

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

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 AN APPEAL brought pursuant to Section 690 of the Act by the Summer Village of Sunbreaker Cove (SV) respecting Bylaw 1087/08 (Bylaw) adopted by Lacombe County (County) on November 26, 2009.

BEFORE:

Members:

D. Thomas, Presiding Officer
P. Mowbrey, Member
J. Noonan, Member

Case Manager:

P. Kemp

[1] This is the decision of the Municipal Government Board (MGB) from a hearing held September 8, 9 and 10, 2010 respecting the SV's appeal of Bylaw 1087/08, passed by the County on November 26, 2009 and alleged to have a detrimental effect on the SV.

OVERVIEW

[2] This appeal concerns Lacombe County Bylaw 1087/08, which redesignated approximately 59.71 hectares (147.5 acres) of land (Development Site) from Agricultural ("A") district to Recreational Vehicle Resort ("R-RVR") district. The owner of the lands, Delta Land Co. (Developer) applied to redistrict the Development Site to accommodate the development of "Sky Country Golf and RV Resort" (Proposed Development).

BACKGROUND

[3] On November 26, 2009, Lacombe County gave third reading to Bylaw No. 1087/08, which re-designated 59.71 ha (147.5 ac) of land from the Agricultural ("A") District to Recreational Vehicle Resort (R-RVR") District. The subject lands are located within NE 34-39-2-W5M. The proponent of the rezoning was the owner of the land, Delta Land. Co. Inc. (Developer). The Bylaw provides for the right to apply for the uses stated, however, it stipulated that prior to approval of any change in land use the Developer must execute a development agreement (DA). The DA was executed on December 4, 2009.

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

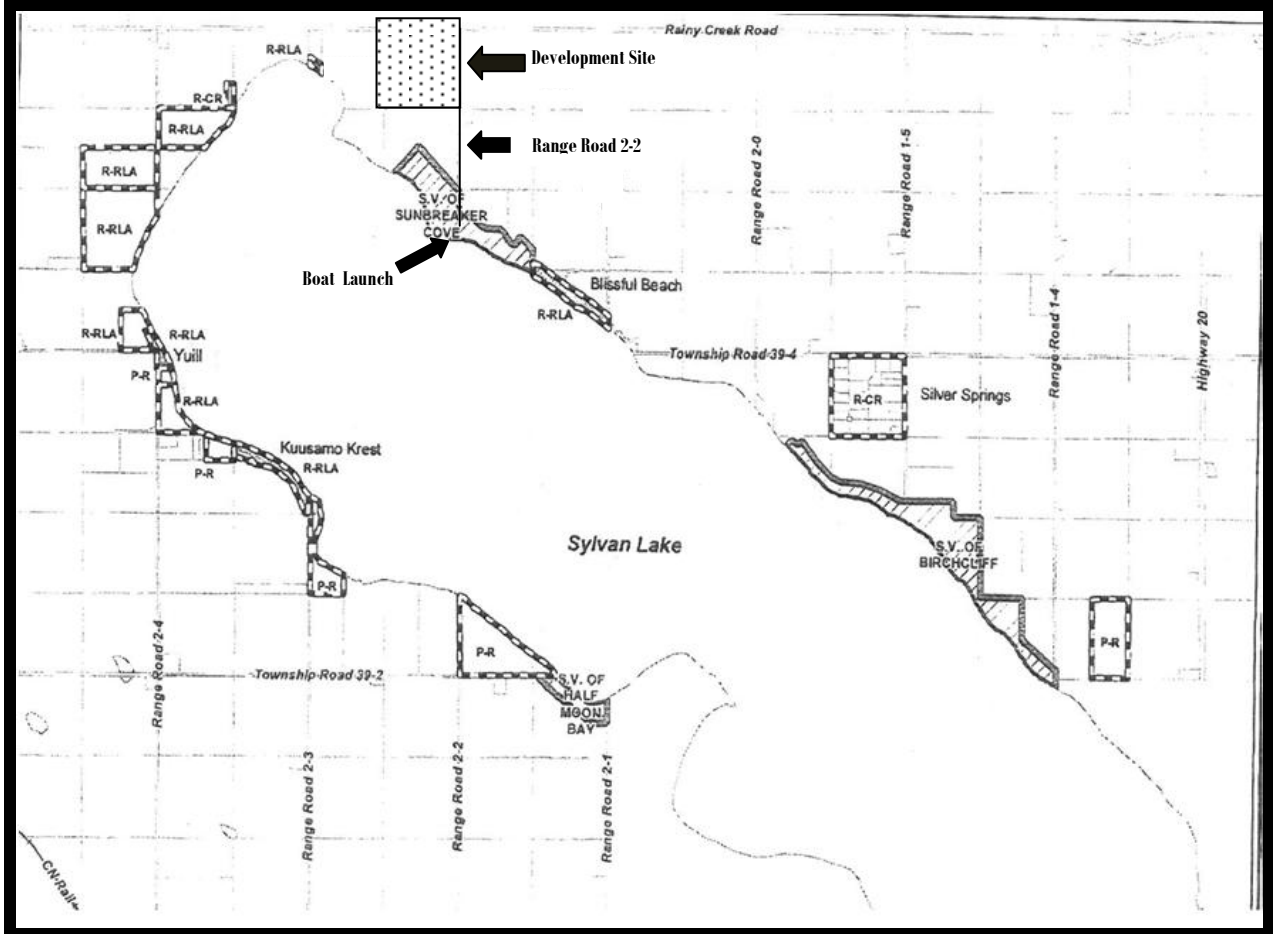
[4] The Summer Village of Sunbreaker Cove (SV) reviewed the Bylaw and participated in the public hearings that took place prior to the adoption of the Bylaw. Subsequently, the SV determined that some of the provisions have or may have a detrimental effect on the SV. On December 17, 2009, SV filed an appeal to the Municipal Government Board (MGB) pursuant to Section 690 of the *Municipal Government Act* (Act).

