

MGB FILE NO.	17/IMD-003
IN THE MATTER OF	AN INTERMUNICIPAL DISPUTE FILED PURSUANT TO SECTION 690 OF THE <i>MUNICIPAL GOVERNMENT ACT</i> , R.S.A. 2000 CHAPTER M-26 WITH RESPECT TO ROCKY VIEW COUNTY BYLAW NO. C-7700-2017, OMNI AREA STRUCTURE PLAN
INITIATING MUNICIPALITY	CITY OF CALGARY
RESPONDENT MUNICIPALITY	ROCKY VIEW COUNTY
DOCUMENT	SUBMISSIONS OF GENESIS LAND DEVELOPMENT CORP. – MERIT HEARING
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I. Introduction

1. For months now, Genesis¹ has been attempting to understand the City's substantive concerns with the Omni ASP, so that it could offer up a resolution that would bring this time-consuming and expensive Appeal to an end.
2. Genesis has longstanding, productive relationships with members of City Administration and City Council and is disappointed that it is involved in an inter-municipal dispute of this nature.
3. Unfortunately, in contrast to its Notice of Appeal request for amendments, the City's submissions ask the Board to repeal the Omni ASP, which would destroy more than \$1.3 million and 6 years of effort by Genesis.
4. In regard to the Omni ASP itself, these submissions will establish that:
 - a) The City's emergency services concern is outside the jurisdiction of the Board.
 - b) The City's funding concerns are a product of its wrong assumptions.
 - c) The City's arguments on detriment misread the Board's prior decisions.
5. Genesis notes evidence that City Council has been taking steps against County developments because the County did not agree to a certain kind of regional planning. While City Council's reasons for proceeding are not known to Genesis, it concedes that this Appeal appears to be another such step.
6. Genesis respectfully asks the Board to dismiss the Appeal.

II. City's emergency services appeal is not before the Board

7. Procedurally, MGA section 690 offers a narrow appeal. The Board may consider only concerns the appellant municipality identified to the respondent municipality in writing

¹ These submissions use the defined terms found in the County's submissions.

before the second bylaw reading.² Laux comments in *Planning Law and Practice in Alberta*:

Several conditions must be met to perfect an appeal under s. 690. First, the complaining municipality must have provided the alleged offending municipality with written notice of its concerns prior to second reading of the impugned bylaw. ...³

8. The reason for this restriction is obvious: a respondent municipality can only consider and resolve concerns the appellant municipality has identified. A section 690 appeal is designed to resolve an “intermunicipal dispute” – which cannot exist when one municipality does not know of the other’s concern. If an appellant municipality has concerns that justify the time and expense of an appeal, it must surely be able to express them during the consultation period, which in this case included:

...substantive discussion and negotiation with respect to the City’s concerns with the ASP from December, 2016 through to October 3, 2017, including six (6) meetings between County and City Administration and one (1) Intermunicipal Committee meeting.⁴

9. The City’s Statutory Declaration states that “In addition to the discussions between The City and County administrations, The City of Calgary sent the following letters to the County”, a September 11, 2017 letter from Mayor Nenshi, and a July 14, 2017 letter from Planner Austin Weleschuk⁵ – being the City’s written notice of its concerns. Neither letter mentions emergency services, never mind the sub-concerns identified in the Reasons for the Appeal⁶, which themselves multiply in the City’s submissions.

² **City’s Legal Brief, Tab 1**, MGA section 690(1):
690(1) A municipality that

...

- (b) has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, and
- (c) has, as soon as practicable after second reading of the bylaw, attempted to use mediation to resolve the matter,
may appeal the matter to the Municipal Government Board.

³ **[TAB 1]** Laux, F. A., *Planning Law and Practice in Alberta*, Third Edition, Edmonton Juriliber, 2013 (“**Laux**”) section 5.8(1)(a) at page 5-35.

⁴ Board Exhibit 2R, Rocky View County Statutory Declaration (“**Board Exhibit 2R**”), paragraph 4(b).

⁵ Board Exhibit 1A, City of Calgary Intermunicipal Dispute Application and Statutory Declaration (“**Board Exhibit 1A**”), Schedule “B” – Statutory Declaration, including Exhibits “A” and “B”.

⁶ Board Exhibit 1A, Schedule “C” – Reasons for the Appeal.

