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 APPLICATION FOR REVIEW of a decision of the Municipal Government Board (MGB) filed by Badlands Recreation Development Corporation (Landowner).

CITATION: Wheatland County v Kneehill County (*Re: Bylaw 1657 an Amendment to the Kneehill County Land Use Bylaw (Bylaw 1564) to add Direct Control DC4 District*), 2015 ABMGB 47

BEFORE:

D. Thomas, Presiding Officer
C. Duxbury, Member
W. Jackson, Member

C. Miller Reade, Case Manager
Z. Soprovich, Assistant Case Manager

OVERVIEW

[1] The MGB was asked to review their decision in MGB 016/15 respecting a dispute between Kneehill County (Kneehill) and Wheatland County (Wheatland). Section 504 of the Act directs that the MGB can review, rescind or vary any decision it makes. This decision is to be read in conjunction with MGB Order 016/15 (Order).

BACKGROUND

[2] On October 14, 2015, in the City of Edmonton, an MGB panel considered written submissions in response to the Landowner's request to review MGB Order 016/15. The Order concerns a dispute between Kneehill and Wheatland. Wheatland argued that Kneehill Bylaw 1657 (Bylaw) would have a detrimental impact on Wheatland, particularly in regards to increased traffic on Wheatland roads. The Bylaw is a direct control bylaw which amends Kneehill's Land Use Bylaw, permits development of a motorsports complex. The Board determined that increased traffic volumes in Wheatland because of the motorsports complex would likely result in a need for upgrading certain Wheatland roads. After determining there was detriment, the Board ordered the Bylaw be amended to assure Wheatland that any necessary road upgrades would occur at the Landowner's expense and to Kneehill's standards.

[3] The Landowner wrote the MGB requesting a review of the Order pursuant to section 504 of the Act. The request focuses on whether the width of the access road right of way was fixed by the Order.

ISSUE

[4] Should the panel grant the Landowner's request for review of MGB Order 016/15?

SUMMARY OF LANDOWNER'S POSITION

[5] The Order requires amendments to the DC4 Bylaw, adding that as a condition of subdivision or development, the Landowner is required to construct an access road in accordance with the May 30, 2014 Watt Consulting Group Transportation Impact Assessment (TIA). Kneehill has suggested that this condition incorporated a road design standard attached to Appendix "F" (Appendix) of the TIA. Kneehill has argued that this standard requires not less than 30 metres (m) right of way.

[6] The Landowner takes no issue with building the access road to a "Major Local Road (Surfaced)" standard, but disputes Kneehill's interpretation that the Board fixed the road design precisely as described in the Appendix of the TIA. Kneehill's suggestion that the Appendix is binding seems impractical as that design detail was never addressed by the Board. Also, Kneehill's requirement of a minimum 30 m right of way is not apparent on the face of the Appendix. Furthermore, following the Appendix would mean that amended standards, such as those approved by Kneehill subsequent to the TIA, would not apply. The minimum 30 m right of way standard was not contained in the original TIA, but Kneehill County amended the Major Local Road (Surfaced) standard on June 24, 2014.

[7] There are some portions of the proposed access road where only a 20 m right of way is available. However, that fact does not prevent construction of a 9 m finished travel surface width of the road. The Landowner has received engineering advice and believes the key factor in design of the road is the 9 m travel surface width.

[8] The overall concern of the Landowner is that Kneehill has incorrectly interpreted the Board's decision by suggesting that a minimum 30 m right of way for the access road is the only possible standard. The Landowner does not disagree with the Board's decision, but requests that the Board confirm whether the condition in paragraph 58 of the Order fixes the construction specifications of the access road to being no less than 30 m. The Landowner consulted with Kneehill about this issue, but it became clear that Kneehill's position would not change.