[5] The SV is a community of approximately 270 lots extending for approximately 1.5 kilometres along the northern shore of Sylvan Lake in central Alberta. It contains both seasonal and year round residences, the majority of which use public pathways to gain access to the lake. There has been little recent development activity on the lake apart from the approval of 200 lots in 2004. However, there is significant demand for recreational property close to the lake.

[6] One of the two boat launches on Sylvan Lake is located at the south end of Range Road 2-2, adjacent to the SV. The County operates the boat launch under a license of occupation (LOC) from the Provincial Government. There is an adjacent recreation area including parking, picnic tables and washrooms that is managed by the SV. The County has applied to the Provincial Government to amend the LOC to permit the County to double the existing width of the boat launch by having two side-by-side ramps. Originally, the LOC was held by the Sylvan Lake North Shore Access Association, which transferred it to the County in 2006 on condition that the boat launch remains open to the public. The other boat launch is located in the Town of Sylvan Lake and is privately owned.

[7] In 2009, the recreation area was upgraded in accordance with recommendations in the Sylvan Lake Public Access Study of 2003 (SLPAS). The SLPAS had recommended the addition of 25-30 parking spaces, however, only 17 were added.

[8] The southern boundary of the Development Site is approximately 0.8 kilometres north of the northern boundary of the SV, as shown on the map below.



[9] The Proposed Development is called Sky Country Golf & RV Resort. It involves a number of RV sites and facilities including a 9-hole golf course and a pool area.

[10] The County required the Developer to hold public consultations prior to adopting the bylaw in which the SV participated. One “open house” was held on July 14, 2007 and another was held on September 8, 2007. All parties agreed that steps were taken to address potential effects identified during the public consultation process, but opinions differed as to whether the steps taken were sufficient to mitigate potential detriment to the SV.

[11] The original Proposed Development was a bare land condominium consisting of 582 condominium ownership lots and 85 daily rental lots. The concept was redesigned following the public consultation process and the number of lots reduced to 423 condominium ownership lots and 84 daily rental lots. (The diagram below represents the current configuration of the Proposed Development.)

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06



[12] The SV's Notice of Appeal stated the following reasons for the appeal:

- That the proposed Bylaw is predicated on the implicit or tacit requirement to reasonable and sufficient lake access and facilities for the proposed use;
- There is no provision either within the proposed Bylaw or the Land Use Bylaw (LUB) requiring the construction of additional boat launching facilities and other amenities to accommodate the extra services required for any development under the Bylaw;
- The construction of the proposed RV park to be built pursuant to the Bylaw will or is likely to cause an immediate and drastic increase in boat traffic on Sylvan Lake;
- The development of the number of trailer lots proposed and their location will have a substantial negative impact on the water quality of the lake;
- The beach, lake front facilities, and the boat launch within the adjacent SV are already used to their absolute maximum and this development would cause gross overcrowding and may or is likely to create dangerous situations;

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

- No adequate plans have been put forward to address the excessive motor vehicle traffic that will or is likely to be caused by any development pursuant to the Bylaw;
- The approval of the Bylaw was predicated on plans which have never coalesced and which continue to evolve;
- The County's Municipal Development Plan (MDP) requires that an Area Structure Plan (ASP) be in existence before a multi-lot subdivision can occur. There is no such plan in existence;
- The proposed Bylaw affects land which is not located within any outline plan of the County; and
- At the time of the Public Hearing, there was a proceeding pending to amend the terms of the "R-RVR" land use district with in the LUB 1056/07, which would substantially change the rules as to what was to be allowed in a development with in the R-RVR land use district. A public hearing in the matter of the general amendment to the LUB was held within one week after the hearing in this case (the site specific land use amendment; the Bylaw). Since then, there has been a further public hearing with regard to the general amendment to the LUB. Therefore, the approval of the Bylaw, intentionally or not, may have been misleading as to its potential impact as the SV and other members of the public (and, possibly, members of the County Council) were, or may have been, uncertain as to the nature of the approval of the Bylaw.

ISSUES

[13] Some of the reasons for appeal listed in the Notice of Appeal were not argued by the SV at the hearing.

1. Does the Bylaw have a detrimental effect on the Summer Village?
 - a. Is the Bylaw premature and therefore detrimental to the SV?
 - b. Is the Bylaw contrary to the Sylvan Lake Management Plan (SLMP) and therefore detrimental to the SV?
 - c. Is the Bylaw in conflict with the County's Municipal Development Plan and therefore detrimental to the SV?
 - d. Will an increase in traffic congestion resulting from the Proposed Development be detrimental to the SV?
 - e. Will the Proposed Development cause detriment to the SV resulting from increased usage beyond the capacity of the recreation and parking area near the boat launch?
 - f. Will the Proposed Development cause detriment to the SV resulting from increased illegal parking on the SV's roadways?

