

Citation: *White City (Town) v Edenwold (Rural Municipality)*, 2023 SKMB 1

Date: 2023-01-12

DETERMINATION OF AN APPLICATION UNDER
Section 18 of *The Municipalities Act*

Application Number: MBC 2019-0001.1

Dates of Hearing: November 23, 24, 25, 28 and 29, 2022

Location of Hearing: Regina, SK

BETWEEN:

Town of White City
(as represented by Robertson Stromberg LLP)

Applicant

- and -

Rural Municipality of Edenwold No. 158
(as represented by Olive Waller Zinkhan & Waller LLP)

Respondent

APPEARED FOR:

The Applicant: M. Kim Anderson, K.C., Legal Counsel
Candace Grant, Legal Counsel

The Respondent: Randy Sandbeck, K.C., Legal Counsel
Elaine Selensky, Legal Counsel

HEARD BEFORE: Chad Boyko, Panel Chair
Gerry Krismer, Member
Paul McIntyre, Member
Larry Grant, Member (Saskatchewan Association of Rural
Municipalities)
Michael Strachan, Member (Saskatchewan Urban Municipalities
Association)

INTRODUCTION:

- [1] The Town of White City (Town) applied to the Municipal Boundary Committee (Committee) of the Saskatchewan Municipal Board (SMB) to review and consider lands for annexation into the Town from the Rural Municipality of Edenwold No. 158 (RM). The original application (as amended) was received on November 26, 2019. The application was that certain lands (Subject Lands) be withdrawn from the RM and added to the Town by altering the respective municipal boundaries.
- [2] The Town applied pursuant to subsection 60(2) and subsection 53(1)(a) of *The Municipalities Act*, SS 2005, c M-36.1 [Act]. The reason for the application was the RM refused the alteration request and declined to provide a complimentary resolution as is required in consensual annexation requests.
- [3] The total area affected by the proposed alteration according to the application of the Town and with the agreement of the parties is 3,988.8 acres of land, which encompasses the developed lands of Emerald Park Subdivision, Great Plains Industrial Subdivision, Escott Estates, Deneve Subdivision, Meadow Ridge Estates and Park Meadow Estates. As well, the application includes undeveloped lands. The parties further agree the total developed acreage is 1,671.72 and total undeveloped acreage is 2,358.73.
- [4] Upon receiving the request and the accompanying information, the Record Book was prepared and shared with both parties and their legal counsels on December 3, 2019. Thereafter, the parties involved the Dispute Resolution Office (DRO) as required by legislation. Mediation sessions were held on June 19, 2019, July 24, 2019, August 23, 2019, September 4, 2019, and October 4, 2019. Nothing was resolved during those sessions. The Committee asked for a mediation report and received it on January 21, 2020. The Committee requested and received a statement of dispute from the Town on January 31, 2020.
- [5] The statement of dispute lists the following five issues:
1. What is the appropriate timeframe for determining the Town's future land requirements?
 2. Given the timeframe, how much land does the Town require?
 3. Which lands (developed and undeveloped) should be included in the annexation?
 4. How will the annexation be serviced?
 5. If the annexation is approved, is the RM entitled to any compensation?

- [6] We note this is the Town's articulation of the issues. A fundamental issue the Committee needs to address is whether the Town demonstrated a need for the Subject Lands for the purpose of growth.
- [7] After receiving the statement of dispute from the Town and the mediation report from the DRO, the 1,547-page application was reviewed. On April 6, 2020, the Town was informed of certain deficiencies in its application and the Committee received a revised application on May 8, 2020.
- [8] In accordance with SMB policy, a case management process was initiated on August 11, 2020. The objective of this process is to clarify or resolve outstanding issues and address any procedural matters before scheduling a hearing. After a series of case management calls, both municipalities' legal counsels agreed to bifurcate the hearings into jurisdictional and merits. The RM asserted the Committee did not have jurisdiction to hear the Town's boundary application as it falls under subsection 53(1)(b) of the *Act* and must be submitted to the Minister for review in the first instance.
- [9] The jurisdictional hearing was scheduled to proceed on January 27, 2021. Due to public health concerns arising from the Covid pandemic, the Committee, upon obtaining consent of the parties, postponed the hearing. The primary concern was public access during meeting restriction sizes imposed in response to the pandemic. The hearing proceeded on November 18, 2021, and a decision was issued December 14, 2021. The decision determined the application could come directly to the Committee.
- [10] The legislation provides that the Committee may, in its discretion, hold a public hearing. Subsection 18(9) of *The Municipal Board Act*, SS 1988-89, c M-23.2 [MBA] directs that we shall hear all persons who wish to make representations relevant to the proposed alteration of boundaries. This matter has raised considerable interest in the Town and the RM. Numerous public meetings were held and the Committee received numerous written communications from the affected residents, other towns, other RM's and landowners. As a result, the Committee determined the matter ought to be dealt with in a public hearing. Given public meeting restrictions, the matter was further deferred to the dates noted for the hearing proper. We add that participant and expert witness availability played a significant part in the dates chosen for the hearing.
- [11] We note that a further "updated" application was received by the SMB on June 15, 2022. The intent of the updated application, identical to the original application and with the agreement of the parties, was to ensure all expert reports and evidence relied upon by the parties was current for the Panel hearing the matter.