10. In its own Statutory Declaration, the County notes that the City never revealed its concerns around emergency services – not by email, by telephone, or in any of the 7 meetings:

At no time prior to the filing of the City’s appeal did the City raise any concerns with respect to any impact to the City’s Emergency Service resulting from the ASP development.⁷

11. A reasonable inference is that until it started drafting the Notice of Appeal, the City in fact had no emergency services concerns.

12. Whatever the situation, it is apparent that in relation to its emergency services concerns:

- a) the City failed in its own duty to provide the County with an opportunity to respond;
- b) because the County had no opportunity to reject the City’s concerns, at second reading of the bylaw no intermunicipal dispute existed;
- c) because there was no intermunicipal dispute at second reading, the City failed to perfect its appeal; and
- d) the Board, therefore, has no jurisdiction over the City’s emergency services concerns – not the funding, not the staffing, not the motor vehicle accident numbers, not the water pressure, and not the fire hydrant connectors.

13. A final note regarding the City’s indication that it wishes to advance “Such other grounds as presented at the appeal hearing”.⁸ Procedurally, the MGA confines the City’s appeal to the concerns in the September and July letters, and to the reasons stated in the Notice of Appeal.⁹ It is not open to the City to present new and better concerns at the hearing.

⁷ Board Exhibit 2R, paragraph 5.

⁸ Board Exhibit 1A, Schedule C – Reasons for the Appeal, section 5.

⁹ **City’s Legal Brief, TAB 1**, MGA section 690(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...”

14. Genesis asks the Board:

- a) to find that the City has not perfected its appeal regarding either emergency services or “other grounds as presented at the appeal hearing”, and that those concerns are outside the Board’s jurisdiction; and
- b) to make substantive findings on emergency services in the alternative to avoid an appeal, unless the City withdraws those concerns. As the County has provided a substantive response on point, Genesis makes no further submissions here.

III. City’s case is based on the wrong assumptions

15. The County has provided a detailed response to the City’s submission. Three of the City’s assumptions are addressed here.

A. 10 year build-out

16. The CIMA+ Report assumes the Conrich and Omni ASP areas will be built out in 10 years:

A traffic forecast for future conditions was developed using the City of Calgary EMME forecast model. Assumptions were that the East Stoney and Conrich areas are fully built out, and City of Calgary infrastructure projects in the area are built and traffic for other areas matches land development expected in 2028. Although development of the Omni area may not be complete by 2028, the background forecast is considered to reasonably reflect the traffic growth for the area as it accounts for build out of the East Stoney and Conrich areas, which are the major developments approved in the area.¹⁰

17. This assumption – which is fundamental to the City’s detriment case – is wrong on its face.

18. It is unclear why the assumption was used. Even without turning to the Conrich and Omni ASPs, which explicitly anticipate build-out over 2 to 3 decades or longer,^{11,12} 12,156 acres

¹⁰ **City of Calgary’s Evidence Submission** (“City’s Evidence”) at **TAB A-2**, CIMA+ Final Report, Omni ASP Appeal: Transportation Network Study dated May 22, 2018 (“CIMA+ Report”) section 3.7 at page 33.

¹¹ **[TAB 2]** Conrich Area Structure Plan, Bylaw C-7468-2015 (excerpts) at pages 8, 25, 28, 89.

¹² City’s Evidence at TAB C-1(2), Omni ASP at page 7, second paragraph, 2. “Plan Organization ...[The Omni ASP] presents a vision of what Omni could be like 20+ years into the future...” ; see also page 20: “6. Planning for Tomorrow ... The following vision statement provides an idea of what the Omni Area Structure Plan area could look like 20 to 25 years into the future:”

could not and will not be built out in the next 10 years. Genesis itself anticipates building out only “The Omni” project (185 acres) over the next 10+ years.¹³

19. The CIMA+ Report does not reasonably reflect traffic growth in the next 10 years. It does not reasonably reflect the transportation improvements that may be required in that time.

