

**BOARD ORDER: MGB 058/17**

**FILE: 17/IMD-001  
17/IMD-002**

**IN THE MATTER OF THE *Municipal Government Act*** being Chapter M-26 of the Revised Statutes of Alberta 2000 (*Act*).

**AND IN THE MATTER OF INTERMUNICIPAL DISPUTES** lodged by the City of Calgary and the Town of Cochrane v Rocky View County, County Bylaw C-7667-2017 and C-7665-2017

**CITATION:** City of Calgary and Town of Cochrane v Rocky View County, 2017 ABMGB 57

**BEFORE:**

Members:

H. Kim, Presiding Officer  
D. Thomas, Member  
S. Steinke, Member

Case Manager:

C. Miller Reade

**Background:**

[1] On August 23, 2017, and August 25, 2017, the City of Calgary (Calgary) and the Town of Cochrane (Cochrane) filed appeals under section 690 of the Act against the Glenbow Ranch Area Structure Plan (Glenbow Ranch ASP) Bylaw C-7667-2017 and Amendments to the County Plan Bylaw 7665-2017 (MDP) were adopted by Rocky View County (Rocky View) on July 25, 2017. Under section 690(4), with the filing of these appeals, a bylaw is deemed to be of no effect until a decision is made by the MGB, or the appeal withdrawn.

[2] After scheduling the date for this preliminary hearing, the MGB directed Calgary, Cochrane and Rocky View to address four matters. The preliminary matters were stated as:

1. The timeliness of Cochrane's appeal
2. The proposed schedule for mediation, evidence exchanges and merit hearing
3. The request by Calgary and Cochrane to be considered as affected parties in each other's appeals.
4. The request for affected party status by Glenbow Ranch Park Foundation

[3] Initial submissions by each party are summarized below in Part A. Part B covers the matters listed above that the parties were asked to address in this hearing.

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## **PART A: The Statements of Appeal**

### **17/IMD-001: City of Calgary v Rocky View County re: Glenbow Ranch ASP**

#### Calgary's Appeal

[4] Calgary had particular concerns with policies in the Glenbow Ranch ASP for transit, transportation, recreation and water protection, and with the MDP amendments that give the residential development in the Glenbow Ranch ASP the appearance of a hamlet. Calgary is of the opinion that the bylaws will have a detrimental effect upon it for the following reasons:

#### **1. Development in the Glenbow Ranch ASP area will detrimentally affect Calgary's transportation network.**

Calgary's Transportation staff does not agree with the traffic control measures shown on Map 9 for Woodland Road and Lochend Road and have concluded that the full build out of the site as planned will necessitate interchanges at two locations (Policy 19.1 Regional Transportation Network).

Alberta Transportation reviewed this ASP, and in a letter dated September 16, 2016, requested the development of an East-West road parallel to Highway 1A between Calgary and Cochrane to accommodate shorter trips in the area. The East-West road will impact Calgary's street network but no analysis has been undertaken to determine the magnitude of the impact, and no public engagement had been undertaken with Calgary residents for alignment options.

In meetings held in December 2016 and March 2017, Alberta Transportation stated its intention, after the Bearspaw ASP was updated, to conduct a functional planning study for Highway 1A between Calgary and Cochrane. Approval of the Glenbow Ranch ASP before updating the Bearspaw ASP may rule out options for good transportation and land use planning on both sides of the highway.

The Glenbow Ranch ASP does not provide an adequate transit solution. Without further detail, including specific plans to service the area with fairly funded transit, Calgary would suffer detriment due to:

- Increased auto mode share for commuting trips to/from employment in Calgary, advancing the timing for the currently unbudgeted interchange at Crowchild Trail (Highway 1A) and 12 Mile Coulee, and in the interim, increasing both the travel time and delays for deliveries to/from Calgary via Highway 1A.

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- Increased use of Calgary Transit’s park and ride lots at Tuscany and Crowfoot LRT stations, displacing existing customers without a mechanism for contributions to operate and maintain the lots.

Relevant Sections of the Glenbow Ranch ASP

- Section 19 Transportation
- Policy 19.1 and Map 9
- Policy 19.14

**2. Development in the Glenbow Ranch ASP will detrimentally affect Calgary’s recreational, community, social and cultural facilities.**

The Glenbow Ranch ASP proposes to add 13,400 new residents without providing recreation, community, social and cultural facilities or amenities to support the population. Decisions about the need for such facilities are instead deferred to the local plan preparation stage which is unacceptable to Calgary. Local plans are non-statutory conceptual schemes, and Calgary has no ability to appeal local plans.

The Glenbow Ranch ASP does not require these facilities and amenities, and there is a high likelihood that residents will rely on the services within Calgary. While Rocky View proposes to work with the City of Calgary to “identify community recreation, culture and community service needs within the plan area through collaborative planning and agreement”, there is no agreement in place and the matter has not been advanced by Rocky View. There are no provisions or policies within the Glenbow Ranch ASP to ensure that the agreement is in place before development occurs. Developing new housing units without providing recreational, community, social and cultural facilities will be detrimental to Calgary as it will put undue stress on such services within Calgary without increased compensation by Rocky View.

