

MGB FILE NO.	17/IMD-003
IN THE MATTER OF	AN INTERMUNICIPAL DISPUTE FILED PURSUANT TO SECTION 690 OF THE <i>MUNICIPAL GOVERNMENT ACT</i>, R.S.A. 2000 CHAPTER M-26 WITH RESPECT TO ROCKY VIEW COUNTY BYLAW NO. C-7700-2017, OMNI AREA STRUCTURE PLAN
INITIATING MUNICIPALITY	CITY OF CALGARY
RESPONDENT MUNICIPALITY	ROCKY VIEW COUNTY
DOCUMENT	SUBMISSIONS OF THE CITY OF CALGARY
FILED BY	<p>THE CITY OF CALGARY David Mercer/Hanna Oh 12th Floor, 800 Macleod Tr SE Calgary, AB T2G 2M3</p> <p>david.mercer@calgary.ca hanna.oh@calgary.ca</p> <p>Phone: 403-268-2453 403-268-3662</p> <p>Fax: 403-268-4634</p> <p>File No. P8577</p>

I. INTRODUCTION

1. On October 20, 2017, the City of Calgary (the "**City**") commenced intermunicipal dispute proceedings pursuant to Section 690 of the **Municipal Government Act**, RSA 2000, c M-26 (the "**MGA**") in respect of Bylaw C-7700-2017, the OMNI Area Structure Plan (the "**OMNI ASP**") passed by Rocky View County (the "**County**") Council on September 26, 2017 (the "**Appeal**").

2. This submission is filed by the City in support of its position that the Municipal Government Board (the "**Board**") order a merit hearing to begin the week of **October 1st, 2018**, for a week-long hearing. With document exchange dates as follows:

July 27 – Calgary files its submissions, reports and will say statements

August 31 – County files its submissions, reports and will say statements

September 7 – Affected Parties file submissions, reports and will say statements

September 14 – City files rebuttal

September 21 – County files surrebutal

II. FACTS

3. The County passed the OMNI ASP on September 26, 2017.

4. The City commenced its appeal on October 20, 2017.

5. The Board held a preliminary hearing on December 6, 2017. At this hearing, the City and the County suggested a fall merit hearing but requested that the Board set a second preliminary hearing in March 2018 in order to establish evidence exchange and merit hearing dates.

City of Calgary v. Rocky View County, 2018 ABMGB 9, at page 5¹, para. 7 [Tab 1]

6. The City and the County entered into mediation on February 13, 2018 scheduled until February 15, 2019.

7. Mediation ended unsuccessfully on February 14, 2018.

8. The City's lead regional transportation engineer resigned from the City effective February 15, 2018.

III. ARGUMENT

Retaining an Expert Transportation Witness

9. The City proposes to submit its submissions, reports and will say statements July 27 to further a full and fair hearing. Due to the sudden departure of the City's regional transportation engineer the City requires time to retain an expert witness to review and comment on the relevant transportation issues. As a result of the City's policies and procedures for the procurement of external consultants, it will take several weeks to have a consultant in place and it will take the consultant approximately two months to prepare a report.

10. The County is proposing that the City file its submission on May 4. This date would significantly prejudice the City as it would be virtually impossible for the City to retain an expert and provide a thoughtful expert report by this date.

11. Counsel for the City was not aware that the City's regional transportation engineer was resigning until a week in advance of when mediation was to commence which was part of the reason why another transportation expert had not been retained in advance of mediation. After the mediation was unsuccessful and the City's regional transportation engineer had resigned, the County expressed an interest in trying to negotiate a settlement with the City which was a reason why the City had not retained an expert immediately following the mediation.

12. The expert evidence the City needs time to seek is central to its appeal and necessary for the Board to make a fair and well informed decision on the merits of the appeal.

The City's Availability

13. The County's proposed merit hearing date of July 26 would significantly prejudice the City as the City's principal hearing team of 6 individuals are unavailable from July 6th until August 27th, 2018.

