of them, but rather allow them to be considered on their merits. It is the position of the landowners that, with few exceptions, the County's bylaws are not detrimental. They may not have been completed to urban standards, but only because they were not intended to regulate an urban region. Admittedly, the bylaws could be improved, but the fact they could be improved does not mean they are detrimental. Any amendments to the bylaws that the Board may direct should be kept to a minimum and address only those specific provisions that will clearly result in detriment. The Board has not been given a general mandate to re-write the Bylaws but is limited to amending or repealing provisions of the Bylaw found to be detrimental.

(ii) Agreements with Adjoining (Appellant) Municipalities

A municipal council should not act in a way that is contrary to its bylaws. It cannot enter into agreements that are contrary to its bylaws, and cannot in its corporate capacity amend its bylaws. Where it is appropriate for a municipality to amend its bylaws, the amendment should be done following proper procedures. The County agreed to the amendments on the understanding that they would be implemented only if the Board found detriment. It is submitted that a finding of detriment is essential.

The fact that the County has negotiated agreements with the adjoining municipalities is irrelevant to the determination of detriment. The County has not admitted that its bylaws are detrimental, but merely decided that if detriment is found, the County might be amenable to having its bylaws

amended in accordance with the agreements. It is, in our view, premature for the County to have negotiated such agreements before it knew what the detriment might be. For the Board to regard the agreements as evidence would be an error of law that would jeopardize the validity of these proceedings: *Dallinga* v. *Council of City of Calgary* [1976] 1 W.W.R. 319 (Alta. S.C.).

(iii) Interrelationship of Municipalities

Generally, all municipalities have been created equal. They have equal legislative authority to adopt those policies and bylaws that they deem to be in the best interests of their residents. Such rights are exercised subject to the protection afforded to adjoining municipalities of having the Municipal Government Board review and remedy planning bylaws that the Board finds to be detrimental to an adjoining municipality. If a municipality does not believe that s.690 of the *Act* affords adequate protection to its long term interests and desires to have greater control over certain geographic areas, it may apply to annex those lands, thereby assuming full legislative control over them. In that way, political accountability is vested in the municipality that exercises control.

One municipality should not be in a position to dictate to another what may or may not be done within the boundaries of the other municipality unless the first municipality is prepared to accept political responsibility for its actions. Any effort that would segregate political control from political responsibility must be resisted. If the County retains jurisdiction over the subject lands, it should be at liberty to make decisions affecting those lands subject only to the over-riding jurisdiction of the Board with respect to provisions of its planning bylaws that are detrimental.

2. Legislative Scheme

(i) Fundamental Principles

There are a number of fundamental principles which must guide the Board in its assessment of the submissions made by the appellants in determining whether or not a provision of the bylaw is detrimental. Absent a finding of the Board that the bylaw has (or potentially has) a detrimental effect upon the appellants, the appeal must be dismissed. Absent evidence in that respect, the Board cannot make a finding that a bylaw is detrimental.

(ii) Burden of Proof

The onus of proof to establish that the bylaws have a detrimental effect is on the appellants. The burden of proof lies upon the party who asserts the affirmative of the issue: *Re CN/CP Telecommunications and Canadian Association of Communications and Allied Workers* (1985) 18 L.A.C. (3d) 78. It is not the duty of the County or the landowners to show that the bylaws do not have a detrimental affect.

(iii) Only Provisions of a Bylaw can be Detrimental

It is the bylaw *per se* that must create the potentially detrimental effect. S.690(5) of the *Act* states: "The Municipal Government Board must decide whether *the provision of the . . . bylaw* is detrimental". The present investigation must therefore be centred on the provisions of the County's bylaws. The issue is not whether the process which led to the adoption of the bylaw was deemed to be satisfactory to the appellants, nor is it what the bylaw fails to provide. It is on "the provision" of the bylaw alleged to cause detriment that the Board must focus.

(iv) Development Potential

Whether or not a provision of a bylaw is detrimental must be assessed in relation to the development or potential development which may flow from the bylaw. It is trite to suggest that it is the development itself and not the bylaw which results in a detrimental effect. The issue is therefore whether or not the provisions of the bylaw will permit development that could have a detrimental effect on the appellant municipalities. The intent of s.690 is to ensure that development initiatives in one municipality address regional concerns and that any detrimental effects of the development are remedied by amendments to the offending bylaw.

(v) Specific Use and Location

It is submitted that if a bylaw does not designate a specific use for a specific location, the potential for the bylaw to have a detrimental effect is remote. A particular use may be considered beneficial or detrimental depending upon its location. Without knowledge as to the specific use and its intended location, the ability to determine whether detriment exists is virtually non-existent. An area structure plan, an area redevelopment plan and a LUB all designate specific land uses upon specific parcels. The MDP does not specify uses for specific parcels, but contains broad policy statements that can be implemented only through another bylaw and accordingly, in and of itself, the MDP cannot have a detrimental effect on an adjoining municipality.

(vi) Threshold of Detriment

To be detrimental, a provision of a bylaw must "unduly" affect the adjoining municipality. It is not simply any inconvenience or adversity which warrants intervention by the Board in the enactment of otherwise valid legislation by a duly elected body. In the context of combines legislation, the Supreme Court of British Columbia in *Valley Salvage Ltd. et al* v. *Molson Brewery B.C. Ltd. et al* (1975) 64 D.L.R. 734 @ 748 states: "The meaning of 'detriment' has been discussed in a number of authorities. It has been held that the word 'detriment' has the same meaning as the word 'unduly' as used in Section 32 of the *Act*." Clearly, the prejudice or harm to the adjacent municipality must be serious enough to warrant intervention in the legislation of a duly elected municipal council.

(vii) Amendments and the Board's Jurisdiction

If the Board finds provisions of a bylaw to be detrimental, it may remedy the detriment by ordering the provision to be amended, or it may order the repeal of the provision [s.690(5)(b) of the *Act*]. There must be a provision. The Board can neither repeal nor amend that which does not exist. It is submitted that the Board should keep the amendments it directs to a minimum, confining them specifically to detrimental effects. The Board has no mandate to re-write the County's MDP or LUB, or to create new land use districts. To do so would not constitute an amendment to the provision causing the detriment and would introduce new policies with which County council might not agree.

3. Response to the City of Edmonton

(i) General Comment

While Edmonton's submission may provide evidence of the need for discussions between municipalities to address matters of regional concern, for the most part Edmonton's submission fails to establish that any provision of the bylaws is detrimental. The submission is predicated on the basic premise that the bylaws of the County fail to address a number of items that the bylaws could otherwise have addressed. This view disregards the requirement that the Board, in making a determination of detriment, must identify the specific provision in the bylaw which it finds to be detrimental. Having found detriment, the Board may respond appropriately. The Board is not given the legislative mandate to incorporate new concepts into the bylaws to cover perceived deficiencies.

(ii) New Planning Regime

Edmonton submits that with the elimination of regional plans, the Board's jurisdiction in addressing and resolving intermunicipal disputes has been expanded commensurately over the scope of the jurisdiction exercised by its predecessor, the Alberta Planning Board. Such a conclusion does not follow. The jurisdiction of the Board must be found within the *Act*. The language of s. 690 is more definitive, both with respect to the assessment the Board must make and the remedies it may apply, than was s.44 of the *Planning Act.*

The legislature is presumed to avoid "stylist" variation in drafting statutes. Once a particular way of expressing a meaning has been used, it will be used again and again wherever the same meaning is intended. Therefore, when a different form of expression is used, the presumption is that a different meaning is intended. Had the legislature intended to expand the scope of the Board's jurisdiction over that enjoyed by the Alberta Planning Board, it would have said so clearly and unambiguously.

Edmonton has argued that by deleting the words "within the boundaries of the first municipality" and replacing them with the words "on it", the legislature has expanded the Board's jurisdiction from that of the Planning Board. This ignores the fact that a municipality has no existence beyond its boundaries. Since the new legislation has been written in "plain English", the words "on it' can have no meaning other than "within the boundaries of the first municipality". Therefore the Board's authority has not been expanded to allow it to find detriment outside the boundaries of the subject municipality.

Edmonton further argues that general, as opposed to specific, detriment is sufficient to warrant intervention. They assert that because the bylaw could be enhanced to better Edmonton's position, the failure to do so is detrimental. They invite the Board to re-write the legislation on behalf of the Municipal Council of the County, notwithstanding that specific provisions within the bylaw are not detrimental.

(iii) General Detrimental Effects

Edmonton's position is that there has not been adequate consultation leading up to the adoption of the County's bylaws and that this has caused detriment to Edmonton. But lack of consultation cannot be a detrimental effect as it does not appear within any specific provision of the bylaw.

It is suggested that the bylaws and actions must be consistent with provincial Land Use Policies, but s.1.2 of the Land Use Policies states: "Policies are presented in a general manner which allows municipal interpretation and application in a locally meaningful and appropriate fashion." Policy statements do not receive the same strict interpretation as do bylaws and legislation: *Harvie* v. *R. in Right of Alberta* (1981) 16 A.L.R. (2d) 223 (Alta. C.A.). The general nature of the policies permits each municipality to prioritize its objectives to achieve that which it believes is in the best interest of the municipality, subject to the right of the Board to modify any legislative action taken by it found to have a detrimental effect on the adjoining municipality.

Section 4 of the Land Use Policies, dealing with land use patterns, states that municipalities are "encouraged to establish land use patterns which contribute to the provision of a wide range of economic development opportunities thereby enhancing local employment opportunities and promoting a healthy and stable economy." Municipalities are therefore to complement and support economic development initiatives.

There is no specific provision of the MDP or the LUB which the City has identified as contravening any specific policy. Edmonton says that the MDP fails to address future land uses and it is acknowledged that it does not do so to the extent that an urban MDP might, but to force urban planning standards on rural municipalities would impose a burden not readily achieved.

(iv) Specific Detrimental Effects.

If MDP policy 15.1.a or 15.1.b is detrimental, it is only to the extent that proposed LUB amendments are not required to be referred to the adjoining municipalities in the same way that statutory plans or amendments to statutory plans are referred and an amendment to policy 15.1.a to that effect is warranted.

It is acknowledged that there are municipal and regional issues which require communication, but a legislative requirement for it is not necessary and will not necessarily cure the problem. The County's MDP does not preclude communication. Therefore, it cannot be said to be detrimental. The landowners would not object to an amendment to the MDP which would require development applications and amendments to statutory plans and LUBs to be referred to Edmonton and St. Albert where the land affected was within the primary zone, the secondary zone, the Sturgeon Valley study Area, or South Sturgeon Study Area. . But Edmonton seeks an amendment whereby it would receive referrals for "comment and concurrence," which implies a bias in favour of Edmonton.

Any undeveloped lands in the County intended for country residential development in future will require reclassification to one of the country residential land use districts in the LUB, necessitating an amendment to the land use map. The amending bylaw, if considered detrimental by an adjacent municipality, could be referred to the Board for a determination of detriment.

An area structure plan can be prepared for those areas within the County that are referred to in the Edmonton's submission without a specific requirement in the MDP. Dale-Maynard Industries Inc. supports the preparation of an area structure plan for the Sturgeon Valley Study Area. Edmonton seeks to impose a higher standard and more detail for the MDP and LUB than is warranted.

Edmonton argues that sections of the MDP and the LUB lack detail and specificity and that this uncertainty is detrimental to Edmonton. However, the kinds of industrial and commercial development contemplated by the MDP would require amendments to the LUB that Edmonton would be able to appeal. Edmonton also claims to be concerned about a perceived lack of provisions with respect to environmental protection, but here again the complaint is about what the bylaw fails to provide, rather than what it does provide.

Edmonton submits that because there are a significant number of uses which are either permitted or discretionary in the agricultural zone that it appears to be more or a holding district than a district reserved for agricultural activities. Edmonton also submits that if its policies and those of the County differ, confusion will result, causing detriment to Edmonton. Neither of these concerns reveal detriment that will "unduly affect" Edmonton.

Edmonton argues that section 16 of the MDP is detrimental because the section fails to specifically recognize that implementation and amendment of the MDP will require consultation. Again, it is not what the bylaw provides, but what it fails to provide that Edmonton argues is detrimental, and requests the Board to rewrite the MDP and LUB to accommodate their concerns. No detriment has been shown relative to the provisions of these documents.

4. Response to the City of St. Albert's Submissions

(i) General Comments

The premise that underlies the submission of St. Albert is that St. Albert is a sophisticated urban centre, well suited to industrial, commercial and intensive residential development, whereas the County is a rural municipality, best suited to agricultural development which does not conflict with the urbanization of St. Albert. Therefore the intensification of land uses in the County must be detrimental. This fails to recognize that the County is equal to St. Albert is almost all respects.