Relevant Sections of the Glenbow Ranch ASP

- Section 14 Recreation, Community and Culture
- Policy 14.1
- Policy 14.4

Relevant Sections of the Rocky View County MDP

- Section 9.0 Hamlets (including but not limited to Policy 9.8)

**3. The Glenbow Ranch ASP’s inconsistency with the Rocky View MDP will detrimentally affect Calgary.**

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The Glenbow Ranch ASP proposes to establish a new hamlet, but has not satisfied the requirements of Policy 9.8 of the Rocky View MDP. In particular, the ASP does not meet Policy 9.8(c) which requires consideration of the impact of the hamlet's population on existing services infrastructure and amenities. Establishing a hamlet without considering the impact of its population on such matters creates uncertainty that negatively impacts intermunicipal planning and is detrimental to Calgary.

Relevant Sections of the Glenbow Ranch ASP

- Section 10 Residential Land Use

Relevant Sections of the Rocky View MDP

- Section 9.0 Hamlets (including but not limited to Policy 9.8)

**4. Development in the Glenbow Ranch ASP will detrimentally affect Calgary's water supply.**

Calgary recognizes the complexities faced by both municipalities to manage the impact of new development on source water quality. Calgary applauds many of the policies in the Glenbow Ranch ASP, in particular the open space conservation and transfer of development credits system, parks natural environment, and stormwater, which will contribute to a reduction of storm water impacts. The Glenbow Ranch ASP is immediately upstream of Calgary's raw water intakes and until further details are provided about the management of risk, Calgary is concerned about risks to its source water quality.

Relevant Sections of the Glenbow Ranch ASP

- Section 21 Stormwater

**5. Detriment to Calgary due to Amendments to the Rocky View MDP in Bylaw C-7665-2017.**

The amendments to the Rocky View MDP approved in bylaw C-7665-2017 will have a detrimental effect on Calgary for the following reasons

- i. Unlike other hamlets such as Harmony and Langdon, the location of this hamlet is not a traditional part of the rural landscape of the region. The approval of the Glenbow Ranch ASP at this location is spot zoning, not a product of planning and undermines Calgary's planning goals and priorities.
- ii. Establishing a new hamlet is contrary to Policy 5.4 of the Rocky View MDP. Rocky View has not adequately demonstrated how this hamlet meets the criteria for establishing a new hamlet. Further, on the basis that no new hamlets were to be

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established in Rocky View, Calgary has proceeded with planning and investment strategies.

- iii. Both the location of the new hamlet and the limited range of available services is detrimental to Calgary due to its implicit reliance on Calgary's infrastructure. There is no consideration for the expenditures of Calgary and its residents.
- iv. The addition of a new hamlet at this location will increase the region's population without requiring or providing additional services. As Rocky View adds population centres without considering the broader needs of the region, Calgary will need to accommodate a full range of services such as affordable housing and transit. Providing services to an increasing regional population will be detrimental to Calgary as it will either reduce its capacity to provide services or require an increase in taxes.

#### Relevant Sections of the Rocky View MDP

- Map 1
- Map 2
- Policy 9.1

#### Rocky View's Response

[5] On September 22, 2017, Rocky View filed its response to Calgary, stating that on April 25, 2017, first reading occurred for Glenbow Ranch ASP, with second and third reading occurring on July 25, 2017. Mediation with Calgary has not occurred for the following reasons:

1. Rocky View has no record of a request by Calgary to enter into mediation for the Glenbow Ranch ASP or amendments to the Rocky View MDP.
2. Calgary and Rocky View had engaged in substantive discussion and negotiation with respect to Calgary's concerns with the ASP and the MDP from May 2015 to April 2017. Over 19 meetings took place while the documents were being developed. Ongoing intermunicipal discussions and negotiation resulted in a number of modifications to the ASP to reflect Calgary's requests for alternative policy language. Throughout the negotiation, Rocky View acted in good faith to achieve resolution with Calgary.
3. Prior to first reading of each of the Glenbow Ranch Bylaws, Rocky View took various actions to address Calgary's concerns including:
  - i. Revising the Glenbow Ranch ASP's Master Drainage Plan;
  - ii. Updating the Glenbow Ranch ASP's Master Transportation Study;
  - iii. Revising the Glenbow Ranch ASP's Servicing Strategy;
  - iv. Amending some ASP policies about the planning of regional transit, recreation, community services and fire services, an increased emphasis on consultation. At Calgary's request, the circulation area of the plan was extended.

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- v. On December 21, 2016, Rocky View provided additional changes to Calgary for policies in Glenbow Ranch ASP.
- vi. On April 6, 2017, Rocky View responded to Calgary's March 1, 2017 letter about second draft of the Glenbow Ranch ASP.
- vii. On April 18, 2017, Rocky View responded to both Calgary's April 3, 2017 letter about the amendments to the Rocky View MDP, and its April 10, 2017 request to delay second reading of the Glenbow Ranch ASP and amendments to the Rocky View MDP.
- viii. The April 25, 2017 Administration Report to Rocky View Council detailed the modifications to the Glenbow Ranch ASP and amendments to the technical documents.
- ix. The April 25, 2017 Administration Report to Council also included Rocky View's position on Calgary's comments about the amendments to the Rocky View MDP.