B. ASPs as funding contracts

20. The City’s unstated assumptions seem to be that the County had to commit to fund City infrastructure in the Omni ASP, and that the Omni ASP does not provide any such commitment.
21. The City has made two errors – one legal and one factual.
22. The legal error is with respect to the nature of an ASP. An ASP is not a financial contract. It is a planning policy document whose primary purpose is to lay out the services and land uses for a large area of land so that servicing and development can be coordinated.¹⁴
23. While ASPs are completely optional, when adopted, under MGA section 633 they:
 - i. “Must describe” the proposed sequence of development, land uses, population density and general location of major transportation routes and public utilities; and
 - ii. “May contain” any other matters council considers necessary.

¹³ [TAB 3] Arnie Stefaniuk will-say statement (“Stefaniuk will-say statement”) at paragraph 20.

¹⁴ [TAB 1] Laux at section 5.3, page 5-5 to 5-6:

Prior to the passage of the 1977 Act, the only statutorily sanctioned plan subordinate to the general plan was the subdivision plan. In practice, however, it was common for municipalities, and the development industry generally, to employ intermediate-level plans which sketched out in greater detail than did the general plan, the municipal servicing infrastructure to be put into place in the pertinent areas of the municipality, along with a more detailed allocation of land use categories. These plans (variously called design briefs, outline plans, area plans and other similar names) were thought to be necessary to ensure that a given specific new node of development would be laid out and services in a manner compatible with existing and future neighbouring developments.

...Recognizing these types of plans were sound planning tools but their status was in doubt, the Legislative gave them statutory sanction in the 1977 Act and called them “area structure plans”.

24. The City clearly understands that ASPs are not financial documents, demonstrated by the fact that its own East Stoney ASP lacks any comment on the funding of County infrastructure.¹⁵
25. The City's factual error is found in its statement that the Omni ASP has no language on funding for City required infrastructure. The ASP contains exactly that language.¹⁶ So does the IDP.¹⁷
26. In addition to the wording in its policies, the County's submissions acknowledge its intention to contribute proportionally to the costs of required infrastructure. Equally, Genesis has a long history of paying for the municipal infrastructure required by its developments and recognizes that it will be contributing proportionally as development proceeds.¹⁸

¹⁵ **County Planning Response, TAB I**, East Stoney Area Structure Plan.

¹⁶ **City's Evidence, TAB C-1(2)**, Omni ASP page 62:

21.7 As part of the local plan approval process, the identification, timing, and funding of any required off-site improvements relating to hard and soft infrastructure shall be required.

21.8 Off-site improvements that are:

- a. internal to the Plan area will be determined to the satisfaction of the County; or
- b. external to the Plan area, including Provincial or The City of Calgary infrastructure, will be determined by the County, in consultation with the relevant municipality and / or Provincial department.

21.10 Costs associated with transportation and/or utility service improvements are the developer's responsibility.

¹⁷ **County Planning Response, TAB C**, IDP at page 32:

13.1.5 The host municipality should consider the impact that a proposed development may have on the transportation infrastructure of the adjacent municipality through the development of a Transportation Impact Assessment (TIA) to the standard of the host municipality.

13.1.6 If the impact of development exceeds the capacity of the existing transportation infrastructure, upgrades should be coordinated through the following process:

- (a) Circulation of the proposal, in accordance with this Plan;
- (b) The adjacent municipality detailing required upgrades as a result of the proposed development, in accordance with the TIA; and
- (c) The host municipality should require appropriate upgrades as conditions of subdivision or development approval.

¹⁸ **[TAB 3]** Stefaniuk will-say statement at paragraph 4.

C. No other funding sources

27. The City's case is based on the assumption that it alone will bear the costs of the ultimate infrastructure build-out. The City uses that assumption even though it is actively pursuing funding from other levels of government – a fact not disclosed in its materials.
28. By way of example, the CIMA+ Report identifies the extension of Airport Trail and the Stoney Trail interchange as the City's sole responsibility. It says that the infrastructure is "neither included nor anticipated to be needed" in the 10-year plan¹⁹ and shows an \$80,000,000 estimate.
29. The CIMA+ Report correctly states that Airport Trail is an unfunded City priority. What it does not acknowledge is that in addition to potential provincial funding, the City has been pursuing an award from the federal government's National Trade Corridor Fund for the Airport Trail Phase 2 corridor project. That project includes part of the Stoney Trail interchange. The CIMA+ Report does not acknowledge City Transportation's report on the potential to collaborate with the Province and County to include additional interchange movements and an extension of Airport Trail east of Stoney Trail. The CIMA+ Report does not acknowledge the fact that the City has already identified its funding for the project.²⁰
30. On July 6, 2018, the Federal Government announced that it would fund the Airport Trail Phase 2 Corridor project.²¹

IV. City's arguments misread the Board's prior decisions

31. The City's arguments misread the Board's prior decisions. The City does not attempt to distinguish those cases. Instead it ignores the parts that do not support its arguments.

