MGB FILE NO.	**16/IMD-002**	
IN THE MATTER OF	**AN INTERMUNICIPAL DISPUTE FILED PURSUANT TO SECTION 690 OF THE *MUNICIPAL GOVERNMENT ACT*, R.S.A. 2000 CHAPTER M-26 WITH RESPECT TO ROCKY VIEW COUNTY BYLAW NO. C-7468-2015, CONRICH AREA STRUCTURE PLAN**	
INITIATING MUNICIPALITY	**CITY OF CALGARY**	
RESPONDENT MUNICIPALITY	**ROCKY VIEW COUNTY**	
DOCUMENT	**JOINT REBUTTAL SUBMISSIONS OF THE CITY OF CALGARY AND ROCKY VIEW COUNTY**	
FILED BY	**THE CITY OF CALGARY** David Mercer/Melissa Senek 12th Floor, 800 Macleod Tr SE Calgary, AB T2G 2M3 david.mercer@calgary.ca melissa.senek@calgary.ca Phone: 403-268-2453 403-268-2404 Fax: 403-268-4634 File No. P7463-1	On behalf of: **ROCKY VIEW COUNTY** **MLT LLP** Barristers & Solicitors 1600, 520-3RD Ave S.W. Calgary, AB T2P ORC Attention: Joanne M. Klauer jklauer@mlt.com Phone: 403-693-4335 Fax: 403-508-4349 File No. 051525-0133

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I. INTRODUCTION

1. This brief of argument is filed on behalf of the City of Calgary (the "**City**") and Rocky View County (the "**County**") in response to the City of Chestermere ("**Chestermere**") Response to the Joint Submissions of the City of Calgary and Rocky View County, filed on behalf of Chestermere on August 26, 2016.

II. ARGUMENT

A. Prerequisites for a finding of detriment

2. Chestermere argues that, unless there is an "admission of detriment", as claimed in the City's Notice of Appeal, by the County, or a finding of detriment by the Municipal Government Board (the "**Board**") based on evidence adduced during the hearing process, the Board cannot order the County to amend Bylaw C-7468-2015, the Conrich Area Structure Plan (the "**Conrich ASP**") in accordance with the Memorandum of Agreement between the City and the County dated June 17, 2016 (the "**Agreement**").

3. Chestermere bases this argument on the Board's decision in ***Sturgeon (County) Re***, Board Order No. MGB77/98. While the City and County agree that the Board is required to find detriment before ordering amendments be made to the Conrich ASP, the City and County submit that the facts in ***Sturgeon*** are distinguishable from the facts at hand.

4. In ***Sturgeon***, the respondent municipality, Sturgeon County, explicitly took the position that the bylaws in question did not cause any detriment to the appealing municipalities, did not agree that amendments to its bylaws were necessary, and specifically requested that the Board weigh the evidence and determine the question of detriment prior to considering the amendments agreed upon between it and the Town of Morinville.

> ***Sturgeon (County) Re*, Board Order No. MGB 77/98 at p. 26, 55 [City of Calgary and Rocky View County Joint Submissions TAB 5].**

5. The City and the County submit that the facts underlying this Appeal and their joint submissions are more akin to those in ***Sundance Beach (Summer Village), Re***, Board Order No. MGB 065/03. In that case, the Summer Village appealed an area structure plan ("**ASP**") passed by Leduc County ("**Leduc**"). Mediation was launched and was successful, and the

Summer Village and Leduc requested that the Board order Leduc to amend its ASP in accordance with the agreement reached in mediation, without reconvening the hearing and without requiring further submissions from the parties. The Board agreed, finding that, although it had to make a finding of detriment, the agreement between the parties served as proof that the ASP, as originally adopted, was detrimental to the Summer Village:

> By agreeing to amendments to the Area Structure Plan Bylaw, the County and the Summer Village have found a way to resolve their differences and find solutions to the question of detriment through mediation. This fact proves to the MGB that parts of Bylaw 26-02 as originally adopted were detrimental to the Summer Village.
>
> ***Sundance Beach (Summer Village), Re*, Board Order No. MGB 065/03 at p. 3-4 [City of Calgary and Rocky View County Joint Submissions TAB 4].**

6. As in ***Sundance Beach***, the City and the County have asked the Board to implement the terms of the Agreement which set out agreed-upon amendments (the "**Amendments**") to the Conrich ASP, and have asked that the Board make a finding of detriment for this purpose. The City and County submit that, given the authority in ***Sundance Beach***, nothing further or more explicit is required. The City and County further submit that requiring anything further or more explicit on the part of either municipality following a mediated resolution would have a chilling effect on the willingness of municipalities to engage in mediation to resolve intermunicipal disputes which is contrary to the ***Municipal Government Act***'s underlying premise of encouraging intermunicipal cooperation.

7. That being said, in the spirit of intermunicipal cooperation and to provide some comfort to the Board in light of Chestermere's submissions, the City and the County agree, for the purpose of ensuring that the Board can order the Amendments, that the issues raised by the City satisfy the Board's test for detriment as it pertains to the City. This finding of detriment is solely for the purpose of implementing a mediated solution that the parties spent a full week negotiating in good faith and that has been ratified by both municipalities' Councils.

B. Opportunities for general public input

8. The City and the County do not simply "suggest" that affected landowners have the opportunity to make submissions on the Agreement: the Board is required to hear from "the owner[s] of the land that is the subject of the appeal". Despite the clear language of the Act,

Chestermere argues that neither the general public nor affected landowners have the opportunity to make submissions on the Agreement.

> ***Municipal Government Act*, RSA 2000, c M-26, s. 691(2) [City of Calgary and Rocky View County Joint Submissions, TAB 3].**

9. The Board considered the effects of bypassing a public hearing in ***Sundance Beach***, finding that the initial public hearing of the bylaw under appeal satisfied the requirement for general public input on the bylaw. This finding is consistent with Section 690(7) of the ***Municipal Government Act***, which provides that a public hearing is not required when the Board orders that a bylaw be amended pursuant to Section 690.

> ***Sundance Beach (Summer Village), Re*, Board Order No. MGB 065/03 at p. 4 [City of Calgary and Rocky View County Joint Submissions TAB 4].**
>
> ***Municipal Government Act*, RSA 2000, c M-26, s. 690(7) [City of Calgary and Rocky View County Joint Submissions, TAB 3].**

10. In cases where a party may be affected but does not own land in the area affected by a bylaw, the ***Municipal Government Act*** does not preclude the Board from hearing from other parties, such as citizens of the general public of Rocky View County, where the Board thinks it appropriate. Rule 9(f) of the Board's ***Intermunicipal Dispute Procedure Rules*** explicitly contemplates the Board, in a preliminary hearing, determining whether a person is affected by an intermunicipal dispute and the extent to which that person is entitled to participate in the hearings. In the ***Wheatland County v. Kneehill County*** intermunicipal dispute, being Board Order MGB 031/14, the Board granted intervener status to a group of area landowners to participate in the hearing within specified parameters.

> **Municipal Government Board, *Intermunicipal Dispute Procedure Rules* [TAB 1].**
>
> ***Wheatland County v Kneehill County*, Board Order No. MGB 031/14 [TAB 2].**

11. In this particular case, the City's Appeal against the Conrich ASP has been made publicly available on both the City and County's websites since March, 2016 and is well known to the public. Affected parties who are not landowners have had ample opportunity to contact the Board and request standing to make submissions. No one made any such request at the February 29, 2016 preliminary hearing and, to the City's and County's knowledge, no one has made such a request to the Board since the preliminary hearing. Further, no one who is not a

landowner has contacted either the City or the County to make inquiry about making submissions at the September Board hearing.