Section 690 (6.1) of the MGA

14. Also, in support of the City's proposal to commence the merit hearing in October, due to recent amendments to the **MGA**, the Board is now required to ensure that all decisions are consistent with the Calgary Growth Management plan approved under Part 17.1 (section 690(6.1)). It is Calgary's understanding that the member municipalities of the Calgary Growth Management Board are currently working on a plan, with the hope to have one in place by the fall of 2018. As a result, any Board hearing that takes place prior to the adoption of the plan, will be impacted by this plan. If a hearing is conducted this summer, the hearing may have to be reopened to consider the impacts of the new plan as the Board is bound to ensure consistency. To try to avoid this possibility, the City proposes a hearing in October.

All of which is respectfully submitted this 22 day of March, 2018

Per:



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Hanna Oh
Counsel for the City of Calgary

TAB 1

NOTICE OF DECISION

**DL 009-18
File No. 17/IMD-003**

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CITATION: City of Calgary v Rocky View County
(*Re: Rocky View County Bylaw C- 7700-2017*) 2018 ABMGB 9

**Re: Intermunicipal Dispute under Section 690 Municipal Government Act (Act)
Appealed by: City of Calgary
Bylaw under Appeal: Rocky View County Bylaw C-7700-2017,
OMNI Area Structure Plan**

This letter is the decision of the Municipal Government Board (MGB) from a preliminary hearing held in the City of Calgary on Wednesday, December 6, 2017.

Before: D. Thomas, Presiding Officer
B. Horrocks, Member
F. Wesseling, Member

C. Miller Reade, Case Manager

Background

[1] On October 20, 2017, the City of Calgary (Calgary), filed a notice of appeal under section 690 of the *Act* stating that Rocky View County's (Rocky View) Bylaw 7700-2017 has or may have

a detrimental effect upon it. The OMNI Area Structure Plan (OMNI ASP) proposes highway business development. Calgary sent a letter to Rocky View council on July 14, 2017 and on September 11, 2017 stating its objection to the OMNI ASP, and outlining its efforts to discuss the issue with the municipality and the landowners. Calgary objected to the impact the highway business development would have on the transportation network, stormwater management, and on Calgary’s emergency services. The bylaw was given third reading and adopted on September 26, 2017.

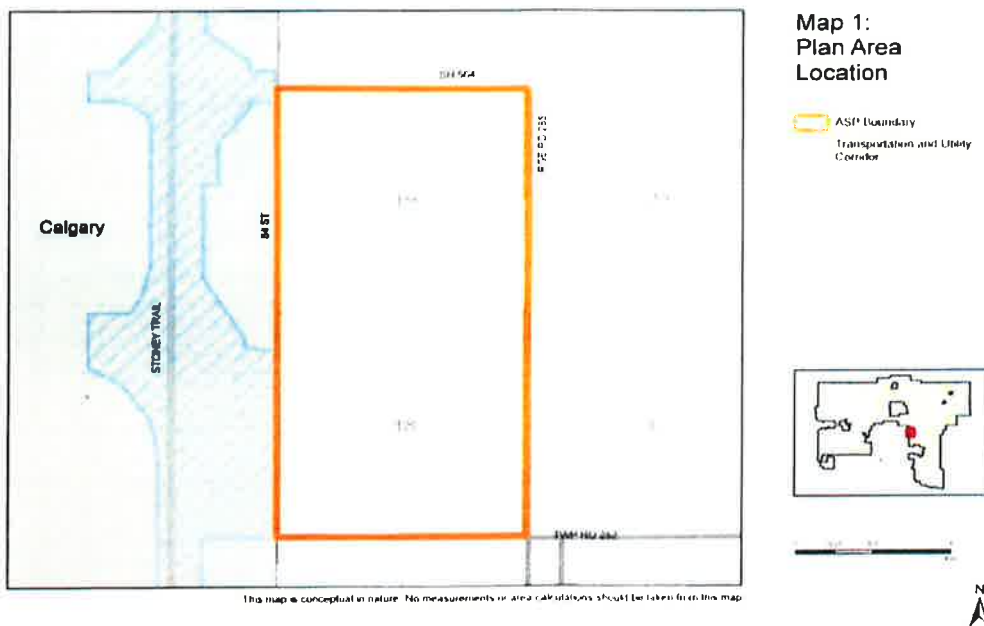


Figure 1: Map showing location of OMNI Area Structure Plan

PART A: Statement of Appeal

[2] In its statutory declaration, Calgary stated that the OMNI ASP has or may have a detrimental effect upon it, because the proposed land use is more intensive than that envisioned in the Rocky View County Plan (MDP) and not appropriate for that location, development of the OMNI ASP will detrimentally affect Calgary’s transportation network and Emergency Services. Calgary is willing to enter into mediation; however, that process has not been initiated.