[6] On August 16, 2017, Rocky View's Reeve sent a letter to Calgary's Mayor addressing Calgary's ongoing concerns with the Glenbow Ranch ASP. The Reeve advised that Rocky View was willing to engage in a dispute resolution process to resolve Calgary's concerns including: direct discussion, mediation and other such tools available to municipalities including an intermunicipal collaboration framework.

### **17/IMD/002: Town of Cochrane v Rocky View County re: Glenbow Ranch ASP**

#### Cochrane's Appeal

[7] On August 25, 2017, Cochrane filed its appeal stating that the Glenbow Ranch Bylaws has or may have a detrimental effect upon it. The statutory declaration included four grounds or issues under appeal, including soft services, transportation, provision of water resources, and inconsistency with the Rocky View MDP due to the designation of Glenbow Ranch as a full service hamlet. While Rocky View did offer to engage in mediation, the invitation to mediate was extended after third reading had been given. Cochrane filed its appeal for the following reasons:

#### **Detriment to Cochrane from Glenbow Ranch ASP Bylaw C-7667-2017**

##### **1. Soft Services**

Without amenities that characterize a complete community or "Hamlet – Full Service", the future development of the Glenbow Ranch ASP will place an unplanned burden on Cochrane's programs, facilities and services.

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As the Glenbow Ranch ASP is a bedroom community, future residents within the Glenbow Ranch ASP will travel to Cochrane for programs, facilities and services not provided within their community, placing undue stress on each area and impacting service levels to Cochrane residents. This will result in financial detriment to Cochrane and its taxpayers for the increased operational costs. It is essential that, prior to this development proceeding, that there is an appropriate cost sharing agreement between Cochrane and Rocky View.

## **2. Transportation**

The addition of approximately 13,500 new residents to both the regional and Cochrane road network remains an area of significant and unresolved concern. Despite Alberta Transportation's plans for the proposed upgrades to the Highway 22 and 1A intersection within Cochrane, the Highway 1A corridor is still experiencing considerable transportation constraints.

Highway 1A also represents a critical regional highway corridor, with a significant commuter population from Cochrane and the surrounding region. It is of paramount importance to Cochrane that Highway 1A functions effectively and efficiently. Any plans for this corridor should be coordinated with input from Alberta Transportation, Rocky View, Calgary and Cochrane before this development proceeds.

Development of a predominately residential community will place additional stress on the existing transportation network. The Glenbow Ranch ASP does not acknowledge or address Cochrane's concerns, nor has it made any attempt to mitigate impacts on this specific issue. Rocky View has overlooked Policy 9.8(c) of its MDP which articulates that an ASP for a hamlet shall address the impact of the population on "existing services, infrastructure, and amenities".

Future residents of Glenbow Ranch ASP will generate additional traffic in Cochrane for typical daily trips, including school trips, until schools are provided within the Glenbow Ranch ASP area. Cochrane will experience increased operational and maintenance costs and, there will be road improvement projects required to relieve traffic congestion which is not included in Cochrane's 10-Year Financial Plan. Without collaboration on long term transportation solutions, the Glenbow Ranch ASP will have significant detrimental impacts on Cochrane.

## **3. Provision of Water Resources**

Due to limited water resources, all Calgary region municipalities are facing significant constraints to growth. In 2006, the South Saskatchewan River Basin was closed to surface

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licenses, resulting in a market and demand for licenses. Other than Calgary, all municipalities within this river basin face an uncertain future for water resources. A comprehensive water strategy is needed which benefits all stakeholders.

The Glenbow Ranch ASP was approved without a comprehensive water servicing solution. It does not have an approved water license, and will require that an existing water license be transferred to support the development in the plan area. While urban municipalities have historically been responsible to acquire and hold the necessary water licenses, Rocky View has deferred this responsibility to the development community. It is anticipated that the developer of Glenbow Ranch ASP will apply to transfer a water license to the plan area after all appeals are complete and the ASP approved. Rocky View has not attempted to address or mitigate Cochrane's servicing concerns about the Glenbow Ranch ASP.

Should transfer of the water license be approved for the Glenbow Ranch ASP, it will have significant detrimental impacts on Cochrane and the Calgary region, including:

- Hamper provincial objectives related to a comprehensive water strategy in support of future development in the Calgary region and ensuring a sustainable future of the South Saskatchewan River Basin.
- Create a competitive market between municipalities, who accept responsibility for provision of public water and developers in Rocky View. This will result in increased costs to consumers in both municipalities and the development of uncoordinated water infrastructure which is not consistent with the South Saskatchewan Regional Plan (SSRP).
- Limit Cochrane's opportunity for future growth by limiting its ability to return treated wastewater to Calgary and then to the Bow River.
- Reduce Cochrane's ability to secure a water license to support its future growth.
- Increase the associated cost of a water license on Cochrane and its residents.
- Due to the *Water Act* regulations for downstream impacts and health of the aquatic environment, placing a limit on the ability to transfer a water license to support Cochrane's future growth.
- Restrict Cochrane's future opportunities for long term wastewater solutions and limiting future growth.