¹⁹ **City's Evidence, TAB A-2**, CIMA+ Report section 3.1 at page 21.

²⁰ **[TAB 4]** CBC News article "Nenshi hopes to cut new deal on Airport Trail Expansion" dated March 20, 2017; Minutes Regular Meeting of Council July 24, 2017 (excerpt), Item 7.1.4 (C2017-0614); Transportation Report to Council re: National Trade Corridors Fund – Airport Trail Phase 2 (C2017-0614) July 24, 2017; C2017-0614 Attachment re: "Infrastructure Calgary Implementation Plan – Airport Trail Phase 2 Corridor".

²¹ **[TAB 5]** Calgary Herald News article "Trudeau, in town for Stampede, announces federal government funding for Airport Trail" dated July 6, 2018.

A. Statutory plan compliance

32. The City spends a considerable portion of its submissions explaining that it believes the Omni ASP does not align exactly with the MDP and claiming that this causes uncertainty, which itself causes detriment. This ignores the Board’s repeated statements that its role is not to police compliance between statutory plans – and that inconsistency between plans does not itself cause detriment.²² It also ignores MGA section 690(5.1), which explicitly directs the Board to disregard MGA 638.
33. As a practical matter, Genesis notes that if County Council thought the ASP was inconsistent with the MDP, it would have amended the MDP and adopted the ASP at the same time, in which case the City presumably would have appealed that amendment as well. In any event, by operation of MGA section 638, to the extent of any conflict or inconsistency, the MDP prevails over the ASP. If there is indeed a meaningful inconsistency, County Council can rectify it at any time.
34. City and County plans standardly note that their maps show approximate locations and sizes only. The MDP is no different, stating at page 60, “The general location of existing or proposed regional business centres, highway business areas, and hamlet business areas is shown on Map 1”. It is curious that the City is arguing that the County’s interpretations regarding the icons on the County’s maps are causing it detriment.
35. In Genesis’ view, the City cannot have been surprised that the County had designated the Omni ASP lands for business uses. Those uses have been in County policies since at least 2009, as the Conrich-West business node.²³ That is why Genesis, typically a residential

²² **City’s Legal Brief, TAB 4**, *Town of Okotoks v Municipal District of Foothills No. 31*, MGB 003/12 (“*Okotoks*”) at paragraphs 8, 63 (citing *City of Edmonton v Sturgeon County*, MGB 77/98), 75.

²³ **County Planning Response, TAB D**, Rocky View 2060 Growth Management Strategy Figure 1 – Growth Management Strategy Map. Also, page 23:

Each business node described on the Growth Management Strategy Map emanates from existing areas of commercial and industrial development, and include the following:

...

• **Conrich-West node:** Located adjacent to major sour gas infrastructure, as well as the northeast ring road which surrounds the City of Calgary, this node is well located to link to the provincial highway system and could be supported by municipal and regional infrastructure.

developer, has been working for over 6 years to develop its 610 acres for business uses.²⁴

B. Working together

36. The City notes that the Board declined to find detriment in *Okotoks*²⁵, where the Town had not provided evidence of budgetary impacts. To avoid the same finding, the City has provided extensive evidence.

37. The City has addressed only the first part of the Board's evidentiary finding in *Okotoks*.²⁶ The Board found that the municipalities had a history of developing cost sharing agreements and that the developer was prepared to pay its proportionate share of transportation costs, such that detriment was not established.

38. To quote expanded comments from the Board in *Chestermere v Rocky View*²⁷:

[124]...detriment would require an unreasonable failure to cooperate with a neighbouring municipality to facilitate service provision, mitigate risks, and share costs: for example, a refusal to provide appropriate services or to enter into joint planning arrangements, mutual aid agreements, and cost sharing agreements as appropriate.

