

IN THE COURT OF APPEAL FOR SASKATCHEWAN

ON APPEAL FROM THE SASKATCHEWAN MUNICIPAL BOARD

APPLICATION NUMBER MBC 2019-0001.1

BETWEEN:

THE TOWN OF WHITE CITY

Prospective Appellant (Applicant)

AND:

THE RURAL MUNICIPALITY OF EDENWOLD NO. 158

Prospective Respondent (Respondent)

**DRAFT NOTICE OF APPEAL**

TAKE NOTICE THAT:

1. The Town of White City, the above-named Appellant (Applicant) (the “**Appellant**”), appeals to the Court of Appeal from the decision of the Municipal Boundary Committee (the “**Committee**”) of the Saskatchewan Municipal Board made January 12, 2023 (the “**Decision**”).
2. The Appellant is appealing the following portion of the Decision:
  - (a) The entirety of the Decision.
3. The sources of the Appellant’s right of appeal and this Honourable Court’s jurisdiction to entertain the appeal are:
  - (a) *The Municipal Board Act*, SS 1988-89, c M-23.2, s 33.1; and
  - (b) *The Court of Appeal Act, 2000*, SS 2000, c C-42.1, s 7(2)(b).

4. The appeal is taken upon the following grounds:
- (a) The Appellant brought an application to add territory to its existing area by withdrawing certain specified land from within the Respondent, Rural Municipality of Edenwold No. 158 (“**Respondent**”) and altering their shared boundary accordingly pursuant to the provisions of *The Municipalities Act*, SS 2005, c M-36.1 (the “**Act**”);
  - (b) The issues before the Committee included:
    - (i) Whether the land identified in the Appellant’s application was appropriately withdrawn from the Respondent and added to the Appellant, notwithstanding that such land was already developed; and
    - (ii) Whether all or some of the land identified in the Appellant’s application was appropriately annexed to the Appellant on the basis that it was required for the future development needs of the Applicant, for commercial, industrial and residential purposes;
    - (iii) Whether some or all of the land identified in the Appellant’s application was appropriately annexed to the Applicant on the basis that it was appropriate to do so for the purposes of consolidating the existing urban community in and surrounding the Applicant;
    - (iv) Whether, if it were appropriate to grant some or all of the land requests made by the Applicant, the result was financially viable from the perspective of the Applicant;
    - (v) Whether, if it were appropriate to grant some or all of the land requests made by the Applicant, the Respondent would be financially viable;
    - (vi) As provided for in s. 18(4) of *The Municipal Board Act*, the Committee was required to consider the following current or prospective matters as they may affect the Applicant and the Respondent:
      - (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;
  - (I) grants or other assistance from the government of Saskatchewan or Canada;
  - (J) local school divisions;
  - (K) transportation, communication and utilities and rates for those things;
  - (L) local improvements in the area affected;
  - (M) hospital, library and other inter municipal bodies;
  - (N) bylaws; and
  - (O) any other matters that the minister or the board considers relevant.
- (vii) To the extent that the Respondent would suffer financial deprivation, the compensation, if any, that the Applicant should provide to the Respondent.
- (c) The Committee dismissed the application in its entirety and concluded that the Appellant did not have a need for land for growth;
- (d) This appeal is taken upon the following errors of law and/or jurisdiction:
- (i) The Committee erred in law by failing to provide adequate reasons to reasonably support all of the conclusions reached by the Committee;

- (ii) The Committee erred in law by failing to articulate, and apply to the facts, the proper legal test by which a proposed annexation is to be evaluated and determined;
- (iii) The Committee erred in law by ruling that the factual evidence presented by the Appellant was insufficient to constitute a basis for annexation of the subject lands;
- (iv) The Committee erred in law by concluding that the Appellant possessed enough land for at least 12 years, and as much as 20 years, of residential growth. Such conclusion was reached either in an absence of evidence, or in the face of controverted evidence (on which the Committee did not provide any analysis or explanation as to why it preferred certain evidence over other evidence);
- (v) The Committee erred in law by failing to consider or determine whether the Appellant had sufficient land available to it to meet its future commercial and industrial land needs;
- (vi) The Committee erred in law by failing to first determine (with supporting reasons) the appropriate timeframe to utilize in determining the Appellant's future land requirements. The Committee then proceeded to make a conclusion, with no analysis or reasons, that the Appellant already possessed enough land for its future land requirements;
- (vii) The Committee erred in law by failing to consider evidence presented by the Appellant, and/or, by failing to identify the legal effect of certain facts, relating to the Appellant's future needs for land. Such evidence includes the below (without limitation):
  - (A) Financial, demographic, and planning evidence that the proposed annexation (of developed commercial and industrial land) to the Appellant, was crucial to the future viability of the Appellant;