It is essential for local governments in the Calgary region to cooperate on water resources, ensuring that future growth and development is achieved in a sustainable manner. The benefit of this approach provides growth certainty, maximizes the use of available water licenses, provides coordinated infrastructure, protects the Bow River basin, ensures a stable and predictable water license market and provides certainty for developers in every

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municipality. In doing so, the Calgary region will achieve the goal and objectives of the SSRP.

#### **4. Detriment due to Bylaw C-7665-2017, Amendments to Rocky View's MDP**

The amendments to the County Plan (Rocky View's MDP) will have a detrimental effect on Cochrane for the following reasons:

- i. Establishing the Glenbow Ranch ASP area as "Hamlet-Full Service" is contrary to the policies set out in Policy 5.4 of the County Plan which limits the establishment of new hamlets in Rocky View. Consequently, Cochrane is facing the potential for new significant residential development that is reliant on Cochrane's programs, facilities and programs.
- ii. Despite Rocky View's recognition of Glenbow Ranch ASP as a "Hamlet-Full Service", there will only be a limited range of services. This is detrimental to as it shifts the burden of responsibility to Cochrane for programs, facilities and services, without any consideration of the financial and service impacts on Cochrane and its ratepayers.

[8] Cochrane affirmed its commitment to work collaboratively with all municipalities in the Calgary region, to plan, deliver and fund intermunicipal services. Comprehensive regional planning is the best forum to resolve differences and align interests for the long term benefits of the region. Cochrane is opposed to the Glenbow Ranch ASP because it will have detrimental impacts on future generations on Cochrane, Calgary and the region.

#### Rocky View's Response

[9] On September 22, 2017, Rocky View responded, stating that discussion and negotiation had taken place between the two municipalities between May 2015 and April 2017. Changes to the Glenbow Ranch ASP were made to reflect Cochrane's request for alternative policy language. Rocky View had not undertaken mediation with Cochrane because it had not been requested, and secondly, there had been in excess of ten (10) meetings between administration and five (5) Intermunicipal Committee Meetings.

[10] Prior to giving first reading to bylaws for Glenbow Ranch ASP and the Rocky View MDP, Rocky View took various actions to address Cochrane's concerns including:

- i. Rocky View developed additional policy wording in the Glenbow Ranch ASP. On December 21, 2016, Rocky View sent a letter advising of the changes.

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- ii. In a separate letter on November 29, 2016, Rocky View responded to Cochrane's concerns with the potential impact of the ASP development on soft infrastructure (i.e. schools, libraries, recreation, emergency services, fire services, protective services, Family and Community Support Services) proposing that an Intermunicipal Collaborative Framework to identify and address soft infrastructure requirements.
- iii. On April 6, 2017, Rocky View provided a letter in response to Cochrane's March 1, 2017 comments on the second draft of the Glenbow Ranch ASP.
- iv. On April 18, 2017, Rocky View provided a letter in response to Cochrane's April 5, 2017 comments on the Bears paw ASP and amendments to the Rocky View MDP.
- v. An April 25, 2017 administration Report, provided Rocky View Council details of the ASP modifications developed to address Cochrane's concerns.
- vi. The April 25, 2017 administration Report also provided details of the amending bylaw to Rocky View's MDP, the County Plan

[11] In an August 16, 2017 letter, Rocky View's Reeve wrote to Cochrane's Mayor addressing Cochrane's ongoing concerns with the Glenbow Ranch ASP and advising that Rocky View was willing to engage in a dispute resolution process to use the various tools available to the municipalities. Rocky View is amenable to dispute resolution with Cochrane. In a letter from the Reeve to Cochrane's mayor, Rocky View provided a list of mediators and dates available for mediation.