12. The Agreement was provided to the Board on June 17, 2016 and has been publicly available on both the County's and City's websites ever since. If an affected party requested standing to make submissions at the September, 2016 hearing with respect to the Agreement, the Amendments, or the Appeal generally, it would be well within the Board's jurisdiction to allow such submissions if the Board deemed it appropriate.

13. For the above reasons, the City and County submit that all landowners and other parties who are affected by the Amendments have full opportunity to make submissions on the Amendments if they so choose and the Board so allows.

C. The Amendments fully remedy any detriment to the City

14. As stated in their Joint Submissions, the City and the County submit that the implementation of the Amendments will fully satisfy any detriment to the City caused by the Conrich ASP. The City and County submit that the issues raised by Chestermere respecting the sufficiency of the Amendments are *ultra vires* this Appeal and the Agreement and are more appropriately considered in Chestermere's appeal.

III. CONCLUSION

15. In summary, while not necessary, the City and County agree, in the spirit of intermunicipal cooperation and for the sole purpose of implementing a mediated solution ratified by both municipalities' Councils and resolving this Appeal, that the issues raised by the City in the Appeal satisfy the Board's test for detriment as it pertains to the City. Implementing the Amendments by Board Order rather than through a public hearing of County Council does not negatively impact any affected landowners nor other affected party, as all such parties have the opportunity to make submissions on the Amendments, the Agreement and the City's Appeal in general at the September hearing if they are permitted to do so by the Board. As outlined above, the Board has the full jurisdiction to hear such a request by an affected party and make a ruling with respect to granting the request in full or in part. All other issues raised by Chestermere in its Response are *ultra vires* this Appeal and the Agreement.

All of which is respectfully submitted this 2nd day of September, 2016

Per: _____

David Mercer
Counsel for the City of Calgary

Per: _____

Joanne M. Klauer
Counsel for Rocky View County

Tab 1

Municipal Government Board (MGB)

15th Floor Commerce Place 10155 – 102 Street
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INTERMUNICIPAL DISPUTE PROCEDURE RULES

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Effective January 1, 2013

PREFACE

These *Intermunicipal Dispute Procedure Rules* were established under section 523 of the *Municipal Government Act*. They apply to all intermunicipal dispute appeals filed or still open on or after January 1, 2013 and replace the Board's "Procedure Guide", dated January 2000.

Informal Bulletins explaining hearings and the subject matter they deal with can be found on the Municipal Government Board website:

http://www.mgb.alberta.ca

For further information you can also contact the Board's office at 780-427-4864 (outside Edmonton call 310-0000 to be connected toll free) or email mgbmail@gov.ab.ca.

Purpose of the Rules

The purpose of the *Intermunicipal Dispute Procedure Rules* is to

- Provide information about the steps involved with intermunicipal dispute proceedings before the MGB.
- Ensure a fair, open and accessible process.
- Increase efficiency and timeliness of Board proceedings.

Operating Principles

These *Rules* recognize that municipalities and persons affected by an intermunicipal dispute should have a fair opportunity to voice their concerns to the Board before it makes a decision.

Hearing participants are encouraged to discuss, develop and bring forward mutually acceptable solutions to issues wherever possible.

Part A - Interpretation and Application of these *Rules*

1. Definitions

1.1 "***Act***" means the Alberta *Municipal Government Act,* RSA 2000, c M-26, as amended from time to time.

1.2 "**Affected person**" means a person affected by an intermunicipal dispute who has a right to participate in Board proceedings to the extent permitted under the *Act* and these *Rules*.

1.3 "**Appellant municipality**" means a municipal authority that filed a notice of appeal with the Board pursuant to section 690 of the *Act*.

1.4 "**Board**" means the Alberta Municipal Government Board and includes any panel of the Municipal Government Board.

1.5 "**Board administration**" means staff engaged to support the Board and Chair carry out their duties.

1.6 "**Board member**" means a member of the Board appointed by the Lieutenant Governor in Council pursuant to section 486 of the *Act*.

1.7 "**Case manager**" means a board member or member of the board administration designated by the Chair as such.

1.8 "**Chair**", for the purposes of these *Rules*, means the person to whom the powers of the Administrator have been delegated under section 486(4) of the *Act*.

1.9 "**Days**" means calendar days.

1.10 "**Panel**" means a panel selected pursuant to section 487 of the *Act*.

1.11 "**Person**" includes a natural person, government agency, corporate or other legal entity.

1.12 "**Respondent municipality**" means a municipality whose by-law has been appealed by an appellant municipality.

1.13 "***Rules***" mean these *Intermunicipal Dispute Procedure Rules*.

2. *Application of These Rules*

2.1 Subject to Rules 2.2 and 2.3, these *Rules* apply to any intermunicipal dispute proceeding before the Board pursuant to Part 17, Division 11 of the *Act*.

2.2 These *Rules* apply only to the extent they are consistent with the *Act* and regulations made under the *Act*.

2.3 The Board may give specific procedural directions which, to the extent of those directions, waive or modify the *Rules* for any given case.

3. *Effect of Non-compliance*

3.1 If a person fails without reasonable excuse to comply with these *Rules* or with an order of the Board, the Board may

(a) Limit or bar the presentation of evidence or argument or give it less weight, where the person has disregarded a Rule or Board decision concerning disclosure or exchange of evidence or argument,

(b) Order the non-complying person to reimburse another person for costs incurred as a result of the non-compliance, or

(c) Take any other action it deems appropriate.

Part B – Communication with and Representation before the Board

4. *Communication with the Board*

4.1 Unless made during a hearing, preliminary hearing, or prehearing conference, communications with the Board about specific ongoing proceedings must be made through the Board administration.

4.2 The Board administration may copy correspondence received to other persons in order to facilitate Board proceedings.

5. *Representation* 5.1 Persons who participate in Board proceedings may represent themselves or be represented by another person.

5.2 Upon the Board's or the Board administration's request, a person who acts for another person must provide

(a) Proof of authorization to act for the other person, and
(b) An address for service

by the date requested by the Board or the Board administration.

Part C – Procedures for Filing Intermunicipal Disputes

6. *Notice of Appeal* 6.1 The notice of appeal and statutory declaration to be filed with the Board under section 690(1)(a) of the *Act* may be made using the forms attached to these *Rules* as Appendix "A" and must be accompanied by

(a) A copy of the written notice of concern sent to the adjacent municipality prior to second reading under section 690(1).

7. *Response to Notice of Appeal* 7.1 The statutory declaration required from the respondent municipality under section 690(3) of the *Act* may be made using the form attached to these *Rules* as part of Appendix "A".

Part D – Case Management and Preliminary Hearings

8. *Case Management* 8.1 A case manager may do one or more of the following:

(a) Direct the appellant municipality, respondent municipality or one or more affected persons to

(i) Clarify or focus the issues in dispute.

(ii) Identify any relevant agreed facts.

(iii) Identify any witnesses to be called and provide a summary of the evidence intended to be introduced through those witnesses.