- [12] Appropriate notices to the public, as required by legislation, were provided by publication of the hearing notice in a local newspaper (Quad Town Forum, which both parties agreed is the local paper and the best vehicle for publication of notices) on November 3 and 10, 2022. The public had been invited to attend and make submissions, orally or in writing. As well, the public had been invited to attend the hearing over the course of the five days scheduled for the matter.
- [13] For the purposes of alteration of municipal boundary applications, the Committee's membership shall be supplemented by two persons appointed by the Minister as part-time members representing the Saskatchewan Association of Rural Municipalities (SARM) and the Saskatchewan Urban Municipalities Association (SUMA). Larry Grant (SARM) and Michael Strachan (SUMA) were appointed and form part of the hearing panel.
- [14] Subsection 18(4) of the *MBA* directs the Committee to consider certain current or prospective matters as they may affect any of the municipalities involved. These matters include:
- (a) land use planning;
 - (b) tax sharing;
 - (c) local boards and commissions;
 - (d) municipal services;
 - (e) municipal capital works;
 - (f) mill rates and assessments;
 - (g) disposition of land or improvements that is owned by or leased to a municipality, local board or commission;
 - (h) disposition of assets and liabilities;
 - (i) municipal electoral boundaries;
 - (j) grants or other assistance from the government of Saskatchewan or Canada;
 - (k) local school divisions;
 - (l) transportation, communication and utilities and rates for those things;
 - (m) local improvements in the area affected;
 - (n) hospital, library and other inter municipal bodies;
 - (o) bylaws; and
 - (p) any other matters that the minister or the board considers relevant.

- [15] The Subject Lands sought to be annexed are described as:

Township 17, Range 17, West of the 2nd Meridian

1. The northwest quarter of section 18
2. The southwest quarter of section 19

Township 17, Range 18, West of the 2nd Meridian

1. Those portions of the north half of section 9 lying north of the northerly boundary of the Canadian National Railway Company Right-Of-Way;
2. The northwest quarter and south half of section 10;
3. The south half of section 11;

4. Those portions of section 12 described as;
 - a. Those portions of the southwest quarter lying within the bold-dashed line as shown in Plan of Proposed Subdivision by Midwest Surveys Inc. (RC-0328-17-PPS) Revision 2, dated April 20, 2018; and
 - b. The northwest quarter.
5. All those portions of the south half of section 13;
6. All of that portion of road allowance, intersections thereof and widenings thereto, known as Kennedy Road lying east of the south half of section 13;
7. All those portions of sections 14 and 15 not currently within the corporate boundary of the Town of White City;
8. All those portions of sections 16, excluding the Canadian National Railway Company Right-Of-Way and Surface Parcel No. 110867586;
9. All that portion of the southeast quarter of section 17 described as;
 - a. The most easterly half of the southeast quarter lying north of the northerly boundary of the Canadian National Railway Company Right-Of-Way.
10. All those portions of the south half of sections 21, 22 and 23 not currently within the corporate boundary of the Town of White City and the Highway No. 1 Roadway Right-Of-Way.

Unless otherwise specified, the above described portions of sections include the adjoining south and west road allowances, intersections thereof and widenings thereto by plan of survey.

[16] The Subject Lands include both developed and undeveloped property. The RM said that approval of the annexation as requested would remove 40% of its annual tax revenue and would impact the RM's ability to provide current and future services to its residents. The Town said the annexation would produce an economically viable Town with an appropriate split between residential, commercial and industrial tax revenues. As well, it would allow for further residential development and address issues it said causes concern with the RM surrounding the Town on 55% of its borders.

BACKGROUND:

[17] The Town pursued annexation of land from the RM on numerous occasions by way of applications to the Committee and consensual agreement with the RM.

[18] In 1983, the lands presently known as Emerald Park Subdivision and Great Plains Industrial Subdivision were annexed into the Town's boundaries. The Town was unable to reach a satisfactory agreement with the developer concerning servicing. The developer approached the RM with respect to a servicing agreement. Agreement was reached and the lands were de-annexed from the Town and returned to the RM by way of an Order in Council. Development proceeded within the RM.