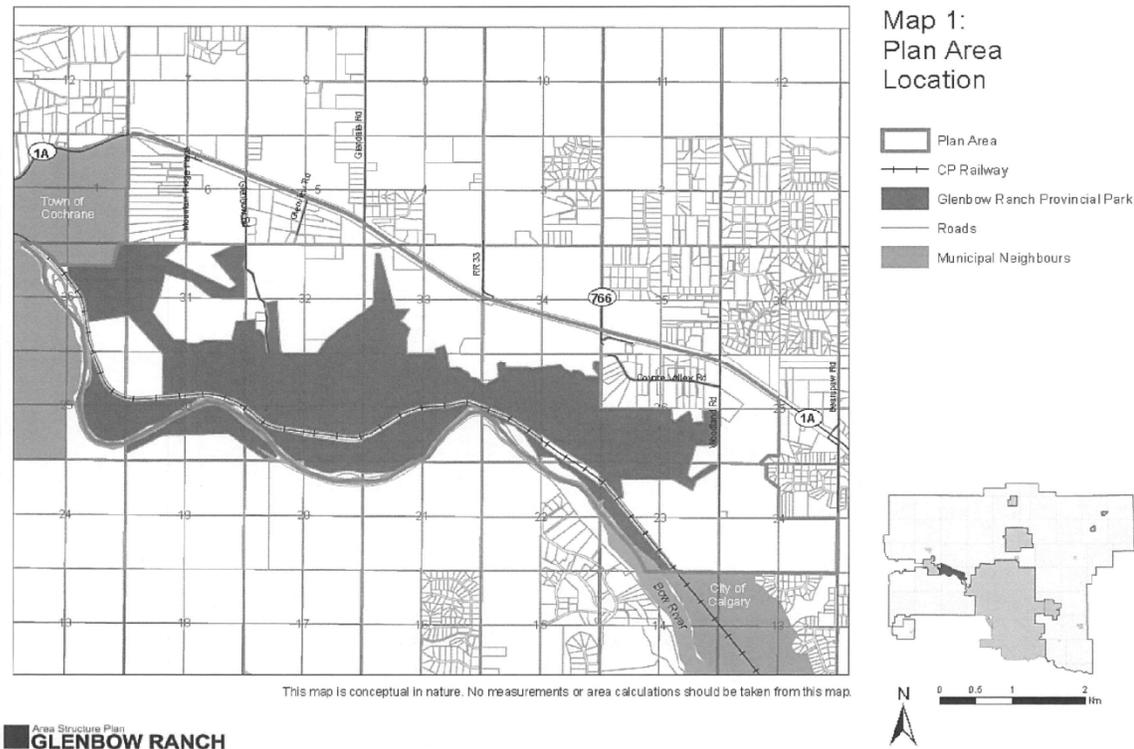


Figure 1 Glenbow Ranch Area Structure Plan

## **PART B: Preliminary Issues**

### **Preliminary Issue 1: Timeliness of the Application filed by Cochrane**

[12] On September 26, 2017, MGB administration notified the parties that Cochrane’s appeal, filed on August 25, 2017, appeared to have been filed out of time. Section 690(1) requires that an appeal be filed within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw. The MGB requested certified copies of the Glenbow Ranch Bylaws to confirm the date that the bylaws were passed.

[13] The Glenbow Ranch Bylaws were adopted on July 25, 2017, Section 22(3) of the *Interpretation Act* required appeals to be filed by August 24, 2017. The parties were invited to make submissions to the MGB panel and speak to the timeliness of the application at the initial hearing.

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#### Cochrane's Submission

[14] In response to the MGB's letter, Cochrane argued that their appeal was filed on time. Cochrane maintained that the earliest date that the bylaw could reasonably have been passed was July 26, 2017. Under section 189 of the *Act*, a bylaw is passed when it receives third reading and is signed in accordance with section 213. While the Glenbow Ranch Bylaws received third reading on July 25, 2017, they were unlikely to have been signed on that day. Bylaws are generally signed in the days following the Council Meeting.

[15] The County's statutory declaration stated that second and third reading of the bylaw occurred on July 25, 2017, but did not include the date that the bylaw was signed. Most municipalities sign the bylaw in the days following third reading, not on the date of third reading. Rocky View has previously followed this practice. If the bylaw was signed on July 26, 2017, Cochrane's appeal was on time. After looking at the certified copy of the bylaws, Cochrane does not dispute the signing date.

[16] At the hearing, Cochrane expanded their argument. On August 24, 2017, a member of Cochrane's administration contacted the MGB seeking instructions on how to go about filing an appeal. When there was no immediate response from the MGB, Cochrane filed its appeal on August 25, 2017. There is no prejudice to any party as a result of the late filing, and the appeal should proceed.

#### Rocky View's Response

[17] Rocky View provided certified copies of the three bylaws which were given third reading and signed on July 25, 2017. On October 6, 2017, Rocky View responded to the MGB's letter, framing the issue into the following two questions:

1. Was Cochrane's notice of appeal and statutory declaration filed outside of the 30 day limitation period of time prescribed by section 690?
2. If so, does the MGB have jurisdiction to extend the limitation period?

[18] Rocky View stated that, in recent years, they had adopted a practice of signing bylaws at the Council Meeting. The Glenbow Ranch Bylaws were passed on July 25, 2017. In order to file the appeal within 30 days, Cochrane's appeal would have to have been received by the MGB on August 24, 2017. Cochrane's appeal, filed on August 25<sup>th</sup>, 2017, was out of time. To confirm the date that the Glenbow Ranch Bylaws were signed, S. Baers, who is the Manager of Planning for Rocky View, confirmed that after a bylaw receives third reading, the County's practice is to have the Reeve sign the bylaws at the next break, or before the end of the Council meeting.

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[19] To address the second question, Rocky View stated that the MGB does not have the authority to extend the 30-day limitation period. Rocky View noted that the tight timelines in Part 17 are intended to deal with matters in a timely and efficient fashion. Citing *Tymchuk v Edmonton (Subdivision and Development Appeal Board) 2012 ABCA 22*, Rocky View noted that the statutory time limits for the commencement of proceeding cannot be extended by the Courts unless “some statute says so”. There are no provisions in the *Act* that allow the MGB to extend the prescribed limitation period of 30 days. The MGB must dismiss Cochrane’s appeal.

Decision and Reasons:

1. Cochrane’s appeal is out of time, and the appeal dismissed.

[20] The MGB announced the above decision orally at the preliminary hearing, since the decision would impact consideration of the other 3 preliminary matters.