(b) Provide the appellant municipality, respondent municipality or one or more affected persons with copies

of correspondence received, decisions, authorities and other information relevant to a dispute.

(c) Direct an appellant municipality or respondent municipality to provide any affected person with access to a notice of appeal or statutory declarations required under section 690.

(d) Direct disclosure of further material or information from the appellant municipality, respondent municipality or one or more affected persons to facilitate a fair, orderly and timely hearing process or to promote compliance with these *Rules*.

(e) Establish or reschedule dates for hearings, disclosure or exchanges of information.

(f) Hold meetings or discussions with the appellant municipality, respondent municipality or one or more affected persons to facilitate any of the above.

(g) Refer any matter to a panel for a preliminary hearing.

8.2 A municipality or affected person who disagrees with a case manager's directive may request a preliminary hearing.

8.3 A Board member who has acted as a case manager in respect of a matter will not participate in any subsequent hearing concerning the same matter unless all affected participants consent.

9. Preliminary Hearings

9.1 At a preliminary hearing, the Board may do one or more of the following:

(a) Direct the appellant municipality, respondent municipality or one or more affected persons to pursue discussions on their own, with a case manager, or with another independent facilitator by specified dates and monitor the progress of such discussions.

(b) Establish dates for hearings.

(c) Determine whether further disclosure is required and direct the appellant municipality, respondent municipality or one or more affected persons to provide or expand particulars, evidence summaries, legal analyses, authorities, or any other relevant documents or material.

(d) Give directions for disclosure or exchange of material, including the timing for production of material, the persons to whom the material must be produced, measures to protect confidential information, and any further directions it deems necessary.

(e) Determine whether procedures, filing or disclosure requirements established by legislation or the Board have been met and determine the effects of any defects.

(f) Determine whether a person is affected by an intermunicipal dispute and the extent to which that person is entitled to participate in the proceedings.

(g) Determine what matters are properly before the Board or whether one or more grounds of appeal should be struck out as frivolous or not reasonably supportable.

(h) Determine requests for postponements, withdrawals, or joint recommendations.

(i) Make any order it deems appropriate to establish procedures by which a hearing may proceed in a fair and expeditious manner.

9.2 Board members who have heard or participated in a panel for a preliminary hearing may also hear or participate in panels for any subsequent hearings concerning the same proceeding if so scheduled by the Chair.

Part E - Prehearing Submissions and Disclosure

10. Disclosure

10.1 Municipalities and affected persons must disclose or exchange any material required under Rules 8 or 9 as directed by a case manager or the Board.

10.2 Unless it grants special permission, the Board will not accept written material filed after it has convened to hear oral submissions.

11. Form of Documents

11.1 Material filed must be clear and understandable. All pages must be numbered consecutively throughout the entire text and graphic content, even if there are dividers or tabs.

11.2 Unless otherwise directed by a case manager or the Board, parties must file eight (8) hard copies of their material with the Board.

11.3 Documents may be filed electronically with the permission of the Board or a case manager.

11.4 The Cover Page in Appendix "B" may form the first page of each disclosure document filed with the Board.

Part F – Orders for Further Disclosure or to Protect Confidential Information

12. Orders for Disclosure

Sharing information before the hearing prevents surprise, encourages resolution through discussion, and facilitates efficient presentations to the Board

12.1 After reviewing the material provided under Rule 10.1, an affected person, appellant or respondent municipality may request in writing that the Board issue an order for further disclosure. Such a request must

(a) Identify as precisely as possible the information or material required and the issue(s) to which it relates,

(b) Provide details explaining how the disclosure requested may be relevant to the issue(s) before the Board, and

(c) Identify the person who will be required to disclose the information.

12.2 When entertaining a request made under this Rule, the Board may consider whether

(a) The material requested should have been disclosed under these *Rules*, a preliminary hearing decision, or other legal requirement;

(b) The material requested is

(i) Within the control of another person,

(ii) Not readily available from another source,

(iii) Potentially relevant to the proceedings before the Board, and

(iv) Reasonably required by the person requesting the information to make their own submissions.

12.3 After considering a request under this Rule, the Board may

(a) Order disclosure within a specific time of all or some of the material requested by the other person, with or without conditions, including conditions to protect any confidential information.

(b) Refuse to order disclosure of the information requested.

(c) Give any other direction it deems to be appropriate.

13. Disclosure of Confidential Information

13.1 Upon request, the Board may make any order it deems appropriate to help protect the confidential nature of information contained in documents filed with it.

Sealing Orders

13.2 An order under Rule 13.1 may include a sealing order restricting public access to certain Board records (or parts thereof), subject to any overriding legal requirement to disclose them.

Confidentiality on Production of Documents

13.3 Where the Board determines that information in documents containing confidential or sensitive material must be disclosed to another person, the Board may, if it deems it appropriate

(a) Order the first person to make and disclose a non-sensitive summary or extract of the original.

(b) Order the material to be provided to the other person subject to a signed undertaking satisfactory to the panel.

(c) Order restrictions on the use of information by observers to a hearing where confidential information is presented.

(d) Make any other arrangement suitable in the context of an open hearing to allow access to the information without unnecessarily compromising its sensitive nature.

Part G - Withdrawals, Agreements, and Postponements

14. Withdrawals

14.1 An appellant municipality may request to withdraw an appeal that it initiated before the Board.

14.2 Subject to waiver from the Board or Board administration, a person who submits a withdrawal request either

(a) After the hearing has been advertised, or

(b) After notices of the hearing have already been distributed

shall appear on the scheduled date to explain the reason for the late withdrawal.

15. Agreements

15.1 Where two or more municipalities or affected persons reach an agreement concerning an issue before the Board, they may provide the Board with a notice of agreement.

15.2 Agreements are to be submitted to the Board in writing.

15.3 The Board may accept or reject an agreement, or ask for supporting information.

15.4 Subject to waiver from the Board or a case manager, parties must be prepared to proceed at the scheduled hearing date to explain the agreement and to provide other submissions as may be required.

16. Postponements

16.1 A request to postpone a scheduled hearing must

(a) Include reasons for the postponement,

(b) Suggest suitable replacement dates for the hearing, or in the case of a request for postponement sine die, include reasons why a specific date cannot be identified,

(c) Be communicated to the Board as soon as the need arises.

16.2 The Board may consider the following factors as relevant to deciding postponement requests:

(a) Whether the request is based on

(i) a serious impediment to the attendance of a principal hearing participant, witness or agent, such

as illness, injury or impassable weather conditions, or

(ii) a serious issue affecting the fairness of the Board's proceedings.

(b) The degree and likelihood of prejudice or cost to other persons if the request is granted and to the person seeking the postponement if the request is denied.

(c) The number of persons affected by the delay and whether they have consented to the postponement.

(d) The likelihood of unreasonable disruption to the Board's schedule.

(e) Where the request is based on relevant pending Board or Court decisions

(i) Whether the decision(s) is expected within 30 days, and

(ii) Whether the relevant proceedings have been pursued expeditiously.

(f) Legislated timelines for hearings and decisions.

(g) Any other factor the Board deems relevant.

16.3 Subject to waiver from the Board or Board administration, all hearing participants must be prepared to proceed at the hearing date scheduled in case the request is not granted.

Late Postponement Requests

16.4 Subject to waiver from the Board or Board administration, a person who submits a postponement request either

(a) After the hearing has been advertised, or

(b) After notices of the hearing have already been distributed

shall appear on the scheduled date to explain the reason for the postponement request.