St. Albert's concern that the MDP has or may have a detrimental effect on St. Albert because it fails to deal adequately with the coordination of land uses, future growth patterns and other infrastructure, and specifically, the potential for intensification of subdivision and development in the St. Albert fringe zone, is premature. At present it is speculative whether the adverse effects will ever materialize.

(ii) Analysis of MDP

The landowners deny that the MDP contains no effective mechanism to coordinate land use, future growth and infrastructure with St. Albert and other adjoining municipalities. Part 15 of the MDP contemplates intermunicipal development agreements, municipal agreements or development plans.

It is speculative and premature on the part of St. Albert to conclude that multi-lot residential development will result in traffic, sanitary sewer problems, risk of ground water contamination or fragmented parcels which cannot be integrated with economic servicing patterns. Country residential development in the County will require a redistricting by amending bylaw, permitting St. Albert to again argue detriment before the Board.

It is appropriate to assess traffic problems and environmental problems relative to industrial development in the fringe zone. Section 15 of the MDP addresses integration of land use and land use patterns and to the extent that the MDP does permit industrial uses in the agricultural zone in the fringe area, it might be amended so as to require an LUB amendment for such uses, so that if detriment were perceived to arise, an appeal would lie to the Board.

Clearly, no commercial development can occur in the fringe areas absent an amendment to the LUB. Such an amendment would allow St. Albert to appeal to the Board. Until the specific location of commercial development is identified and its nature and magnitude disclosed, it is not possible to determine if detriment will arise.

Development in the primary fringe zone may be beneficial to St. Albert and it is premature to suggest that it may be "ominous." It is not what the MDP provides but what it fails to provide that St. Albert argues is detrimental. As suggested by St. Albert, it is appropriate to refer amendments to the MDP to St. Albert for comment, prior to adoption, but not before first reading.

(iii) Analysis of the LUB

St. Albert argues for the establishment of an "Urban Fringe" land use district, something the bylaw does not provide. The establishment of such a zone is inappropriate and is not authorized by s.690(5) of the *MGA*. For the most part it is premature, absent specific development proposals for specific lands, to conclude that smaller parcels result in any of the detrimental affects alleged.

Respecting economic impact, absent a specific development proposal, it is premature to assess whether or not there would be any adverse economic impact or social detriment.

The obligation for intermunicipal planning is reciprocal. Cooperation and coordination between neighbouring municipalities can occur only with both municipalities fully participating in the process and proceeding in the recognition that each municipality is equal, that each municipality is entitled to exercise legislative control over land within its boundaries, and that each therefore controls land use planning issues. It must be understood that it is inappropriate for a municipality to visit its wants, desires and objectives upon an adjoining municipality. Each must work together to achieve their respective objectives and to mitigate any detrimental effects which may result.

(iv) Conclusion

The landowners suggest limited amendments to the County's bylaws. The landowners agree that:

- Referral to adjoining municipalities of LUB amendments within the applicable fringe zone should be required under Section 15.1. provided response to such referrals are completed in a timely manner.

- Some discretionary uses in the Agricultural District of the LUB should not be discretionary in fringe areas and should require rezoning.

- The landowners do not take issue with modification to the fringe area boundaries as suggested by Edmonton.

- The landowners have taken no position relative to the amendments respecting Morinville.

- The landowners have no objection to the requirement for an area structure plan for Sturgeon Valley.

In all other the landowners request that the appeals be dismissed.

Walter K. Mis

The provisions of the MDP and the LUB are not detrimental and therefore the appeal should be dismissed for the following reasons:

1. General

The onus is on the appellants to show that the MDP and the LUB are detrimental in accordance with the requirements of the *Act*. There is no reverse onus on the respondent to show that the MDP and the LUB are not detrimental.

In the determination of detriment the *Act* provides two options to the MGB: either dismiss the appeal or order the adjacent municipality to amend or repeal the provision. In both instances the Board is required to identify a provision and determine if it is or is not detrimental.

The lack of a provision is not what is to be addressed by the Board, yet this is substantially what the appellants are objecting to in their appeals. The appellants have not met the onus of showing that a particular provision is detrimental.

2. The Fringe Areas

Policy 15 of the MDP introduces the concept of urban fringe area, a policy not found in previous development plans. The complaint of the appellants is not that the policy is detrimental, but that the new policy does not encompass all that they want. The St. Albert proposal is a massive extension of jurisdiction. For example, proposed Policy 15.6 would give St. Albert a veto over developments in the fringe area. Edmonton wants the proposed fringe surrounding its boundary expanded, yet at the same time acknowledging that it can have no jurisdiction over lands in an adjacent municipality.

The appellants must provide some evidence of a specific detriment, and identify the land in question. The appellants have not identified any specific land except in a general way, referring

to lands adjacent to their boundaries. Landowners in the fringe would be subject to control not only by the County, but by Edmonton and St. Albert as well. This is completely untenable and extremely detrimental to the affected landowners.

Another reason why specific lands must be identified is that there are different planning considerations with respect to different parcels. Maintaining blanket control in a fringe area into which an adjacent city has no intention to expand is clearly and unreasonably detrimental to the owners of land in the fringe. Without identifying specific land uses for specific parcels, it is impossible to determine whether or not a use is detrimental to adjacent property owners or municipalities. The fringe area as proposed by St. Albert would effectively double the size of its control area without annexation.

The LUB as passed contains no provision respecting fringe areas. Again, lack of a provision is not the same as a specific provision found to be detrimental. It is not the provisions of the LUB that are detrimental to the landowners but the changes that are requested by the appellants. The proposed permitted uses in the fringe are considerably reduced from the original LUB, as adopted by the County. The effect is to sterilize the lands in the fringe, limiting them to activities that are not economic.

3. Country Residential

Section 11 of the *Subdivision and Development Regulation* provides for restrictions on country residential uses within a certain distance from the boundary of a city or town. If the appellants are correct, then the lack of any other restriction would mean that the regulation is detrimental. This is clearly not the case. Further, the regulation only addresses country residential uses, indicating that other uses were not considered important enough to warrant the wholesale intrusion of a city or town into the jurisdiction of a rural municipality.

4. Agricultural

It has been acknowledged that the County has not changed the agricultural land use designation in the fringe area from its previous designation. The mere act of implementing what was in the old bylaw into a new bylaw cannot change what was previously acceptable to something detrimental.

5. Consultation

The MDP and the LUB were drafted as a result of lengthy consultations. There were numerous meetings held at which interested landowners were given an opportunity to voice their concerns. The passing of another bylaw by the County, acquiescing to changes in the MDP and the LUB

without first going through the public hearing process, is a contravention of the *Act*, in particular Part 7, even if passage of the bylaw is qualified.

6. The Appeal is Ultra Vires

The County is delegated the power to govern in its geographical area by the *Act*. Delegated power cannot be redelegated. The power to veto virtually any development in the fringe amounts to annexation in fact, if not in law. Municipalities are equal and one municipality is not to be given precedence over another. The appellants are not prepared to give an equivalent veto to the County with respect to development in a fringe area within the boundaries of Edmonton and St. Albert. For this and the reasons already set forth, the appeal should be dismissed.

James Sillito

It is submitted that Edmonton and St. Albert had insufficient argument and evidence to justify their position that the bylaws create a detriment or may create a detriment. It is illogical to suggest that urban development can occur only within urban boundaries. Further, the provisions of the disputed bylaws are sufficient to address the issue of compatibility problems with the expansion of the urban centres. All that is needed is intermunicipal cooperation. The large concentration of country residential development in the Sturgeon Valley, as well as hamlets and industrial development in the area, have not demonstrated that such uses have created severe detriment to the urban centres.

The appellants are asking the County to plan for the long term growth of the urban centres, yet the urban centres have not provided details of their long term growth plans. The arguments of the urban centres are economic and are an attempt to limit competition for growth opportunities. This is an unacceptable and unfair approach to demonstrating detriment. Economic protectionism is neither a legitimate planning goal, nor a legitimate rational for these appeals.

The impact of the proposed changes suggested by the appellants on landowner in Sturgeon have not been presented. The proposed changes would be detrimental to the landowners. The appealed bylaws are the end result of an exhaustive democratic public participation process and the Board should not disturb this process. One municipality should not be allowed to control or amend the statutory plans and bylaws of another municipality in the absence of a clear and compelling justification for doing so.

In the past the County has been a good municipal neighbour and it should not be expected that this will change in the future.

R. W. McCulloch

The Board must not consider the agreements reached by the parties regarding the proposed amendments to the County's bylaws until the Board has determined that the appealed provisions have or may have a detriment effect. Municipalities have the right to annex adjacent lands if they want to control development in a fringe area. Although consultation and cooperation are important, municipalities should be the final decision making authority within their boundaries and development should not be restricted if full agreement with neighbouring municipalities is not achieved. Municipalities make choices regarding the level of services and standards provided, just as residents make choices about the municipality they live in. The Board must respect those choices. There is no legislative requirement that a municipality provide services for residents outside their boundaries, and, in fact, the Province provides some of the basic services like transportation, water and sewer. It is submitted that the Board should dismiss the appeals, or if detriment is found, amend the bylaws as minimally as possible.

Ms. Christine Harrold

Public hearings have been held during which interested persons made submissions and the bylaws subsequently passed by the County's elected officials in a democratic process should be respected. It is submitted that the Board should dismiss the appeals.

Mr. R. Swist

It is submitted to the Board that the consultative process provided an opportunity for the appellants to make their concerns known to the County and that they should have taken advantage of that opportunity at the time. If St. Albert is not willing to annex the Villeneuve fringe area, then the landowners in that area should be able to develop their land in the same manner as other landowners throughout the County and not be limited by the St. Albert fringe restrictions.

Mr. Ed Sinclair

The Board should dismiss the appeals because the appellants are monetarily motivated and because the arguments are not based in fact, there is no detrimental effect.

Mr. Terry Bokenforh

It is submitted that the Board must dismiss the appeals. The consultative process was the place for the appellants to raise issues and that process had been performed in a satisfactory manner. The proposed amendments have not had to undergo the scrutiny of the landowners as is required in the bylaw adoption process. There is concern that the effect of the proposed amendments will

be to create a veto over the County's actions, while the County and its landowners will have no recourse regarding decisions made within the appellants' boundaries. In particular, the proposed treatment of intensive agriculture, recreational uses and country residential in the fringe will limit development options for landowners in that area.

Mr. D. Savich, on behalf of Mr. Joe Dauphinais

It is submitted hat the Board should dismiss the appeals. Mr. Dauphinais' land is located in the fringe area one mile north of St. Albert. The bylaw provisions do not have a detrimental effect, and, given the MDP's goal of fostering cooperation and coordination, it would be speculative to assume that there would not be an agreement between the municipalities. It is submitted that the municipality where an individual's land is located should have the ultimate responsibility over the use of the land.

Mr. Graeme McKay

It is requested that the Board dismiss the appeals.

Karl, Edwin, Walter and Gary Tappauf

It is requested that the Board dismiss the appeals because the proposed amendments would effectively freeze development of their lands. In addition, neighbouring urban municipalities should not be able to dictate what happens inside the County and what landowners could do with their land.

RESPONSE OF STURGEON COUNTY

1. General

The County takes the position that Bylaws 818/96 and 819/96 do not cause any detriment to the appealing municipalities. If the Board does find detriment, the County has submitted a suggested solution to the detriment in its original submission. County's position is not one of neutrality. The County takes the position that the Board must weigh the evidence and determine if it has jurisdiction to act pursuant to the provisions of the legislation, that is, to determine if there is any detriment caused to the appealing municipalities by the passage of the bylaws.

2. Response to the City of St. Albert

It must be pointed out that efforts at joint planning were not terminated by the County in September, 1996. The joint planning process was halted in the fall of 1995 due to the municipal election and the request of the Mayor of St. Albert. Following the election in early 1996 a joint

committee was struck. The joint committee recommended a two mile fringe area. in the fall of 1996. St. Albert proposed a five mile fringe. At this point, the joint planning process came to an end.

St. Albert's concerns rest largely with development in the fringe, particularly with proposed development near or on the common boundary. The County would point out to the Board that the policy in section 15 of the MDP requires that proposed uses be compatible in accordance with generally accepted planning practices, that utility services be provided, and if those services were only available from the adjacent municipality, then agreement between the proponent and the adjoining municipality would be required before any approval was granted. This should be sufficient to address any of the concerns of St. Albert.

The policy adopted by the County with regard to multi-lot residential development is supported by Alberta Agriculture. Alberta Agriculture supports the clustering of country residential development.

With regard to item 33(b) in St. Albert's submission, the County is unclear as to what type of kennels are referred to.

3. Response to the City of Edmonton

(i) Lack of Consultation

The issue of consultation with neighbouring municipalities with respect to Bylaws 818/96 and 818/96 is not a matter before the Board on this appeal. Notwithstanding that the matter is not before the Board, the County disputes the statements made by Edmonton with regard to consultation. The County embarked upon extensive consultation in the process of preparing its MDP and LUB.