[21] The uncontradicted evidence of S. Baers is that Rocky View signed the Glenbow Ranch Bylaws on July 25, 2017 and the certified copies of the bylaws provided by Rocky View support this claim. While the letter from MGB administration cited section 22(3) of the *Interpretation Act* for the calculation of time, section 22(7) applies in this case. If an appeal of the bylaw was to be filed within 30 days, section 22(7) states that “if an enactment provides that anything is to be done within a time after, from or before a specified day, the time does not include that day.” Since the bylaw was adopted on July 25, 2017, if the appeal was filed within 30 days from the date that the bylaw was passed, the timeline would have lapsed on August 24, 2017. Any appeals of the Glenbow Ranch Bylaws should have been filed on August 23, 2017. Cochrane’s appeal, filed on August 25, 2017, was out of time.

[22] While there are no decisions on the issue of timeliness for intermunicipal disputes, there are other authorities on timeliness for other matters considered by the MGB or by an Assessment Review Board. The *Act* does not have a provision, in either Part 12 or Part 17 giving the MGB authority or discretion to extend the timelines for filing an appeal. A deadline is a deadline, and this appeal is not properly before the MGB.

### **Preliminary Issue 2: Schedule for Mediation, Evidence Exchanges and Merit Hearing Dates**

[23] A joint submission was prepared by Calgary, Cochrane, and Rocky View to provide the MGB panel with a proposed schedule. Calgary advised the panel that, despite Cochrane being out of time and closed by the MGB, the schedule would still be suitable. The timeline considered that the Calgary and (if it were to proceed) Cochrane hearings would be separate hearings but conducted consecutively.

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[24] Rocky View still intends to conduct mediation with Cochrane. Although not specified in the timeline, the intention was for a week of mediation with each of Calgary and Cochrane and each agreement was to be reviewed for consistency.

Decisions and Reasons:

2. The MGB accepts the timeline with one alteration to reflect changes to the *Act*. The timeline in 17/IMD-001 will be as follows:

<b>Date and Time (submissions due at Noon)</b>	<b>Action</b>
Friday, December 21, 2017	Completion of Mediation
Friday, January 26, 2018	Written Report to the MGB about the mediation process for 17/IMD-003, and an estimate of time for merit hearing.  If mediation is not successful, response to the mediation report by Rocky View under section 691(3)(c).
Friday, March 16, 2018	Calgary Submissions and Will Say Statements
Friday, May 4, 2018	Rocky View Submissions and Will Say Statements Submissions by Landowners
Friday, June 1, 2018	Rebuttals by Calgary Submissions by Affected Parties - Cochrane and Park Foundation
Friday, June 8, 2018	Sur-rebuttal by Rocky View
Monday, June 18, 2018	Merit Hearing

Submissions for the merit hearing are to be placed on the municipal websites.

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Calgary and Rocky View will be responsible for retaining the services of a court reporter for the merit hearing. The associated costs will be shared equally between the municipalities, and copies of the transcript will be provided at no cost to the MGB.

[25] Although no estimate of time required for the hearing was described by the parties, the MGB would invite submissions on this matter with the January 26, 2018 report. The location of the hearing will be in the MGB's office in Calgary.

[26] All submissions are due no later than noon on the date noted. Submissions will be made electronically between parties, but one hard copy will be delivered within three business days. The MGB's submissions are to be emailed to [mgbmail@gov.ab.ca](mailto:mgbmail@gov.ab.ca). eight (8) hard copies (one unbound) are to be delivered to the MGB's Edmonton Office within three (3) business days following the due date. One electronic copy and one hard copy is to be provided to the affected parties.

[27] The above timeline appears reasonable, and the MGB appreciates that Calgary, Cochrane and Rocky View filed a joint submission. As noted in other MGB decisions, the timeline for mediation is as important as establishing merit hearing dates. It should be noted that there are a number of intermunicipal disputes where, after mediation has occurred, the parties agree to withdraw the appeal. If, after mediation, the appeal is withdrawn, there will be no submissions filed with the MGB and the merit hearing will be cancelled.

**Preliminary Issue 3: Addition of Cochrane as an Affected Party in Calgary's Intermunicipal Dispute.**

[28] In their initial statutory declarations, Cochrane and Calgary requested affected party status in the other's appeal. Since Cochrane's appeal was determined to be out of time, the MGB heard Cochrane's submission for affected party status in Calgary's appeal. If, after mediation between Calgary and Rocky View or due to the MGB's decision on Calgary's appeal, changes result to the Glenbow Ranch Bylaws, Cochrane believes that there will be impacts upon it.

[29] Cochrane and Calgary's concerns with the Glenbow Ranch Bylaws are very similar. As mediation between Calgary and Rocky View proceeds, Cochrane may be materially impacted if changes are made to three areas in the Glenbow Ranch Bylaws: transportation, soft services, and water. Cochrane believes that comprehensive planning is necessary prior to any development on the site. Waiting to the local plan stage to plan for access and transportation, soft services and water to the Glenbow Ranch ASP is not sufficient. Secondly, merely conducting consultation on issues does not mean resolution will occur.