[9] The Landowner notes that section 24.3 of the MGB Intermunicipal Dispute Procedure Rules (Rules) requires review requests to be made no later than 30 days following a decision. Although this request is outside that 30-day period, the Landowner notes that the Rules are non-binding and that the MGB has the discretion to address matters such as this review. As a matter of procedural fairness, the MGB should offer clarification of the Order.

SUMMARY OF KNEEHILL'S POSITION

[10] Kneehill's only interest is to ensure that it has complied with the Order. It takes no substantive position in regard to the Landowner's request and does not object to further clarity of the Board's intention.

[11] Section 5.3 of the TIA states that the Major Local Road (Surfaced) standard will be utilized. That section also indicates that the Appendix includes a generic cross-section of the road standard. Kneehill disagrees with the Landowner's assertion that the minimum 30 m right of way standard was added subsequent to the TIA. Although a textual comment indicating the minimum 30 m right of way was subsequently added to the TIA, the diagram contained in the Appendix at all times required a right of way greater than 20 m. To comply with the Order, the Landowner needs to comply with the standard as it appears in the Appendix.

[12] Kneehill has only received preliminary engineering information from the Landowner. Detailed information would be needed prior to a determination of whether a reduced right of way is appropriate. In the event the MGB proceeds with a review, Kneehill submits that the review should be confined to the issues in the Landowner's submissions.

SUMMARY OF WHEATLAND'S POSITION

[13] Wheatland opposes the Landowner's review request. One of Wheatland's primary concerns with the Bylaw is that it did not prescribe the road design standard and allowed Kneehill to permit standards not in compliance with the TIA, and possibly to Wheatland's detriment. Although it is not clear that a reduction in the right of way width would affect the 9 m paved roadway, reducing the right of way may compromise the integrity of the road. Wheatland is also concerned that allowing the Landowner to not comply with the TIA in this circumstance will entertain future deviations from the TIA in the future.

[14] Wheatland offered that, under the Act, the Landowner could apply to amend the Bylaw to reflect a modified or amended TIA. Such an option would allow Wheatland to review the requested TIA amendment and determine if there is the potential for detriment. If the Landowner is permitted to modify its adherence to the TIA without applying to amend the Bylaw, Wheatland will not have any right of appeal even though it could be detrimentally affected.

[15] Wheatland also notes that the Landowner has not produced support for its review request that would comply with section 24.5 of the Rules. Furthermore, section 24.3 of the Rules provides that requests must be made no later than 30 days from the date of decision. The Landowner has not complied with that timeline in this instance.

SUMMARY OF AREA RATEPAYERS' POSITION

[16] The Ratepayers oppose the review request. No new evidence or information has become available since the hearing. The arguments made by the Landowner subsequent to the hearing

could have been presented at the hearing and no claim of procedural defect or material error has been made. Furthermore, the Alberta Court of Appeal (ABCA) has ruled that decisions of administrative tribunals should be consistent.[1] The Ratepayers also note that the ABCA in *Keyland Development Corporation v Alberta (Municipal Government Board)*[2] stated that appellate intervention should only be permitted if the Board acted unreasonably or committed a principal or manifest error. Because none of those situations exist in the present case and since administrative tribunal decisions should be consistent, the review should not be granted.

DECISION

[17] The panel denies the request for review of MGB Order 016/15.

REASONS

[18] The panel notes that the Landowner's request for review came more than 30 days after the Order, contrary to section 24.3 of the Rules. However, the panel does have discretion to consider requests beyond 30 days and the timeliness of the request is not the only determining factor in this panel's decision. While the panel questions whether the Landowner has standing to make a request for review (as opposed to either of the two municipalities), that is not determinative in the decision.

[19] In paragraphs 11 and 29 of the Order, all parties agreed to the findings of the TIA and the AMEC letter. The Board was never asked to discuss the technical requirements of the access road right of way because the Board was informed that all parties agreed to the recommendations and findings of the TIA. This issue was not in dispute.