- [19] In 2000, the Town applied to annex a portion of the RM for a potential residential development. The Town sought to annex 66.64 acres. That application was granted by the Committee on April 18, 2001, with the Committee ordering the Town to compensate the RM by payment of the equivalent of five years municipal taxes.
- [20] In 2003, the Town and RM agreed to annexation of 400 acres from the RM to the Town.
- [21] In 2005, the Town sought to annex a further 850 acres of land from the RM. The lands included the Emerald Park Subdivision and the Great Plains Industrial Subdivision. The Committee denied that application (0001/2005) observing that there appeared to be many alternate solutions to the problem expressed by the Town. The Committee said:

This Committee is not mandated to determine an ideal population size for any municipality nor is it mandated to decide whether an urban oriented council is better suited to deal with a problem than a rural oriented council, or vice versa. Historically this Committee has looked to an application to alter boundaries and has compared the need for the land in one municipality with the needs and uses of the municipality where it presently lies. It has been accepted that any municipality should have land resources available to serve and satisfy a demand for growth. There is no basis in law that an application should only be judged on that basis. In this case the boundary alteration has been set out as a need, but the benefits can only be measured subjectively. For the most part, the use of the land will not change as it is already fully developed. For the most part the services to the land will not change, because the same level will continue, either identically or comparatively as the administration moves from one desk to another. It is true there are some barriers in both the development and the provision of services, but there appear to be alternatives.

- [22] In 2007, the Town sought to annex the golf course and surrounding areas. The reason expressed was a desire to have the golf course, which at the time was owned by the Town, within the Town boundaries. The Committee denied that application on the basis that a need for change in governance and services, which we found to be the driver of the application, had not been made out.
- [23] In 2015, the parties entered into an agreement for further land to be annexed from the RM to the Town by way of agreement. The land was approximately 400 acres. 377 acres of that land is still currently undeveloped. 30.68 acres are subject to a certificate of approval from the Community Planning Branch (CP), Ministry of Government Relations. Nothing has been registered with the Information Services Corporation, which would indicate further development occurred on the land. The RM says the Town currently has approximately 823 acres of developable residential land within its jurisdiction. The 2015 agreement was the basis of much evidence and argument before us. More will be said about that agreement later in this decision.

PUBLIC PARTICIPATION:

- [24] In our Notice of Hearing, the Committee invited the public to participate by written submission or by making oral submissions to the Committee on November 23, 2022.
- [25] The Committee received 60 written submissions opposing the annexation and 31 submissions supporting the annexation from the public.
- [26] Fifteen individuals provided oral submissions at the hearing. Half supported the annexation and half opposed the annexation.
- [27] Both SUMA and SARM provided oral and written submissions to the Committee.
- [28] The reasons for the respective positions presented to the Committee are diverse. An incomplete list of concerns raised are servicing, taxation, future development, compensation that the Town might be ordered to pay to the RM, recreational facilities, roadways, transportation corridors, efficiencies derived from economies of scale, adequate representation in the municipal governments, high schools, and sewer and water services.

PUBLIC DOCUMENTS:

- [29] As part of the case before us, the following public documents were referred to by both parties:
- Town of White City's Official Community Plan (OCP), Bylaw No. 580-14, adopted December 22, 2014;
 - *Official Community Plans - Preparation of an OCP*;
 - *A Guide to Municipal Boundary Alterations (Annexation)*, Version 4, November 2015 (*Guide*); and
 - *Principles for Financial Settlements between Municipalities for Boundary Alterations (Principles)*.

The OCP is an adopted bylaw of the Town. The other documents were prepared by the Ministry of Government Relations. The documents provide guidance to the participants in a boundary annexation.

- [30] The guidance provided with respect to developing an OCP lists a number of key elements. An OCP is described as a comprehensive policy document designed to guide the physical, environmental, social and cultural development of the municipality. An OCP formulates a consistent approach that fosters effective and planned growth. The most important benefit of an OCP is the certainty it provides the residents, landowners, and municipality

regarding the future. Residents, landowners, community groups, developers and investors can use the OCP as a tool to understand where and how future growth may occur.

[31] The OCP provides the municipalities vision for the future. The OCP must be prepared in consultation with a professional community planner and incorporate any applicable provincial land use policies and statements of provincial interest. The OCP must adhere to *The Planning and Development Act, 2007, SS 2007, c P-13.2 [PDA]* in certain areas. Section 32 of the *PDA* requires statements of policy with respect to sustainable current and future land use and development on the part of the municipality.