The County was of the opinion that it was unreasonable for Edmonton to expect the County to delay its plan process until Edmonton was finished the preparation of its MDP and LUB.

The County also provided numerous opportunities for input from the city. The County extended the timeline for comments to Jan. 15, 1997. As well, the County participates in a Senior Administrators and Planning Committee with adjacent municipalities which meet on three month regular intervals.

(ii) Provincial Land Use Policies

The County submits that the MDP and the LUB are consistent with the policies.

(iii) *Municipal Government Act*

Edmonton feels there is detriment incurred under Policy 15.1 because it does not make mention of referring redistricting applications to adjacent municipalities. The County made no mention of these referrals. This was not included in the wording of policy 15 as s.692(5) of the Act specifically does not require that such notice must be given.

(iv) Redistricting Land

Edmonton states that the County's practice is to not redistrict lands in advance of a particular development. This statement is incorrect. The County does refuse development and subdivision that is not in compliance with the districting. It should be noted that the Alberta Planning Board sometimes permitted subdivisions even where existing districting was not appropriate.

(v) Multi-lot Country Residential

Edmonton questions the policy of allowing multi-lot country residential subdivisions adjacent to existing subdivisions, but this policy of the County is consistent with the policy of Alberta Agriculture. A letter of support from Alberta Agriculture was attached as evidence.

(vi) Separation Distance

Edmonton suggests that the County has no policy respecting the separation distance to be applied between heavy industrial uses and residential uses. This in incorrect. The County employs a separation distance of 457 meters. The County understands that Edmonton does not have a separation distance in its bylaws.

(vii) Miscellaneous Comments

The County supports referral of proposals to expand the boundaries of the Hamlet of Nameo for comment. The County does not support a referral system which requires concurrence from the appealing municipalities. There is no legislative authority for such a provision.

The County does not support any revisions to Policies 3.1, 3.2 of 3.3 of the MDP, since no detriment has been shown that would support these amendments.

The County does not support any amendments to policy 7.3, 7.10, or 8.1, or the addition of a sub-policy to policy 7, Policy 11 or Policy 14.6. The County does not support the second proposed amendment to s.12 as this amendment would apply everywhere in the County. It is not appropriate to make this mandatory in the general policy because the matter is dealt with in the fringe areas. With respect to Section 7.10, the section as passed requires proposed uses to be

"evaluated on the merits". Therefore compatibility with area land uses will be addressed. The proposed change to Policy 8.1 was not referred to in the accord and so it is not appropriate to impose this as a general requirement. If the proposed use is in a fringe area or on identified highway corridor, it will be referred to Edmonton for comment and concurrence.

Edmonton has shown no detriment with respect to Policy 11.5. With respect to Policy 11.9, it is inappropriate to include Gladu Lake in this policy as the sub-policy deals with the preservation of shores. This is not an issue with Gladu Lake. With respect to Policy 11, it was not the intention of the accord that these areas be redistricted to Agriculture Nature Conservation District.

In conclusion, it is the position of Sturgeon County that none of the allegations by the appealing municipalities that the disputed bylaws will result in detriment are supportable.

SECTION II - THE KEY JURISDICTIONAL ISSUES

The following are the questions which the Board found to be fundamental to a decision in the Sturgeon Intermunicipal Dispute. Most, if not all of these issues were raised by counsel for the corporate landowners. These issues deal with fundamental aspects of the relationship between MDPs and LUBs, the definition of detriment in the planning context, the rights of landowners, and the jurisdiction of the Board itself.

- What is the meaning of "detriment" as it is used in s.690 of the *Municipal Government Act*?

- Have the provincial Land Use Policies changed the status of Alberta municipalities in a way that qualifies the meaning of detriment?

- Has a change in language from s.44 of the former *Planning Act* broadened or narrowed the jurisdiction of the Board under s.690 of the *Municipal Government Act*?

- Is there a "threshold" of detriment that must be present before the Board can act?

- If the new *Municipal Government Act* has made all municipalities equal, both urban and rural, has this affected the threshold?

- Does failure of a municipal development plan to conform to the provisions of the *Municipal Government Act* and the provincial Land Use Policies automatically result in detriment to adjacent municipalities, or are the provisions of a plan too remote to cause detriment?

- Does s.690 confine the Board to a consideration of the effect of each provision of a municipal development plan or land use bylaw in isolation, or may the Board examine the offending provisions in relation to other provisions, in the context of the spirit and intent of the document as a whole?

- Is the Board limited to amending only those provisions of a municipal development plan or land use bylaw that have been complained of, or may the Board amend other provisions, or even add new provisions where necessary, to remedy detriment?

- What is the effect of the relationship between the land use bylaw and the municipal development plan, and how should it be dealt with in finding and directing a remedy for detriment?

- Is failure by a municipality to engage in meaningful negotiations with an adjacent municipality a factor that should be considered by the Board in finding detriment or in directing a remedy if detriment is found?

- What is the effect of an agreement by a respondent municipality to amend its municipal development plan or land use bylaw so as to obviate the detriment complained of?

- Must the Board find detriment before it can make an order directing the respondent to amend its municipal development plan and land use bylaw in accordance with the agreement?

- What is the role of the landowners, and what weight should the Board give to their concerns?

FINDINGS OF THE BOARD ON THE JURISDICTIONAL ISSUES

1. The Meaning of "Detriment"

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

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact "could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another."[1] Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County's MDP will result in detriment to them.

[1] F. Laux, *Planning Law*, Oct. 1996, p.5-40

Another instance where detriment might be claimed is where there is a clearly defined difference in the nature, purpose and function of two municipalities. An attempt by one of them to appropriate to itself the kind of land use and development customarily accommodated by the other will likely be perceived as detrimental by the other. In Alberta, the predominant difference is that between urban and rural municipalities, and detriment is often said to arise from the migration of traditionally urban land uses into the countryside. This phenomenon is driven by lower land costs and less stringent development standards in rural municipalities. Urban municipalities naturally fear an erosion of their tax base as a result of out-migration of commercial and industrial businesses. In the past, regional planning commissions attempted to resist this tendency to "urban sprawl" by emphasizing the differences in function between urban and rural municipalities, and endeavoring to maintain a clearly defined geographic boundary between the two.

Finally, the meaning of detriment must be determined in the context of probability, causality and effect, then weighed in the balance of municipal autonomy and individual rights. This process raises complex issues. As counsel for the Town of Morinville has so aptly put it: "Regional planning under the previous legislation never got into all of the types of issues contemplated by Section 690." [2]

2. The Effect of the Provincial Land Use Policies

In November of 1996, the provincial Land Use Policies were adopted by Order in Council pursuant to s.622 of the *Municipal Government Act.* Section 4.0 of the Land Use Policies deals with the establishment of land use patterns. Policies 1 and 3 of Part 4.0 are set out below:

1. Municipalities are encouraged to establish, on a municipal and on an intermunicipal basis, land use patterns which provide an appropriate mix of agricultural, residential, commercial, industrial, institutional, public and recreational uses developed in an orderly, efficient, compatible, safe and economical manner in keeping in keeping with the general policies of this section and the more specific policies found in sections 5.0 to 8.0.

. . .

3. Municipalities are encouraged to establish land use patterns which contribute to the provision of a wide range of economic development opportunities, thereby enhancing local employment possibilities and promoting a healthy and stable economy. In carrying out land use planning, municipalities are encouraged to complement and support provincial economic development initiatives.

[2] *Summary of Position of Town of Morinville*, p.4

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

3. The Scope of the Board's Jurisdiction

Planning has been described as an attempt to bring rationality to decision making regarding future physical development. Because planning is by nature prospective in outlook, it seems only reasonable to conclude that the detriment contemplated by s.690 of the *Act* and its precursor, s.44 of the *Planning Act*, is the kind that is likely to arise in the future from a condition or set of conditions in the present. 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.

In *Lloydminster* v. *Alberta Planning Board et al.*, the Alberta Court of Appeal in dealing with the application of s.44 of the *Planning Act*, found that:

> Section 44 is a broad power. It was conceded that a municipal council using it need not necessarily point to any conflict with planning within its area: it is enough that the action complained of may have some detrimental effect. That may be an effect on the planning processes; it may be an effect on the use and enjoyment of property within the complaining municipality.[3]

Section 44 of the *Planning Act* enabled a municipality to appeal if it was of the opinion that a statutory plan or LUB of an adjacent municipality might have a detrimental effect "within" its boundaries. Section 690 of the *Act* confers a right of appeal where a municipality believes that the statutory plan or LUB of an adjacent municipality "has or may have a detrimental effect on it." In the Board's view, this change in language can only mean that detriment is no longer confined to effects on lands within the boundaries of the appellant municipality. This interpretation finds support in the fact that general plans often deal with lands beyond existing municipal boundaries, but which are likely to be brought within the municipality in future, usually within the five to ten year time horizon of the general plan.

Clearly, the scope of appeal, broad to begin with under s.44 of the *Planning Act*, has been further broadened by s.690, in both geography and time. This enhancement of the jurisdiction of the Board, enabling it to look beyond municipal boundaries for detrimental effect, would appear to

[3] *City of Lloydminster* v. *Alberta Planning Board, County of Vermillion River No. 24, and Totran Services Ltd.* (1982) 39 A.R. (Alta C.A.) 402@405

be an appropriate adjustment to the legislation, commensurate with the phasing out of regional planning in the province.

4. The Threshold of Detriment

It was submitted by counsel on behalf of the corporate landowners that the effect of recent sweeping changes in the province's municipal and planning legislation has been to "emancipate" municipalities, particularly rural ones. All municipalities have now been "created equal" by the *Act*, so the argument goes, and with this new regime has some freedom to do as they wish. This philosophy is reflected in the introduction to the MDP:

Two fundamental principles have been applied to the Sturgeon MDP. The first principle is embodied in the *Act*.

> "In carrying out its planning responsibilities, the Municipal District of Sturgeon will not lose sight of the rights of individual citizens and landowners."

The second principle embodies the basic rationale behind the recent changes to planning legislation in Alberta. *The rationale is to encourage and support municipal autonomy.* (Board's emphasis)

> The Municipal District of Sturgeon will establish land use patterns which make efficient use of land, infrastructure, public services and public facilities; and which contribute to the development of healthy, safe, and viable communities by encouraging appropriate mixes of all land use types, and a wide range of economic opportunities.

Anyone reading the above could scarcely avoid the conclusion that the County is "open for business." Nothing, however, is said about intermunicipal cooperation, one of the cornerstones of the province's Land Use Policies. Apparently, as far as the County's MDP is concerned, the mantle of municipal autonomy may be worn free of any obligation to one's neighbours.

It was further submitted that this new freedom implies a stringent test, or threshold, for detriment that must be satisfied before the Board can act. According to this argument, the sovereignty of a municipality must not be lightly interfered with; therefore the complainant municipality must be "unduly" affected before detriment can be found. According to this view, detriment may be found only where a provision of the County's MDP or LUB is virtually certain to cause significant harm in the immediate future. According to counsel for the corporate landowners, the test should be "whether or not the prohibited act imposes improper, inordinate, excessive or oppressive restrictions upon competition the benefit of which is the right of everyone."[4] If the

[4] *Response of Dale Maynard Industries Inc. and 702602 Alberta Ltd. to Written Submissions,* p.2

appellants wish to control land use beyond their boundaries, so the argument goes, they should annex it.

The Board must reject this argument. If the legislature had intended to limit the scope of the Board's jurisdiction under s.690, it could have done so expressly. Instead, as the Board has found its powers have been broadened. With freedom from the dictates of regional planning comes greater responsibility to neighbouring municipalities. Where freedom is abused, the Board has the power to implement appropriate measures to restore a balance. Finally, annexation is hardly an appropriate tool for land use control, involving as it does a variety of other considerations, including issues of assessment and taxation, serviceability, and growth projections.

The Board is, however, keenly aware of the gravity of its powers under s. 690 of the *Act*. A municipality's lawfully adopted planning documents must be respected, reflecting as they do the hopes and aspirations of a community and its citizens, expressed and defined through the grass-roots democracy of meetings and public hearings. 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. The remedy must then be finely tuned so that the bylaw is modified only to the extent necessary to prevent the harm.

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

Finally, the nature of the Board itself must be taken into account. The Board is not a regional planning commission. It does not have a staff of planners and technicians to study a matter and make recommendations, nor does it keep a library of reports, studies and plans of the area in question. Its approach to the matters that come before it is quasi-judicial, rather than investigative or directed toward policy. The detriment complained of must therefore be of a nature that raises issues that are capable of adjudication in the context of an adversarial hearing. This means that issues for which detriment cannot be readily established, or which would require further study before an effective remedy can be developed, will fall outside the ambit of matters that can be effectively dealt with by the Board.