SUMMARY OF THE SUMMER VILLAGE'S POSITION

Test for Detriment

[14] The Summer Village argued that the test for detriment is set out in the Sturgeon decision (MGB 77/98). Detriment does not have to be proved beyond a reasonable doubt. There is a two part test involving both the reasonable likelihood of detriment to the SV resulting from the bylaw and the significance of the impact on the SV should detriment result. In the Sturgeon decision the MGB used the words "*potential for detriment of a degree significant enough to warrant the Board's intervention*".

[15] The Summer Village quoted from the Sturgeon decision at page 44 of 84 where it states:

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.

The Bylaw Does Not Comply with the County's MDP

[16] The SV submitted that it, the County and six other municipalities approved the Sylvan Lake Management Plan (SLMP) in or around 2000. The SLMP was intended to be an intermunicipal development plan, but that was not completed. Subsequently, it was revised and endorsed by Lacombe County, Red Deer County, the Town of Sylvan Lake, the SV and five other summer villages. The SLMP is not a statutory plan and was not adopted as such by a bylaw. Neither is it identified as an outline plan on the County's website.

[17] The SLMP identified the area within approximately 1.6 kilometres (1 mile) of the lakes as the "Lake Development Area". The Development Site is located within this area.

[18] The County approved the current Land Use Bylaw (LUB) and the Municipal Development Plan (MDP) by bylaw on August 28, 2007.

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

[19] The MDP states that:

County Council shall not consider an application for a multi-lot residential subdivision, unless an area structure plan prepared and approved by Council is in place to guide decisions on development in the area.

The MDP also states that:

Any existing outline plans adopted by Council prior to the adoption of this Municipal Development Plan shall be recognized in place of an area structure plan.

However, the MDP does not define “outline plan”. Neither is “outline plan” defined in the LUB or the Act. The SLMP is not identified as an outline plan on the County website or in its published materials.

[20] The MDP further states that:

The County may consider higher density housing development along Sylvan Lake provided publicly accessible open space with lakefront access is provided as a trade off for increased density.

[21] The SV argued that no publicly accessible open space has been provided as a trade off for increased density as anticipated by the MDP. Further, as no ASP is in place and the SLMP is not an outline plan, the Proposed Development does not comply with the unequivocal mandatory language of the MDP and should, therefore, be found *ultra vires* and struck down.

The Bylaw is Premature

[22] The SV submitted that the County is currently in the process of developing a “Sylvan Lake Area Structure Plan” (Sylvan Lake ASP). This is the planning document that would guide developments proposed to be located within the area close to the lake. As the planning documents and policy direction that would guide the Proposed Development are still in the process of being formulated by the County, the SV argued that the Bylaw is premature.

The Bylaw is Contrary to the SLMP

[23] The SV submitted that the Bylaw proposes a use to accommodate the proposed development and that the development is contrary to the SLMP. It is, therefore, incompatible with and detrimental to the SV.

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

[24] The SLMP contains the following statements:

1. *No defined limits for development are set as municipalities intend to rely on further site specific analysis to determine the level or density of development that can be supported at any particular location.*
2. *Public access to the lake is a very contentious issue with local residents acknowledging that there is a need for additional public access to the lake but not in agreement as to where such development should occur.*
3. *Land bordering ... Sylvan Lake should be used to support and take advantage of the residential and recreational potential of the lake.*
4. *Significant opportunities for public access and use of Sylvan Lake must be maintained ... it is recognized that new access areas will need to be carefully planned so as to minimize conflicts with surrounding land uses and not be detrimental to the lake.*
5. *Details regarding the form or density of development that may be appropriate at any particular location will ... have to be determined following further site specific analysis.*

[25] The SV contended that no site-specific analysis of the particular development proposal has occurred with respect to the external impacts the Proposed Development will have on the SV. Hence, the Proposed Development is contrary to the SLMP.

Direct Control Zoning vs. Development Agreement

[26] The SV argued that the DA entered into by the County and the Developer is a contract to which the SV is not a party. As such, it is subject to amendment by the signatories without input or comment from the SV. SV witness Mr. B Romanesky, a professional planner, stated that a well considered Direct Control designation would have been preferable in that respect.

Increased Usage Beyond Capacity of Beaches

[27] Mr. Romanesky testified that he visited the SV in July on a Wednesday afternoon to look at the amenities that are available. He noted that the beach was very well used, even though it was not a weekend, and stated that he believed people from the development will want to use the lake and the beaches, whether or not they own boats. He pointed out that the SV had no sidewalks and that no plans exist to build sidewalks. Pedestrians walking to the beach must walk on the SV roads.

Increased Usage Beyond the Capacity of the SV Recreation and Parking Area

[28] The SV stated that there are now two boat launches on Sylvan Lake. One is a private facility located in the Town of Sylvan Lake and the other is a public facility located in the SV. There is already pressure on the boat launch located in the SV. During the summer it is very

busy, particularly on long weekends. As the boat launch is integrated with the recreation and parking area, increased use of the boat launch will result in increased use of the recreation and parking area.

[29] The SV referred to the County Staff Report that was prepared in November of 2008 and presented to the County Council prior to approval of the Proposed Development. It includes the following paragraph on page 4:

The impact of 400+ additional seasonal lots raised concerns about the effects on the existing local boat launch facilities. Even with significant upgrades, the parking and launching areas located in the Village of Sunbreaker Cove are often congested with lengthy wait times to launch a boat and insufficient parking. Staff feels it is unreasonable to expect that these facilities will be capable of handling additional traffic. Although Mr. Wilson has noted a shuttle service would be provided to residents of the RV development, at peak usage times, to mitigate parking issues, there has been no consideration made related to the impacts based on the increase of total users.

