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Intermunicipal Disputes: Recent Cases and Lessons Learned

CPAA Conference 2024

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Presentation Outline

(a) MGA sections where disputes can arise:

- s. 631 Intermunicipal Development Plan
- s. 690 Intermunicipal Disputes – LPRT
- s. 708.26 – 708.43 – Intermunicipal Collaboration Framework – Arbitration

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Section 631 Intermunicipal Development Plans (IDP's)

- municipalities with common boundaries may adopt IDP for areas of land lying along the boundaries as they consider necessary (s. 631(1))
- required to be in place by April 2020
- are Statutory Plans
- focuses on planning and development

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Section 631 Intermunicipal Development Plans (IDP's)

s. 631(8) an IDP must address

- future land use
- proposals for future development
- provision for transportation systems
- coordination of intermunicipal programs relating to the physical, social and economic development
- environmental matters
- any other matter relating to the physical, social or economic development that both councils consider necessary

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Section 631 Intermunicipal Development Plans (IDP's)

s. 631(8) an IDP must include

- a procedure to resolve conflicts between the municipalities
- a procedure to amend or repeal the IDP
- provisions for administration of the IDP

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Section 631 Intermunicipal Development Plans (IDP's)

s. 631(9) – despite subsection (8) – some of these matters may be dealt with in an ICF under Part 17.2

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2066052 Alberta Ltd v Stettler (County No 6), 2019 ABCA 279

- application for an RV park on the shores of a lake
- subject to two IDP's, an MDP and ASP
- SDAB confirmed the development permit with conditions on the number of RV stalls reducing the density of the dwelling units (370 units to 168 units) on the basis of a finding that RV stalls fit into the definition of dwelling unit in the IDP
- leave to appeal decision to the Court of Appeal

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2066052 Alberta Ltd v Stettler (County No 6), 2019 ABCA 279 – grounds of appeal

1. **The SDAB encroached on the jurisdiction of the MGB**
2. **The SDAB erred in finding inconsistencies among statutory plans and in applying provisions of the MGA related to hierarchy of statutory plans**
3. ***The SDAB erred in applying the BLSSIDP prescribed densities to an RV park***

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1. The SDAB encroached on the jurisdiction of the MGB

[18] The applicable statutory plans in this case include the IDPs, which prescribe maximum densities for the lands in question. The applicant argues that the intermunicipal settlement agreement had the effect of amending the IDPs. That argument cannot be sustained because the IDPs expressly provide that they can only be amended by bylaws of the parties to them. No bylaws amending the plans were enacted by any of the three municipalities governed by the BLSSIPD, let alone by the five municipalities governed by the BLIDP.

[19] As suggested above, quite apart from what the IDPs provide with respect to amendment, the *MGA* indicates that statutory plans are to be amended by bylaw (see for example, *MGA*, ss. 191(2) and 692(1)(f)). And if such a bylaw is proposed, there must be a public hearing (*MGA*, s. 692(1)). In this case, no such public hearing was held. The applicant argues that there was extensive public consultation. Public consultation is not the same as a public hearing. Not only the public, but the other municipalities which also have development lands surrounding Buffalo Lake (the Counties of Lacombe and Camrose) would be entitled to an opportunity to be heard because they too are impacted by a development density change on lands adjacent to Buffalo Lake.

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1. The SDAB encroached on the jurisdiction of the MGB

[20] In short, the applicant fundamentally misconstrues the *MGA*. Section 690 of the *Act* governs intermunicipal disputes in which one or more municipalities are of the opinion that a plan or bylaw adopted by an adjacent municipality has a detrimental effect on them. In such circumstances, the aggrieved municipalities may appeal to the MGB and the MGB must then decide whether the plan or bylaw is detrimental to the municipalities appealing (*MGA*, s. 690(5)). The right to appeal is limited to the municipality or municipalities which are of the opinion that the plan or land use bylaw may have a detrimental effect on them. This ground of appeal has no reasonable chance of success.

2. The SDAB erred in finding inconsistencies among statutory plans and in applying provisions of the MGA related to hierarchy of statutory plans

[25] The applicant's second argument, that the prescribed hierarchy of statutory plans had to be disregarded, misapprehends the *MGA*. In determining whether a municipality is detrimentally affected by a statutory plan or a bylaw adopted by its neighboring municipality, the MGB is permitted to disregard the hierarchy of statutory plans set out in s. 638. However, that does not mean that the SDAB in determining a development appeal can do the same. Indeed, the SDAB is statutorily compelled to do the opposite. The SDAB must have regard to the hierarchy set forth in s. 638.

