

BOARD ORDER: MGB 098/08

FILE: 07/IMD-02

EXECUTIVE SUMMARY

The Municipal Government Board, in this decision, rejects the claim of detriment and dismisses the appeal by the City of Edmonton with respect to the passing of a Municipal Development Plan Bylaw 1-2007 by Strathcona County.

Section 690 of the Act permits an adjacent municipality to file an appeal with the MGB if, in their opinion, a municipal development plan adopted by an adjacent municipality has or may have a detrimental impact on it. Strathcona County (County) adopted a municipal development plan (SCMDP) on May 29, 2007. The City of Edmonton (City) filed an inter-municipal dispute with the Municipal Government Board within the time requirements required by the section 690 of the Act.

The MGB rejects the argument of the City that the new Capital Region Board Regulation (Alta Reg. 49/2008) and the recently released the “Radke Report” expanded the determination of detriment and permitted the MGB to refer the issue of detriment of the SCMDP to the Capital Regional Board (CRB). The Regulation applies prospectively. There is no provision in section 690 of the Act that directs the MGB to refer the inter-municipal dispute to another board.

The Radke Report and the Regulation address broader considerations of regional planning, governance and implementation. The City’s claims of detriment focused on specific policies or lack of policies in the SCMDP.

One of the primary claims of detriment by the City is that the SCMDP lacked detail on land uses, density and phasing of development. The MGB concludes that the proposed land uses in the geographic areas challenged by the City are sufficiently clear and provided for the appropriate level of detail for a planning document of this nature. The policies in the SCMDP direct land use, development and infrastructure coordination. In addition, the SCMDP contains policies which direct further planning processes, growth management strategies and subsequent plans that will provide increasing levels of detail and certainty over time.

The policies in the SCMDP, which address consultation with the City, include involvement of the City in a Joint Planning Study (JPS), participation in the growth management strategies for urban growth areas in the County, referrals of plans to the adjacent municipalities and a host of other consultative processes related to land use, provision of infrastructure and other inter-municipal initiatives. The MGB does not find these processes sufficiently deficient to cause detriment nor does it find the request to specifically include reference to the City of Edmonton substantive enough to order a change to the SCMDP.

The SCMDP designates an Urban Reserve policy overlay onto the Agriculture Large Holdings Area north of Highway 16 and West of Highway 21 approximately two miles east of the City

BOARD ORDER: MGB 098/08

FILE: 07/IMD-02

boundaries. The MGB finds the argument and evidence of the City insufficient and very generalized with respect to detriment arising from the designation of an Urban Reserve Area, the expansion area for the Sherwood Park Urban Service Area. The County confirmed that before an Urban Reserve Area can be changed to an Urban Service Area an amendment would be required to the SCMDP. Prior to amendment, this area would be subject to a growth management strategy which would involve a broad based community consultative process which would include the City as a stakeholder.

The SCMDP establishes a Transition Urban Reserve Policy Area as an overlay on the Agriculture Large Holdings Policy Area adjacent to the City and immediately north of the Sherwood Park Urban Service Area. The MGB observes that a change from the Agriculture – Large Holdings Policy Area to the Transition Urban Reserve Policy Area would require a plan amendment as is the case with Urban Reserve Policy Area. The MGB does not find this policy designation unclear as claimed by the City. The policies related to the Transition Urban Reserve Policy area in the SCMDP direct future uses of a predominantly non-residential nature as a transition from industrial uses to the south west to anticipated long term residential uses to the east. The MGB concludes that the claim of lack of detail was unfounded. As well, the claim of deficient consultation policies was unfounded as the City would be involved in responding to any plan amendments to this area as well as the development of future plans adjacent to the boundaries. It would also be directly involved in the joint planning study, which encompasses part of this area.

The SCMDP establishes a Rural/Urban Transition Policy area south of the acreage development on the south side of Sherwood Park, on the eastern boundary of the City. Again, the City's claim of uncertainty and lack of detail with respect to the Rural/Urban Transition Policy Area is rejected. A review of the policies describes the nature of the proposed residential uses that will be interspersed among environmentally sensitive areas. This area is also subject to a growth management strategy and part of the area is subject to the joint planning study between the County and the City which will provide various opportunities for input by the City.

The City also claimed detriment regarding the Agriculture Small Holdings Area located southeast of the City boundaries. The City claims detriment due to the premature fragmentation of lands because of the SCMDP policy to allow agriculture small holdings in the area. The City could not identify any contemplated plans or direction of long term growth in an easterly or south easterly direction to justify the claim of detriment. The MGB finds the detriment referred to by the City to be too remote.

A further claim of detriment arose regarding the adequacy of the SCMDP policies dealing with separation distances between heavy industries and other incompatible uses. The area of primary controversy was the area in the County adjacent to the heavy industrial area adjacent to Clover Bar in the City. The City acknowledged in closing submissions that it would be unlikely that

BOARD ORDER: MGB 098/08

FILE: 07/IMD-02

major heavy industries would locate on the balance of the Clover Bar lands. In fact, evidence showed that lands being planned for development in the near future were not of the nature that off-site risk impacts would occur.

County experts illustrated that non-industrial developments in Edmonton located adjacent to Clover Bar have constrained development in the Clover Bar area. The City's claim that the SCMDP incorporated inadequate setback policies from the Clover Bar area was countered by the County's experts who provided credible evidence on the future development of the Clover Bar area. The City provided no heavy industrial and risk management experts to contradict the County experts; thus, the MGB gives considerable weight to the evidence of the County's experts. The SCMDP contains a number of policies to address heavy industrial separation through the use of the Major Industrial Accident Council of Canada (MIACC) separation and risk guidelines and other measures. As a result, the MGB finds no detriment.

The SCMDP recognizes a 1.5 kilometre area strip on either side of the Edmonton/Strathcona boundary as a Joint Planning Study Area. The MGB finds the Joint Planning Study provides the City with direct involvement in planning the area immediately adjacent to the fringe of the City. There was no evidence to support a conclusion that the development approvals in the area were to be frozen and insufficient evidence to suggest that the JPS recommendations would not be given due consideration. More importantly, the joint planning study area provides the City with very direct input. The MGB views the JPS as a positive initiative which meets the inter-municipal co-operation directives in the Provincial Land Use Policies.

Overall, the evidence of the City was not sufficiently convincing that detriment was created to the degree sufficient to cause the MGB to intervene in the adoption of the SCMDP. As stated in previous MGB decisions "the meaning of detriment must be determined, then weighed in the balance of municipal autonomy and individual rights." "If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonable likely to occur, and to have a significant impact on the appellant municipality should it occur."

The MGB does not find that the City established, with the evidence it led, that the SCMDP failed to meet the requirements of the Act to address the coordination of land use, future development and infrastructure and, more importantly, that an intervention into a local bylaw should be directed.