[30] The first area, transportation and access, is of concern due to the Glenbow Ranch ASP's reliance on Highway 1A for access, Alberta Transportation's requirement for a roadway parallel

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to Highway 1A and Rocky View's practice of using local area plans for detailed planning and design. The second area, soft services, is an issue since the Glenbow Ranch ASP has limited commercial development and is characterized as a bedroom community. The Glenbow Ranch ASP contains objectives and policies to collaborate with Cochrane and Calgary for cost sharing and complimentary service delivery for cultural and community services needs and community recreation. Thus, the Glenbow ASP recognizes that it doesn't have the soft services and a plan is needed. Water availability is the third area that Cochrane believes the Glenbow Ranch ASP cause detriment. Rocky View does not have adequate water licenses for the development contemplated by the ASP. The Glenbow Ranch ASP states that water availability will be confirmed at the local plan stage.

[31] Calgary did not object to Cochrane's application to participate as an affected party. Cochrane's participation in the mediation would allow for a regional discussion. Cochrane acknowledged that the matters discussed in Calgary's mediation were those set out in Calgary's statutory declaration. Cochrane has no intent to bring in additional issues during the mediation between Calgary and Rocky View. Further, a skilled mediator will focus discussions and keep things on track.

[32] Rocky View did not dispute that Cochrane is an affected party in Calgary's dispute. However, it noted Cochrane and Calgary's appeals are unique to each municipality and circumstance, and Rocky View does not want Cochrane to bootstrap its appeal onto that of Calgary. If Cochrane is to be added as an affected party, Rocky View requested that the MGB direct, as it did in DL 018/16, limited participation of Cochrane in the appeal. These are:

- (a) Cochrane, as an affected party, will limit its submissions to the issues raised by Calgary.
- (b) If Calgary and Rocky View resolve any matters in mediation and withdraw them from the appeal, Cochrane may not file submissions on these matters.
- (c) When questioning witnesses from Calgary or Rocky View, Cochrane is limited to questions of clarification on those matters remaining under dispute.

[33] Rocky View does not agree to Cochrane's participation in its mediation with Calgary. Calgary's issues are different and distinct from Cochrane's. Cochrane's participation in Calgary's mediation may complicate and lengthen discussions. Rocky View noted that soft services and water resources will be discussed during the development of the intermunicipal collaboration framework and during discussions for the growth management framework in the Calgary region.

[34] Rocky View explained that the timeline for mediation included a week for mediation with Calgary and a week for mediation with Cochrane. Rocky View still intends to engage in mediation with Cochrane.

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Decision and Reasons:

3. Cochrane is an affected party in Calgary's appeal of the Glenbow Ranch Bylaws.
4. As an affected party, Cochrane's participation in this hearing will be as follows:
  - (a) Cochrane will limit its submissions for 17/IMD-001 to the issues raised by Calgary.
  - (b) If Calgary and Rocky View resolve any matters in mediation and withdraw them from the appeal, Cochrane may not file submissions on the withdrawn matters.
  - (c) Cochrane is limited to questions of clarification for Calgary and Rocky View's submission.
  - (d) The merit hearing panel may give additional instructions relating to the Affected Parties as they see fit.

[35] Despite Cochrane's own appeal being deemed out of time, it remains an affected party in Calgary's appeal. Reflecting Rule 9.1(f) in the Intermunicipal Dispute Procedure Rules, Cochrane may participate the hearing for 17/IMD-001 as an affected party, to speak to matters raised by Calgary.

[36] Affected party status does not imply a requirement to participate in mediation, since section 690 requires only the appellant and respondent municipalities to attempt mediation. The extent to which Cochrane participates in mediation as an affected party, is best left to the municipalities to determine,

**Preliminary Issue 4: Addition of Glenbow Ranch Park Foundation as an Affected Party in Calgary's Intermunicipal Dispute.**

[37] On September 28, 2017, the Glenbow Ranch Park Foundation (Park Foundation) submitted a request to be considered as an affected party. The Park Foundation believes it is an affected party for the following reasons:

1. They own lands immediately adjacent to the Glenbow Ranch ASP.
2. The Park Foundation has a substantial role in the operation of the Glenbow Provincial Park. It provides park services and participates in parks operations, and forms 50% of the board of directors which operates Glenbow Ranch Provincial Park.
3. The Park Foundation had a primary role in the development of "The Integration of Glenbow Provincial Park in the Glenbow Planning Area." which was the foundation of the Glenbow Ranch ASP.
4. The Glenbow Ranch Provincial Park can receive the conservation easements and other land interests contemplated in the Glenbow Ranch ASP. The Park Foundation has an agreement with the Government of Alberta for stewardship and integration of lands received by the Glenbow Ranch Provincial Park.

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5. On behalf of the Glenbow Ranch Provincial Park, the Park Foundation conducts consultations and engages Calgary and Cochrane.
6. Rocky View does not oppose the Park Foundation's application for affected party status.