[32] Public consultation is an important element of the process. As the OCP is generally adopted as a bylaw, the consultation process associated with bylaw changes allows stakeholder input.

[33] The *Guide* was developed with a goal to foster and encourage economic growth and to reduce barriers that may delay or prevent the growth of urban and rural municipalities.

[34] One of the key elements in the document is contained in Section 4.1, which says in part:

The reason the SMB considers planning documents when determining if a contested boundary application should proceed is to substantiate the need for the boundary to be altered to facilitate growth. It is important to understand statutory municipal plans. The Official Community Plan (OCP) is the recognized statutory document guiding and identifying the growth management strategy for a single municipality....

[35] The *Guide* references the OCP in Section 4.3. It says:

It is important to understand the purpose of boundary alteration is to enable community growth. An OCP is the recognized statutory document guiding and identifying the growth management strategy for a municipality. Where a municipality does not plan for growth it is much more difficult to prove to the SMB that a boundary alteration is necessary to support proposed growth.

[36] The *Guide* goes on to say that when in effect, the SMB uses an OCP for much of the case. Failing an OCP, which addresses the land use issues in an annexation application, the SMB will rely on the legislation that provides guidance on considerations the Committee ought to consider as per subsection 18(4) of the *MBA* quoted in paragraph [14] above.

TOWN'S OCP:

- [37] The Town's current OCP is before the Committee as Schedule 13 of its application. The OCP was adopted on December 22, 2014, by way of Bylaw 580-14. We accept that an OCP is largely an aspirational document projecting future use based on several economic drivers. A number of points do arise from the OCP.
- [38] The first is the statement that was found on page 28 of the OCP. The Town position contained in the 2015 OCP says based on current development permits and assuming a conservative growth scenario, the Town required 250 to 300 acres of developable land for urban housing. This would translate into a land need of 250 to 300 acres, which in the projection, would be sufficient for 20 years. This projection did not address commercial or light industrial needs.
- [39] The OCP says that a request for alteration of municipal boundaries would be supported when such alteration is consistent with sound land use planning and is determined to be of mutual interest. Illustrative of that cooperation between the RM and the Town is a 2015 Boundary Alteration Agreement (agreed upon by the both the Town and the RM) with an effective date of January 1, 2016. This agreement followed closely on the 2015 Town OCP being finalized. As part of the recitals, the participants agreed that:
- The incorporation of the subject lands into the corporate boundaries of the Town effectively provides the Town of White City with a long-term supply of land to accommodate the strong growth and development of the community, more specifically, the development of the Town Centre Neighborhood and surrounding complementary residential areas as well as commercial/light industrial development along the highways corridor.
- [40] The agreement also provided that the Town agreed not to pursue incorporation of W ½ 15-17-18 W2 into the Town in the future. We note the current annexation request by the Town asks that those lands be incorporated into the Town. The RM says the clear intent of the 2015 agreement was that future growth of the Town would occur to the south and east rather than the west.
- [41] Mauricio Jimenez, on behalf of the Town, testified the OCP had been amended in 2015-2016 to account for transportation, municipal reserves and the Town Centre Plan. He testified that in 2017, the OCP was further amended to provide future support for a full-service community. It was at this time Crosby Hanna & Associates (Crosby) was engaged and provided advice with respect to annexation of lands. As we understood Mauricio Jimenez's testimony, he stated the OCP was not updated to reflect the 2017 changes because the residents of the annexed land would not be consulted. He may be in error in this point given CP approved the future land use map in February 2017.

- [42] The 2015 OCP shows annexation land in the northeast bounded by highways 1 and 48, which was to proceed in two phases. The map is stamped “Deleted” and shows “Amended by Bylaw No. 663-20.”
- [43] Lastly, CP reviewed the annexation application of the Town and pointed out the annexation was not for the acquisition of bare land. Rather, it was for acquisition of serviced developed land. Both the Town and the RM agreed the current annexation application was unprecedented. CP also noted it had received amendments to the Future Land Use, which were approved by CP in February 2017.
- [44] This brings us to the present application. The matter proceeded on November 23, 24, 25, 28 and concluded on November 29. The issues as we see them and as confirmed by the parties are what, if any, lands ought to be annexed by the Town from the RM and if lands are ordered to be annexed what compensation ought to be paid by the Town to the RM or by the RM to the Town. Consideration with respect to future servicing, tax rates and growth remain potential issues to resolve. A very significant matter is the request by the Town to annex developed lands. By definition, lands already developed cannot provide areas for further growth.