39. The County's submissions show that the municipalities regularly collaborate on transportation and servicing. There is explicit support for this ongoing collaboration in the Omni ASP, the East Stoney ASP, the IDP, and the MDP. There is even support for it in Kari Fellows' resume, which shows the County collaborating, negotiating and mediating with the City:

Nose Creek Area Structure Plan... 2014-2015 Development of Area Structure Plan for the north gateway to Calgary including significant industrial and employee intensive land uses over 680 hectares to accommodate 21,000 jobs and a population of 9,000. Collaboration with Alberta Transportation and Rocky View County were key to developing a transportation network for this area.

²⁴ [TAB 3] Stefaniuk will-say statement at paragraph 9.

²⁵ City's Legal Brief, TAB 4, "*Okotoks*".

²⁶ City's Legal Brief, TAB 4, *Okotoks* at paragraphs 217 to 220.

²⁷ City's Legal Brief, TAB 5, "*Chestermere*".

Haskayne Area Structure Plan... 2014-2015 Transportation Planning Project Manager for development of a residential Area Structure Plan adjacent to municipal and provincial park lands with sensitivity to significant natural features in the area. Negotiation with Rocky View County regarding access through County roads, and with CP Rail regarding access across the rail line, were key parts of the plan area. ...

Various Area Structure Plans, Neighbouring Jurisdiction... 2013 – 2017 Evaluated impacts of long range planning by neighbouring jurisdictions on City of Calgary’s road and street network through Area Structure Plan reviews, and negotiating changes to draft plans to reduce risks of unmitigated impacts on the City. Represented City of Calgary in mediation for City’s appeal of Rocky View County’s Conrich ASP, contributing significantly to an outcome that was good for Calgary.²⁸

40. The City has provided no evidence that the County has failed - or “unreasonably failed” - to collaborate on or pay its proportional share for infrastructure of mutual interest and benefit. For that reason, the City has not provided evidence of detriment.

V. Omni ASP appeal

41. Genesis had hoped and expected that the municipalities would sort out their differences at the February mediation. After the City cut off the mediation early, the County extended an offer that the City found attractive and Genesis again hoped for a resolution. At the April 11, 2018 procedural hearing, the Board asked the City for an update and Counsel for the City advised:

As I understand from my clients, and the main client for this being transportation given the engineering issues, is that they're comfortable right now with what Rocky View has presented in terms of changes to the ASP.

...

I think -- and my opinion is based upon feedback from my clients -- that we're 99 percent of the way there to an agreement, based upon what I'm hearing from my clients.²⁹

²⁸ County Evidence, TAB A-4.

²⁹ [TAB 6] April 11, 2018 Procedural Hearing Transcript (excerpt) page 32, lines 6-10; lines 12-15.

42. Genesis infers that these wording changes dealt with funding. This inference is based on the fact that the City’s detriment claim is based on funding, and that the only ASP amendments it seeks (in the alternative) deal with funding.
43. On April 19, 2018, the City Intergovernmental Affairs Committee recommended that City Council accept the tentative settlement agreement negotiated by the Administrations.³⁰ On April 23, 2018, City Council rejected the tentative settlement agreement and provided direction to City Administration to proceed to the merit hearing.³¹ City Council offered no reasons for or insight into its decision.
44. As the County submissions note, this Appeal is very similar to the Conrich and Glenbow ASP appeals. As in the Conrich ASP appeal, the City “primarily perceives that the ASP will accelerate roadway upgrades in Calgary”,³² seeks no substantive changes to the ASP, and asks for better financial commitments from the County through the Board’s surgical intervention.³³
45. What is different is that in this Appeal, the City seems to hope the Board will repeal the ASP so that development in the Omni ASP area will be evaluated by the Growth Management Board. This hope can be seen in the City’s correspondence predating the Omni ASP adoption³⁴ and in the City’s submissions:

52. It is premature for the OMNI ASP to proceed while the Part 17.1 of the MGA Growth Management Board is being established for the region pursuant to the Calgary Metropolitan Region Board Regulation. Once the new growth plan growth plan is in place, the detriment can be addressed in a holistic regional fashion.

53. Due to the cross-boundary, regional aspects of the detrimental impacts, the ultimate solution would be to have the City and County undertake a comprehensive and coordinated plan for the OMNI ASP lands, along the boundary between the County and the City.

³⁰ [TAB 7] Intergovernmental Affairs Committee Minutes April 19, 2018 (excerpt), Item 9.1 (IGA2018-0482).