[38] The Glenbow Ranch ASP intends for a master planned residential community, based on conservation design principles, to protect the landscape values of the Glenbow Provincial Park. The Park Foundation would like to participate in the hearing. Glenbow Provincial Park is the central planning feature of the Glenbow Ranch ASP. The Foundation plays a central role in the Park and can provide a perspective of the impacts of the Glenbow Ranch ASP on Glenbow Provincial Park.

[39] The relationship between the Park Foundation and Alberta Environment and Parks in the operation of Glenbow Provincial Park is unique. The Park Foundation's role includes programming, research and stewarding or managing donated lands prior to their inclusion in Glenbow Provincial Park. The Park Foundation assisted in the development of the background document for the ASP, and will steward the lands transferred to the Glenbow Provincial Park as a result of density transfers from the Glenbow Ranch ASP. The Park Foundation produced an email from the regional director for Alberta Environment and Parks supporting the Park Foundation's participation in the hearing, but noting that the Park Foundation is not speaking for Alberta Environment and Parks.

[40] Rocky View did not object to the Park Foundation's application as an affected party and argued that the Park Foundation should have the same restrictions on participation as Cochrane.

[41] Calgary did not support the Park Foundation's application for affected party status. Calgary believes that section 691 affords standing to a landowner and that an affected party should also be a landowner. The intermunicipal dispute hearing is intended to resolve the detrimental impacts on Calgary due to Rocky View's area structure plan. The Park Foundation is not a landowner. There is no evidence that the Park Foundation speaks for the Province of Alberta. If the Park Foundation is added as an affected party, their role should be limited to the same role as Cochrane.

#### Decision and Reasons

5. The Park Foundation is an affected party.
6. Similar to Cochrane, the Park Foundation's role in this dispute is limited to:
  - (a) The Park Foundation will limit its submissions for 17/IMD-001 to the issues raised by Calgary.
  - (b) If Calgary and Rocky View undertake mediation and resolve an issue and withdraw it from consideration, the Park Foundation may not make submissions relating to it.

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- (c) The Park Foundation is limited to asking questions for clarification of Calgary and Rocky View's submission.
- (d) The merit hearing panel may provide any additional instructions to the Park Foundation as it sees fit.

[42] The relationship of the Park Foundation to Glenbow Provincial Park is unique. Given their involvement in all facets of the Glenbow Ranch Area Structure Plan, they may bring forward information that can assist the MGB in determining detriment. The Park Foundation should also be treated as a landowner within the plan area as it holds lands in trust and will clearly be affected by changes to the Glenbow Ranch ASP. As such, the MGB is satisfied that it should have standing to speak at the hearing for matters raised by Calgary.

[43] While Calgary notes that section 691 gives a role to landowners in an intermunicipal dispute, there are instances where plans and bylaws have impacts on other parties. The Procedure Rules, adopted in 2013, endeavored to allow affected parties to participation in the hearings, in a method and role defined by the panel. The Park Foundation is also a landowner in the Area Structure Plan, as it stewards lands within the plan area for future inclusion in Glenbow Provincial Park.

[44] The panel is not seized with this matter.

Dated at the city of Edmonton, in the Province of Alberta, this 13<sup>th</sup> day of December, 2017.

MUNICIPAL GOVERNMENT BOARD

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(SGD) H. Kim, Presiding Officer

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**Exhibits**

**17/IMD-001 City of Calgary v Rocky View County re: Glenbow Ranch Provincial Park**

- 1A Appeal Submission by Calgary
- 2R Rocky View County Statutory Declaration
- 3R Certified Copies of Bearspaw ASP amendment, Bylaw 7664-2017
- 4R Certified Copies of Rocky View MDP amendment, Bylaw 7665-2017
- 5R Certified Copies of Glenbow Ranch ASP, Bylaw 7667-2017
- 6AP Submission by Glenbow Ranch Park Foundation for Affected Party Status
- 7 Proposed Schedule for Mediation, Evidence Exchanges, and Proposed Merit Hearing Dates
- 8A Submission by Calgary objecting to Glenbow Ranch Park Foundation's request to be added as an Affected Party
- 9L Submission from Glenbow Ranch Park Foundation – Email from Alberta Environment and Parks, M. Storie, Regional Director, Parks Kananaskis Region

**17/IMD-002 Cochrane v Rocky View re: Glenbow Ranch Provincial Park.**

- 1A Appeal Submission by Cochrane
- 2R Rocky View County Statutory Declaration
- 3 September 26, 2017 Correspondence from MGB re: timeliness of Cochrane's appeal
- 4A Response to September 26, 2017 letter from Cochrane re: appeal filed on time
- 5R Certified Copies of Bearspaw ASP amendment, Bylaw 7664-2017
- 6R Certified Copies of Rocky View MDP amendment, Bylaw 7665-2017
- 7R Certified Copies of Glenbow Ranch ASP, Bylaw 7667-2017
- 8AP Submission by Glenbow Ranch Park Foundation for affected party status
- 9 Proposed Schedule for Mediation, Evidence Exchanges, and Proposed Merit Hearing Dates
- 10R Rocky View County Response re: September 26, 2017 Correspondence from MGB
- 11 City of Calgary Submission re: objection to Glenbow Ranch Park Foundation as an Affected Party