EVIDENCE/WITNESSES:

- [45] The three Hearing books before the Committee contain 3,557 pages, which includes expert reports, submissions of the parties, case law and written submissions by interested parties. The Committee reviewed all of the information contained in the Hearing books. The Committee heard four full days of evidence and a half day of argument. What follows is a summary of the salient points of evidence led by the parties. If a point is not mentioned in our decision that does not mean we have not heard, considered, and understood it. Lastly, we point out the Committee is not bound by the rules of evidence.

Town’s Witnesses

Greg Weiss

- [46] Greg Weiss, President and Founder of Corvus Business Advisors Inc., was first contacted by the Town in November of 2017. He provided extensive analysis with respect to issues concerning financial compensation and extensively referenced the *Principles* in his report *Town of White City/RM of Edenwold Annexation Financial Impact Assessment* (Corvus Report). He provided his opinion with respect to compensation based on those principles. He was accepted as an expert in municipal finance and compensation matters without objection. Our review of his resume and past practice confirms it is appropriate to accept him as an expert in these areas.

[47] Greg Weiss concluded that based on the *Principles*, the proposed annexation results in an annual financial gain to the RM of \$1,491,917 per year and, as such, no compensation is payable to the RM. Given this financial gain, he suggests the Committee should determine if compensation from the RM to the Town is appropriate and, if so, asserts the RM ought to pay the Town the sum of \$4,475,750 over four years. He further says the RM ought to provide \$2,254,995 to support future infrastructure in the annexation area. These funds are designated use funds already paid to the RM by developers and are designated for infrastructure construction in the annexation area that forms part of the development levy and servicing agreements. A complete list of his recommendations is contained on pages 744 to 749 of Hearing Book 2.

[48] The Corvus Report says, in part:

In short, the transfer of developed commercial and industrial lands from the RM to the Town is pivotal to the financial viability of White City in the future.

[49] Greg Weiss said in his evidence that that portion of his September 2018 report was no longer applicable. It is unclear to the Committee why the statement is no longer applicable as it appears to be fundamental to the application.

Tom McCormack

[50] Tom McCormack, President of Metro Economics, provided analysis with respect to economic and demographic projections. He was retained in 2019. He has been accepted as an expert in three or four matters concerning demographic projections in Ontario municipal matters. He was accepted as an expert in economic and demographic projections without objection. He was very clear that he was not qualified to comment on the need for land expressed by the Town. He did testify that people seem to like the area based on the statistical analysis. He was equally clear that his analysis did not pertain to whether the Town and the Emerald Park Subdivision ought to be governed together or parts of Emerald Park ought to be governed by the Town. His analysis is based on both the Town and the RM population combined and is used in the ISL Growth Study Report. His projections were that the “area” will grow. However, he did not say that growth will only occur in the Town or the RM. Simply, the population of this area (including lands in the RM and Town) will grow.

Darren Young

[51] Darren Young, Community Planning Manager for ISL Engineering and Land Services, was accepted as an expert in municipal planning and growth analysis. He was previously qualified as an expert and testified on two occasions before Alberta boards. We accepted him as an expert without objection.

[52] He accepted that this was an unprecedented annexation request and presented that a 25-year time horizon for planning land use is a best practice for municipalities. He said the proposed annexation would solve the issue of the Town being closed for development by RM development immediately adjacent to its borders. Currently, there are RM developments on 55% of the Town border and he understands with the present long-range planning, that figure could increase to 85%. He accepted that the present undeveloped residential land within the Town represents at least 10 to 12 years' development. His report incorporates the findings from the Crosby Hanna Report. Lastly, we understand that he used the "high" assessment of the economist.

Mauricio Jimenez

[53] Mauricio Jimenez, White City Town Planner, has been employed by the Town since 2012 in increasingly responsible roles. He worked closely with Corvus, ISL, Crosby and Metro Economics and reviewed all of the proffered reports. He was primarily responsible for the 2015 OCP and says it identifies the lands the Town is currently seeking to annex. The 2015 OCP was amended in 2016 to deal with transportation issues, municipal reserves and the Town Centre Plan. In 2017, the OCP was further amended to provide further support for a full-service community. The annexation area, which is identical to the areas identified by Crosby, was updated but it appears the residents of the proposed annexed land were not consulted.

[54] Mauricio Jimenez accepts that development is market driven. He agrees there is at least 10 years of land within the Town boundaries for residential development and at least three years of land within the Town boundaries for future commercial development (once commercial development starts).