Calgary’s Reasons for Appeal

[3] Calgary included 3 reasons for its appeal and the corresponding sections of the OMNI ASP which are detrimental, summarized as follows:

Issue 1. The proposed land use in the OMNI ASP is significantly more intense than envisioned in the Rocky View MDP and the location is inappropriate.

The OMNI ASP is not consistent with the MDP, which identified the area for Highway Business uses. In the MDP, Highway Business uses are limited in size, in close proximity to highway intersections and interchanges, and offer local employment opportunities. Instead, the OMNI ASP includes destination commercial, large format commercial and entertainment uses, offering regional employment opportunities consistent with a Regional Business Centre use. Calgary believed Rocky View would follow its MDP policies, coordinating land use and transportation planning into its land use vision for the OMNI ASP.

While the Conrich ASP mediation was underway, Calgary was unaware that planning for the OMNI ASP was occurring. After the Conrich ASP mediation, Calgary understood that future developments would be consistent with the Calgary - Rocky View IDP and the MDP, and it appeared that Rocky View understood the impact of development on Calgary's transportation infrastructure.

The OMNI ASP, which proposes 1320 acres of commercial and light industrial lands, is not designated in either the MDP or the Calgary - Rocky View IDP. The OMNI ASP does not coordinate land use and transportation planning with either plan, resulting in negative impacts on Calgary's existing and proposed transportation system.

Issue 2. Development in the OMNI ASP will detrimentally affect Calgary's transportation network.

If approved, the OMNI ASP will result in safety problems, capital costs and traffic congestion, which are detrimental to Calgary. The proposed transportation infrastructure designed to support the traffic generated by the approved Janet, Conrich and East Stoney ASPs cannot support the additional traffic, which will be generated by the OMNI ASP. In the 2016 mediation agreement for the Conrich ASP, Calgary and Rocky View agreed to a complete the 84 Street NE Study to determine the classification, alignment, and right of way requirements for the traffic volumes anticipated by the adjacent lands. This study is underway. Adding the OMNI ASP into the 84 Street NE Study will increase both the timeline and the budget to complete the study.

The OMNI ASP's June 2017 Network Analysis showed that existing traffic volumes exceed 84 Street NE's roadway capacity and its intersections. The Network Analysis did not propose any solutions. Since jurisdiction for 84 Street NE shifts between Calgary, Rocky View and the Province within the area of the OMNI ASP, detailed plans for transportation and transit are required but have not been developed.

Calgary is also developing a goods movement strategy, which proposes major upgrades to Airport Trail west of Stoney Trail for the regional movement of goods. The Airport Trail

upgrades are at the planning and design stage. The OMNI ASP proposes construction of Airport Trail east of Stoney Trail as a major 4-lane roadway, generating additional traffic, which limit regional goods movement.

Issue 3. Development of the OMNI ASP will detrimentally affect Calgary’s Emergency Services.

At full build-out, development within the OMNI ASP lands will have several incidents per day requiring emergency services. The OMNI ASP identifies that such services will be provided by Rocky View and by contract from adjacent municipalities. However, Rocky View does not have a response station in the area, nor does it have a contract with Calgary.

If Calgary’s Emergency Services were contracted, services would be provided by Stations 32 and 38. Use of services from these stations will impact service levels for Calgary and its residents and will be detrimental for Calgary. Chestermere’s Emergency Services could be contracted, however due to distance, the 10-minute response time required by the Alberta Building Code would be exceeded.

Issue 4. Relevant Sections of the OMNI ASP.