Part H - Hearing Procedures

17. *Location of Hearings*

17.1 Hearing locations will be determined having consideration for the convenience and cost to those attending the hearings and to the Board.

18. *Mode of Hearings*

18.1 At the discretion of the Board, hearings may be conducted by way of

(a) An in-person hearing.

(b) A telephone or other form of electronic conference.

(c) Written materials and submissions delivered to the Board.

(d) Any combination of (a), (b) or (c) or any other means a panel or case manager deems appropriate.

19. *Cost of Participation*

19.1 Subject to an award for costs under Part J, persons who participate in Board proceedings do so at their own expense.

20. *Identification of Participants and Notice of Oral Submissions*

20.1 A panel or case manager may make any arrangements they deem necessary to identify all participants at a hearing and ensure an orderly hearing process.

20.2 Subject to waiver from the panel, persons intending to make oral submissions at a hearing must notify the case manager of their intent within a reasonable time before the hearing begins.

21. *Recording of Proceedings*

21.1 No person shall make an audio, video, photographic or other electronic record of Board proceedings or a verbatim record without obtaining permission from the Board prior to the hearing.

21.2 If the Board permits a party to make a verbatim record of the proceedings, the Board is to receive paper and electronic copies of the record, as applicable, at no cost to itself and the Board may apply one or more of the following conditions:

(a) The costs of transcription, including expedited transcription if requested by the Board, and copies for the Board are to be borne by the person who requested the record, unless others agree to share the costs.

(b) Other persons specified by the Board are to receive

additional copies of any transcription or recording, provided they cover the cost of the copies they receive.

(c) The process of recording or transcription will not interrupt the orderly conduct of Board proceedings.

(d) The recording or transcription proposed will be, in the view of the panel, of sufficient accuracy.

(e) Any other condition the Board finds appropriate.

21.3 The Board may provide for the recording of its own proceedings where

(a) A transcript may be requested by the Court of Appeal under section 688 of the *Act*, or

(b) The Board otherwise deems it necessary to do so.

21.4 The Board will not provide access to recordings or transcripts made under Rule 21.3(a) except as necessary to fulfill its responsibility under section 688 of the *Act* or other legal requirement including freedom of information and protection of privacy legislation.

Part I - Recusal of Panel Members

22. *Withdrawal of Panel Members Owing to Apprehension of Bias*

22.1 Where a panel member becomes aware of circumstances that he or she believes may raise a reasonable apprehension of bias, that member will

(a) Disclose the circumstances and withdraw from the panel, or

(b) Disclose the circumstances and give the affected parties an opportunity to either

(i) Waive any objection to the member sitting on the panel, or

(ii) Give reasons as to why the panel member should or should not withdraw.

22.2 A appellant or respondent municipality or an affected person may ask a panel member to withdraw because of a reasonable apprehension of bias. A person who makes such a request

must do so as soon the circumstances giving rise to it become known and must provide reasons for the request.

22.3 Where a member has been asked to withdraw, the panel will give an opportunity to the appellant municipality, respondent municipality and any other affected person it deems to have a sufficient interest to address the question of whether the circumstances raise a reasonable apprehension of bias.

22.4 The decision to grant or dismiss a request to withdraw because of an apprehension of bias must be made by the member in question.

22.5 A panel member may confer with other panel members before deciding whether to withdraw.

22.6 A panel from which one or more members has withdrawn may

(a) Proceed to hear the matters before it, subject to the existence of a quorum as defined in section 489 of the *Act*, or

(b) Adjourn or make arrangements to reschedule a matter so that it may be heard by a full panel.

Part J - Post-Hearing Procedures

23. Costs

See Section 501

23.1 When determining whether to award costs, the Board may consider whether the person(s) against whom they are to be awarded

(a) Has abused the Board's process.

(b) Has acted contrary to an agreed-upon or Board-directed process.

(c) Has caused unreasonable delays, postponements, or expense.

(d) Has acted unreasonably or engaged in conduct worthy of an order to reimburse another person for costs and expenses incurred as a result of that conduct.

23.2 Where the Board does not otherwise direct, a request for costs must

(a) Be filed with the Board no later than 30 days after the date of the Board's decision.

(b) Specify the total sum sought for costs together with a description of how the amount is calculated and an itemized list of any expenses sought to be recovered.

(c) Specify the reasons why an award of costs is appropriate in the circumstances.

24. Rehearings/ Reviews

Application Process

24.1 A request may be submitted to the Board in writing to rehear, review, vary or rescind any matter or decision under the discretionary power granted by section 504 of the *Act*.

24.2 A request under this Rule must include

(a) A detailed statement explaining how the request meets the grounds for a rehearing or review listed under this Rule; and

(b) The following background information:

(i) Name of the applicant.

(ii) Board decision number.

(iii) Address, phone number and contact persons for the appellant and respondent municipalities.

24.3 Requests must be made no later than 30 days following the date of the decision.

24.4 After a request is filed pursuant to this Rule, the Chair may

(a) Refer the matter to a case manager for case management,

(b) Refer the request to the panel that originally heard the matter for further directions, final determination, or both, or

(c) Refer the request to a new panel for further directions, final determination, or both.

Grounds for

24.5 The Board may exercise its power under section 504 of the *Act*

a Rehearing or Review

in the following circumstances:

(a) New facts, evidence or case-law that was not reasonably available at the time of the hearing, and that could reasonably have affected the decision's outcome had it been available,

(b) A procedural defect during the hearing which caused prejudice to one or more of the parties,

(c) Other material errors that could reasonably have changed the outcome of the decision, or

(d) Any other circumstance the Board considers reasonable.

24.6 The following are generally not sufficient grounds to grant a rehearing or review:

(a) Disagreement with a decision.

(b) A party's failure to provide evidence or related authorities that were reasonably available at the time of the hearing.

25. *Access to Board Decisions*

25.1 The Board may publish its reports or have them published in any form, including posting them on the Internet.

26. *Access to other Board Records*

26.1 The Board will not make will not make available a filed notice of appeal or statutory declarations required under section 690 that can be viewed at the initiating or responding municipality.

26.2 Other records that have been filed with the Board for an intermunicipal dispute will be made accessible for viewing at the MGB office in Edmonton, subject to

(a) Restrictions imposed by Board orders, freedom of information and protection of privacy legislation or other legal restrictions, and

(b) Payment of any prescribed fee if copies are required following viewing.

Appendix "A"

Notice of Appeal for Intermunicipal Dispute Form

Statutory Declaration Form

Municipal Government Board (MGB)

RETURN TO:
Municipal Government Board
15th Floor Commerce Place 10155 – 102 Street
Edmonton AB T5J 4L4
Telephone: 780-427-4864 Fax: 780-427-0986
Email: mgbmail@gov.ab.ca
Web URL: http://www.mgb.alberta.ca

Notice of Appeal for Intermunicipal Dispute

As per section 690(1) of the *Municipal Government Act* (*Act*), a municipality that

1. 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,
2. has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, and
3. is attempting or has attempted to use mediation to resolve the matter

may appeal the matter to the Municipal Government Board. A statutory declaration indicating the status of mediation must accompany this Notice of Appeal. The Notice of Appeal and Statutory Declaration must be filed with the MGB within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw.