[20] The panel also notes that as per section 24.6 of the Rules, a party's failure to provide evidence reasonably available at the time of the hearing is not a sufficient reason to grant a review. Because all parties agreed to the TIA, all presumably had ample opportunity to review and contemplate the report. Nevertheless, variance of design standards illustrated in the appendix to the TIA was not raised as an issue by any party during the merit hearing. Section 24.5 of the Rules indicates that a review may be granted in situations where new facts arise that were not reasonably available at the original hearing. That does not apply in this situation as all parties had access to the TIA before the hearing and all agreed to its contents.

[21] There was no procedural defect in the hearing, nor did the Board make any material errors. The issue raised in this request for review is no longer an intermunicipal dispute. The decision in the Order accepted the assertion by the parties that compliance with the TIA would resolve potential detriment to Wheatland arising from the access to the proposed development.

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[1] *Altus Group v Calgary (City)*, 2015 ABCA 86.
[2] 2006 ABCA 348.

[22] Despite the amendments ordered in MGB 016/15, either the DC4 Bylaw or the Kneehill Land Use Bylaw can be amended after following the proper procedures under the Act. The decision of detriment by the MGB does not freeze the bylaw.

[23] This request for review highlights a difference in understanding between the Landowner and Kneehill about the interpretation of the TIA and the application of engineering standards. This is not a situation for the Board to review its decision. It is up to Kneehill to apply the bylaw. If an amendment is necessary to accommodate the Option 1 route, Kneehill has the discretion to initiate this using the procedures under the Act. As suggested by Wheatland, Kneehill or the Landowner could allow a modified design for the north access road through an amendment to the DC4 Bylaw or in a new or updated land use bylaw. The advertisement and bylaw adoption procedure would provide all parties the opportunity to discuss and review the proposed roadway design.

Dated at the City of Edmonton, in the Province of Alberta, this 19th day of November 2015.

MUNICIPAL GOVERNMENT BOARD

D. Thomas, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED:

NO.	ITEM
1.	Landowner's review application of August 13, 2015
2.	Kneehill's submissions of September 9, 2015
3.	Wheatland's submissions of September 8, 2015
4.	Area Ratepayers' submissions of September 3, 2015
5.	Landowner's response of September 16, 2015

APPENDIX "B"

LEGISLATION

Municipal Government Act

The Act provides for the MGB to reconsider its decisions.

504 The Board may rehear any matter before making its decision, and may review, rescind or vary any decision made by it.

MGB Intermunicipal Dispute Procedure Rules

These rules provide situations where the MGB may exercise its powers to review an order under section 504 of the Act.

24.1 A request may be submitted to the Board in writing to rehear, review, vary or rescind any matter or decision under the discretionary power granted by section 504 of the Act.

24.2 A request under this Rule must include
- A) A detailed statement explaining how the request meets the grounds for a rehearing or review listed under this Rule; and
- B) The following background information:
  - I. Name of the applicant.
  - II. Board decision number.
  - III. Address, phone number and contact persons for the appellant and respondent municipalities.

24.3 Requests must be made no later than 30 days following the date of the decision.

24.4 After a request is filed pursuant to the Rule, the Chair may
- A) Refer the matter to a case manager for case management,

B) Refer the request to the panel that originally heard the matter for further directions, final determination, or both, or
C) Refer the request to a new panel for further directions, final determination, or both.

24.5 The Board may exercise its power under section 504 of the Act in the following circumstances:

A) New facts, evidence or case-law that was not reasonably available at the time of the hearing, and that could reasonably have affected the decision's outcome had it been available,
B) A procedural defect during the hearing which caused prejudice to one or more of the parties,
C) Other material errors that could reasonably have changed the outcome of the decision, or
D) Any other circumstance the Board considers reasonable.

24.6 The following are generally not sufficient grounds to grant a rehearing or review:

A) Disagreement with a decision.
B) A party's failure to provide evidence or related authorities that were reasonably available at the time of the hearing.