The OMNI ASP requires amendments in the following areas:

Part I: Introduction

- Section 4: Key Issues and Opportunities, Physical Constraints and Attributes
- Section 6: Planning for Tomorrow, OMNI Vision and OMNI Goals

Part II: Planning Policies

- Section 8: Commercial, Commercial Objectives, Policies 8.2 and 8.3, Large-Format Retail Uses (text box), Policies 8.7 and 8.10
- Section 9: Light Industrial Objectives
- Section 10: Agricultural, Policy 10.5
- Section 11: Gateways, Gateways Objectives
- Section 15: Emergency Services
- Section 16: Transportation, Transportation Objectives, Policy 16.6, City of Calgary

Rocky View Response

[4] In the November 14, 2107 statutory declaration, Rocky View’s CAO explained that Bylaw 7700-2017 was developed and adopted after extensive consultation with Calgary. Throughout its development, after concerns were raised by Calgary, the OMNI ASP and the OMNI Transportation Network Analysis prepared by D.A Watt and Associates (Watt 2017) was changed, and these changes provided to Calgary.

[5] At the September 12, 2017 public hearing, the proposed changes were detailed to Rocky View Council and the public. After the public hearing, both administrations continued to meet. Discussions continued prior to second and third reading for further changes to Watt 2017 and Section 8, 12, 16 and Map 7 and 7A of the OMNI ASP. Until this appeal was filed, Rocky View was unaware of concerns about the impact the OMNI ASP on Calgary's Emergency Services. Rocky View is willing to engage in mediation, and provided Calgary with its list of preferred mediators and available dates in January and February.

PART B: Preliminary Issues

Preliminary Issue 1: Mediation Schedule

[6] On November 15, 2017, the MGB provided notice of an initial hearing on December 6, 2017 to Calgary, Rocky View and the affected landowners to initiate the hearing process, determine the potential for mediation, consider any preliminary matters raised by the parties, and establish a schedule for mediation, and evidence exchanges leading to a merit hearing date. On November 27, 2017, Genesis Land Development Corporation (Genesis) filed a request to be considered as an affected person in the hearing to participate in the mediation.

[7] At the hearing, Calgary and Rocky View informed the MGB that they had agreed to mediation during the weeks of February 5 and 12, 2018. Calgary and Rocky View suggested a fall merit hearing date, but, requested that the MGB set a second preliminary hearing in March 2018 in order to establish evidence exchange and merit hearing dates.

Decision and Reasons: Mediation Schedule

[8] Upon reviewing the written submissions, and considering the arguments put forward at the hearing, the MGB announced the following decision at the December 6, 2017 hearing:

1. A mediation report providing an update on the mediation process and indicating if additional time is required will be prepared by Calgary and submitted to the MGB by 12:00 p.m. (noon) on or before February 23, 2018. If Rocky View is in agreement with the report, a joint submission may be prepared.
 - b) If Rocky View has a response to the mediation report under section 690(3)(c) this will be due on or before March 2, 2018 at 12:00 p.m. (noon).
 - c) If required, a second preliminary hearing to determine an evidence exchange schedule and merit hearing dates could occur in writing, by teleconference, or in person, on or after March 12, 2018.

[9] The panel did not provide its reasons at the December 6th hearing, explaining to the parties that reasons would follow in writing.

[10] Under section 691(1)(a), the MGB must commence a hearing within 60 days after receiving the notice of appeal. This is insufficient time for the municipalities to attempt mediation. Calgary and Rocky View have established a schedule to attempt mediation, which the MGB accepts with a small amendment to reflect recent changes to the *Act*.

[11] At the conclusion of the mediation, MGB requests that the appellant municipality, Calgary, submit a report which identifies the following:

1. The issues which remain unresolved;
2. If additional mediation time is needed;
3. If additional studies are to be prepared and an estimate of time needed to prepare these studies, and
4. The proposed start date and duration of the merit hearing.

Due to recent changes to the *Act*, if the mediation is not successful, section 690(3)(c) affords Rocky View the opportunity to respond within 30 days of mediation's completion.