³¹ [TAB 8] Minutes Regular Meeting of Council April 23, 2018 (excerpt), Item 12.3.3 (IGA2018-0482).

³² [TAB 9] *City of Calgary v Rocky View County*, 2017 ABMGB 20 (Board Order MGB 020/17) (“*Conrich*”) at paragraph 2.

³³ **City’s Legal Brief at paragraphs 55(a) through (d).**

³⁴ Board Exhibit 1A, Schedule “B” at Exhibit “A” and Exhibit “B”.

46. The City fails to address the Board’s finding in MGB DL 027/18 following the April 11, 2018 procedural hearing, or the case the Board cited³⁵ in response to the City’s request for a delay because of the Calgary Metropolitan Board Regulation, Alta Reg. 190/2017 (the “Regulation”). The *Strathcona* case found that the equivalent regulation for the Capital Region was prospective and not retroactive. Contrary to the City’s assertion, it is not “premature for the Omni ASP to proceed” while the Growth Management Board is being established. The Regulation and the Growth Management Board are irrelevant to this Appeal.
47. It should be clearly noted that the City does not object to development of the Omni ASP lands, nor does it say it prefers other land uses, road alignments, or utility alignments. As noted above, the City states:

Due to the cross-boundary, regional aspects [], the ultimate solution would be to have the City and County undertake a comprehensive and coordinated plan for the OMNI ASP lands, along the boundary between the County and the City.³⁶

48. This wish comes remarkably late. The County and Genesis each made ample efforts to give the City opportunity to participate in planning the Omni ASP lands.³⁷ And, paradoxically, when the County suggested the municipalities coordinate planning for the Omni and the East Stoney ASPs, the City did not accept.

VI. Regional planning

49. Evidence, much of it from the City’s own files, shows that City Council has been trying to control development in the County since at least 2011 – in response to the County not signing on to regional planning in 2009.

³⁵ [TAB 10] *City of Edmonton v Strathcona County* re: Strathcona County Municipal Development Plan Bylaw 1-2007 (“*Strathcona*”) (MGB 098/08).

³⁶ **City’s Legal Brief at paragraph 53.**

³⁷ Board Exhibit 2R, paragraph 4.b); County Planning Response, TAB J; [TAB 3] Arnie Stefaniuk will-say statement at paragraphs 13 - 19.

A. Calgary Regional Partnership falls apart

50. The Calgary Regional Partnership was a cooperative established in 1999 by the rural and urban municipalities in the greater Calgary area. It dealt with regional growth and planning issues.
51. A major effort of the Calgary Regional Partnership was the creation of the Calgary Metropolitan Plan. It has been reported that because the City would have effectively had a veto over planning matters in the rural municipalities and because the City's water licences would be used as bargaining chips against them, the County and the MD of Foothills rejected the Calgary Metropolitan Plan and then left the Calgary Regional Partnership.³⁸

B. City takes action against County – and developers in the County

52. In March 2011, City Council decided to restrict its water and wastewater servicing to only Calgary Regional Partnership members.³⁹ Developments along the County's Highway 8 that had not yet connected to the City's wastewater line were affected badly. Litigation ensued over the MacKenas⁴⁰ and Elbow Valley West subdivisions.⁴¹ The MacKenas developer built an interim wastewater system though the pipes are in the ground awaiting connection to the City line.⁴² The Elbow Valley West developer installed holding tanks. To this day, because of the disagreement over the Calgary Metropolitan Plan, rather than travel through already-installed pipes, wastewater from Elbow Valley West is *trucked* to the City treatment plant. Four times a day.⁴³

³⁸ [TAB 11] Meghan Norman, *Regional Partnering for Global Competitiveness: The Planning-Governance Challenge and the Calgary Regional Partnership* (2012) (excerpt) at page 56.

³⁹ [TAB 12] Minutes Regular Meeting of Council May 28, 2018 (excerpt), Item 7.22 (IGA2018-0610); Utilities & Environmental Protection Report to Intergovernmental Affairs Committee (IGA2018-0610) May 17, 2017 (*sic* 2018) at page 1.

⁴⁰ [TAB 13] *MacKenas Estates Development Corporation v. Calgary (City)*, 2012 ABCA 376.

⁴¹ No reported decision available.