Part 1 – General Information – Please Print

APPELLANT MUNICIPALITY

Name of Municipality				Telephone Number
Designated Contact			Position *(e.g. C.A.O.)*	
Address *(Street, PO Box, RR)*	*(Town/City/Village)*		*(Province)*	*(Postal Code)*
E-mail Address				Fax Number

AGENT INFORMATION AND CERTIFICATION (if Appellant is Represented by a Lawyer/Agent)

Name of Firm				
Designated Contact		*(Last) (First)*		Telephone Number *(daytime)*
Address *(Street, PO Box, RR)*	*(Suite, Apartment)*	*(Town/City/Village)*	*(Province)*	*(Postal Code)*
E-mail Address				Fax Number

ADJACENT MUNICIPALITY

Name of Municipality				Telephone Number
Designated Contact *(e.g. C.A.O.)*				
Address *(Street, PO Box, RR)*	*(Town/City/Village)*		*(Province)*	*(Postal Code)*
E-mail Address				Fax Number

Part 2 – Owner(s) of Land that is the Subject of the Appeal

(If more than one owner, please attach list of the names and addresses of each landowner of any land that will be directly affected by this appeal)

Name *(Last)*	*(First)*	Telephone Number *(daytime)*
Address *(Street, PO Box, RR)* *(Suite, Apartment)* *(Town/City/Village)*	*(Province)*	*(Postal Code)*
E-mail Address		Fax Number

Part 3 – Bylaw Information *(all to be completed)*

Please indicate which bylaw is under appeal	
Date bylaw received second reading	Date bylaw passed

Please attach a copy of the notice sent to the municipality prior to the second reading.

Part 4 – Reasons for Appeal

Indicate the specific provisions appealed and the reasons you think they are detrimental (attach more pages as necessary).

.....

.....

.....

.....

.....

Signature of Appellant OR
Person Authorized to Act on Behalf of Appellant

Date

This information is being collected for the purposes of setting up appeal hearings in accordance with Section 33(c) of the Freedom of Information and Protection of Privacy Act. The contact information you provide may also be used to conduct follow-up surveys designed to measure satisfaction with the appeal process. Questions about the collection of this information can be directed to Alberta Municipal Affairs, Municipal Government Board, 15th Floor, Commerce Place, Edmonton, Alberta T5J 4L4 780-427-4864. (Outside of Edmonton call 310-0000 to be connected toll free)

Municipal Government Board (MGB)

RETURN TO:
Municipal Government Board
15th Floor Commerce Place 10155 – 102 Street
Edmonton AB T5J 4L4
Telephone: 780-427-4864 Fax: 780-427-0986
Email: mgbmail@gov.ab.ca
Web URL: http://www.mgb.alberta.ca

Statutory Declaration
(Intermunicipal Dispute Appeal)

I _____ **of** _____ **DO SOLEMNLY DECLARE THAT:**
(Name)

1. _____ wishes to file an Appeal with the
(Appellant Municipality)

Municipal Government Board concerning _____, and that
(Bylaw provision under appeal)

2. I am the _____ of the _____, and that
(Position) (Appellant Municipality)

3. (*Please choose one of the following*)

(a) Mediation with (adjacent municipality) was not undertaken ☐

(b) Mediation was undertaken but was not successful ☐

(c) Mediation is ongoing and the appeal is being filed to preserve the right of appeal ☐

4. And further, the reasons why mediation was either not undertaken or not successful are as follows in Attachment "A" (*please tick N/A if option (c) was selected*), ☐ N/A

AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND KNOWING THAT IT IS OF THE SAME FORCE AND EFFECT AS IF MADE UNDER OATH.

_____ _____
(Signature of Appellant OR Person Authorized to Act on Behalf of Appellant) (Print Name)

DECLARED BEFORE ME AT _____

In the Province of Alberta, this _____ day

of _____, 2_____

_____ _____
(Commissioner for Oaths) (Print Name)

_____
(Expiry Date of Commission)

This information is being collected for the purposes of setting up appeal hearings in accordance with Section 33(c) of the Freedom of Information and Protection of Privacy Act. The contact information you provide may also be used to conduct follow-up surveys designed to measure satisfaction with the appeal process. Questions about the collection of this information can be directed to Alberta Municipal Affairs, Municipal Government Board, 15th Floor, Commerce Place, Edmonton, Alberta T5J 4L4 780-427-4864. (Outside of Edmonton call 310-0000 to be connected toll free)

Appendix "B"

Cover Page

MGB FILE NO.	
IN THE MATTER OF	AN INTERMUNICIPAL DISPUTE
INITIATING MUNICIPALITY	
RESPONDENT MUNICIPALITY	
DOCUMENT	
NAME (ORGANIZATION) ADDRESS FOR SERVICE EMAIL TELEPHONE (FOR PERSON FILING THIS DOCUMENT)	

RECEIVED

EXHIBIT NO._____

FOR MGB USE ONLY

Tab 2

2014 ABMGB 31
Alberta Municipal Government Board

Wheatland County v. Kneehill County

2014 CarswellAlta 1519, 2014 ABMGB 31, [2014] A.W.L.D. 4147, [2014] A.W.L.D. 4148

In the Matter of the Municipal Government Act being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act)

In the Matter of an Appeal pursuant to Section 690 of the Act by Wheatland County respecting the adoption of Bylaw No. 1657 by Kneehill County on January 14, 2014

T. Golden Presiding Officer, M. Axworthy Member, R. McDonald Member

Heard: June 25, 2014
Judgment: August 28, 2014
Docket: 031/14

Counsel: J. Klauer, for Appellant
B. Barclay, for Respondent

Subject: Civil Practice and Procedure; Public; Municipal

Headnote

Municipal law — Planning appeal boards and tribunals — Practice and procedure — Standing

Municipal law — Planning appeal boards and tribunals — Practice and procedure — Hearing — Miscellaneous

Table of Authorities

Statutes considered:

Municipal Government Act, R.S.A. 2000, c. M-26
s. 488(1)(j) — referred to

s. 488.01 [en. 2009, c. A-26.8, s. 83(2)] — referred to

s. 523 — referred to

s. 617 — considered

s. 641 — considered

s. 690 — considered

s. 691 — referred to

s. 691(2) — considered

***T. Golden Presiding Officer*:**

1 This is an interim decision of the Municipal Government Board (MGB) from a preliminary hearing held in the Town of Drumheller on June 25, 2014, to receive an update on the mediation process, establish merit hearing dates, and determine the standing of interested ratepayers.

Overview

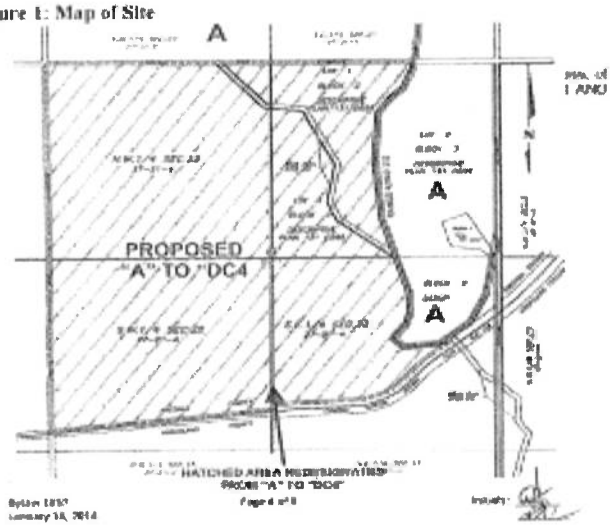
2 Although the parties are still discussing the matters under dispute, they agreed that a merit hearing should be scheduled since they have not yet reached an agreement. The Appellant, Wheatland County (Wheatland) wishes to prepare further submissions about traffic impacts and the Respondent (Kneehill) will need time to comment. The MGB selected November 17, 2014 for the merit hearing to begin.