[12] Submissions may be made electronically to all parties, but a hard copy is also required. The MGB's submissions are to be emailed to mgbmail@gov.ab.ca. Eight hard copies (including one unbound) are to be delivered to the Municipal Government Board's Edmonton office within three (3) business days following the due date. One hard copy is to be delivered to other parties within three (3) business days.

[13] The legislation encourages an attempt at mediation. Where the parties have agreed to mediate and have developed a schedule, the MGB has scheduled merit hearing dates to allow mediation. If the parties require additional time to complete the mediation, a written request with reasons can be sent to the MGB for its consideration and approval. The MGB requests a progress report if the schedule for mediation is unknown, or if some matters have been resolved and to determine if the dispute will be proceeding to merit hearing.

Preliminary Issue 2: Genesis' application for Affected Person status and request to participate in the Mediation.

[14] Referring to Rule 9(10)(f) of the IMD Procedure Rules, Genesis requested affected person status to participate in the mediation. Genesis wanted to keep apprised of any changes to the OMNI ASP and any resulting requirements or expectations for further studies. Genesis is willing to provide information to assist in the mediation between Calgary and Rocky View. Genesis explained that it provided the funding for the OMNI ASP and its supporting technical documents (transportation, water and wastewater, and stormwater management), but did not participate in it development.

[15] Genesis owns over half of the lands within the OMNI ASP, referring to its lands as the OMNI Project. Stage 1 of the OMNI Project is a carefully phased, sequential commercial project of 185 acres matched to local and regional market demand. Genesis intends to begin the

development of the Stage 1 lands for highway commercial and convenience retail in 2018 and 2019, and has entered into contracts with retail anchor tenants. Stage 1 will not burden emergency services nor local transportation infrastructure. While the necessary technical and market demand studies are complete for Stage 1, there are no such studies for the additional OMNI ASP lands owned by Genesis. Since marketing of these lands will continue beyond 2025, the land use scenario will change to reflect market demand.

[16] If the mediation in this dispute is not successful, this matter will go to merit hearing, delaying development of the lands and adding to the overall cost of development. Genesis is looking to the MGB for its direction about a role in the mediation and the merit hearing.

Rocky View and Calgary's Response to Genesis' Request

[17] Section 690 allows for a municipality to file an appeal of a plan or bylaw adopted by an adjacent municipality, and requires an attempt at mediation by the municipalities. There is no requirement that a landowner or an affected person participate in the mediation unless the Board instructs it. In previous disputes, participation in mediation by either a landowner or an affected person has been at the invitation or insistence of the municipalities. Section 691 allows the landowner to participate in the merit hearing.

[18] This is a dispute between the municipalities tied to a mediation agreement that resolved the Conrich dispute. During Conrich's mediation, Calgary and Rocky View agreed that they would develop a traffic study for 84 Street NE (84 Street Study). The 84 Street Study is underway and its terms of reference and study area expanded to include the OMNI ASP. While Genesis has contributed funding to the 84 Street Study, it has not been an active participant. Some of the issues raised by Calgary may be resolved by mediation, however including Genesis in the mediation could limit the discussion and extend the timeline for mediation.

[19] At the hearing, Calgary took no position about the inclusion of Genesis in the mediation. Genesis' inclusion is an issue between Rocky View and Genesis. If the MGB were to include Genesis in the mediation, Rocky View would prefer that Genesis participate as a consultant rather than as a full participant. If a mediation agreement is reached, only Calgary and Rocky View are required to sign. At the merit hearing, Genesis can make submissions and speak to the agreement. Rocky View proposed that, at the end of the mediation, Calgary and Rocky View would update Genesis on the substance of the agreement and invite input.

Decision on Genesis's Application as an Affected Person and Participation in Mediation

[20] Since the MGB's decision on the affected person application would impact the scheduling of the mediation, the MGB deliberated and announced its decision orally at the December 6, 2017 hearing, stating that its reasons would follow in writing.

2. In addition to being a landowner, Genesis is an affected person.

3. Mediation will occur between Calgary and Rocky View using a process agreed to by both parties. Genesis will not be included in the mediation.