[30] The Proposed Development will include a large overflow parking area on the southeast corner of the property, the intention of which is to prevent overuse of the present parking facilities in the area of the boat launch. A shuttle service will be available to transport users of the overflow parking and their boats to the boat launch. However, this lot will be approximately one kilometre away from the boat launch and the SV is not convinced that it will prevent problems at the existing facility due to increased usage resulting from the Proposed Development.

[31] The SV referred to the Sylvan Lake Public Access Study (SLPAS) which was recommended by the SLMP and undertaken in 2003. The following table and comments appear on page 16 of the SLPAS:

Table 2.2: Boat Capacity Estimates

Peak Boats in use on the lake:	Current 300	Future 425
Total Boats Moored on the Lake:	Current 1200	Future 1660
Total Boats Launched on Peak Days	Current 200	Future 300
Total Truck/Trailer Stalls:	Current 75	Future 150

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

If the current launches on peak days are estimated at 200/day and the future launches are estimated at 300/day, that equates to 100 additional launches per day. Literature suggests that boat launch parking turns over twice per day (ie. morning fishing and afternoon water skiing), so to meet the estimated launching requirements in the future, an additional 50 truck/trailer stalls would be required. However, in addition to increased capacity to support future launching estimates, additional truck/trailer stalls are required in the short term to meet existing demand and resolve some of the existing problems associated with boat launching at road allowances and other public access sites. Currently there are only about 75 truck/trailer stalls to support 200 launches and as such an additional 25 stalls are required just to meet current demand.

[32] The SLPAS goes on to recommend that Sun Haven, the Sunbreaker Cove site, add 25 to 30 new truck/trailer stalls. Accordingly, the Sun haven parking lot is already at capacity and any increase in the number of users will exceed capacity.

[33] The SV introduced into evidence a report from D.A. Watt Consulting, a firm hired by the SV to do a peer review of the Williams Engineering Traffic Impact Assessment (TIA) of 2009. Mr. E. Van Weelderen spoke to the D.A. Watt report. The report commented that the TIA did not address the potential impact of the Skyy residents on the capacity of the parking area or boat launch arising from secondary uses such as recreation. The report also noted that there are already parking infractions in the vicinity of the boat launch and indicated that there is a strong potential for parking spill over on Sunbreaker Cove Road and the adjacent streets and roads in the SV. For the Skyy users that make use of the day use parking lot, the report expressed concern regarding their safety as they are directed to walk on Sunbreaker Cove Road in conflict with vehicular traffic. Upon questioning by counsel for the SV, Mr. Van Weelderen stated that additional transportation analysis, specifically in the areas of the boat launch and Sunbreaker Cove Road between the Proposed Development and the boat launch, would be needed to determine whether increased traffic would have a detrimental impact on the SV.

[34] Mr. G. Clark, a resident of the SV, testified that parking was a problem, especially on summer weekends. He explained that the SV had hired a retired RCMP officer to provide some enforcement for the "No Parking" signs the SV had been obliged to install on some of the SV roadways. Mr. Clark introduced the enforcement officer's report into evidence to show that there had been some parking infractions since the enforcement officer was retained.

[35] Ms. P. Jorgensen, another SV resident, testified that the parking is already a problem and that sometimes residents have a difficult time accessing their lots because of vehicles and boat trailers parked on the streets. Further, she contended that this is a safety issue. Emergency vehicles would have a difficult time accessing the homes of residents because of the parking

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

problem as it exists now. She also stated that, in her opinion, the boat launch would become unsafe if the number of users increased.

[36] The SV argued that the Bylaw is predicated on the implicit or tacit requirement for reasonable and sufficient lake access and facilities for the proposed development. The SV submitted that there is no analysis of how the proposed development will manage its needed lake access; there is no provision either within the Bylaw or within the LUB requiring construction of additional boat launching facilities to accommodate the proposed development. The SV further submitted that while there is a collection of funds through the DA, that money is tied to each plan of subdivision with no guarantee that the County will build new lake access facilities by any certain date, if at all.

SUMMARY OF THE COUNTY'S POSITION

Process of Adopting the Bylaw

[37] The County described the process followed in adopting the bylaw as follows.

- Following the first two open houses, the Developer was asked to prepare a summary of who attended and the concerns that were raised, and to provide the County with an indication of how the Developer intended to address those concerns.
- Subsequently, the Developer made a formal request to Council to consider an amendment to the LUB to redistrict the land.
- As part of that process, the planning department prepared a report to council providing a general description of the request, with an overview of all the policy considerations and any statutory documents that needed to be considered. They confirmed that the land fell within the Lake Development Area of the SLMP and that further site specific examinations would be required during the redistricting process to confirm that the individual lots and locations were suitable for the type of development proposed.
- Council passed first reading of the bylaw on January 8, 2009 and set a date for public hearing on March 4th, following which the Developer was again to review the submissions made at the public hearing and provide the County with an indication as to how they intended to address the concerns raised.
- The County, as part of its process, requires the Developer to sign a DA before council will consider third and final reading of a redistricting bylaw.
- There were negotiations occurring throughout a number of months that involved reviewing various reports (including the TIA, and environmental report, a hydrological study and a historical study) with the planning and operations departments, and site visits.
- The environmental study showed that there were no environmental concerns and the hydrological study showed that there was adequate water without influencing the lake

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

water. The TIA indicated that some road improvements and infrastructure improvements would be required.