3 A group of area landowners (Ratepayers) also requested intervener status. The MGB permitted the Ratepayers to participate, provided their submissions are limited to the issues raised by the municipalities, who are the main parties in this dispute.

Background

4 As described in MGB DL 017/14, Wheatland has filed an inter-municipal dispute related to Kneehill's Bylaw No. 1657 (DC4 Bylaw), which it claims has or may have a detrimental effect upon it. The gist of Wheatland's complaint is that the roadway analysis required in the DC4 Bylaw does not provide clarity as to how the anticipated racetrack development will affect road access, what upgrades may be necessary and who will be responsible to pay for them. The proposed site is illustrated in the map below:

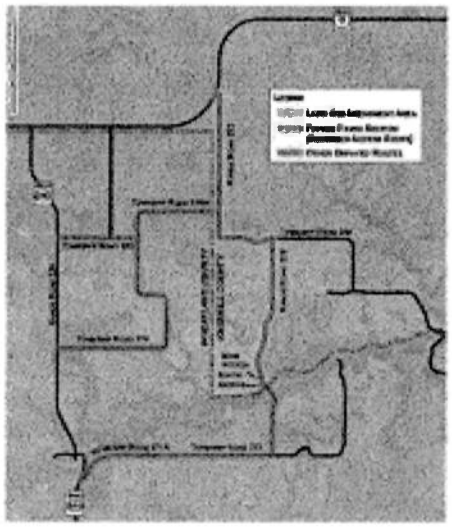
Figure 1: Map of Site



Graphic 1

Additional Information: Access Roadways

5 In the interests of clarity, the MGB requested an additional map prior to the current preliminary showing the existing traffic routes into the area. The map, produced by Watt Consulting Group, is reproduced below:



Graphic 2

Preliminary Hearings

6 A preliminary hearing occurred by teleconference on March 26, 2014 to open proceedings, determine if negotiation had commenced, and set a hearing date. At that hearing, Wheatland advised that the parties believed a Transportation Impact Assessment (TIA) might resolve the dispute and were preparing a joint term of reference to this end. The parties anticipated that the Landowner would have a TIA prepared by May, and asked for another preliminary in late June to let these activities occur. Accordingly, DL 017/14 set this preliminary for June 25, 2014.

Wheatland Report on Submission

7 A TIA was completed in due course and negotiation has continued between the two municipalities and the Landowner. However, on June 11, 2014, Wheatland stated that the study failed to include the requested analysis of the intersection between Township Road 274 and Range Road 220. Wheatland also advised it was prepared to withdraw its appeal, subject to:

a) Provision of analysis on the intersection from the Watt Consulting Group (Watt), and

b) Kneehill and the Developer agreeing to develop the main access to the site in the TIA.

Negotiation Status Report

8 On June 18, 2014, Wheatland confirmed acceptance of the TIA; however, it remained concerned that the Area Structure Plan (ASP) and DC4 Bylaw do not require compliance with the TIA, which bases its conclusions on the premise that the Landowner will pave and erect signage directing traffic to the primary access (Primary Access) from Highway 9.

9 To address these concerns, Wheatland requested that Kneehill amend the DC4 Bylaw to require construction of the Primary Access according to the Watt TIA as a condition of any development or subdivision approval. However, Kneehill's position is that amending the DC4 Bylaw is inappropriate, and that the matter can still be addressed as a condition of development or subdivision approval. The Landowner advised that Kneehill, as the development or subdivision authority, will address TIA recommendations in any application, at which point Wheatland will still have an opportunity to comment.

Affected Landowners (Ratepayers)

10 On June 23, 2014, MGB administration received a written request from counsel for a group of landowners (Ratepayers), requesting an opportunity to be heard. The MGB provided the Ratepayers with an agenda for the June 25, 2014 preliminary hearing along with some supporting materials. The TIA was not included as it was prepared by the Landowner and had not yet been accounted for as a submission.

11 In their written request, the Ratepayers stated that they wished to be heard on the following:

> 1. The ASP and DC Bylaw are drafted such that there is no assurance that the developer will be responsible for the cost of roadways required to give access to the development (Section 650 and 655 of the MGA) and, in the absence of a completed TIA, there is no realistic method of assessing those liabilities. That is a potential "detriment" to the MD of Wheatland and its Ratepayers - some of whom we (Municipal Counsellors Inc.) represent;
>
> 2. The access roadways will have to be expanded and upgraded within the Rosebud River Valley which has been recognized as an environmentally significant area by Kneehill County. Adverse impacts on water bodies are detrimental to all Albertans, including the residents of Wheatland County. Without a completed TIA there is no ability to assess whether any roadway alterations will be done in the least environmentally disruptive manner possible, which is a detriment to residents of Wheatland County.

Issues

1. What information is required to proceed to a merit hearing?

2. What are possible dates, and how much time is needed for a merit hearing?

3. What, if any, standing should the Ratepayers receive?

Summary of Wheatland's Position

Issues Outstanding

12 Wheatland reiterated its position that the text of the DC4 Bylaw should be amended to set the Primary Access as the route in the Watt TIA and that the TIA requirements should apply to any development or subdivision on site. Section 641 of the Act establishes what can be included in a direct control bylaw, and it is permissible to designate an access route and standards.

Merit Hearing Dates

13 Wheatland requested time to retain a traffic engineer to perform their own TIA or analyse the Watt TIA to assess the impact if a primary access road is not established. Three months, or September 26, 2014, could be an appropriate time for this activity to occur. At the merit hearing, they expect to call one or two witnesses.

14 If the merit hearing were to occur during the week of November 17, 2014, Wheatland suggested that information exchanges begin on September 26, 2014. Kneehill and the Landowner would respond to Wheatland's submissions by October 24, 2014. Rebuttal would take place on November 7, 2014. These dates were not discussed with the other parties.

Standing of Ratepayers

15 Wheatland does not object to the request by the Ratepayers to have limited status to participate in the hearings. The Ratepayers are strongly impacted by road usage, which is central to this dispute.

Summary of Kneehill's Position

Issues Outstanding

16 Kneehill's position is still that the amendment of the bylaw is inappropriate under current circumstances. Alternatives have been discussed and further negotiation is possible. The main issue is now "What will happen with the routing of traffic from the site?"

Merit Hearing Dates

17 One month should be ample time to consider the issue with the existing TIA.

18 It would be inappropriate to give Wheatland three months to produce a TIA, while giving Kneehill only one month to respond. If Wheatland is to produce its own TIA evidence, this should be submitted by the beginning of September. The response date of October 24, 2014 is acceptable, as is Wheatland's suggested merit hearing date.

19 Kneehill anticipates calling up to three witnesses and suggests three days for the merit hearing.

Standing of Ratepayers

20 Kneehill County is opposed to the Ratepayers receiving intervener status in this dispute. Drawing the MGB's attention to Section 690 of the Act, Kneehill argued that a dispute is between two municipalities. Further, Section 691(2) states "The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal." The right to call evidence is different than the ability to make submissions.