RM's Witnesses

Marc Hoffort

[55] Marc Hoffort is a Partner at Virtus Group Chartered Professional Accountants & Business Advisors LLP. He is a Chartered Professional Accountant and a Chartered Business Valuator. He provided a Limited Critique Report responsive to the Corvus Report. The Corvus Report was prepared to provide the financial impacts associated with growth within the current Town boundary and the proposed annexation area for a 24-year period from 2024 to 2047. The Corvus Report included costs, recoveries, assessment and tax impacts associated with the combined area of the current Town and the proposed annexation area. The Corvus Report also considered impacts on the RM and annexation area landowners. The response was prepared on a similar basis.

- [56] Marc Hoffort took note of one of the conclusions reached by Greg Weiss concerning the Town's perceived need for non-residential land to limit future mill rate increases:
- ... developed residential lands in the annexation area are financially dependent on developed non-residential lands in the annexation area and, therefore, it is important that transfer of the developed residential lands be undertaken together with transfer of developed non-residential lands.
- [57] His view was the above statement confirms the financial viability of the new entity is dependent on annexation of developed commercial and industrial land. If only developed residential lands are included in the annexation, a mill rate increase of approximately 10% in years one and two would be required. We believe this conclusion is well founded. We say this because the evidence led shows the residential commercial mix of the Town is 99% residential and 1% commercial
- [58] We note the Town expressed concerns with respect to financial disclosure provided by the RM. The Town suggests this proceeding is akin to a summary judgement application and the RM is required to put its best foot forward and failed to do so. The RM response is that the financial information required would, by the RM estimate, have taken two people eight to 10 weeks to compile. The RM points out it is under no obligation to provide the information requested or in the format requested. It also points out the hearing is not comparable to a summary judgement procedure involving multiple expert witnesses and reports. From our perspective, we cannot see where the Town has been disadvantaged by any lack of production.

Bill Delainey

- [59] Bill Delainey, Senior Planner with Associated Engineering, has a BA in Rural and Urban Development from the University of Saskatchewan, a Registered Professional Planning designation from the Saskatchewan Professional Planners Institute and is a member of the Canadian Institute of Planners. He has municipal operational management experience, community planning experience and development planning experience.
- [60] The scope of Bill Delainey's engagement is to review the annexation application and growth studies submitted by the Town and offer statements of opinion on whether the application is consistent in the principles established in the *Guide*. He was not hired to prepare a growth study nor is he able to comment on the compensation piece. He references the Town OCP with the most recent consolidation published in April 2022.
- [61] The first general point made by Bill Delainey is that the OCP is a critical document in the annexation process. "Critical" is our term rather than his. This is consistent with the documents referenced in paragraph [14] above.

[62] The second general point he made was that a growth forecast is a technical background document used by the council and administrators to quantify growth and inform the creation or update the OCP. According to him, the key difference is the role of the public and stakeholders in verifying the projection portrayed in the OCP. He observed that the Town completed multiple growth forecasts with minimal amendments made to the OCP to align the policies with the quantification of growth represented by the forecasts. He also comments that the annexation seeks to incorporate existing developed commercial and industrial land in the RM despite the lack of policy support provided by the OCP nor is the incorporation of these lands essential in the Town satisfying its projected growth.

[63] The conclusions reached by Bill Delainey as contained in his report are:

- The Town's proposal does not align with the direction portrayed in its future land use map regarding lands identified to accommodate projected growth.
- The Town's proposal proposes to incorporate developed land within the Emerald Park subdivision and the Great Plains Industrial area despite that this intention is not represented in the OCP. The rationale provided for the inclusion of this land in the proposal seems to focus on the Town's need to diversify its economy and tax base to relieve the burden on residents to fund services and programs.
- The choice to use a 25-year growth horizon as the basis for defining the proposal is contrary to the principle that an annexation request should include land that is imminently needed for development.
- Based upon the information provided in the growth studies and with consideration of the additional land use planning that has been completed to support the Royal Park and Picasso Pathways development, the Town has a sufficient land base within its corporate limits to support a population of 16,862 representing 103% of the 25-year forecast.
- Basing an annexation request on a 25-year forecast will overestimate the amount of land needed given the variability of population change and development patterns over this period.
- Proposing such an extensive annexation in one application is contrary to the coordinated policies established in each OCP as it relates to intermunicipal cooperation and management of land in the JMPA and the principles set out in the Guide. Both communities would benefit from the opportunity to establish the principles and procedures as described in their respective OCPs without the pressure of having to defend their positions associated with an annexation which clearly circumvents the ideal of cooperation and coordination in land use planning.

[64] Bill Delainey was cross-examined on two points. The first was his observation that the annexed lands ought to be imminently needed for development. He agreed the public documents do not contain that qualifier; however, it was his view that Committee decisions support that proposition. The Committee decisions concerning boundary alterations have considered imminent development in the context of the implementation of an appropriate tax multiplier for compensation. Lastly, he was pressed on his conclusion that there currently exists within the Town boundaries sufficient land base to

support a population of 16,862 representing 103% of the forecast. He did not accept that criticism but allowed that a change in density could have an effect on this calculation. He was an impressive witness and provided valuable information to the Committee.