[26] In short, the applicant's first argument does no more than challenge the SDAB's interpretation of statutory plans upon which considerable deference is given, almost to the point of not even constituting a question or law or jurisdiction. The applicant's second argument may raise of question of law, but it is has no reasonable chance of success. The SDAB correctly interpreted the *MGA*. Neither one of the applicant's two arguments under this ground of appeal has a reasonable chance of success.

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3. *The SDAB erred in applying the BLSSIDP prescribed densities to an RV park*

'**Dwelling Unit**' means any residential unit, recreational unit, or commercial unit that is used to shelter and provide overnight accommodation. The use of a dwelling unit may be either permanent or temporary but shall be comprised of a self-contained building/structure/vehicle or a combination of interdependent buildings/structures/vehicles. A dwelling unit must provide sleeping quarters, sanitary facilities, and cooking facilities.

[32] The SDAB's interpretation and application of the density restrictions of the BLSSIDP to an RV park is certainly reasonable and, in my view, correct. Given the deference to be accorded to the SDAB in interpreting statutory plans, this ground of appeal has no reasonable chance of success.

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2066052 Alberta Ltd v Stettler (County No 6), 2019 ABCA 279 – grounds of appeal

- case demonstrates distinction between intermunicipal disputes – ie. disputes between municipalities
- case demonstrates correct application of provisions in the IDP and the LUB (hierarchy)

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***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2021 ABCA 160 (Leave to Appeal)**

***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2022 ABCA 191 (Appeal Decision)**

- County issued a development permit
- County posted notice of the permit on its website in accordance with the LUB
- City filed an appeal of the development permit 4 months after it was issued
- ISDAB held a hearing and found that the appeal was filed late and they had no jurisdiction
- Leave to appeal to the Court of Appeal on the grounds that the notice requirements under the IDP had not been followed

***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2021 ABCA 160 (Leave to Appeal)**

***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2022 ABCA 191 (Appeal Decision)**

- Court of Appeal commented that ordinarily a dismissal of a late appeal would not raise a question of law or jurisdiction of sufficient importance to merit a further appeal, nor would such an appeal have a reasonable chance of success;
- Leave was granted because there may be questions about whether certain statutory notice and consultation requirements of the IDP were conditions precedent to the issuance of a valid development permit, and if so whether the conditions were met.

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***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2021 ABCA 160 (Leave to Appeal)**

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- IDP identified an area called the "Referral Area" located around the City
- Proposals for lands in the Referral Area are required to be circulated to the City for review and comment (City has 30 days) and there was a dispute resolution process if agreement could not be reached
- County argued this provision of the IDP was not applicable for two reasons, (i) this land was not in the Referral Area and (ii) the development permit was not for a non-residential development permit in areas not designated for the same
- City tried to initiate the dispute resolution process in the IDP but County argued that it was not applicable as it only applied to an amendment of the LUB

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- Leave to appeal was granted
- Court commented that a question of law was raised that the issuance of this development permit might be a *de facto* amendment of the Area Structure Plan and the LUB.

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***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2021 ABCA 160 (Leave to Appeal)**

***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2022 ABCA 191 (Appeal Decision)**

[1] The issue in this appeal is whether the City of Grande Prairie complied with section 686(1)(b) of the Municipal Government Act and filed with the County of Grande Prairie No. 1 Intermunicipal Subdivision and Development Appeal Board an appeal against a development permit the County issued to 2040207 Alberta Ltd. on time.

[2] The Board concluded that the City filed late.

[3] We agree and dismiss the City's appeal.

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***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2021 ABCA 160 (Leave to Appeal)**

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[19] We have carefully considered the able arguments Ms. Stewart-Palmer, Q.C. and Ms. Elhatton-Lake, counsel for the City, have presented in support of their client's appeal.

[20] But they have not convinced us that any of the provisions of the Intermunicipal Development Plan between the City and the County or the County's Municipal Development Plan and Cowan Area Structure Plan alter in any way the timeline for filing an appeal under section 686(1)(b) of the Municipal Government Act.

[21] These arguments are best addressed to the County of Grande Prairie No. 1 Intermunicipal Subdivision and Development Appeal Board when it has a timely appeal before it.