- Once the DA and concept plan were finalized, Council approved the DA and gave third and final reading to the bylaw.

County Involvement with Parking and the Boat Launch

[38] During a mediation process in relation to a different appeal involving the same parties, the County agreed to look at enhancing the parking at the boat launch. Part of the agreement with the SV was that the County would remain the holder of the license of occupation for the boat launch and that the adjacent amenities, which are the Sun Haven recreation area (including the camp house, washroom facility and parking) would be transferred to the SV. The County retains the license of occupation for the boat launch pursuant to an agreement (with the previous holder) that the boat launch will remain open to the public. Recently, the County obtained approval from the Province to double the size of the boat launch.

Test for Detriment not Met

[39] The County referred to previous MGB decisions with respect to the test for detriment, and concluded that to find the Bylaw is detrimental to the SV, the Board must be satisfied that the harm to be prevented is both reasonably likely to occur and reasonably likely to have significant impact on the SV. In other words, there must be a probability, not just a possibility, that detriment will occur, and the detriment demonstrated must not be minor or remote. Further, the onus is on the SV to demonstrate that significant detriment is reasonably likely to occur. It is not up to the County to demonstrate otherwise.

[40] In the County's view, the test for detriment was not met for the reasons described below.

The Process of Adopting Bylaw was not Detrimental to the SV

[41] The County contended that the process followed in adopting the bylaw was correct and that the proposed development is consistent with the applicable statutory plans. However, the County took the position that, even if there was some procedural irregularity in the adoption process, which was not admitted, the SV did not demonstrate that the alleged irregularity resulted in detriment to the SV. There was no suggestion that the process followed limited the SV's opportunity to communicate its concerns in any way. In fact, the SV admitted that they had every opportunity to make their concerns known throughout the consultation process.

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

Increased Use of Beaches

[42] The County argued that Mr. Romanesky's evidence and opinion regarding potential overuse of the beaches around the SV should be given little or no weight, as it was based on a single visit to the SV.

Traffic Congestion and Parking

[43] The County reiterated the steps that are being taken to address the SV's concerns regarding traffic and parking, but pointed out that the SV provided no studies to support allegations of increased traffic congestion or increased parking on SV roadways. The evidence that was provided was either anecdotal or based on a single visit, which is an insufficient sample.

[44] The County also noted that the only evidence brought forward regarding the potential for increased usage at the boat launch and consequent traffic and parking issues was brought forward by the Developer. According to the Developer, less than 5% of occupants at two resorts without direct lake access owned boats. Given those numbers, it seems unlikely that the residents of the Proposed Development will significantly affect usage of the boat launch and adjacent parking lot.

[45] There was evidence at the hearing that the Developer tried to buy land immediately north of the SV for the overflow parking lot, but the land was not for sale. The County argued that when that land is developed, the County will have the power and authority to have some part of it set aside to ameliorate the parking situation in the SV. The County pointed out that Mr. Van Weelderen, the SV's witness, testified that he could not give a professional opinion that there will be a detrimental effect due to traffic or parking.

[46] The SV's evidence was that parking is already a problem. In accordance with the recommendations of the SLPAS, the County and the SV upgraded the parking at the Sun Haven recreation area. However, only 17 spaces were added rather than the recommended 25 to 30 additional spaces. No evidence was produced to show that the existing problem has anything to do with the Proposed Development. It is not the Developer's responsibility to fix the parking problem in the SV. Rather, the developer's obligation is to work with the County to mitigate any detriment the Proposed Development may cause.

[47] The County argued that its evidence showed the County went to great lengths to identify potential negative affects on adjacent municipalities and to impose conditions on the Developer to address and mitigate those effects.

[48] The County listed the following steps that were taken to address the SV's concerns:

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

- In response to the SV's concerns and through negotiations with the Developer, the County reached an agreement that the main access to the Proposed Development would be from Rainy Creek Road rather than Sunbreaker Cove Road. Further, there would be only one main entrance and the other entrance would be for emergency use only.
- Also in response to the SV's concerns, the County worked with the Developer to move construction of some of the amenities from the third and fourth phases to the first and second phases of the Proposed Development. Further, there will be public facilities (parking, a clubhouse, washrooms and ball diamonds) located in the Northwest corner of the Proposed Development that will be available to all members of the public, including the residents of the SV.
- The County negotiated with the Developer for a Municipal Reserve (MR) strip all along Sunbreaker Cove Road. The MR will contain a berm with trees and landscaping so as to minimize views into the RV Park itself.
- The County required the Developer to make a \$2,500 per lot contribution toward improving lake access.
- After a site visit, the County determined that it would be in the best interest of all if the MR was retained on-site with a particular mind being paid to the issue of parking at the boat launch. The County required the Developer to agree to construct an overflow parking area in the MR on the southeast corner.
- The County required that the Developer dedicate MR and construct a regional trail, as envisioned in the SLPAS, along the north and east boundaries of the Proposed Development. The trail will be for the use of both Sky Country residents and the general public and will connect with other developments as they occur in the future.