21 Intervener status has not previously been granted in an intermunicipal dispute. Kneehill had no objection to the Ratepayers receiving notice of appeal and attending the hearing to make submissions on the issues under dispute, but they should not receive intervener status. Citing Rule 9F of the MGB Intermunicipal Dispute (IMD) Procedure Rules, Kneehill noted that the MGB can determine the effect and extent to which the Ratepayers can participate in the hearing. Kneehill does not object to the Ratepayers being provided copies of submissions and being allowed to respond by the Rebuttal date put forward by Wheatland. However, the response should be limited to the issues of detriment set out by Wheatland.

Summary of Landowner's Position (Badlands)

22 Counsel for the Landowner stated that his client is aware that, in a dispute, the Landowner does not have the same standing as the two municipalities. The Landowner is serving as a resource through this process, supporting the municipalities to proceed with the dispute in a timely manner. The TIA was prepared by the Landowner to help facilitate the negotiation process and focus the discussion. In response to the Ratepayers request for a copy of the TIA, the Landowner provided one to the Ratepayers' counsel.

Information Requirements and Time Requested

23 The Landowner does not have any objection to the proposed information exchange dates or the merit hearing. The TIA can be peer reviewed, but the Landowner feels that the report has refined the issues under appeal. The Landowner submits that this process has taken time and any effort which would expedite the hearing process is appreciated.

Standing of Ratepayers

24 The Landowner does not object to the Ratepayers being informed about the dispute but opposes the Ratepayers being given standing as interveners. Intermunicipal disputes are between municipalities. Ratepayers, as residents of the municipalities, are included in the process. Disputes are about detriment to the municipality, not detriment to the individual. Detriment is about balancing public good and individual rights as set out in Section 617 of the Act. The Landowner accepts that the Exhibit 6 map defines the area around the site where the Ratepayers live or own land.

25 Section 690 defines a party for the purposes of an intermunicipal dispute. Even the Landowner has only a peripheral role in an intermunicipal dispute, as the dispute and the issues of detriment are between Kneehill and Wheatland. Finally, everything before the MGB in this dispute has had a public hearing where the Ratepayers have had the opportunity to speak.

Summary of Ratepayers' Position

Standing

26 The Ratepayers seek to participate in the hearing and request intervener status as allowed at hearings before what was previously the EUB (Energy and Utilities Board).

27 The IMD Procedure Rules recognize principles of Natural Justice and contemplate an opportunity for Ratepayers to be heard. As the most affected people, and as users of the roads, the Ratepayers would like access to the documents in the hearing, including the TIA, in order to make submissions. To illustrate the properties belonging to the Ratepayers, a photograph was produced showing lands owned by the Ratepayers and the land affected by Bylaw 1657.

28 The Ratepayers have two concerns: first, the ASP and DC bylaws give no assurance that the developer "will be responsible for the cost of roadways required to give access to the development"; second, expansion and upgrading of the access roadways will impact the Rosebud River Valley. Intervener status or similar is requested to receive all the information distributed between the parties, and to be given an opportunity to make submissions.

29 While an inter-municipal dispute is a dispute between municipalities, Section 690 does not restrict the participants. Although public hearings have occurred for both the DC4 and BMR Area Structure Plan, the public is satisfied neither with the outcome of the hearings nor with the adoption of the bylaws.

30 There are only limited opportunities for the landowners to express their opinions and be heard. As some of the most affected people and as users of the roads they should be able to have access to the documents used in the dispute. The Ratepayers request they be able to attend the hearing and have some latitude to present limited evidence. In particular, they would like to include a biologist to review the TIA, as they are concerned about the impact of the roads.

Findings

1. Does the Bylaw give sufficient clarity about:

    a. to what extent will roads within Wheatland be used to access the proposed development?

    b. to what extent will road upgrades be necessary within Wheatland, and who is to pay for them?

2. Wheatland requires additional information about the access routes.

3. Ratepayers are frequent users of municipal roads who must ultimately pay for their upkeep; they are affected to that extent by the issues raised in this inter-municipal dispute.

4. Adverse effects on biology were not raised as a source of detriment in this dispute, and are not at issue before the MGB.

5. The ratepayers should have access to information about this dispute.

Decision

31 Upon hearing the positions of the parties at the hearing, their agreement on the matters above, and noting that the negotiation process continues, the MGB makes the following decision:

32 The merit hearing is scheduled for *Monday, November 17, 2014* at *10:00 a.m.*, and will *continue on November 18 and 19th starting at 9 a.m. (if needed)*. The location of the merit hearing will be confirmed by MGB administration and a notice will be sent to both municipalities, the Landowner, and Counsel for the Ratepayers. Notice of the hearing is to be posted on both Kneehill and Wheatland County's websites.

33 The MGB sets the following timeline for information exchange, reporting, and merit hearing:

Date and Time	***Action***
Friday, September 12, 2014	Wheatland County Submissions
Friday, October 24, 2014	Kneehill County's Response, Landowner's Response
Friday, November 7, 2014	Rebuttal by Ratepayer and Wheatland
Monday, November 17, 2014	Hearing

34 All submissions are due no later than *12:00 noon* on the dates noted. Electronic submissions may be made available to all parties. The MGB's submissions are to be emailed to mgbmail@gov.ab.ca. Five hard copies (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 both municipalities, the Landowner and the Counsel for Ratepayers within three (3) business days.

Will-say statements are to be provided to all parties using the above submission criteria for any witnesses called.

35 The municipalities must post a hearing notice provided by the MGB on their municipal websites. Any municipal submissions noted above are to be posted on their respective municipal websites for public viewing within three (3) business days of their respective due date.

Standing of Ratepayers

36 Ratepayers may participate at the hearing within the following parameters:

- Submissions at the merit hearing will be made through a single spokesperson. Others in attendance may then make additional points provided they relate to appropriate issues and do not repeat prior points.
- Submissions are limited to issues under dispute as set out above. These issues do not include the biological or environmental impact of traffic changes.
- Ratepayers' submissions to the MGB will be due on the rebuttal date on November 7, 2014.
- The MGB will provide copies of previous submissions to the Ratepayers.

Court Reporter Requirement

37 The two municipalities, Kneehill and Wheatland, will be responsible for retaining the services of a court reporter for the merit hearing. The cost associated with retaining the court reporter will be shared equally between the municipalities. Written transcripts must be provided to the MGB at no cost to the Board.

Reasons

38 The MGB appreciates that ongoing discussions have taken place between the parties, and there has been significant progress toward resolving the dispute. Wheatland remains concerned that the TIA does not answer its questions about access routes to the site. In addition, since the TIA is not included within the DC4 Bylaw, there remains a concern that the proposed upgrades to the Primary Access route (paving of the primary access, signage to the site from Highway

9) will not occur, resulting in use of the two access routes located in Wheatland County. As there remains a claim of detriment of the DC4 Bylaw by Wheatland, it is necessary to schedule a merit hearing.

Merit Hearing Dates

39 Dates for the merit hearing and submissions have been chosen to ensure adequate time to prepare and review materials, and accommodate the parties' schedules. The MGB accepts that Wheatland requires time to analyse the existing Watt TIA or complete a new analysis, as it was anticipated that the TIA prepared by the Landowner would capture Wheatland's concerns of road usage on the other two routes to the Development. The exchange dates will accommodate this activity.