⁴² [TAB 14] Rocky View Weekly article dated June 15, 2010, "Mackenas Country Estates clears final hurdle".

⁴³ [TAB 15] CBC News article dated May 18, 2018, "Calgary might extend wastewater services to 120 homes outside of city boundaries".

53. In 2013, the Province refused the City’s request to legislate the Calgary Metropolitan Plan to compel the County’s participation.⁴⁴
54. As noted in the County’s submissions, in September 2015, the City joined Airdrie, Chestermere and Cochrane to establish a 1-year “Urban Municipalities Task Force” (the “Task Force”) to strategize against the County.⁴⁵
55. Although weeks later the Province announced that a mandatory Growth Management Board would be established for the Calgary region, the Task Force proceeded to meet 6 times in its first year, exploring tools to use against the County such as municipal government board appeals, annexation, amalgamation and formation of specialized municipalities.⁴⁶

C. City expands actions

56. Four months after the Task Force was created, the City filed the first of three MGA section 690 appeals against the County. On January 6, 2016, it appealed the Conrich ASP. That appeal was resolved with no substantive changes to the ASP, with changes limited to bringing in IDP wording, and the municipalities agreeing to study the upgrading of shared infrastructure and to make joint application for provincial funding.
57. In September 2016, City Council extended the term of the Task Force for 2 years.⁴⁷
58. In February 2017, the IDP’s minimum 5-year period ended. While the IDP could have been amended at any time, either municipality could now provide 12-months’ notice to terminate.⁴⁸ On April 6, 2017, the City gave notice that it was terminating the IDP, but

⁴⁴ [TAB 16] Corporate Services Report to Intergovernmental Affairs Committee (IGA2015-0693) dated September 15, 2015 at page 2.

⁴⁵ [TAB 16] Corporate Services Report to Intergovernmental Affairs Committee (IGA2015-0693) dated September 15, 2015.

⁴⁶ **County Planning Response, TAB H**, Deputy City Manager’s Office Report to Intergovernmental Affairs Committee (IGA2016-0551), dated September 8, 2016.

⁴⁷ **County Planning Response, TAB H**, Deputy City Manager’s Office Report to Intergovernmental Affairs Committee (IGA2016-0551), dated September 8, 2016; City Urban Municipalities Task Force webpage.

⁴⁸ **County Planning Response, TAB C**, IDP sections 15.2.2, 15.2.3, 15.2.5.

remained “committed to working with our regional and intermunicipal partners”.⁴⁹

59. In July 2017, City Council approved the Task Force’s recommendations for its own dissolution and for the City to “[c]ontinue to rely upon the use of the Municipal Government Act Section 690 appeals”, as “the optimal tool” to use against County development plans pending development of the new regional plan.⁵⁰
60. Per the Task Force strategy, on August 23, 2017, the City filed a second section 690 appeal – this time against the Glenbow Ranch ASP. The Glenbow Ranch ASP decision was released April 24, 2018 – with very similar results to the Conrich ASP appeal.⁵¹ The resulting changes to the ASP were fundamentally non-substantive; the County agreed to do things it was clearly already going to do, and the two municipalities agreed to work together on a few items.

D. City changes servicing policy after Province forces it to share water licences

61. Recently, it is the City’s approach on servicing in the County that has come under pressure from the Province. In 2017, the Province told the City it would have to share its water licences with new regional customers.⁵² Faced with that reality, City Council decided to negotiate a new master servicing agreement with the County and directed Administration to look at finally servicing Elbow Valley West.
62. In February 2018, City Council approved a new Policy on Regional Water, Wastewater and Stormwater Servicing (CP2018-01), which allows Administration to again consider County requests for servicing.⁵³

⁴⁹ **County Planning Response, TAB G**, April 6, 2017 letter from Mayor Nenshi to Reeve Boehlke. Note: while both municipalities are currently at liberty to repeal their IDP bylaws, neither has done so, and the IDP remains in force. Because of 2015 MGA section 638 amendments, effective October 26, 2017, the IDP prevails over the ASP to the extent of any conflict or inconsistency.

⁵⁰ **[TAB 17]** Minutes Regular Meeting of Council July 24, 2017 (excerpt), Item 5.13 (IGA2017-0580); Urban Municipalities Task Force Report (revised) to Intergovernmental Affairs Committee (IGA2017-0580) July 6, 2017 at page 1.