[49] In conclusion, the County reiterated that the issue before the MGB is not whether enough studies were done by the County to determine possible detrimental effects on the SV. It is not up to the County to demonstrate that the Proposed Development will not have a detrimental effect. The issue is not whether this is a good or bad development, or what has been done about the boat launch or current parking issues in the SV. It is not whether the right process was followed in passing the bylaw. The issue before the MGB is whether this development is likely to have a significant detrimental impact on the SV. The County submitted that it has substantially addressed the potential detriment by way of the DA, the scaled down concept plan, expanded boat launch and expanded parking.

SUMMARY OF THE DEVELOPER'S POSITION

[50] Mr. L. Dzaman spoke on behalf of the Developer. The Developer described the changes that were made to the draft concept of the Proposed Development in response to concerns raised by the SV and other members of the public. These changes included moving the main entrance, changing the type of lots (from small to larger) and reducing the number of lots (from 667 to 515), the addition of the water park, addition of the overflow parking area and shuttle service,

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

addition of the regional trail and more. Over 4,000 trees will be planted on the site of the Proposed Development.

[51] The Proposed Development is a four phase development that could take as many as 20 years to complete, so the increase in the number of residents would be more gradual than the residents of the SV appeared to believe. The Developer also pointed out that the Proposed Development, being a recreational facility, not all of the lots would be occupied at any given time.

[52] The Developer spoke to the management of four resorts: Lakewood Golf Course at Sylvan Lake, Coyote Creek west of Sundre, Raymond Shores at the north end of Gull Lake and Glenniffer Lake Resort along the Red Deer River. Two of those developments are directly on the lake and have excellent access to the lake directly from the resorts. Lakewood is similar to the Proposed Development, being approximately one mile away from the lake. Coyote Creek is near the Red Deer River, but there are no lakes nearby.

[53] All four developments reported that their average occupancy in May, June and September was 20% to 25% on weekdays and 30% to 40% on weekends. In July and August they are occupied at approximately 25% to 30% on weekdays and 50% to 60% on weekends.

[54] Glenniffer Lake Resort reported that 35% or 40% of the occupants owned boats. At Raymond Shores, boat owners numbered 25%. Those are the two resorts with lake access on site. Less than 5% of occupants at Lakewood and Coyote Creek own boats.

[55] The Developer testified that the amenities intended to be provided in the Proposed Development are high quality amenities that will tend to keep the occupants in the development. He compared the proposed water park to the water park in Red Deer, which is well used because it is safe and has a beach and a picnic area. The water park was originally intended to be put in as part of the third or fourth phase but was moved to the first phase due to negotiations with the County.

FINDINGS

[56] Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B, the MGB finds the facts in the matter to be as follows.

1. No detriment will result to the SV due to the adoption of the bylaw prior to the completion of the Sylvan Lake ASP.
2. The process followed by the County in passing the impugned bylaw was not detrimental to the SV.

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

3. No detriment will result to the SV from the alleged incompatibility of the bylaw with other planning documents.
4. The evidence did not demonstrate that significant detriment to the SV is likely to result from the Proposed Development due to increased traffic or increased use of the boat launch.
5. The evidence did not demonstrate that significant detriment to the SV is likely to result from the Proposed Development due to increased usage of the beaches in the vicinity of the SV.

DECISION

The Appeal is dismissed.

It is so ordered.

REASONS

Whether Bylaw Premature

[57] The SV argued that the redistricting bylaw is premature because the County is presently developing a Sylvan Lake ASP, which is the planning document that would guide developments proposed to be located within the area close to the lake. The County responded by saying, in essence, that the guidance provided by the SLMP was sufficient for its purposes.

[58] The MGB notes that an ASP is not a mandatory statutory plan:

Area structure plan

633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.

[59] The SV did not expand upon this argument at the hearing, and it remains unclear how the adoption of the redistricting bylaw prior to the ASP results in detriment to the SV. The MGB finds no detriment in this respect.

Conflict of Bylaw with Strict Requirements of MDP

[60] It appears to the MGB that the SV concentrated the majority of its resources for the appeal in its effort to demonstrate that the County did not follow the correct process in adopting the impugned bylaw as outlined in the MDP. Indeed, the second last sentence in the SV's legal submission states:

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

The SV believes it has demonstrated that LC [Lacombe County] has failed to comply with the clear and strict requirements of the MDP and, consequently, the LUB amendment should be found to be ultra vires and struck down.

[61] In a section 690 appeal, the MGB's jurisdiction is limited to amending or repealing provisions of a bylaw found to be detrimental. That an improper process was used in adopting a bylaw does not, in itself, lead to the conclusion that detriment to an adjacent municipality has or will occur. A somewhat similar issue was argued before the MGB in the Sturgeon appeal, in which the MGB remarked:

The Board does not agree with the proposition that simply because a MDP does not conform with the requirements of the Act or the Land Use Policies, detriment must necessarily result.

[62] There must be a connection between the process followed by the adopting municipality and some form of harm suffered by the adjacent municipality. For example, if the process followed by the adopting municipality had the effect of preventing the adjacent municipality from participating in the consultative process or from voicing its concerns with respect to the bylaw, the adjacent municipality might argue that the process itself was detrimental.

[63] In this case, no such allegation was made. In fact, at the hearing the SV candidly admitted that it was invited to participate in the consultative process, that it participated fully, and that the County took corrective action with respect to many of its concerns.