Paige Boha

- [65] Paige Boha has been employed with the RM since 2015 and currently holds the position of Manager, Planning and Development. The current OCP and sector plan of the RM states that development in the RM will be to the west of the Town. There is no current plan for the RM to develop to the south or east of the Town. Paige Boha provided the estimate of the time required to compile the requested financial data for the Town.
- [66] Paige Boha was asked for her assessment of the impact on the RM if the annexation was granted.
- [67] The first thing required would be a complete rewrite of the OCP to take into account the loss of residential and commercial lands. They would lose four districts within the RM that would require bylaw rewrites. The loss of 40% of the tax revenue would require a complete re-examination of current staffing levels and all current services provided by the RM. The estimate is that up to 13 staffing positions could be affected by the annexation. This would also affect the RM's ability to participate in the regional partnership with the towns of Balgonie and Pilot Butte and the Village of Edenwold. In summary, the grant of the annexation would cause a fundamental re-examination of all aspects of the RM servicing and long-range planning.

Mitchell Huber

- [68] The last witness called by the RM was the current Reeve, Mitchell Huber. He was counsellor for two terms (2001-2005) and Reeve from 2005 to date. He has been through two annexations with the Town and is the signatory on behalf of the RM to the 2015 agreement that transferred certain lands from the Town to the RM. The agreement was executed on October 13, 2015. The effective date of that boundary alteration was January 1, 2016. The recital of that document says the agreement provides the Town with a long-term supply of land to accommodate the strong growth and development of the community, more specifically the development of the Town Centre Neighbourhood and surrounding complementary residential areas as commercial/light industrial development along the highway corridor.

- [69] Mitchell Huber testified that his understanding of the 2015 agreement was that the Town agreed not to pursue incorporation of W ½ 15-17-18 W2 in the future as it was the RM's intent to develop to the west of the Town. We note these lands are included in the current application. He acknowledges there is further work to do pursuant to the agreement. As we understand his testimony, his view is that further work to be done in no way invalidates the agreement between the Town and the RM that W ½ 15-17-18 W2 would not form part of any future annexation request.
- [70] The Town's future development, as contained in the 2015 OCP with future and long-term growth, is designated to the east and south of the Town. The RM has no desire to develop on lands to the south and east of the Town. In fact, the RM said it would be willing to discuss annexation of lands to the south and east consistent with the Town OCP.
- [71] Mitchell Huber was questioned about the White Butte Regional Planning Committee (WBRPC). This was a committee comprising the RM, Town, Balgonie and Pilot Butte. It was originally set up to deal with a safety issue concerning access to Highway 1. The RM stopped participating in the WBRPC after the safety issues were resolved. In his words, the continuation of the WBRPC was always about the Town. There was no progress with the other participants. Mitchell Huber's view is that if the annexation is granted in its current form, it would set the RM back decades. The RM has worked hard on development and has succeeded in developing an area with an appropriate mix of residential, commercial, and industrial tax base. It provides services to the residents and landowners at a reasonable rate.
- [72] The Town first approached the RM about the proposed annexed lands in this application by way of a letter dated May 15, 2018. The letter shocked the RM. The Town invited the RM to discuss the proposal. At that meeting, no other proposal, other than what was contained in the letter, was discussed nor were any alternatives to what was proposed offered. The RM is at a loss to understand how it could be better off with the proposed annexation. It wishes to continue down the path charted by its 2019 OCP.

ANALYSIS:

- [73] The Committee is faced with what has been described by the parties as an unprecedented application. We agree with that characterization. Annexation is generally employed where there is a demonstrated need for land suitable for growth. In the present application, we have a request for annexation concerning both developed and undeveloped land. It is our view, by definition, that developed land cannot provide land needed for growth. This would apply whether the land was designated, commercial, industrial or residential.