5. The Effect of Non-Conformity with the Municipal Government Act and the Provincial Land Use Policies

Both Edmonton and St. Albert have submitted that the County's MDP does not conform to the requirements of s.622(3) and s.632(3) of the *Act*. Section 622(3) provides as follows:

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

Edmonton argues that the County failed to act in consideration of provincial Land Use Policies 2.0 and 3.0, which describe, in a very broad and general way, the kind of participation and cooperation between municipalities that the province wishes to encourage as part of the planning process. Edmonton has alleged that the County made insufficient efforts to involve Edmonton in its deliberations, or to inform Edmonton of its activities and directions with respect to its MDP or LUB. This, it is said, has resulted in detriment to Edmonton.

Edmonton also alleges that the County has acted contrary to s.1.2 of the Land Use Policies, which encourages municipalities, provincial departments and agencies to consult with one another "where questions on the spirit and intent of these policies arise during implementation." Edmonton's position is that there was no meaningful communication between the two municipalities regarding the interpretation of the provisions of the Land Use Policies. This loss of an opportunity to consult with the County has allegedly resulted in detriment to Edmonton.

St. Albert submits that the County not only failed to meet the requirements of s.3.0 of the Land Use Policies, but completely ignored s.4.0 of the Land Use Policies, and that the lack of a mechanism for coordinating land use, further growth, and infrastructure in the MDP is contrary to the requirements of s.632(3) of the *Act.* Section 632(3) provides as follows:

> (3) A municipal development plan
> (a) must address
> (i) the future land use within the municipality,
> (ii) the manner of and the proposals for future development in the municipality,
> (iii) the coordination 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 either generally or specifically . . .

St. Albert's position is that the absence of an effective mechanism for coordinating land uses, future growth patterns and other infrastructure in the County's MDP is in and of itself detrimental to St. Albert, and urges the Board to find accordingly.

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, and if it is found that it will, the Board must then decide whether the detriment can be remedied by amending the plan to bring it into conformity with the legislation.

Finally, it should be noted that the requirement is merely that the MDP "address" items (i) through (v) of s.632(3). Had the legislature meant that the MDP was to effectively provide for these matters, it could have expressed that intention clearly and unambiguously. The Board finds that the County has in fact addressed these items in its general municipal plan, although perhaps not in as thorough a manner as adjoining municipalities may have wished.

6. Are the Provisions of a MDP "Too Remote" to Cause Detriment?

Counsel for the corporate landowners has submitted that any finding of detriment must be tied to a specific provision of the County's MDP or LUB. Therefore, it is said, the issue before the Board is simply whether or not the impugned provision permits any development which could have a detrimental effect on the appellant municipalities. The argument is summed up in the following quotation:

> In our submission, if a bylaw does not designate a specific use for a specific location, the potential for the bylaw to have a detrimental effect is remote. Any particular use may be deemed to be beneficial or detrimental pending (*sic*) upon its specific location. Without specific knowledge as to the use and without specific knowledge as to the location, the ability of the Board to determine detriment is virtually non-existent. An Area Structure Plan, an Area Redevelopment Plan and the LUB all designate specific land uses upon specific parcels. *The MDP does not specify uses for specific lands. It contains broad policy statements which can be implemented only through further bylaw and accordingly, of itself, cannot have a detrimental effect on an adjoining municipality* (Board's emphasis)[5]

The Board takes issue with the statement that MDPs do not specify uses for specific lands. This may be true of some MDPs, but it is certainly not true of the County of Sturgeon's, which provides for a number of specific land uses including agriculture, industrial, commercial and country residential uses. This fact has been recognized by counsel for the corporate landowners

[5] *Response of the Landowners Dale Maynard Industries Inc. and 702602 Alberta Ltd.,* pp. 4, 5

in his response to the argument of the City of Edmonton that a MDP that does not set out specific uses for specific lands is incapable of being appealed:

> In response, the MDP of the County does contain a map that designates specific uses for specific lands and designates the urban fringeland as Agricultural.[6]

While the Board concedes that detriment arising from the provisions of a MDP may, by the very nature of the document, be more distant in time and perhaps less certain in point of origin, this should not be taken to mean that the potential for detriment can be dismissed out of hand as too remote. Such an interpretation flies in the face of the *Act*, which contemplates detriment arising from statutory plans, which by definition include general municipal plans:

> S.616(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 . .

If the Board were to accept the analysis offered by counsel for the corporate landowners, it would limit the Board's jurisdiction under s.690 to *ad hoc* decisions based on piecemeal applications for land-use redesignation. This would confine the Board to a reactive role, tantamount to the former Alberta Planning Board's jurisdiction to adjudicate subdivision appeals. In the Board's view, this is not what was intended by the legislature.

The purpose of a plan is to guide municipal decision making in a comprehensive way. In this way the plan prevents *ad hoc* decision-making. It has been said that the most common effect of plans is to restrain the municipality in the exercise of its powers rather than to directly control land use:

> . . . plans can be so vague and nebulous as to have little effect on municipal decision-making. Such plans not only run counter to the traditional rationale for municipal plans in that they do not prevent *ad hoc* decision-making but they also run contrary to the view that the plan is a "quasi-constitutional" document which is to protect the citizens of the municipality, particularly property owners from unwarranted and poorly considered or rapid changes. The plan, therefore, should be seen as a stabilizing device but it may not always fulfill that function.[7]

In the context of the new regime of regional planning through intermunicipal cooperation and interdependence, it is not unreasonable to suggest that the role of the MDP also includes protection of neighbouring municipalities from rapid or poorly considered change. This certainly

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[6] *Response of Dale Maynard Industries Inc. and 702602 Alberta Ltd. to Written Submissions*, p.4
[7] S. M. Makuch, *Canadian Municipal and Planning Law,* Carswell, Toronto, 1983, p.185

seems to have been the intent of the legislature in prescribing the matters that a MDP is to address pursuant to s.632(3)(a)(iii) and (iv).

The MDP is the "guidance system" for the LUB. Whether or not a particular land use redesignation will be approved will depend to a large extent on what is provided for in the MDP's policies and future land use map. The plan therefore plays a significant role in land use regulation, only a little removed from the more "direct" effect of the LUB. The MDP is often determinative in deciding whether or not to approve a discretionary use. It also manifests itself pursuant to certain provisions of the *Act* by preventing the approval of a subdivision that does not conform to its provisions [s.654(1)(b)]; ensuring that its provisions are taken into account in subdivision appeals [s.680(2)(a)], or forcing subdivision and development appeal Boards to comply with it [s.687(a)]. This illustrates the restraining effect of the plan, operating through the LUB.

In the view of the Board, the MDP is clearly capable of causing detriment in a number of ways that are far from being too remote. The fact that the plan is implemented over time through the vehicle of the LUB does not change this.

7. Is it Open to the Board to Read the MDP or LUB as a Whole in Finding Detriment?

Counsel for the corporate landowners submits that a finding of detriment must be tied to a particular provision of the plan or bylaw:

> . . . it is evident that it is that which is expressed that is a provision, and not that which is not expressed. The question then arises as to whether or not such provision may cause a detrimental effect. That the bylaw could be improved upon or enhanced or made less objectionable by additions does not render it detrimental. Morinville argues . . . that the word "provisions" which appear throughout s.690 must be read in the context of sub-section 1 (page 2) and should therefore be given a broad general interpretation. In fact, the converse is true. With respect, unless the appellants can point to a specific provision that causes detriment, the bylaw cannot be seen to be detrimental.[8]

In the Board's view, this analysis might be appropriate where only one or two of the provisions of a plan or bylaw have been complained of, but certainly not where many or most of them have, as in the present case. The Board agrees with counsel for Morinville that the test to be applied is the one set forth under s.690(1), i.e., whether or not a statutory plan or bylaw has or may have a detrimental effect on an adjacent municipality. It is a rule of legal interpretation that an enactment must be read as a whole, so that each provision may be understood in the context of all the other provisions. Where a number of the provisions of a plan or bylaw have been appealed, it is axiomatic that they be read together, rather than in isolation. The use of the word

[8] *Response of Dale Maynard Industries Inc. and 702602 Alberta Ltd. to Written Submissions,* pp. 6, 7

"provision" or "provisions" in the subsections that follow s.690(1) is, in the view of the Board, due primarily to the fact that a plan or bylaw is made up of provisions, and it seems only reasonable that the detriment complained of should be with reference to them as a whole or individually.

8. Is the Board Limited to Amending or Repealing Only the Provisions That Have Been Appealed in Order to Remedy Detriment?

Where detriment is found, certain of the provisions of a MDP or LUB will be subject to amendment or repeal. Should this be taken to mean that the Board is confined to repealing an offending provision in entirety when the problem could be remedied by a minor amendment to another provision that might not be detrimental in and of itself? Counsel for the corporate landowners has addressed this issue in his written response:

> What the bylaws fail to prohibit is not allowed. No development permit will issue unless the development is specifically authorized by a "provision" of the bylaws. If however, a bylaw specifically authorizes a development but fails to provide adequate separation space, the failure to provide adequate separation space may be seen to be detrimental and is in the nature (of) an amendment which the Board could direct be made. *If by a minor amendment, the detriment can be eliminated, the Board is authorized to make such amendment.*(Board's emphasis)[9]

Clearly, counsel has recognized that provisions work together. An otherwise innocent provision, for example, a development standard like a minimum separation distance, can result in detriment when coupled with a potentially offensive provision such as an industrial land use. This understanding is the nub of the matter, and it is central to the issues before the Board. If an adjustment can be made to a part of the plan or bylaw that is not in itself detrimental, but which would if amended obviate the need to radically alter or even repeal the offending provision, it would be preferable to the more intrusive remedy.

But this begs the question: what would the situation be if the bylaw failed to provide a separation distance at all, or, taking things a step further, if it failed to designate a location where potentially noxious uses could be safely accommodated? Could the Board nevertheless add a provision to the bylaw if it would prevent detriment? Counsel for Morinville has submitted that consequences flow from omissions as well as provisions, a view with which the Board agrees. It seems only reasonable that if the detriment can be expunged by amending the plan or bylaw through adding a new provision rather than repealing existing provisions, then that remedy is one the Board should have recourse to. This would accord to s.690 "the fair, large and liberal construction and interpretation that best ensures the attainment of its object" required by s.10 of

[9] *Response of Dale Maynard Industries Inc. and 702602 Alberta Inc. to Written Submissions*, p.7

the *Interpretation Act.* In the view of the Board, it would allow s.690 to be used with precision, rather than in "shotgun" fashion.

9. How Should the Relationship between the LUB and the MDP be Approached in Remedying Detriment?

In the view of the Board, it is trite to suggest that the MDP and the LUB must be read together to understand their effect. They are intended to work together; the plan as the guiding policy document giving direction to the bylaw, and the bylaw implementing its policies. With respect to a finding of detriment, an amendment to the plan may either obviate or create the need for an amendment to the bylaw, and vice-versa. It is therefore imperative that the plan and bylaw be read together, just as provisions of the same document must be read together.

10. Should the Board Take into Account the Failure of a Municipality to Engage in Meaningful Negotiations in Finding Detriment or in Directing a Remedy?

Failure to negotiate in good faith will not necessarily result in detriment, but it will likely result in a LUB or MDP that at worst will be detrimental, and at best will be distrusted by neighbouring municipalities. However, the Board is loath to assign blame to a party where negotiations either failed to produce a result satisfactory to an appellant, or broke down entirely. Each side will tend to blame the other where this occurs, and it will often be exceedingly difficult to determine which side was at fault, even assuming fault can be found. Negotiations often break down despite the best efforts of all concerned.

However, where there is clear evidence that negotiations failed due to an entrenched attitude of the part of a respondent that brooked no consideration of reasonable compromise, the Board might be justified in taking into account the probability that that same attitude will result in conflicts between the parties in future. This might have an effect on the nature of the remedy that the Board directs. For example, the remedy might be made more stringent than where both parties seemed generally able to work together successfully. Alternatively, a mediation clause might be found to be an appropriate remedy.

11. What is the Effect of an Agreement between an Appellant and a Respondent to Amend the Plan or Bylaw in a Way that would Obviate Detriment? Is it Necessary for the Board to find Detriment before it Can Implement the Agreement?

The Board agrees with counsel for Morinville that a proposed settlement of an intermunicipal dispute is not a case of one municipality abdicating its authority in favour of another, but rather an example of intermunicipal cooperation. It is a tacit recognition that the actions of one municipality can affect its neighbour. To accept the argument of counsel for the corporate landowners that such agreements are by nature beyond the legislative authority of council of the

respondent municipality would deny both appellant and respondent the right to engage in a mediation style process whose result would be virtually certain to be preferable to an order imposed on them unilaterally by the Board.