⁵¹ **[TAB 18]** *City of Calgary v Rocky View County*, 2018 ABMGB 24.

⁵² **[TAB 19]** Minutes Regular Meeting of Council February 26, 2018 (excerpt), Item 9.3.2 (IGA2018-0089); Utilities & Environmental Protection Report to Intergovernmental Affairs Committee (IGA2018-0089) February 15, 2018.

⁵³ **[TAB 19]** Minutes Regular Meeting of Council February 26, 2018 (excerpt), Item 9.3.2 (IGA2018-0089); Utilities & Environmental Protection Report to Intergovernmental Affairs Committee (IGA2018-0089) February 15, 2018.

63. In an interesting coming together of City Council’s wastewater actions and this Appeal, a June 2018 report to Council notes the apparent incongruity of servicing Elbow Valley West while also appealing the Omni ASP – and suggests that the way to avoid bad optics before the Board is to delay approving servicing until after this Appeal is concluded:

The City is currently in an intermunicipal dispute with RVC over the OMNI Area Structure Plan and other intermunicipal issues. The City filed a Municipal Government Board 690 appeal of the OMNI Area Structure Plan. Proceeding to provide servicing to EVW might be viewed as Calgary supporting unsustainable RVC development and may have unanticipated consequences on the ability of The City to present a fulsome appeal. This risk could be mitigated by not proceeding with servicing EVW until the appeal merit hearing has been concluded.⁵⁴

64. The City’s appeal lacks substance and seeks to repeal the Omni ASP so that the lands will be planned under the authority of the Growth Management Board. There is sufficient reason to infer that this Appeal is City Council’s latest effort to try to force regional planning on the County outside of what the Province has itself prescribed.
65. With all due respect to City Council and its longstanding desire for regional planning, Genesis objects to the Omni ASP being used as a cudgel against the County. It is *Genesis* that is paying here.

VII. Genesis

66. Genesis is a land developer. On a daily basis, it takes on the risk required to build municipalities. Like land developers everywhere, Genesis acquires raw land and works through what is typically a difficult municipal approvals process. It provides land for roads and public utility lots, for schools and parks, and for environmental reserves. It pays for and lays miles of sewer pipes, water pipes, and roads. As a result of Genesis’ efforts, communities are built, and people and businesses find homes. Vacant land that had been

⁵⁴ [TAB 12] Minutes Regular Meeting of Council May 28, 2018, Item 7.22; Utilities & Environmental Protection Report to Intergovernmental Affairs Committee (IGA2018-0610) May 17, 2017 (*sic* 2018) at page 4.

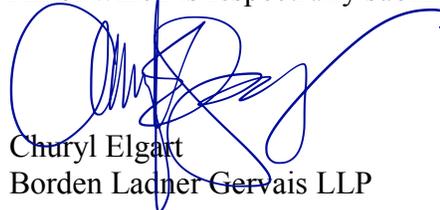
taxed minimally generates millions of dollars of taxes a year, which fund municipal budgets.⁵⁵

67. Over and above fulfilling its obligations, Genesis has provided millions of dollars to the City, including a very large contribution to help construct the Genesis Centre in northeast Calgary.⁵⁶
68. For many months, Genesis took pains to reach out to City Councillors and Administration to ensure that they were aware of and could provide input on the Omni ASP.⁵⁷
69. It now seems that despite all of this, City Council's goal is to strip Genesis of the Omni ASP, which Genesis itself paid for, and throw it into a lengthy new evaluation process.
70. Like the MacKenas and Elbow Valley West developers, Genesis appears to have found itself in the middle of a political fight it did not seek and does not want. Like those developers, Genesis is paying a huge price.
71. Genesis submits that it followed the rules, policies, and direction of the municipality that has jurisdiction over its land – as it was both required and entitled to do. It would appreciate being allowed to proceed with “The Omni” project now.

VIII. Remedy

72. Genesis asks the Board to dismiss the City's Appeal.

All of which is respectfully submitted,



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⁵⁵ [TAB 3] Stefaniuk will-say statement at paragraphs 1 - 5.

⁵⁶ [TAB 3] Stefaniuk will-say statement at paragraph 5.

⁵⁷ [TAB 3] Stefaniuk will-say statement at paragraphs 13 - 19.