

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	RESPONSE SUMMATION OF THE CITY OF CALGARY
FILED BY	<p>THE CITY OF CALGARY David Mercer/Hanna Oh/Henry Chan 12th Floor, 800 Macleod Tr SE Calgary, AB T2G 2M3</p> <p>david.mercer@calgary.ca hanna.oh@calgary.ca henry.chan@calgary.ca</p> <p>Phone: 403-268-2453 403-268-3662 403-268-5535</p> <p>File No. P8577</p>

I. INTRODUCTION

1. This response legal summation is filed on behalf of the City of Calgary (“**City**”) in response to Rocky View County (“**County**”) and Genesis Land Corporation’s (“**Genesis**”) summation submissions filed on August 8, 2018.

2. The City generally relies on the materials it has already filed but would like to clarify a few points in this response.

- The City disagrees with (i) the County’s assertion that the Board has consistently taken the position in 690 appeals that where there is a demonstrated willingness by municipalities to discuss cost sharing, there is no detriment, and (ii) Genesis’s assertion that detriment does not exist where it is possible that the municipalities will be able to cooperate to facilitate service provision, mitigate risks, and share costs.
- The City is not satisfied with the County’s proposed mechanisms to resolve the detrimental impacts of the Omni ASP on the City.

3. The City requests that the Board implement the City’s proposed amendments as set out in its legal summation filed August 8, 2018.

II. Hypothetical Future Agreements Do Not Eliminate Detriment

4. The City respectfully submits that it would be unreasonable for the Board to conclude that there is no detriment on the City on the basis of hypothetical future agreements that neither the Board, nor the City has any authority to enforce. As previously stated by the City, if a hypothetical future agreement could impact the Board’s assessment of detriment, then detriment would never be found because detriment can always be alleviated hypothetically [**Exhibit 20A, para 25**]. In other words, such an interpretation would render section 690 meaningless and should not be accepted.

5. The City disagrees with the County’s assertion that the Board has consistently taken the position under section 690 that willingness by municipalities to discuss cost sharing negates any potential detriment. The County cites the *City of Chestermere v. Rocky View County* MGB019/017 for this principle. However, the Board in that decision found, in the context of social infrastructure which is not even required to be addressed in an Area Structure Plan, that there was no detriment because there were existing agreements between the municipalities in place to address social infrastructure [**Exhibit 12A, City Legal Submission, Tab 5, para 123, Findings – Issue 4, 13**]. There are no such existing agreements in place for the Omni ASP.

6. The County also cites the *Edmonton, St. Albert and Morinville v. Sturgeon County* MGB 77/98 decision to support its argument that a willingness to cost share means that there is no detriment. However, in that decision the arguments and evidence of the appellants were not sufficiently compelling to warrant intervention [**Exhibit 12A, City Legal Submission, Tab 2, page 62, second paragraph**]. The City submits that the Board has ample compelling evidence with respect to the Omni ASP negatively impacting the City to a significant degree that does warrant the Board's intervention. This is especially true where the language within the Omni ASP is not adequate to protect the City against these negative impacts.

7. Meanwhile, Genesis references the *Town of Okotoks v. Municipal District of Foothills* MGB 003/12 decision to support its argument that the Board should not find detriment where there is a willingness of the municipal parties to collaborate. This principle is not reflected in the decision because the appealing municipality had not provided sufficient evidence for the purposes of infrastructure detriment as a part of its appeal [**Exhibit 12A, City Legal Submission, Tab 4, para 219**].

8. As detailed in the City's response submission to Genesis [**Exhibit 22A, paras 17 and 18**] it is the City's position that the Board should not decline to find detriment with respect to the substantial negative transportation impacts of the Omni ASP solely on the basis that the appealing and responding municipalities may at some unknown time in the future enter into a hypothetical agreement to resolve the cost-sharing issues raised by the City. If the Board is going to rely on future agreements to mitigate detriment, the requirement for such agreements should be in the ASP itself as requested by the City in its requested relief.

III. The County's proposed mechanisms to resolve detriment are not adequate

A) Recent history suggests collaboration is not a panacea

9. While the City acknowledges that there have been several instances in the past where the City and the County have successfully worked together – on a range of projects and issues – the reality is that such collaboration is becoming more and more difficult, especially when dealing with complex inter-municipal issues. As noted previously, this is the third section 690 appeal filed by the City, against the County, in recent years.

10. Two recent examples that further illustrate this are the 84th Street Study and the East Stoney Trail Infrastructure Analysis. Notwithstanding the willingness and intent of both parties to work together in a collaborative manner, the reality is that neither study has been finalized and completed.

11. This is not to assign blame or fault to either side – indeed, it would appear that both parties have expressed a desire to carry out and complete both studies. What it does highlight, however, are the inherent constraints and limitations (i.e. within the planning and budgeting process) that can ultimately lead to such issues for Conrich and now with the Omni ASP. There is also the reality that the City’s transportation experts and the County’s transportation experts do not always see eye to eye (such that parties have had difficulty agreeing and accepting the other parties’ data); the circumstances surrounding Omni are no different.

12. Therefore, the City would respectfully caution the Board against simply defaulting to the position that there is no detriment because there has been a “demonstrated willingness” between the parties to work together and reach an agreement. The City submits that further guidance and direction from the Board through the City’s proposed amendments – as a way to facilitate this work – is both reasonable and appropriate.