Based on submissions by Rocky View and Genesis, the MGB orders:

4. Genesis will provide information it deems necessary to the mediation to Calgary and Rocky View.
5. Calgary and Rocky View will invite Genesis to a mediation session to provide a summary of the matters discussed in the mediation, allowing Genesis to determine if it is able to proceed with its development.

Further, if this dispute proceeds to merit hearing, Genesis' role as an affected person is the following:

6. (a) Genesis will limit its submissions to the issues raised by Calgary, the appellant municipality.
(b) If Calgary and Rocky View resolve any matters in mediation and withdraw them from the appeal, Genesis may not file submissions on these matters.
(c) When questioning witnesses from Calgary or Rocky View, Genesis is limited to questions of clarification on those matters remaining under appeal in this dispute.

Reasons

[21] Sections 690 and 691 establish that the MGB can hear and decide intermunicipal disputes, but does not describe a hearing process. In 2013, the MGB adopted the Intermunicipal Dispute Procedure Rules (IMD Rules) to provide additional procedures for hearings and for guidance to parties to fulfill its role as an administrative tribunal. The IMD Rules allow for someone who is neither a landowner nor a municipality to apply to the MGB to be considered as an "affected person" to participate in the hearing to the extent consistent with the *Act*. In particular, under Rule 9.1 allows for the MGB to determine affected person status, the extent of their participation in the hearing, and can direct municipalities and affected persons to pursue discussions. Genesis applied to the MGB for status as an affected person in order to participate in the mediation with Calgary and Rocky View.

Why is Genesis, a Landowner, also an Affected Person?

[22] The MGB accepted Genesis' application as an affected person because it owns lands within the OMNI ASP and provided funding to complete technical studies and the OMNI ASP. Genesis wishes to be involved in the proceedings to give perspective on issues raised by Calgary, the appellant municipality in Area Structure Plan. MGB believes that Genesis' perspective on the matters under appeal, which will be helpful to inform the MGB.

Participation in the mediation

[23] Rocky View objects to the full participation of Genesis in the mediation noting that the *Act* requires that the appellant and respondent municipalities attempt mediation. There is no requirement that a landowner attempt mediation. Rocky View is concerned that Genesis' participation in the mediation will increase the complexity, the required amount of time and therefore the cost. Both municipalities were willing at the end of the mediation, to provide Genesis with an overview of the mediation agreement, which would allow Genesis an opportunity to determine the impact of the mediation on its development plan.

[24] When the MGB receives a request for a landowner, or an affected person, to participate in the mediation it canvasses the opinions of the municipalities. The process put forward by the municipalities in this case represents a reasonable balance to allow for Genesis, a landowner, input to the process without introducing new issues that they have no standing to raise in this intermunicipal dispute. There is nothing in this decision, which suggests that being granted affected person status is a prerequisite to enter into mediation, or to limit discussions on other matters that are not in dispute between municipalities, landowners and affected parties.

[25] Affected party status is not a prerequisite to be included in the mediation attempt between the municipalities. Additionally, discussion about topics, which are not part of the dispute, can take place between landowners, affected persons and municipalities at any time.

[26] If Genesis wishes to participate in the hearing as an affected person, the MGB has included directions for their participation.

[27] The panel is not seized with this matter.

Dated at the City of Edmonton, in the Province of Alberta, this 21st day of February, 2018

MUNICIPAL GOVERNMENT BOARD



D. Thomas, Presiding Officer

- cc: K. Cote, City of Calgary
D. Corbin, City of Calgary
S. Baers, Rocky View County
A. Zaluski, Rocky View County
P. Ngo, Alberta Transportation
T. Richelhof, Alberta Transportation
M. Scheidl, Alberta Municipal Affairs
A. Stefaniuk, Genesis Land Development Corporation

Exhibits

- 1A Appeal Submission, City of Calgary**
- 2R Rocky View County Statutory Declaration**
- 3AP Correspondence from Genesis Land requesting Affected Person Status**
- 4AP Submission for Affected Person Status from Genesis Land Development Corporation**
- 5 Suggested Schedule for Mediation Dates, Evidence Exchanges and Merit Hearing Dates**