[64] The MGB agrees with the County that the procedure followed in adopting the bylaw, whether valid or not, was not detrimental to the SV. The MGB makes no finding as to the validity of the bylaw. Jurisdiction to declare a bylaw invalid for flawed process is given not to the MGB but to the Alberta Court of Queen's Bench:

Application to the Court of Queen's Bench

536(1) A person may apply by originating notice to the Court of Queen's Bench for

- a) a declaration that a bylaw or resolution is invalid, or*
- b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.*

(2) A judge may require an applicant to provide security for costs in an amount and manner established by the judge.

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

Procedure

537 A person who wishes to have a bylaw or resolution declared invalid on the basis that

- a) the proceedings prior to the passing of the bylaw or resolution, or*
- b) the manner of passing the bylaw or resolution does not comply with this or any other enactment must make an application within 60 days after the bylaw or resolution is passed.*

Validity relating to public participation

538 Despite section 537, a person may apply at any time

- a) for a declaration that a bylaw is invalid if*
 - (i) the bylaw is required to be put to a vote of electors and the vote has not been conducted or if the bylaw was not given the required approval in such a vote,*
 - (ii) the bylaw is required to be advertised and it was not advertised, or*
 - (iii) a public hearing is required to be held in respect of the bylaw and the public hearing was not held,*
- or*
- b) for an order requiring a council to pass a bylaw as a result of a vote by the electors.*

Conflict with Sylvan Lake Management Plan

[65] The SV argued that the bylaw was detrimental to the SV because it conflicted with the SLMP. Specifically, the SV alleged that the SLMP stated it would rely on “more site-specific analysis of particular development proposals to determine the level or density of development that is deemed appropriate at any given location.” The SV alleged that no such site specific analysis occurred with respect to the “external” impacts the Proposed Development will have on the SV. There were no submissions demonstrating how the lack of site-specific analyses would result in harm to the SV. Accordingly, the MGB finds no detriment in this regard.

Usage Beyond Capacity of Summer Village Facilities, Beaches and Boat Launch

[66] In order for the MGB to take action in a section 690 appeal, there must be a finding of detriment to the appellant municipality. The meaning of detriment was discussed in the Sturgeon decision as follows:

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

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." 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.

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."¹ 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.

[67] The MGB acknowledges that it could be detrimental to a municipality if a development in an adjacent municipality resulted in usage beyond capacity of facilities in the vicinity of the adjacent municipality. However, it is not sufficient simply to assert that such a result is the inevitable result of the location of the Proposed Development in proximity to the SV. To quote once more from the Sturgeon decision:

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. [Emphasis added]

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

[68] Having heard the submissions of all the parties, the MGB cannot conclude that the harm alleged by the SV is reasonably likely to occur or that if it occurred, it would significantly impact the SV such that an exercise of the MGB's power under subsection 690(5)(b) is justified. The MGB does not find that the SV established, with the evidence led by it that the Proposed Development will more likely than not result in significant harm to the SV.

[69] The MGB heard from the SV's witness, Mr. Van Weelderren that the TIA done by the County did not address the potential impact of the Skyy residents on the capacity of the parking area or boat launch arising from secondary uses such as recreation. In Mr. Van Weelederren's professional opinion, additional transportation analysis, specifically in the areas of the boat launch and Sunbreaker Cove Road between the Proposed Development and the boat launch, would be needed to determine whether increased traffic would have a detrimental impact on the SV. Unfortunately, the SV did not retain Mr. Van Weelederren's firm to perform the necessary additional transportation analysis and as a result, he could only testify that it had not been done by the County. However, the County is not obliged to disprove the SV's claims of detriment in this appeal. Rather, it is the responsibility of the SV to establish through evidence that significant detriment is likely to occur. This was not done.

[70] Mr. Romanesky, testified that, in his opinion, significant numbers of residents from the Proposed Development will come to the beaches in the vicinity of the SV. Mr. Clark and Ms. Jorgensen testified that parking is a problem in the SV during the summer months that the boat launch is already used to, if not beyond capacity. Ms. Jorgensen stated that illegal parking in the vicinity of the boat launch obstructs SV residents' driveways and makes it difficult for emergency vehicles to access the SV. All were of the opinion that these situations will probably worsen due to the proximity of the Proposed Development to the SV.

[71] The MGB reiterates that these allegations, if established through evidence, might form the basis of a finding of detriment. However, the evidence used to establish these claims must be of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact. As stated in the Sturgeon decision:

A municipality's lawfully adopted planning documents must be respected; reflecting as they do the hopes and aspirations of a community and its citizens, expressed and defined through the grassroots democracy of meetings and public hearings. 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....

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

[72] The evidence provided by the SV in support of its claims of detriment was largely unscientific and/or anecdotal and does not support a finding of detriment with regard to any of the grounds put forward.

No costs to any party.

Dated at the City of Edmonton, in the Province of Alberta, this 26th day of January 2011.