- (B) Evidence that the Appellant in fact required the annexation of developed commercial and industrial lands, for the purpose of future growth, and not for solely financial reasons;
  - (C) Evidence that the Appellant is increasingly physically surrounded by the developments of the Respondent Rural Municipality, which, absent an annexation, will limit the Appellant's future sustainable growth;
  - (D) Evidence that the Appellant would be financially viable following a grant of the Appellant's application, should the Committee order a boundary alternation; and
  - (E) Evidence that the Respondent would be viable, and likely better off financially, should the committee order a boundary alteration.
- (viii) The Committee erred in law by basing its decision, in part, on irrelevant considerations, such as (without limitation):
- (A) The Committee concluded that the Respondent possesses a greater ability than the Appellant to attract and manage significant commercial developments, where such was not a relevant consideration;
  - (B) The Committee referred to and made conclusions and criticisms relating to the Appellant's previous long range planning decisions, where such is not a relevant consideration;
  - (C) The Committee referenced the Respondent's evidence that the Respondent was prepared to enter into discussions with the Appellant concerning consensual annexation of lands to the east of the Appellant Town. Such was not a relevant factor before the Committee, and was moreover privileged by virtue of settlement privilege. Moreover, the legal test as to whether the Appellant demonstrated sufficient need for more land, should not rely on speculation on what may, or may not, be agreed in future outside

the land which the Appellant had already identified as being most appropriate for annexation purposes;

- (D) The Committee further failed, when considering the Respondent's evidence on the possibility of consensual annexation to the south and east of the Appellant's boundaries, to consider evidence before it respecting the non-suitability of such land;
  - (E) The Committee further failed, when considering the Respondent's evidence on the possibility of consensual annexation to the south and east of the Appellant's boundaries, to consider evidence before it respecting the Respondent's own developments in these areas and the Respondent's failure or refusal to provide any complementary resolution to the Appellant for annexation of lands to the south or east.
  - (F) The Committee failed to consider the uncontroverted evidence before it that the consensual path to annexation had been fully exhausted.
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- (ix) The Committee erred in law in that it correctly identified its obligations to consider the matters referenced in s. 18(4) of *The Municipal Board Act*, but then failed to address or consider all but two of those considerations, being subsections 18(4)(a) and (p);
  - (x) The Committee erred in law by failing to have due regard to and to consider relevant principles set forth in the *Guide to Municipal Boundary Alterations (Annexation), Version 4, November 2015*, when determining whether or not the annexation was justified by future land needs;
  - (xi) The Committee erred in law by failing to have due regard to and to consider relevant principles set forth in the *Principles for Financial Settlements between Municipalities for Boundary Alterations* when determining whether or not the annexation was justified by future land needs;

- (xii) The Committee erred in law when considering an earlier agreement between the Appellant and Respondent in relation to a boundary alteration in 2015, treating that agreement as a binding promise by the Appellant that it would not in the future pursue any growth in lands located to the west of the Appellant Town. The Committee erred in basing its decision, in any part, on such conclusion;
- (xiii) The Committee erred in law by not considering evidence before it that the land specifically referenced in the boundary alteration agreement in 2015 had been excluded at the wishes of its landowner, who had since changed its position and sought for the specific land to be annexed by the Applicant;
- (xiv) The Committee erred in law by failing to make any factual findings as to whether the proposed annexation would actually result in an annual financial gain to the Respondent Rural Municipality, and whether this factor thus supported the proposed annexation;
- (xv) The Committee erred in law by concluding that an annexation request should be limited to land that is imminently needed for development. The Committee further erred by failing to offer reasons for this conclusion, by failing to articulate how it defined the phrase “imminent;” and by failing to apply its definition to the facts before it; and
- (xvi) The Committee erred in law by concluding that a municipality’s future land needs could not encompass already developed land, on the basis that such land was not capable of future growth, but merely a change in governance. Such conclusion was made in the face of previously contested annexations in which the Committee had ordered the annexation of developed land into the applicant municipality.

5. The Appellant therefore respectfully requests the following relief:

- (a) An order that the Decision is set aside and the matter is remitted to the Committee for a new determination;

(b) That the Appellant be awarded costs of the application below before the Municipal Boundary Committee; and

(c) That the Appellant be awarded costs of this appeal.

6. The Appellant's address for service is:

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Lawyer in Chamber of File: M. Kim Anderson K.C./Candice D. Grant

7. The Appellant requests that this appeal be heard at Regina, Saskatchewan.

DATED at Saskatoon, Saskatchewan this 9<sup>th</sup> day of February, 2023.

**ROBERTSON STROMBERG LLP**

For: 

M. Kim Anderson K.C.  
Solicitors for the Appellant,  
The Town of White City

TO: The Registrar of the Court of Appeal for Saskatchewan

AND TO: The Respondent, Rural Municipality of Edenwold No. 158  
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