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***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2021 ABCA 160 (Leave to Appeal)**

***Grande Prairie (City) v. Grande Prairie (County No. 1)* 2022 ABCA 191 (Appeal Decision)**

[26] Our disposition does not impose an unduly onerous obligation on the City. It need only monitor the County's development permit website and contact the County for information about development permits relating to land in the rural-urban fringe area.

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Section 690 Intermunicipal Disputes – LPRT

- Section 690(1) a municipality that 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 ... may appeal the matter to the LPRT
- timelines for filing the appeal – 30 days (s. 690(1.1)
- mediation is contemplated (s. 690(2) (3))
- s. 690(4) – the provision that is the subject of the appeal is deemed to be of no effect until the LPRT issues its decision
- s. 690(5) LPRT can dismiss the appeal if no detriment or order a municipality to amend or repeal the detrimental provision(s)
- LPRT must disregard s. 638 when determining detriment (s. 690(5.1)
- LPRT decisions must be consistent with growth plans under Part 17.1 (s. 690(6.1))

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Section 690 Intermunicipal Disputes – LPRT

- LPRT website has a list of 17 cases since the late 1990's

- Section 690(1) a municipality that 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 ... may appeal the matter to the LPRT

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Section 690 Intermunicipal Disputes – LPRT

City of Calgary v. Rocky View County MGB 068/18

- Calgary argued that portions of an ASP adopted by Rocky View had a detrimental affect on Calgary
- The MGB (now the LPRT) summarized it's interpretation of the term 'detrimental' at paragraphs [43] – [48]

[43] The legislation states the MGB must, subject to any ALSA regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the appellant municipality.

[44] Detriment is not defined in the Act or its regulations; however, the MGB commented on the meaning of detriment in The City of Edmonton, the City of St. Albert, and the Town of Morinville v. County of Sturgeon (MGB 077/98) or the Sturgeon decision. While not binding, these comments have served as a useful reference point for many subsequent decisions.

[45] The meaning of detriment was discussed in the Sturgeon decision as follows:

The dictionary definition is straightforward enough. According to Webster's New World Dictionary, "detriment" means "damage, injury or harm" (or) "anything that causes damage or injury." This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as "nuisance" factors (page 44/84).

[45] The meaning of detriment was discussed in the Sturgeon decision as follows:

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another”. Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County’s MDP will result in detriment to them (page 44/84). BOARD ORDER: MGB 068/18 FILE: 17/IMD-03 131/ 156-M68-18 Page 14 of 52

[46] The Sturgeon decision also noted the invasive nature of the remedy under section 690, which is not to be imposed lightly or in circumstances where detriment cannot be clearly identified or will not have a significant impact: If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonably likely to occur, and to have a significant impact on the appellant municipality should it occur (page 48/84; emphasis added). There is also a functional or evidentiary component to the Board's ability to direct an effective remedy under s.690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote (page 48/84).

[47] Similar points appear in later decisions, including Sunbreaker Cove v. Lacombe County, MGB 007/11, where the MGB observed there must be evidence…of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact (at para. 71).

[48] Generally, the onus rests with the initiating party to show a detrimental effect rather than with the respondent to refute the allegation of detriment. In this case, the MGB weighed the evidence and submissions of the parties to determine if harm was reasonably likely to occur and if it would have a significant impact on Calgary. Each issue was measured against this test.

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s. 708.26 – 708.43 – Intermunicipal Collaboration Framework – Arbitration

- Requirement for municipalities who share a common border to enter into agreements called Intermunicipal Collaboration Frameworks (ICF)
- Purpose of ICF's (s. 708.27)
  - (a) integrated and strategic planning, delivery and funding of intermunicipal services,
  - (b) steward scare resources, and
  - (c) ensure municipalities contribute funding to services that benefit their residents.
- Renewed every 5 years

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s. 708.26 – 708.43 – Intermunicipal Collaboration Framework – Arbitration

- The contents of the ICF must describe the “services to be provided under it that benefit residents in more than one of the municipalities.”

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s. 708.26 – 708.43 – Intermunicipal Collaboration Framework – Arbitration

- *Town of Whitecourt v. Woodlands County* – Arbitrator D. Howes February 3, 2022 (application for judicial review pending)
- *City of Grande Prairie v. County of Grande Prairie No.1* – Arbitrator R. McBean, September 2, 2021
- *Brazeau County v. Town of Drayton Valley* – Arbitrator R. McBean, January 20, 2022
- *Town of Peace River v. MD of Peace No. 135* – Arbitrator M. Simpson, November 21, 2021

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QUESTIONS?

Thank you for having me

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