The effect of launching an appeal under s.690 is both unusual and oppressive. The provisions of the plan or bylaw of the respondent municipality are frozen in time as of the date the appeal arrived at the offices of the Municipal Government Board. Where a substantial number of provisions have been appealed, the entire municipal planning system may be rendered inoperable. The fate of the appealed provisions is entirely in the hands of the Board. When the Board reaches its decision, the parts of the plan or bylaw that the Board has directed be repealed simply disappear, while provisions that are to be amended have no force or effect until they are enacted in their new form. Clearly, no agreement by a municipality to amend its planning documents can have any effect while the documents themselves are in limbo pursuant to s.690.

The agreement reached should not be regarded as anything more than an intimation of what might have happened had negotiations come to a successful conclusion before the appeal. The fact that the agreement is the result of negotiations between equals suggests that the changes recommended are the least intrusive, and reflect what the parties are prepared to live with. Counsel for the County of Sturgeon has made it very clear that the agreement is to be regarded as "without prejudice" with respect to whether the provisions of its MDP and LUB are detrimental. The Board accepts this position. Such an agreement can be given effect only if the Board were to find, firstly, that the provisions it dealt with were in fact detrimental, and secondly, that the proposed amendments were capable of remedying the detriment. The decision of the Board is therefore a condition precedent to the agreement having any force or effect.

12. What is the Role of the Landowners, and What Weight Should the Board Give to Their Concerns?

When all has been said and done, what is central to the landowners' concerns is their ability to use their property as they see fit. It has even been suggested by one of the landowners that implementation of the proposed settlement would require zoning so restrictive that it would amount to expropriation without compensation. The right of this Board to direct amendments to lawfully adopted municipal development plans and land use bylaws has also been challenged.

Persons who may be affected by the outcome of a hearing have a right to be heard. It is a part of the democratic process specifically included in s.690. Nevertheless, the primary duty of the Board in a s.690 hearing is to determine whether the appellants will suffer detriment, and if the Board decides that they will, to direct amendments that will prevent it. In the Board's view, this is an instance where the legislature has decided that the greater public interest lies in protecting the rights of communities over the rights of private landowners. Counsel for Morinville has stated it as follows:

> As we have pointed out . . . in the land use planning process, there are inevitably conflicts between the rights of individuals and the rights of the community as a whole. This is inherent in the system and will never be eliminated. Land-use planning will always be a balancing act between the general public benefit and the rights of individuals. This is recognized in Section 617 of the MGA.
>
> However, it is submitted that the public good must be measured by different means in different contexts. At the local level, there are restrictions, for the public benefit, on the use of land by individuals. Similarly, in a broader context, Section 690 places restrictions on the actions of individual municipalities for the greater public benefit. Section 690 recognizes that this must be done to achieve another aspect of the public benefit.[10]

The bottom line is that s.690 mandates unusual and invasive measures. It gives the Board the power to alter municipal bylaws that are otherwise within the exclusive preserve of the municipality itself. Some landowners have questioned the constitutionality of such an enactment, but that is not an issue resolvable within the jurisdiction of this Board.

However, this does not mean that the effect on landowners is to be disregarded. S.617 of the *Act* requires that preparation and adoption of plans and related matters must be accomplished "without infringing on the rights of individuals for any public purpose except to the extent that it is necessary for the overall greater public interest". In the Board's view, this means that amendments directed under s.690 must be tailored to achieve the goal of preventing detriment without infringing on private interests more than is strictly necessary.

[10] Summary of Position of Town of Morinville, pp. 6, 7

SECTION III - THE BOARD'S DECISION

Summary of the Decision

The Board dismisses the appeal of Morinville with respect to the provisions of the County's LUB and MDP as they affect lands within the County that lie outside the urban fringe area surrounding Morinville and identified (in dark yellow as primary urban fringe and light yellow as secondary urban fringe) on the MDP Future Land Use Map. For the purposes of this Order, the described area shall be referred to as the Morinville intermunicipal fringe.

The Board dismisses the appeals of Edmonton and St. Albert respecting the provisions of the MDP and LUB as they relate to or affect lands within the County but lying outside the primary and secondary urban fringe areas adjacent to Edmonton and St. Albert as identified on the MDP Future Land Use Map. For the purpose of this Order, the St. Albert intermunicipal fringe includes the lands which lie north of Big Lake between the watercourse known as Riviere Qui Barre and St. Albert and shown on the MDP Future Land Use Map in light and dark green as Recreation and Environmental Protection Areas.

For the purpose of this Order, portions of the Sturgeon Valley Study Area and the South Sturgeon Study Area are included in the fringe shown as light yellow and dark yellow on the MDP Future Land Use Map.

When referred to collectively in this Order, these fringe areas are termed "the intermunicipal fringe."

The appeals have been allowed with respect to certain provisions of the MDP and the LUB in relation to the intermunicipal fringe. In the context of the Board's findings regarding the definition and threshold of detriment, the Board has determined that detriment is sufficiently probable or significant enough to warrant repealing or amending certain provisions of the MDP and LUB as they apply within the intermunicipal fringe.

A number of appeals have been allowed respecting the entire areas of the Sturgeon Valley Study Area and the South Sturgeon Study Area as shown on the MDP Future Land Use Map. The changes only apply to the MDP. There are no alterations to the LUB respecting the areas lying outside the intermunicipal fringe. The provisions which have been added to the MDP regard the adoption of area structure plans because the Board felt that these areas are significant in relation to Edmonton and St. Albert and that further unplanned development in these areas would be detrimental to the appellant cities. The Board has included these provisions as there was general consensus on the need for area structure plans for these locations.

In arriving at a definition of the intermunicipal fringe, the Board felt that in view of the fact that the urban fringe areas in the MDP represent an initiative by the County toward intermunicipal consultation, they should not be interfered with more than strictly necessary. Also, the Board noted that the boundaries of the urban fringe as specified in the MDP seemed acceptable to the appellants. The Board has not distinguished between the Primary Urban Fringe and the Secondary Urban Fringes as defined in the MDP because, in the view of the Board, the same detrimental effects can arise in both and therefore both should be subject to the same policies. The Board foresees that in the course of detailed studies and discussions, the municipalities themselves may decide to adjust the intermunicipal fringe boundaries as appropriate.

Context for the Decision

The purpose of this section is to provide a brief overview of the context in which the Board reached its decision. More detail is provided in Section II, The Key Jurisdictional Issues. The Board heard considerable argument from the parties respecting the legislative framework, and reached the conclusions outlined in the following text.

Before the Board can take action pursuant to s.690 of the *Act*, it must be satisfied that the appealed provisions have, or may have, a detrimental effect on an appellant municipality. In the Board's opinion, the detriment complained of must be significant enough to justify the Board's intervention in the local legislative process. The Board does not accept the that any finding of detriment, no matter how minor or remote, warrants intervention.

The Board rejects the argument of certain landowners that, in determining detriment pursuant to s.690, the Board must confine itself to consideration of each appealed provision of a bylaw in isolation, that is, without reference to other provisions of the bylaw, whether appealed or not. Instead, the Board found that individual provisions of a bylaw can be properly understood only in the context of all other provisions. A municipal development plan and a land use bylaw are, of necessity, closely linked, since they are intended to function together. It follows therefore, that a municipal development plan and a land use bylaw must be read and understood in relation to one other. Similarly, the fact that a municipal development plan manifests itself directly through the mechanism of a land use bylaw, negates the argument of the landowners that the provisions of a municipal development plan are "too remote" to cause detriment.

The role of the Board pursuant to s.690 is limited to finding detriment and if found, to repealing or amending the offending provision. 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. Accordingly, the Board rejects the argument that it should act as a planning authority and set ideal intermunicipal planning policies. The current legislation requires municipalities to do this through their own initiatives in intermunicipal cooperation and communication. In the Board's

opinion, the appellants have demonstrated detriment only in a limited number of areas. Consequently, the Board is prepared to intervene only in those areas.

The Board accepts the appellant's argument that the provincial Land Use Policies serve as a back drop to the decision of the Board. However, the Board does not accept that mere non-compliance with the Land Use Policies is detrimental in and of itself. Actual detriment must be shown. The Board also accepts the appellants' argument that under the current legislative scheme and the provincial Land Use Policies, municipalities are to be treated as full equals.

The Board heard arguments of detriment from all three municipalities, Morinville, Edmonton and St. Albert, and found common themes relating to their respective fringe areas. The Board acknowledges that the size and growth rates of the three municipalities differ significantly and recognizes the impact of these differences on the fringe areas.

A finding of detriment is a condition precedent to the Board's authority to repeal or amend a municipal bylaw under s.690. The fact that the appellants and the respondent had negotiated possible amendments to the bylaws does not enable the Board to circumvent its responsibility under s.690 of the *Act.* Although the agreements provide indications of consensus on what is considered detrimental as well as potential remedies, the Board accepts the argument of the landowners that the tentative agreements between the municipalities cannot be implemented without first finding detriment.

The Board heard argument from the respondent and the landowners that if the Board found a level of detriment that warranted intervention, and subsequently ordered amendments to the Bylaws, the amendments should not have the effect of sterilizing land or infringing on individual rights to an extent that offends s.617 of the *Act*. Land use change must be accommodated in an orderly fashion within the context of Section 617. Evidence presented at the hearing indicated that expansion by the appellant municipalities into the fringe would occur in most areas at a relatively slow and gradual pace.

Under s. 691(2), the Board is required to hear from owners of "the land that is the subject of the appeal." The Board accepts that the role of the landowners is to ensure that their rights as provided for in s.617 are not overlooked. The Board carefully reviewed its decision in light of this section.

Reasons for the Decision

Generally, the Board has accepted the appellants' evidence and arguments regarding detriment in the fringe areas, the Sturgeon Valley Study Area, and the South Sturgeon Study Area. In particular, the Board accepts the appellants' position that certain provisions of the bylaws have or may have a detrimental effect because they are deficient in regulations regarding the location of

incompatible land uses, in detail regarding planning coordination and specific policies, and in appropriate mechanisms for intermunicipal consultation. These deficiencies are detrimental in view of certain policies in the MDP, for example "providing a diversity of residential land use options in locations proximate to service and employment centres." While the Board might obviate detriment by repealing such a provision, that in itself would not prevent country residential and other development from concentrating near urban centres. Such development concentrating near urban centres may be a positive activity provided the development is properly planned with intermunicipal communication being key.

Although it may be true that all municipalities have been "created equal," experience and practicality have shown that urban style municipalities offer more services than the more rural style municipalities, and tend to expand outward into rural style municipalities. Unplanned, piecemeal development on land near urban boundaries can cause significant detriment in a number of ways, most of which have been dealt with exhaustively by the appellants. For these reasons the Board is ordering certain amendments to the MDP and LUB as they apply in the intermunicipal fringe areas, as well as MDP amendments for the Sturgeon Valley Study Area and the South Sturgeon Area. Outside these areas, the Board concluded that generally, the effect of the impugned provisions did not achieve a threshold of detriment that would justify the Board's intervention.

In the Municipal Development Plan

1. Detriment Not Found

(i) General Remarks

In the Board's view, the appellants' arguments comprise four main themes: location, economic impact, servicing, and transportation. The Board found that, with respect to the operation of the appealed provisions of the bylaws outside the fringe areas, there was not sufficient evidence that significant detriment would result. Development outside the fringe will not only be more distant from municipal boundaries, but more dispersed as well. Then too, most of the land in the County has been designated for agricultural use, both in the MDP and the LUB. Other kinds of development will require a redesignation by amendment to the LUB's land use map, and arguably the MDP's Future Land Use Map as well. Such redesignations would be appealable to the Board. In general, the Board found that the appellants' arguments relating to the issues of agriculture, the environment, country residential, industrial and commercial development, and resource extraction, to be speculative with respect to land outside the urban fringe, and a potential for detriment was not established. Appeals were therefore dismissed with respect to the application of these provisions outside the fringe.

(ii) Fragmentation of Agricultural Land

The Board concluded that the agricultural policies of the MDP are substantially consistent with the provincial Land Use Policies. Although fragmentation of agricultural land may be a concern to the residents of Alberta as a whole, arguments and evidence adduced to the effect that the bylaws create a detrimental impact on adjacent municipalities was not compelling. The Land Use Policies do not appear to anticipate that each municipality will address the conservation of agricultural land in the same manner, but rather that each municipality is encouraged to design mechanisms suitable to its individual needs. Therefore, the Board dismissed the appeals with respect to the policies in Part 2 of the MDP.

(iii) Country Residential

The Board is of a similar view regarding country residential development as it may occur outside the fringe area. Argument heard by the Board was not sufficient to show that the growth patterns of the appellant municipalities would be impeded, that incompatible land uses would locate adjacent to the appellants, or that the provision of cost effective servicing would be compromised. The Board accepts that the locational criteria for country residential development outside the fringe, including the proximity of these uses to agricultural uses, are land use planning matters solely within the purview of the County. The Board also finds that the MDP and LUB do in fact deal with issues of compatibility. The Board does not accept the appellants' contention that they are affected detrimentally by patterns of country residential development outside the fringe. Because of the County's extensive use of agricultural zoning, further country residential development cannot occur without over most of the area of the County without rezonings. Therefore, the Board dismisses the appeals with respect to the policies in Part 3 of the MDP, relative to the area outside the fringe.