B) Cost-sharing and the County’s draft offsite levy bylaw

13. Another example of the City and the County failing to address inter-municipal issues in lockstep is evidenced by the County’s draft offsite levy bylaw. At no time was the City consulted or otherwise made aware by the County that the proposed bylaw would be coming forward in July 2018. It appears that other industry stakeholders, including Genesis, were also largely kept in the dark.

14. Funding the cost of shared transportation infrastructure – within an inter-municipal offsite levy or a combination of the City’s and County’s offsite levy bylaws – is a complicated task. The City submits that the current language within the ASP does not provide the necessary clarity to achieve a desired result for all parties involved.

15. The City finds itself in a position where (i) the County has stated that it intends for the developer to pay for infrastructure required for the development of the Omni ASP even if the infrastructure is within the City, and (ii) the developer has stated that it has no intention of paying for the vast majority of infrastructure located outside of the County which includes the upgrading of 84th St which will be required for any development of the Omni ASP lands.¹ Further clarification and certainty within the ASP to reflect the stated intentions of the County to ensure the City is not negatively impacted by the Omni ASP development is warranted in these circumstances.

¹ As mentioned in the City’s summation, paragraph 55, there were some contradictory statements made about this but the City’s transportation engineer, Mr. Hopkins confirmed that the full widening and ultimate build out of 84th street is not required by the developer of East Stoney.

C) Conditions of subdivision or development permit and build out over time

16. The County has acknowledged throughout the hearing and through their written submissions that the County interprets the policies of the Omni ASP as ensuring that the City will have the opportunity at the local plan/subdivision/development permit stage to require a funding commitment or require the developer enter into an agreement with the City for the construction of road infrastructure [**County Summation, para 52**].

17. The City appreciates that the County intends for the policies of the Omni ASP to be interpreted in this way. However, that intention is not actually reflected in the words of the ASP. The City merely requests that the ASP be amended to reflect the stated intentions of the County.

18. The County and Genesis have both confirmed that Genesis intends to develop its phase 1 lands over the next 10 years. While Genesis's Omni Project is only a small proportion of the Omni ASP lands, it constitutes a significant portion of the negative transportation impacts (as shown in Table 3-4 of the CIMA+ report on page 41, which shows the highest traffic volumes attributed to "destination commercial" development). Genesis currently anticipates 850,000 square feet of commercial development which includes "destination commercial" uses such as shopping centres and outlet malls, which at the trip generation rate used in both the County and City's transportation studies, would generate over 3,000 afternoon peak hour trips.

19. The County has noted that Deerfoot Meadows, which sprang up within 6 years, is not yet fully developed [**County Summation, pg 7**]. Nevertheless, Deerfoot Meadows is a telling example that even development that may not be fully built out can still have profound transportation impacts.

20. Similarly, the impacts of the Genesis development on the City's transportation network will be acute and detriment to the City will occur as soon as stores are open for business. It is therefore imperative that the wording in the ASP be clarified and strengthened in order to mitigate the City's transportation concerns, as that is what will guide development in Phase 1 and onwards.

IV. CONCLUSION

21. The City re-states its position that there is sufficient evidence for the Board to make a finding of detriment in this case. The City is not suggesting that the County is prohibited from pursuing an "urban" development involving commercial and industrial uses. However, it is incumbent on the County to do so in a reasonable and predictable way in order to mitigate the negative impacts on the City. The policies of the Omni ASP do not

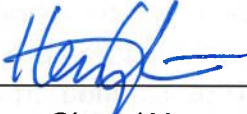
adequately nor appropriately take into account the City's concerns and resulting impacts and detriment caused.

22. The City does not take issue with the fact that the Omni development will attract people from the City. What it does take issue with is that the County's development will significantly and negatively impact the City's traffic and transportation infrastructure. As mentioned in paragraph 63 of the City's summation, while the major infrastructure projects required for the Omni ASP are being planned for by the City, some of the required infrastructure is not required for up to 60 years² to support growth in the City. The City does re-evaluate its priorities on an ongoing basis, but it should not be forced to do so to support growth in the County.

23. Lastly, the County cites paragraph 143 of the Okotoks decision, which states that municipalities "are autonomous and retain authority change their planning priorities, providing they do so responsibly". While municipalities do have this ability, the County cannot and should not be allowed to exercise that authority in a way that causes detriment to a neighboring municipality (hence, the appeal mechanism found in section 690). The City further submits that the requirement to use this authority "responsibly" is magnified when the development is directly adjacent to another municipality. Otherwise, the ability to plan development in an "orderly, economical and beneficial" manner is defeated.

24. This appeal raises important issues for municipalities in Alberta, and the City is grateful for the opportunity to present its case. The City respectfully asks the Board to consider the issues raised in this appeal and to grant the remedies sought within the City's Summation provided on August 8, 2018.

All of which is respectfully submitted this 10th day of August 2018

Per: 
Henry Chan / Hanna Oh / David Mercer
Legal counsel for the City of Calgary

²The City's summation submitted Aug 8 mistakenly states that the major projects are not required for over 60 years. This has been corrected to reflect that some of the projects are not required for up to 60 years [Exhibit 20A, Transportation Response, Tab 1, Attachment 1, City of Calgary Expected Transportation Infrastructure Projects].