MUNICIPAL GOVERNMENT BOARD

(SGD.) D. Thomas, Presiding Officer

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
C. Davis	Solicitor for the Appellant (Summer Village of Sunbreaker Cove)
B. Romanesky	Witness for the Appellant (Summer Village of Sunbreaker Cove)
E. van Weelderren	Witness for the Appellant (Summer Village of Sunbreaker Cove)
G. Clark	Witness for the Appellant (Summer Village of Sunbreaker Cove)
K. Becker Brookes	Solicitor for the Respondent (Lacombe County)
T. Hager	Witness for the Respondent (Lacombe County)
A. Williams	Witness for the Respondent (Lacombe County)
F. Wilson	Landowner/Developer (Skyy Country)
L. Dzaman	Witness for Landowner/Developer (Skyy Country)
P. Jorgensen	SV Resident
K. Purdy	Observer (Developer)
M. Reiter	Observer
R. Wuetherick	Observer
T. Boets	Observer
B. Carr	Observer
B. Newton	Observer
K. Paul	Observer

APPENDIX "B"

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:

NO.	ITEM
1A	Brief of the Appellant Summer Village of Sunbreaker Cove
2R	Argument of the Respondent Lacombe County
3A	Rebuttal of the Appellant Summer Village of Sunbreaker Cove
4A	Appellant's Additional Evidence
5R	Response of the Respondent Lacombe County
6A	Appellant's Rebuttal re: Additional Evidence
7L	Letter submitted by Frank Wilson dated July 5, 2010

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

8L Letter submitted by Frank Wilson dated August 30, 2010
9R Respondent's Letter dated September 7, 2010 and excerpt from Development Agreement
10L Landowner's Map of Proposed Development
11A Appellant's Site Maps
12L Results of Landowner's Resort Survey
13A Appellant's list of remedy options

APPENDIX "C"

LEGISLATION

The MGB considered the following legislation in making its decision in this appeal.

Municipal Government Act

Section 488 of the Act sets out the MGB's jurisdiction to hear intermunicipal disputes.

488(1) The Board has jurisdiction

(j) to decide intermunicipal disputes pursuant to section 690.

Section 690(1) of the Act provides that a municipality may appeal, to the MGB, an allegedly detrimental statutory plan or land use bylaw of an adjacent municipality.

690(1) If a municipality 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 and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may, if it is attempting or has attempted to use mediation to resolve the matter, appeal the matter to the Municipal Government Board by

(a) filing a notice of appeal and statutory declaration described in subsection (2) with the Board, and

(b) giving a copy of the notice of appeal and statutory declaration described in subsection (2) to the adjacent municipality

within 30 days after the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

Section 690(2) and (3) require both the appealing municipality and the other municipality to file statutory declarations regarding mediation.

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 and provide a statutory declaration stating*

- (a) the reasons why mediation was not possible,*
- (b) that mediation was undertaken and the reasons why it was not successful, or*
- (c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.*

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating

- (a) the reasons why mediation was not possible, or*
- (b) that mediation was undertaken and the reasons why it was not successful.*

In hearing an intermunicipal dispute, the MGB must hear the appeal and make a decision within certain timelines. These timelines are set out in section 691, which also determines who must be notified of the Appeal, and from whom the MGB is required to hear in making the decision.

691(1) The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must

- (a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and*
- (b) give a written decision within 30 days after concluding the hearing.*

(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

Section 690(4) and (5) provide that a statutory plan under appeal is of no effect from the time the MGB receives the Notice of Appeal until it makes a decision under subsection (5). Subsection (5) requires the MGB to determine if the statutory plan is detrimental to the appealing municipality.

690(4) When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

- (a) *dismiss the appeal if it decides that the provision is not detrimental, or*
- (b) *order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.*

Section 616 defines terms used in Part 17 of the Act.

616 In this Part,

(k) *“land use bylaw” means a bylaw made under Division 5 and a bylaw made under section 27 of the Historical Resources Act;*

(dd) *“statutory plan” means an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4;*

653(4.4) For the purposes of this section,

(b) *“conceptual scheme” means a conceptual scheme adopted by the municipality that*

(i) *relates a subdivision application to the future subdivision and development of adjacent areas, and*

(ii) *has been referred to the persons to whom the subdivision authority must send a copy of the complete application for subdivision pursuant to the subdivision and development regulations;*

The Act also sets out requirements for holding public hearings generally and for specific bylaws passed under Part 17:

230(1) When this or another enactment requires council to hold a public hearing on a proposed bylaw or resolution, the public hearing must be held, unless another enactment specifies otherwise,

(a) *before second reading of the bylaw, or*

(b) *before council votes on the resolution.*

(2) *If a public hearing is held on a proposed bylaw or resolution, council must conduct the public hearing during a regular or special council meeting.*

(3) *A council may by bylaw establish procedures for public hearings.*

(4) *In the public hearing, council*

(a) *must hear any person, group of persons, or person representing them, who claims to be affected by the proposed bylaw or resolution and who has complied with the procedures outlined by the council, and*

(b) *may hear any other person who wishes to make representations and whom the council agrees to hear.*

(5) *After considering the representations made to it about a proposed bylaw or resolution at a public hearing and after considering any other matter it considers appropriate, the council may*

(a) *pass the bylaw or resolution,*

BOARD ORDER:

MGB 007/11

FILE:

09/IMD-06

- (b) make any amendment to the bylaw or resolution it considers necessary and proceed to pass it without further advertisement or hearing, or*
- (c) defeat the bylaw or resolution.*

(6) The minutes of the council meeting during which a public hearing is held must record the public hearing to the extent directed by the council.

692(1) Before giving second reading to

- (a) a proposed bylaw to adopt an intermunicipal development plan,*
- (b) a proposed bylaw to adopt a municipal development plan,*
- (c) a proposed bylaw to adopt an area structure plan,*
- (d) a proposed bylaw to adopt an area redevelopment plan,*
- (e) a proposed land use bylaw, or*
- (f) a proposed bylaw amending a statutory plan or land use bylaw referred to in clauses (a) to (e),*

a council must hold a public hearing with respect to the proposed bylaw in accordance with section 230 after giving notice of it in accordance with section 606.