(iv) Industrial and Commercial Uses

The Board found that location of industrial and commercial uses outside the fringe minimizes the potential for incompatibility with uses within the appellant municipalities. Municipal growth patterns are not compromised by uses outside the fringe, and servicing of remote uses is not dependent on service extensions from urban municipalities. Due to the vast area of Sturgeon County, the Board finds it would be unreasonable to expect the County to use the same planning approach as that employed by the appellant municipalities, who are required to regulate concentrated land use patterns associated with urban densities. Many rural industrial uses are well suited to isolated locations. The appellants can gauge and respond to the impact of location and transportation issues outside the fringe area by means other than direct intervention in the respondent's planning bylaws.

The Board found that the potential economic impact of commercial/industrial uses locating in the County, rather than in the appellant municipalities, was not detrimental *per se*. The *Act* and the Provincial Land Use Policies no longer make a distinction between urban and rural municipalities in regard to land use. The Board would not intervene if a business located in Morinville rather than St. Albert or Edmonton; consequently, the Board could see no reason why intervention would be warranted if it were to locate in the County. Part 7 of the MDP contains provisions for assessing the environmental of industrial uses, and sets minimum separation standards. These minimums can be increased by the approving authority, based on the merits of a particular proposal and its relation to adjacent land uses. Therefore the Board finds that detriment does not arise from the provisions of Part 7 or 8 as they apply outside the urban fringe.

The appellant municipalities argued that the Board should find detriment in the fact that residents or business locating in the County may use "soft" services within the appellant municipalities. The Board has concluded that the MDP sufficiently addresses this matter in Part 15, and that the arguments and evidence of the appellants are not sufficiently compelling to warrant intervention. Residents in all municipalities are very mobile, and the Board is not prepared to intervene in the methods of allocating servicing costs and revenue sharing. This is a matter to be negotiated by the municipalities themselves.

(v) Transportation

In the Board's opinion, Edmonton did not present convincing evidence that provisions in the bylaws with respect to traffic safety and visual impact of development adjacent to highways outside the fringe would result in a reasonable likelihood of detriment. Although Part 12 of the MDP does not address the issues raised to the degree requested by the appellant, the Board is not of the view that amendments to Part 12 are warranted. Policy 12.7 of the MDP addresses traffic safety related to accessing highways and secondary highways. In addition, key portions of the highway corridors leading into the appellant municipalities are within the fringe and will be dealt with through the amendments directed in relation to the fringe.

(vi) Environmental and Natural Resources

The appellant Edmonton raised concerns about the adequacy of the MDP policies regarding environmental and natural resources in environmentally significant areas. The Board was unable to find detrimental effect on Edmonton based on the evidence of the appellant that a number of its residents make occasional use of these areas. The concern of the appellant seemed to be that the MDP failed to deal with the areas in the same manner as the appellant would have done had they been situated within its municipal boundaries. The MDP does address key environmentally sensitive areas such as the Coronado Sand Dune Area, Big Lake, and Manawan Lake. It contains policies for lands adjacent to lakes, requires environmental impact assessments for multi-lot country residential and industrial development, and recognizes a special gravel extraction area

outside the fringe. The Board does not accept that the treatment of resource extraction and environmentally sensitive areas is a cause of detriment. The appeals are therefore dismissed with respect to Parts 11 and 14 of the MDP.

(vii) Consultation and Plan Implementation and Amendment

In the Board's opinion, the consultation provisions in the MDP are insufficient in relation to the fringe areas. Outside the fringe areas, the implementation and amendment provisions of the Bylaws provide adequate mechanisms for intermunicipal consultation.

2. A Reasonable Likelihood of Detriment

(i) General Remarks

The Board finds that the potential for detriment of a degree significant enough to warrant the Board's intervention is to be found in the fringe areas. Urban municipalities are centres of gravity for a variety of land uses and development tends to concentrate in the these areas. The Board therefore accepts the arguments of the appellants that lack of coordinated, detailed planning and consultative mechanisms, combined with a variety of land uses, many of them incompatible, can result in this degree of detriment. The Board heard convincing argument in relation to the Sturgeon Valley and South Sturgeon Study Areas and areas in both the primary and secondary fringe of the County's MDP.

The Board accepts the argument that certain land uses may be inappropriate in the fringe due to incompatibility of existing or proposed uses. Potential land use conflicts may be avoided or minimized if appropriate planning mechanisms are in place and opportunities to evaluate the application of use and development standards are provided for in the planning process. The Board accepts that certain uses proposed for the fringe that are associated with potential air or water pollution, excessive noise, odour or other nuisance factors, should receive special attention prior to receiving planning approval.

The appellants presented argument and evidence about the land use conflicts created by the location of intensive livestock, large dog kennels and other intensive agricultural uses, air strips and major home based businesses and heavy industrial development in proximity to their boundaries. The Board accepts that these land uses may be incompatible due to odour, noise, other nuisance factors, as well as traffic generation, especially in areas where residential uses are located nearby. The Board agrees that if the County does not seek input from neighbouring municipalities when such uses are proposed within the fringe, conflicts among land uses are likely to result in detriment to urban municipalities.

The fringe is an area in transition from less intensive development to more intensive development. Lack of sufficient detail in the provisions of the MDP and LUB may result in land use conflicts and inefficient patterns of servicing as the fringe areas change from semi-rural to more intensified uses. The Board agrees with the appellant municipalities that the lack of detailed planning mechanisms in the fringe areas may cause detriment of a degree warranting intervention. In addition, the provisions dealing with the coordination of land use and future growth patterns in the fringe area, as set out in Policy 15 of the MDP, are somewhat vague and thus have the potential of creating uncertainty that may result in incompatible land uses, inefficiencies in extension of hard services, uncoordinated transportation corridors, and curtailment of options for growth.

The Board acknowledges that references to generally accepted planning principles are not definitive in that they may mean different things to different planners. The appellants expressed concern that the County's Fringe Policy is described as an interim measure until intermunicipal agreements are reached. The Board accepts their argument that if an intermunicipal agreement is not reached, or if permanent uses with long term consequences are approved prior to the completion of an intermunicipal agreement, detriment may result.

The appellants presented compelling argument and evidence regarding the location of multi-lot country residential development, institutional, commercial, and industrial uses within the fringe areas. The Board is not convinced that the mere existence of these uses in the fringe may cause detriment, but agrees that a lack of detailed planning and direction with respect to the location and the intensity of these uses may be detrimental, for example where incompatible residential, commercial and industrial uses are situated adjacent to one another. This is a particular concern where growth directions for intensive residential, commercial or industrial uses are well established. The Board recognizes that there will be a transition in land use intensity over time, and agrees with the appellants that a lack of detail in future land use planning and policies may result in land use conflicts and the inefficient and costly provision of hard servicing. In the Board’s opinion, the likelihood of significant detriment warrants intervention in the fringe areas.

The appellants presented compelling argument and evidence that the lack of detailed transportation policies and planning in the fringe areas could result in the duplication of transportation resources, inefficient development of roadways, and costly “retro-fit” expenditures on roadways that become over or under design capacity. The Board heard evidence in relation to 127 Street in Edmonton and St. Albert Trail in St. Albert. The Board accepts that there is a direct relationship between land use and transportation needs that manifests itself in appropriate locations for major arterials, the function and capacities of the roadways and the timing of improvements and financial capacity to meet changing needs. The Board recognizes that the lack of detailed planning for allocation of land uses combined with somewhat scanty transportation policies meets the threshold of detriment in the urban fringe. Similar arguments with respect to the extension of hard services is accepted by the Board.

The provincial Land Use Policies place considerable emphasis on intermunicipal coordination and cooperation. The Board heard compelling evidence and argument that a lack of consultation at key points in the preparation of subdivision or development plans, or amendments to statutory plans or LUBs having effect in fringe areas, is likely to result in significant detriment to adjacent urban municipalities. The Board agrees that certain provisions of the County's bylaws lack sufficient detail and direction to ensure that adjacent municipalities have an opportunity for input in preparation of these plans and amendments in the fringe areas and the Sturgeon Valley Study Area.

When adjacent municipalities are left out of the information loop concerning the types, intensity and magnitude of development that may occur in the fringe, they are deprived of the opportunity to comment on and make suggestions for the resolution of land use incompatibility, servicing and transition problems. Nor are they able to make such modifications to their own planning, development, transportation and servicing plans as may be necessary to ensure compatibility of land uses and cost effective servicing**.** This is especially so for the Sturgeon Valley Study Area and the South Sturgeon Study Area because development in these areas may result in a large population, or the relocation of heavy industry that may impact the development and effectiveness of transportation routes in the County, St. Albert and Edmonton.

Without detailed plans and substantial consultation between municipalities, the Board finds a high potential for detriment in the urban fringe areas and the two Study Areas. Policy 15 of the MDP does not go far enough in providing locational criteria for specific land use proposals and other detailed planning requirements, nor does it establish a complete and effective referral system between the subject municipalities. This uncertainty with respect to possible location of these uses creates a significant potential for detriment in the intermunicipal fringe. The provisions of the County's MDP which the Board found to be detrimental in the intermunicipal fringe areas and the South Sturgeon and Sturgeon Valley Study Areas are set out below.

(ii) Multi-lot Country Residential Subdivision (Part 3)

The location of multi-lot country residential subdivision may have a detrimental impact on the adjacent municipality. Without an area structure plan or an agreement between municipalities, a country residential subdivision could occur in an area adjacent to an industrial plant or similar operation causing the limitation for expansion of the plant or causing complaints about heavy traffic or dangerous activities in or near residential settlements. Of particular concern is the Sturgeon Valley Study Area where servicing, subdivision design, and transportation need to be planned in order to avoid detrimental effects to both Edmonton and St. Albert.

(iii) Industrial (Part 7)

The location of industrial land uses may have a detrimental impact on an adjacent municipality. Without an area structure plan or an agreement between municipalities, an industrial use could locate adjacent or near urban residential, parks or similar uses, resulting in heavy traffic, noise, odour or dangerous activities, all of which are clearly incompatible with residential uses. Further, the expansion of residential uses may be limited in an urban centre thereby causing uneconomic construction of urban infrastructure. Of particular concern is the South Sturgeon Study Area which is generally planned for rural industrial development.

(iv) Commercial (Part 8)

The location of commercial land uses may have a detrimental impact of the adjacent municipality. The locations need to be clearly defined and planned in order to avoid the creation of a hazardous and cumbersome transportation network in the fringe. Further, there is a need to buffer commercial activity from adjacent residential land uses in order to avoid problems with heavy traffic and noisy activity.

(v) Environmental Protection (Part 11)

Inside the intermunicipal fringe area and the Study Areas, the lack of identification, protection and development of environmentally significant areas may have a detrimental impact on adjacent municipalities. The issues surrounding the identification and development of environmental areas rarely respect municipal boundaries. Rivers, park systems, historical sites, other water bodies and similar features need the benefit of protection from at least two municipalities. A good plan and sharing of information in fringe areas can provide protection to environmental areas without compromising the rights of either municipality.

(vi) Transportation and Utilities (Part 12)

The location and status of transportation routes and the location and type of utility servicing may be detrimental to the adjacent municipalities. It is crucial that the design and location of such facilities address the needs of all municipalities in order to avoid uneconomical construction and dangerous traffic movements. In the fringe areas, benefit to both municipalities can be attained provided detailed plans and consultation are prevalent between the municipalities involved.

(vii) Natural Resources (Part 14)

The location of natural resources and the subsequent extraction of the resources may have a detrimental impact on the adjacent municipalities. For example, a gravel extraction operation adjacent to an urban style residential subdivision may not only be annoying but may be

dangerous to the residents. A detailed plan and consultation in the fringe area will not only identify the location of such resources but may address means to mitigate severe impacts to neighbours.

(viii) Fringe Areas (Part 15)

Inside the identified fringe areas, the lack of information respecting the location of future land uses and the lack of adequate measures to provide for detailed plans or agreements and the lack of complete referral systems on applications, may be detrimental to the adjacent municipalities. Intermunicipal fringe areas require special treatment to acknowledge the rights of neighbours without infringing on the rights of landowners except to the benefit of the greater public interest. Fringe areas represent significant public interest in both municipalities.