40 The September 12, 2014 submission date will allow Kneehill time to respond to either a new TIA or an analysis of the Watt TIA. While Kneehill requested an earlier exchange date in September, the chosen date would allow all parties six weeks to analyse Wheatland's submission and prepare for rebuttals. The merit hearing date proposed by the MGB would accommodate all schedules. Finally, posting the materials on the municipal websites will allow the Ratepayers and other members of the public to review the submissions.

Standing of Ratepayers

41 Section 691(2) states that the MGB

> is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

42 This provision sets inter-municipal dispute proceedings apart from many other tribunal hearings where the public (or broad categories of interested persons) have more extensive rights to participate. The limitation in Section 691(2) is consistent with the fact that inter-municipal disputes are primarily disputes between elected municipal councils about land planning policies - themselves passed through a legislative process following public consultation. Further, inter-municipal disputes have the unusual and disruptive effect of suspending legislation until litigation is complete. By restricting the scope for third party participation, the legislature intends to encourage timely resolution that will become difficult if many parties are allowed to participate and raise new issues without restriction.

43 While Section 690 does not grant third party participation rights, it does not prevent such participation outright. Rather, the extent to which third parties may participate is a discretionary matter for the MGB to consider on a case by case basis. Section 9.1 of the MGB's IMD Procedure Rules state as much:

> At a preliminary hearing, the Board may do one or more of the following:
>
> > f) Determine whether a person is affected by an inter-municipal dispute and the extent to which that person is entitled to participate in the proceeding.

In this case, the map Exhibit 6 illustrates that the group of represented Ratepayers owns the majority of the lands surrounding the BMR Area Structure Plan lands. The Ratepayers reside in both municipalities and, through taxes, pay for maintenance and (sometimes) construction of roads. They will all be affected to a varying but significant extent by impact of the anticipated development on traffic. While the Ratepayers' concerns would also have been considered during the preparation, and during the public hearings for the ASP and the DC4 Bylaw, the MGB believes they should have an opportunity to be heard at the merit hearing - at least on a limited basis.

44 However, it must not be forgotten that the right to appeal a bylaw on the basis of detriment is limited to a neighbouring municipality; given this fact, the contextual features described above, and the importance of reaching a resolution within a timeframe that is fair to directly affected landowner (in this case BRDC) the MGB is reluctant to expand its inquiry to include issues not raised by the municipalities, such as the effect of potential road upgrades on the natural environment.

45 Accordingly, the MGB directs the Ratepayers to restrict their submissions to issues raised in the notice of appeal, as refined through this preliminary hearing process. In addition, no further materials or witnesses will be considered. For further clarity, the MGB notes the issues before it do not include the effects of expanding or upgrading access roadways on the biology or environment of the Rosebud River Valley.

46 Given the number of interested persons, it is suggested that the Ratepayers' make their submissions primarily through a single spokesperson. Others in attendance may then make additional points provided they relate to the appropriate issues and were not previously covered.

47 The panel hearing the merits may give additional instructions as they deem fit.

Appendix "A"

PERSONS WHO WERE IN ATTENDANCE OR MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

NAME	*CAPACITY*
J. Klauer	Counsel for the Appellant
A. Parkin	Wheatland County Representative
B. Barclay	Counsel for the Respondent
A. Hoggan	Kneehill County Representative
C. Davis	Council for the Landowner
J. Zelazo	Landowner, Badlands Recreation Development Corporation
S. Trylinski	Council for the Ratepayers
G. Koester	Observer for Wheatland County
B. Armstrong	Observer for Wheatland County
T. Arzzier	Adjacent Landowner
A. Andersen	Adjacent Landowner
H. Andersen	Adjacent Landowner
S. Andersen	Adjacent Landowner
V. Andersen	Adjacent Landowner
E. Christensen	Adjacent Landowner
D. Christensen	Adjacent Landowner
V. Christian	Adjacent Landowner
E. Clark	Adjacent Landowner
J.C. Clark	Adjacent Landowner
M. Clark	Adjacent Landowner
R. Clark	Adjacent Landowner
W. Clark	Adjacent Landowner
N. DeBernando	Adjacent Landowner
M. Fanti	Adjacent Landowner
R. Hamm	Adjacent Landowner
B.J. Janzen	Adjacent Landowner
K. Janzen	Adjacent Landowner
R. King	Adjacent Landowner
B. Long	Adjacent Landowner
D. Poulsen	Adjacent Landowner
P. Pallesen	Adjacent Landowner
L. Skibsted	Adjacent Landowner
R. Skibsted	Adjacent Landowner

Appendix "B"

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:

NO.	*ITEM*
Exhibit 1	Information Package including List of Information
Exhibit 2	Transportation Impact Assessment (TIA)
Exhibit 3	Map of Endorsed Access Routes
Exhibit 4	Landowner, Badlands Motorsports Resort Submission of June 24
Exhibit 5	Ratepayers' Submission of June 23
Exhibit 6	Aerial Photo showing location of Ratepayers' lands and the area covered by the DC4 Bylaw.

Appendix "C" — Applicable Legislation

Municipal Government Act

Part 12

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

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

Section 523 of the Act allows that the MGB "may make rules regulating its procedures."

Part 17

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Each and every plan must comply with the philosophy expressed in 617.

> 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.

Section 690 and 691 set out the process for filing an intermunicipal dispute, and the actions that must be undertaken by the MGB and the municipalities in dispute.

> 690(1) If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may, if it is attempting or has attempted to use mediation to resolve the matter, appeal the matter to the Municipal Government Board by
>
> > (a) filing a notice of appeal and statutory declaration described in subsection (2) with the Board, and
> >
> > (b) giving a copy of the notice of appeal and statutory declaration described in subsection (2) to the adjacent municipality

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

(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating

(a) the reasons why mediation was not possible,

(b) that mediation was undertaken and the reasons why it was not successful, or

(c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating

(a) the reasons why mediation was not possible, or

(b) that mediation was undertaken and the reasons why it was not successful.

(4) When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must, subject to any applicable ALSA regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal 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.

(6.1) Any decision made by the Municipal Government Board under this section in respect of a statutory plan or amendment or a land use bylaw or amendment adopted by a municipality must be consistent with any growth plan approved under Part 17.1 pertaining to that municipality.

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

(8) The Municipal Government Board's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.

691 (1) The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must

(a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and

(b) give a written decision within 30 days after concluding the hearing.

(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

Intermunicipal Dispute Procedure Rules

Under section 523, and established by the MGB in 2013, the Intermunicipal Dispute Procedure Rules set out additional administrative actions for processing, hearing and determining intermunicipal disputes:

Part B: Communication with and Representation before the Board

5. Representation

5.1 Persons who participate in Board proceedings may represent themselves or be represented by another person.

5.2 Upon the Board's or the Board administration's request, a person who acts for another person must provide

a) Proof authorization to act for the other person, and

b) An address for service by the date requested by the Board or the Board administration.

Part D: Case Management and Preliminary Hearings

9. Preliminary Hearings

9.1 At a preliminary hearing, the Board may do one or more of the following:

f) Determine whether a person is affected by intermunicipal dispute and the extent to which that person is entitled to participate in the proceeding.

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