- [74] All of the reports provided by the Town suggest the current mix of 99% residential and 1% commercial mix is not viable for a community. None of the reports or evidence led address the issue that the Town made the decisions to limit commercial and industrial uses that leads it to its current residential commercial mix. Put another way, it would seem that one of the drivers behind the application is an attempt by the Town to undo decisions made years earlier, which in the current light of day seem to present significant financial challenges to the community. The acquisition, through annexation, of developed industrial and commercial property would go far to balancing the commercial residential mix. It is our view that this acquisition may demonstrate a financial need but does not resolve any perceived need for future land for growth.
- [75] The Delainey Report states:
- An argument can be made that the Town's lack of opportunity is a direct result of deficient long-range planning within the community and not due to a strategic advantage provided to the RM by its corporate boundaries.
- [76] We agree with that analysis. The Town complains that the RM strategy effectively boxed in the Town and lessened the opportunity for future development.
- [77] The Town advances a further reason for the annexation. That reason is to address the RM growth immediately situate to the Town boundaries. The Town says without the annexed property, it will ultimately be stymied in its further growth plans. We note the current OCP of the Town does not support such an acquisition. In the OCP, Town development has been designated to the south and east, not the west. We also note that every proposed development within the RM would require CP approval.
- [78] We have particular concern with respect to annexation of developed land. As noted, such land cannot provide an opportunity for future growth. From our perspective, the only result of annexation of developed land, aside from the financial considerations mentioned earlier, is a change in governance. The use of the lands will not change nor will the level of services required by residents and businesses change. There may be efficiencies of scale but the evidence on this point was scant and certainly not sufficient to order an annexation of this magnitude.
- [79] There is no dispute between the parties that, at worst, there is currently sufficient land for residential development of at least 12 years and there may be as much as 20 years' worth of land available within the Town boundaries. As we understand the current development landscape, the Town is issuing some 10 to 20 residential building permits per year. In our view, this land currently provides sufficient land for anticipated growth by the Town until 2034-2035.

- [80] In its written submission to us, the RM said it is prepared to enter into discussions concerning consensual annexation of lands to the east. When this issue was raised by the Committee, the Town's legal counsel advised this was a matter of privilege (precisely what type of privilege remains unclear) and would address this issue as necessary. The Town did not suggest the statement by the RM concerning consensual annexation was incorrect. No further objection or argument was advanced. In our view, we are entitled to take into account the position advanced by the RM concerning consensual annexation under subsection 18(4)(p) of the *MBA*. We see the potential for further consensual annexation as clearly relevant to the issue before us, particularly in light of CP's view that all remedies available through legislation ought to be exhausted prior to ordering annexation of service developed land.
- [81] We are troubled by the Town seeking to annex land that it expressly said it would not pursue under the 2015 consensual annexation agreement. The Town seems to advance the position that as, in its view, the RM has not complied with its obligations under the agreement, they are not bound by the agreement. Mitchell Huber expressed the Town's position with respect to the RM obligations. He did not say it was not bound by the agreement. Rather, his position was they are prepared to work with the Town on what are admittedly long-term projects. In our view, in seeking to annex land it had expressly said it would not pursue, the Town undermined any perceived justification to order the annexation of the requested lands.
- [82] We add that the RM demonstrated the ability to attract and manage significant commercial, industrial and residential developments. The Town has not demonstrated experience in commercial or industrial developments.
- [83] We understand and appreciate that this issue has presented a challenge both to RM and Town residents for a lengthy period of time. The passion of the public participants and the concern with the divisive nature of this application was clear.

DECISION:

- [84] The Town has not demonstrated a need for land for future residential growth in support of this application. The Town has an adequate supply of undeveloped residential land to last at a minimum for 10 to 12 years, which we see as sufficient for the reasons already expressed.
- [85] The Town has not demonstrated a need for annexation of developed residential, commercial or industrial lands for growth. For the most part, the developed lands being sought by the Town are fully developed and, as such, those lands cannot provide further opportunity for growth.

[86] Based on the evidence presented at the hearing, we have concluded that annexation of the developed lands is sought only for financial reasons rather than to enable future growth of the Town. The Town has not demonstrated a need to annex land to stop the development next to its borders. As we have ordered no lands to be annexed, we need not deal with the various positions concerning adequate compensation.

[87] The application on behalf of the Town is dismissed in its entirety.

COSTS:

[88] The SMB does not normally award costs in our proceedings. The vast majority of our hearings are one day or less. In adjudicating this application, we heard four days of evidence, a half day of public submissions and a half day of argument. Section 58 of the *MBA* provides us with the ability to order costs in our discretion and we may fix costs at a sum certain or order costs to be taxed and prescribe a scale under which the costs shall be taxed.

[89] In particular, subsection 58(1) of the *MBA* allows the SMB to order costs incurred by the Board. In this case, the SMB incurred substantial costs of over \$17,000 to conduct this hearing. During case management, legal counsel was informed that costs would be a live issue in this case, particularly given the request for annexation of developed lands. As the Town has been unsuccessful in its application, in our view, the proper order is to fix the costs at \$8,500 and direct the Town pay that sum to the SMB by February 28, 2023.

Per: 
Chad Boyko, Panel Chair

Per: 
Jessica Sentes, Director