In the Land Use Bylaw

Most of the land in the intermunicipal fringe is designated "Agricultural" ("AG") or "Agricultural - Nature Conservation" ("A-NC") in the LUB. The Board finds that certain use provisions of these land use districts have significant potential for detriment within the intermunicipal fringe of the appellant municipalities. Outside the intermunicipal fringe, these provisions will have little or no detrimental effect on the appellants. The remaining provisions that have been appealed are not, in the view of the Board, detrimental, either within or outside the intermunicipal fringe for the same reasons as given *supra.*

The provisions of the AG and A-NC Districts that the Board has found to be potentially detrimental in the intermunicipal fringe are as follows: intensive agriculture, intensive livestock operations, kennels, major home based business, agriculture industrial use, and airstrip. The Board notes that the only future land use categories shown on the Future Land Use Map of the County's MDP that are not reflected as Land Use Districts in the LUB are the Primary and Secondary Urban Fringe Categories. Consequently, the Board is directing amendments that will reduce the potential for detriment by expunging certain uses such as intensive livestock operation from the list of permitted uses and moving some permitted uses into the discretionary category. These amendments will affect the AG and A-NC Districts. These are relatively minor changes, but an incidental effect of the amendments will be the creation of two new land use districts. As mentioned, these changes to the AG and A-NC District will result in a redesignation directed only to lands within the intermunicipal fringe. Where a parcel of land designated AG or A-NC is only partially within the intermunicipal fringe as defined by this Order, the redesignation will apply to the total area of land within the titled parcel.

Remedies

General Remarks

Where the Board finds detriment, it must direct amendments to the County's planning bylaws pursuant to s.690(5) of the *Act.* The Board is satisfied that the following amendments will remedy the detriment the Board has found without infringing on the rights of individual landowners except as necessary in the overall greater public interest. The Board is of the view that individual rights will be enhanced by these amendments because certain of the amendments encourage and require further public input into planning matters in the fringe.

The amendments will create an intermunicipal fringe district only around those municipalities that were parties to the appeal. They do not apply to create fringe districts around municipalities that were not appellants, such as Fort Saskatchewan, Bon Accord, and Legal. Similarly, the amendments the Board has directed to the policies of the MDP will apply only within the intermunicipal fringe areas around the appellant municipalities. It is hoped that the County will consider applying the fringe policies directed by the Board to the municipalities that did not appeal. These additions would be negotiated outside this appeal process and would be the subject to the public hearing process outlined in s.692 of the *Act.*

The amendments related to the Sturgeon Valley Study Area and South Sturgeon Study Area deal with detriment found by the Board. Primarily, this detriment arises from provisions that do not provide adequate processes for consultation with neighbouring municipalities. The Board notes that the corporate landowners supported the preparation of an Area Structure Plan for the Sturgeon Valley Study Area. The ordered amendments will enhance opportunities for input from landowners.

The Board also notes that for the consultative process to be effective, comments on referrals of subdivision proposals, development permits, and statutory plan amendments must be returned in a timely fashion. Failure to do so would impose an undue burden on the County's planning process. Further, the ordered amendments provide for referral to and comments by the appellant municipalities, but do not grant a "veto power" to them. S.690 does not, in the Board's view, confer authority on the Board to direct amendments of a kind that would delegate a municipality's decision-making power to adjacent municipalities.

In ordering amendments to the LUB with respect to certain uses such as intensive livestock operations, the Board is not ordering the prohibition of these uses in the intermunicipal fringe. Instead, the Board's intention is to ensure that the approval of new intensive agricultural operations or expansion of existing intensive livestock operations in the intermunicipal fringe require a an amendment to the County's LUB, which will be referable to adjacent municipalities for comment, as well as appealable to this Board.

The provincial Land Use Policies place considerable emphasis on intermunicipal cooperation and coordination. The Board was convinced by the argument of the appellants that the bylaws did not provide sufficient opportunities for consultation with adjacent municipalities and this lack may result in development that causes detriment to the County's neighbours. The following amendments ordered by the Board address these deficiencies within the intermunicipal fringe and in part, within the Sturgeon Valley Study Area and the South Sturgeon Study Area. Again, the Board wishes to stress that consultation means a full, fair and formal opportunity for input, but does not mean a "veto".

The Board heard arguments of detriment in the intermunicipal fringe from Morinville, St. Albert and Edmonton and found common themes related to the kinds of detriment complained of. The Board acknowledges that the ideal boundaries of the intermunicipal fringe and its associated provisions might differ from what has been ordered due to variables such as population size, growth rates, land use and growth patterns, geography, geological or topographic features, transportation routes and patterns, servicing capacities and extensions, and many other community features. The Board, however, is a quasi-judicial appeal tribunal and not a regional planning authority. Therefore, the ordered amendments are more generic in nature, based on the argument and evidence submitted at the hearings to demonstrate detriment. The Board is convinced that the appellant municipalities and the respondent municipality, with input from affected landowners, can develop more precise and detailed intermunicipal fringe plans with provisions that comprehensively meet the future needs of the parties. The objective of the ordered amendments is to prevent detriment as the Board has found it, not to enhance the County's planning bylaws.

IT IS ORDERED THAT the Sturgeon County MDP be amended as follows:

In Part 3, Multi-lot Residential Subdivisions, by adding the following after Policy 3.4:

3.5 For the purpose of developing an Area Structure Plan, the Sturgeon Valley Study Area shall be the area shown as such on the Future Land Use Map, and more particularly described as that area bounded on the west by the road allowance one mile east of Highway 2; on the north by Highway 37; on the east by Highway 28, and by the shared boundary with Edmonton and St. Albert on the south.

3.6 In addition to the provisions of Policies 3.1 and 3.3, the following provisions apply to the Sturgeon Valley Study Area:

(i) within six months of the date of this Order of the Municipal Government Board, development of an area structure plan for the whole of the Sturgeon Valley Study Area shall be commenced, and shall be completed and ready for adoption within 18 months of the commencement date;

(ii) preparation of the area structure plan shall be guided by a steering committee composed of representatives from Sturgeon County, the City of Edmonton, the City of St. Albert, Alberta Transportation and Utilities, and any other persons who may be reasonably regarded as having an interest in the Sturgeon Valley Study Area;

3.7 The area structure plan shall address questions of supply and demand, and provide for the following matters:

(i) the amount, location, phasing and density of future country residential subdivisions
(ii) utility servicing
(iii) demands for educational, recreational and social services;
(iv) transportation issues and impacts;
(v) impacts on nearby urban centres;
(vi) other land uses such as trails, open space, agriculture; and
(vii) procedural matters for dealing with the plan process and plan implementation matters, such as referrals, plan amendment and repeal.

In Part 7, Industrial, by adding the following after Policy 7.6:

7.6.1 In addition to the provisions of 7.5, an Area Structure Plan shall be adopted for all of the South Sturgeon Study Area which will

(i) be guided by a steering committee with representatives from Sturgeon County, City of Edmonton, Alberta Transportation and Utilities, residents/landowners in the study area and other key stakeholders;

(ii) consider the integration of future land uses and infrastructure in North East Edmonton;

(iii) through the approval of a detailed terms of reference, address such matters as:

(a) the type, amount, location, phasing and density of future land uses;
(b) utility servicing;
(c) demands, if any, for educational, recreational and social services;
(d) transportation issues and impacts;
(e) impacts on nearby urban centres;
(f) other land uses such as trails, open space, agriculture;
(g) procedural matters for dealing with the plan process; and
(h) plan implementation matters, such as referrals, plan amendment and repeal.

15 Fringe Areas

Morinville, St. Albert and Edmonton Intermunicipal Fringe

15.6 Notwithstanding Section 15.1 and not withstanding any other provision of the MDP, the following provisions apply to the intermunicipal fringe for Morinville, St. Albert and Edmonton.

1. The intermunicipal fringe for St. Albert, Edmonton and Morinville shall be the combined area of the primary and secondary fringe as illustrated on the Future Land Use Map near St. Albert, the area north of Big Lake and east of the Riviere Qui Barre.

2. The purpose of the intermunicipal fringe is to ensure that orderly planning and development occurs. The purpose is not to prohibit development but to ensure that intensive development has growth options, locational acceptance, and that development in the fringe can be absorbed into a more intensive development pattern in a cost effective manner.

3. The LUB shall provide for the following:

   (a) an Intermunicipal Fringe District (IMF)for Morinville, St. Albert and Edmonton based on the boundary of the fringe. The district may be in the form a single district for all three municipalities or separate districts;
   (b) subdivision standards in the IMF District based on the guidance outlined in Section 2.3 to 2.7 inclusive within this plan;
   (c) uses which may generate heavy traffic, odour, excessive noise, air or water pollution or nuisances shall be considered only as discretionary uses;
   (d) a referral system to the respective urban municipality for subdivision applications, development permits for discretionary uses, and LUB amendments in the urban fringe;
   (e) a referral system in the St. Albert and Edmonton fringe overlap that shall result in referrals being sent to both adjacent municipalities.

4. An area structure plan shall be required for any subdivision or development which exceeds the subdivision density standard in the IMF District.

5. Any statutory plan preparation, adoption or amendment or LUB adoption or amendment within the fringe shall require participation and referral, with the intent of giving meaningful comment by the urban municipality adjacent to that fringe. Responses to referrals shall be completed in a timely fashion.

6. The above system of referrals may be eliminated after the adoption of an Inter-MDP or a system of area structure plans, the preparation of which provided the respective municipalities with an opportunity for input and participation.

7. Within one year of the adoption of the amendments in this order, Sturgeon County, with the participation of the respective municipalities, shall develop a mechanism to resolve disputes. Any resolution developed through this mechanism regarding a policy matter that affects the MDP or LUB shall subsequently by subject to the public hearing process required by Section 692 of the *Municipal Government Act.*

8. Sturgeon County expects that St. Albert, Morinville and Edmonton will reciprocate with similar provisions for cooperation and coordination in their planning bylaws.

9. The other provisions of this plan are subject to this provision where the subject land is within the intermunicipal fringe as described on the Future Land Use map.

IT IS ORDERED THAT the Sturgeon County LUB be amended as follows:

Sturgeon County is directed to amend LUB 819/96 by adding two new districts known as the Intermunicipal Fringe District (A) *(IMF-A)* and Intermunicipal Fringe District B *(IMF-B).* These new districts apply to all land designated Agricultural District (becomes IMF-A) and Agricultural - Nature Conservation District (becomes IMF-B) in Bylaw 819/96 which are located within the defined fringe of Edmonton, St. Albert and Morinville, and the intermunicipal fringe portions of the Sturgeon Valley Study Area and the South Sturgeon Study Area, all as shown on the Future Land Use Map in the MDP. The new districts do not apply to other lands in the intermunicipal fringe areas of Morinville, Edmonton and St. Albert which have been designated for other uses by Bylaw 819/96.

1. The Intermunicipal Fringe District -A (IMF-A) shall contain all the provisions of the Agricultural District in Bylaw 819/96 with the following additions or deletions:

   Delete from the Permitted Uses Section:

   (i) Intensive agriculture with farmstead
   (ii) Intensive livestock operation with farmstead on a lot located a minimum of 1.0 miles from the boundary of an urban centre or Hamlet.
   (iii) Kennels, Boarding and breeding use on a pre-existing lot located more than 1000 feet from a dwelling on an adjacent lot.
   (iv) Major home based business on a pre-existing lot.

Delete from the Discretionary Use Section:

(i) Agricultural industrial use
(ii) Airstrip
(iii) Intensive livestock operation with farmstead on a lot located between 0.5 miles and 1.0 miles from the boundary of an urban centre or hamlet
(iv) Kennels, Boarding and breeding use on a pre-existing lot located less than 1000 feet from a dwelling on an adjacent lot

Add to discretionary uses:

(i) Kennels, Board and breeding use on a pre-existing lot located more or less than 1000 feet from a dwelling on an adjacent lot or the boundary of an urban municipality
(ii) Major home based business on a pre-existing lot.

Add the following provision:

(i) All applications for a development permit for a permitted or discretionary use shall be referred to Edmonton, St. Albert or Morinville, as appropriate, for review and comment prior to a decision by the County.
(ii) All applications for redesignation and subdivision shall be referred to Edmonton, St. Albert or Morinville, as appropriate, for review and comment prior to a decision by the County
(iii) Alterations to the boundary of the Hamlet of Namao shall be referred to Edmonton for review and comment prior to a decision by the County
(iv) The processes to initiate the preparation of Area Structure Plans for Sturgeon Valley Study Area and the South Sturgeon Study Area shall be referred to Edmonton and St. Albert for review and comment in accordance with the provisions of the MDP and prior to any public hearing being held to consider the adoption of an Area Structure Plan.

2. The Intermunicipal Fringe District-B (IMF-B) shall contain all the provisions of the Agricultural - Nature Conservation district in Bylaw 819-96 with the following additions or deletions:

Delete from the Permitted Uses Section

(i) Intensive livestock operation with farmstead on a lot located a minimum of 1.0 miles from the boundary of an urban centre or hamlet.
(ii) Kennels, Boarding, breeding use on a pre-existing lot located more than 1000 feet from a dwelling on an adjacent lot.

(iii)Major home business on a pre-existing lot.

Delete from the Discretionary Uses Section

(i) Intensive livestock operation with farmstead on a lot located between 0.5 miles and 1.0 mile from the boundary of an urban centre or hamlet.
(ii) Kennels, Boarding, breeding use on a pre-existing lot located less than 1000 feet from a dwelling on an adjacent lot

Add to Discretionary Uses

(i) Kennels, Boarding and breeding use on a pre-existing lot located more or less than 1000 feet from a dwelling on an adjacent lot or the boundary of an urban municipality.
(ii) Major home based business on a pre-existing lot.

Add the following provision:

(i) All applications for a development permit for a permitted or discretionary use shall be referred to Edmonton, St. Albert or Morinville, as appropriate, for review and comment prior to a decision by the County.
(ii) All applications for redesignation and subdivision shall be referred to Edmonton, St. Albert or Morinville, as appropriate, for review and comment prior to a decision by the County.
(iii)The processes to initiate the preparation of area structure plans for Sturgeon Valley Study Area and the South Sturgeon Study Area shall be referred to Edmonton and St. Albert for review and comment in accordance with the provisions of the MDP and prior to any public hearing being held to consider the adoption of an area structure plan.

Observations

The following are observations of the Board which are not binding on the parties, but which the parties may wish to give consideration to in future endeavors. In the Board's opinion, the best planning solutions are developed with the full cooperation of the parties involved, in an environment of mutual respect for each other's autonomy, and within the context of inter-municipal cooperation and land use coordination. The Board expects that many of the amendments made in this order will be considered by the appellant municipalities as they prepare their MDPs and LUBs. The intermunicipal fringe works in both directions. Municipalities must also realize that planning decisions must be accomplished within the context of individual rights as referred to in Section 617 of the *Act*.

Although the MDP and the LUB of the appealing municipalities were not before the Board, it is not unreasonable to expect that many of the mechanisms to resolve detriment discussed with respect to the subject bylaws should be considered in a reciprocal effort because the inter-municipal fringe works both ways. Within the context of the new provincial Land Use Policies, municipal boundaries should not be seen as a "Chinese wall" separating one municipal authority from another. Globilization is removing boundaries internationally and urbanization of Alberta generally is making municipal boundaries, especially in metropolitan settings, less important. Intermunicipal cooperation and coordination are the new watchwords.

Throughout the hearing, the Board was told about problems with vagueness and lack of detail in the plans and policies for the fringe. The Board appreciates that land use planning outside the fringe in the vast rural area can only reasonably be done with broad policy statements. However, the advantages of increasing detail in the fringe of large municipalities, or municipalities experiencing rapid growth, or in a fringe area with distinctive and unique features or land uses should not be discounted to quickly for the sake of flexibility. The fringe, an area going through transition from low intensity uses to higher intensity uses over perhaps a number of generations, requires that land owners and neighbouring municipalities have the right to a greater degree of clarity and detail respecting future land uses and policies.

Dated at the City of Edmonton, in the Province of Alberta, this 2nd day of April, 1998.

MUNICIPAL GOVERNMENT BOARD

T. Helgeson, Presiding Officer

SECTION IV

APPENDIX "A"

PERSONS IN ATTENDANCE, MAKING SUBMISSIONS OR GIVING EVIDENCE
(List of landowners and observers may not be complete)

NAME	CAPACITY
Sheila McNaughton, *Reynolds Mirth Richards & Farmer*	Solicitor representing Sturgeon County
Gilbert Boddez	Witness, Sturgeon County
Ken Gwozdz	Witness, Sturgeon County
Leo Burgess, Barry Sjolie *Brownlee Fryett*	Solicitors representing Morinville
Randy Leal	Witness, Morinville
William Shores, David Jarome *Shores Belzil*	Solicitors representing the City of St. Albert
Jeff Greene	Witness, City of St. Albert
Dwayne Kalynchuk	Witness, City of St. Albert
Darryl Howery	Witness, City of St. Albert
Charlotte St. Dennis,	Solicitor, City of Edmonton
Marlene Exner,	Witness, City of Edmonton
Gwendolyn Stewartt-Palmer	Witness, City of Edmonton
Lorne Mc Master	Witness, City of Edmonton
L. Stephenson	Witness, City of Edmonton
Richard Haldane *Parlee McLaws*	Solicitor representing County Landowner Dale Maynard Industries
Ronald Swist	Landowner
Christine Harrold	Landowner
James Sillito	Landowner
Ken Fisher	Morinville Mirror
Terry Bokenfohr	Landowner
H. Shuttleworth	Landowner
David Klippenstein	UMA Engineering Ltd.

Sheila McDonald	Landowner
Shannon Wyatt	Student, Brownlee Fryett
Don Savich	Landowner
Bob McCulloch	Dale Maynard Industries
Walter Mis	Landowner
Peter Mis	Landowner
Dorothy Chartrand	Landowner
Richard Priest	UMA Engineering Ltd.
Ernest Pare	Landowner
Drina Culo	Observer
Edward Sinclair	Landowner
Hal Morris	Observer
Ann Pare	Landowner
Graeme MacKay	Landowner

APPENDIX "B"

DOCUMENTS RECEIVED DURING THE HEARINGS

1. Sturgeon County Legal Submission
2. Sturgeon County Response Brief
3. City of Edmonton Legal Submission
4. City of Edmonton Response Brief
5. City of St. Albert Legal Submission
6. Letter from RL Planning Associates to Brownlee Fryett respecting submissions to be made on behalf of the Town of Morinville along with the curriculum vitae of Randy Leal.
7. Response brief on behalf of Dale-Maynard Industries Inc. (County landowner)
8. Letter from Terry Bokenfohr (County Landowner)
9. Letter dated Sept. 2, 1997 from Edward Sinclair (County Landowner)
10. Letter dated September 4, 1997, from Karl, Edwin, Walter and Gary Tappauf (County Landowners)
11. Certified copy of resolution made by Morinville Town Council on August 26, 1997.
12. City of St. Albert errata sheet
13. City of St. Albert map - 1979 Annexation
14. City of St. Albert Land Use Map
15. AM Peak Traffic Counts
16. PM Peak Traffic Counts
17. Future Land Use Map
18. Water Supply and Reservoir
19. Hydraulic Capacity Rating Wet Weather Flow
20. City of St. Albert Council Motion - August 11, 1997

21. Chart comparing existing land use and proposed land uses, (LUB)
22. Chart proposing new policies for the MDP, along with comments
23. July 21, 1997 letter from Sturgeon to Edmonton
24. July 30, 1997 letter from Edmonton to Sturgeon
25. Comparison Chart between land uses
26. "Will Say" statement of Ken Gwozdz (Sturgeon Development Officer)
27. Statement of R. W. McCulloch dated September 11, 1997
28. Section 250, Edmonton LUB RR - Rural Residential District
29. Letter from D.M. Savich to the MGB and dated September 11, 1997.
30. Bokenfohr Brief
31. Sturgeon County Council Resolution of August 12, 1997
32. Lac Ste. Anne County letter to Sturgeon dated April 9, 1996
33. Sturgeon Annual Report for Open House held April 10, 1997
34. Excerpts from the Alberta Subdivision and Development Regulation
35. Letter dated Sept. 30, 1996 from Sturgeon to St. Albert regarding fringe planning.
36. Alberta Court of Appeal Decision - Lloydminster v. Alberta Planning Board
37. Alberta Planning Board Order 419-M-91/92 - City of Red Deer vs. County of Red Deer
38. Excerpt from the 1963 Alberta Planning Act - Sec. 93
39. Supreme Court of Canada Decision - 1984 - Hartel Holdings vs. City of Calgary
40. Excerpt from the Alberta Interpretation Act
41. Letter dated October 14, 1997 along with summary brief and reply submissions from St. Albert to the Municipal Government Board
42. Summary argument of James Sillito sent to the Municipal Government Board on September 30, 1997.
43. Summary position of Walter K. Mis to the Municipal Government Board received on September 30, 1997.
44. Summary position of the Town of Morinville to the Municipal Government Board
45. Summary argument of the City of Edmonton to the Municipal Government Board received o September 30, 1997.
46. Letter dated September 25, 1997 from Reeve Frank Shoenberger to the Municipal Government Board.
47. Final position and argument submitted by Sturgeon County to the Municipal Government Board on September 30, 1998
48. Letter dated November 7, 1997 from the solicitor for Sturgeon County to the Municipal Government Board.
49. Response of Dale-Maynard Industries Inc. and 702602 Alberta Ltd., submitted to the Municipal Government Board on October 14, 1997.

APPENDIX "C" LEGISLATION REFERENCES

Municipal Government Act

Powers, duties and functions

5 A municipality

(a) has the powers given to it by this and other enactments,
(b) has the duties that are imposed on it by this and other enactments and those that the municipality imposes on itself as a matter of policy, and
(c) has the functions that are described in this and other enactments.

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

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.
1995 c24 s95

Division 2
Land Use Policies

Land use policies
622(1) The Lieutenant Governor in Council may by order, on the recommendation of the Minister, establish land use policies.

(2) The Regulations Act does not apply to an order under subsection (1).

(3) Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Municipal Government Board must be consistent with the land use policies.
1995 c24 s95

Division 3
Planning Authorities

Subdivision authority
623(1) A council must by bylaw provide for a subdivision authority to exercise subdivision powers and duties on behalf of the municipality.

(2) A subdivision authority may include one or more of the following:

(a) any or all members of council;
(b) a designated officer;
(c) a municipal planning commission;
(d) any other person or organization.

1995 c24 s95

Division 4
Statutory Plans

Intermunicipal Development Plans

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

(2) An intermunicipal development plan

(a) may provide for
  (i) the future land use within the area,
  (ii) the manner of and the proposals for future development in the area, and
  (iii) any other matter relating to the physical, social or economic development of the area that the councils consider necessary,

and

(b) must include
  (i) a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that have adopted the plan,
  (ii) a procedure to be used, by one or more municipalities, to amend or repeal the plan, and
  (iii) provisions relating to the administration of the plan.

1995 c24 s95

Municipal Development Plans

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

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

(3) A Municipal Development Plan

(a) must address
  (i) the future land use within the municipality,
  (ii) the manner of and the proposals for future development in the municipality,
  (iii) the co-ordination of land use, future growth patterns and other infrastructure with adjacent municipalities if there is no intermunicipal development plan with respect to those matters in those municipalities,
  (iv) the provision of the required transportation systems either generally or specifically within the municipality and in relation to adjacent municipalities, and
  (v) the provision of municipal services and facilities either generally or specifically,

(b) may address
  (i) proposals for the financing and programming of municipal infrastructure,
  (ii) the co-ordination of municipal programs relating to the physical, social and economic development of the municipality,
  (iii) environmental matters within the municipality,
  (iv) the financial resources of the municipality,
  (v) the economic development of the municipality, and
  (vi) any other matter relating to the physical, social or economic development of the municipality,

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

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

(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.

1995 c24 s95;1996 c30 s56

Division 11
Intermunicipal Disputes

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

(a) filing a notice of appeal with the Board, and
(b) giving a copy of the notice of appeal to the adjacent municipality

within 30 days of the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

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

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

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

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

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

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

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

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

(8) The Municipal Government Boards decision under this section is binding, subject to the rights of either municipality to appeal under section 688.
1995 c24 s95

Subdivision and Development Regulation

Restrictions
11(1) On or before March 31, 1998, a subdivision authority must not approve an application for subdivision for country residential use unless the land that is the subject of an application

(a) is 8 kilometres or more from the boundaries of a city or town having a population of 5000 or more persons,
(b) is 3.2 kilometres or more from the boundaries of a city, town or village having a population of 1000 or more but less than 5000 persons, and
(c) is 1.6 kilometres or more from the boundaries of a town, village or summer village having a population of less than 1000 persons.

(2) If an urban fringe boundary was established and existed on August 31, 1995 under a regional plan adopted pursuant to the Planning Act RSA 1980 cP-9, that boundary applies in place of the distances established under subsection (1).

(3) Notwithstanding subsection (1) or (2), a subdivision authority may approve an application for subdivision for country residential use if

(a) the affected city, town, village or summer village gives its consent in writing to the application,
(b) the use is permitted under the applicable intermunicipal development plan, or

(c) the use is permitted under an agreement entered into between the affected city, town, village or summer village and the municipality in which the land that is the subject of an application is located.

(4) This section does not apply

(a) to a subdivision adjusting the boundary of an existing parcel,
(b) to the subdivision of a fragmented parcel from a titled area, or
(c) to the subdivision of the first parcel from a previously unsubdivided quarter section

if it is permitted in the applicable land use bylaw.

(5) In this section, country residential use means the use of land in a rural municipality for residential purposes, other than in a hamlet established under section 59 of the Act.

AR 212/95 s11;122/97