

**BOARD ORDER NO. MGB 117/10**

**FILE: AN07/WARB/V-01**

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 by the Village of Warburg, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from Leduc County.

**BEFORE:**

Members:

H. Kim, Presiding Officer  
W. Kipp, Member  
R. Strauss, Member

MGB Staff:

R. Duncan, Case Manager

**SUMMARY**

After careful examination of the submissions from the Village of Warburg (Village), Leduc County (County), affected landowners, and other interested parties, the Municipal Government Board (MGB) makes the following recommendation for the reasons set out in the MGB report, shown as Appendix D of this Board Order.

Recommendation

That the annexation be approved in accordance with the following:

The Lieutenant Governor in Council orders that

- (a) effective January 1, 2011, the land described in Appendix A and shown on the sketch in Appendix B is separated from Leduc County and annexed to the Village of Warburg,
- (b) any taxes owing to Leduc County at the end of December 31, 2010 in respect of the annexed land are transferred to and become payable to the Village of Warburg together with any lawful penalties and costs levied in respect of those taxes, and the Village of Warburg upon collecting those taxes, penalties and costs must pay them to Leduc County,

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- (c) the assessor for the Village of Warburg must assess the annexed land and the assessable improvements to it for the purposes of taxation in 2012 and subsequent years,

and makes the Order in Appendix C.

Dated at the City of Edmonton, in the Province of Alberta, this 4<sup>th</sup> day of November 2010.

MUNICIPAL GOVERNMENT BOARD

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(SGD.) W. Kipp, Member

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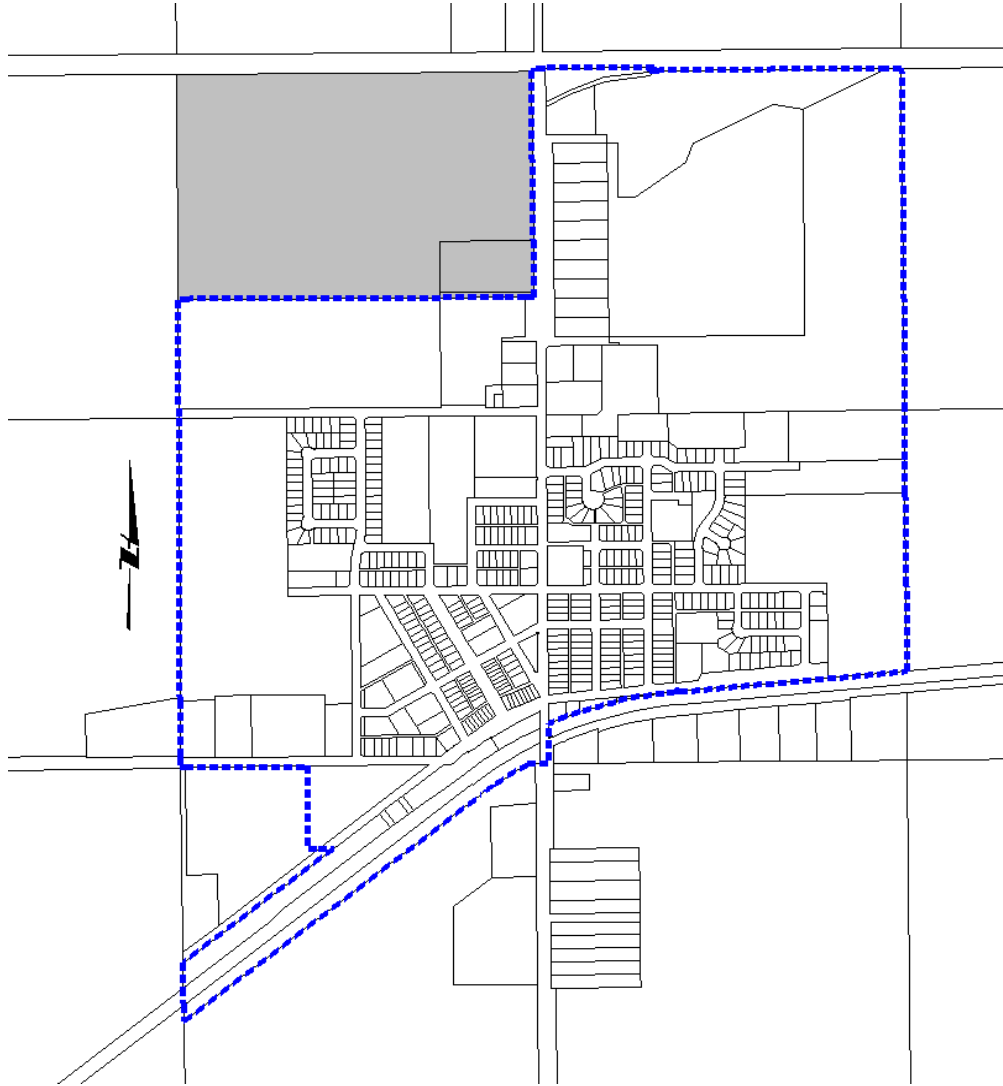
**APPENDIX A**

**DETAILED DESCRIPTION OF THE LANDS SEPARATED  
FROM LEDUC COUNTY AND ANNEXED TO  
THE VILLAGE OF WARBURG**



ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION THIRTY-FIVE (35),  
TOWNSHIP FORTY-EIGHT (48), RANGE THREE (3) WEST OF THE FIFTH MERIDIAN  
NOT WITHIN THE VILLAGE OF WARBURG LYING SOUTH OF THE SOUTH  
BOUNDARY OF PLAN 3623LZ.

**APPENDIX B**

A SKETCH SHOWING THE GENERAL LOCATION OF THE AREAS  
ANNEXED TO THE VILLAGE OF WARBURG



**Legend**

-  Existing Village Boundary
-  Annexation Area

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**APPENDIX C**

**ORDER**

1 In this Order, “annexed land” means the land described in Appendix A and shown on the sketch in Appendix B.

2 For the purposes of taxation in 2011 and in each subsequent year up to and including 2025, the annexed land and the assessable improvements to it

- (a) must be assessed by the Village of Warburg on the same basis as if they had remained in Leduc County, and
- (b) must be taxed by the Village of Warburg using the municipal tax rates established by Leduc County.

3 Where in any taxation year a portion of the annexed land

- (a) becomes a new parcel of land created
  - (i) as a result of subdivision,
  - (ii) as a result of separation of title by registered plan of subdivision, or
  - (iii) by instrument or any other method that occurs at the request of or on behalf of the landowner,
- (b) is redesignated, at the request of or on behalf of the landowner under the Village of Warburg Land Use Bylaw, to a designation other than agricultural or urban reserve,

section 2 ceases to apply at the end of that taxation year in respect of that portion of the annexed land and the assessable improvements to it.

4 After section 2 ceases to apply to the annexed land or any portion of it in a taxation year, the annexed land or portion and the assessable improvements to it must be assessed and taxed for the purposes of property taxes in the following year in the same manner as other property of the same assessment class in the Village of Warburg is assessed and taxed.

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5 The Village of Warburg shall pay to Leduc County the following:

- (a) \$905.00 on or before June 30, 2011,
- (b) \$905.00 on or before June 30, 2012,
- (c) \$905.00 on or before June 30, 2013,
- (d) \$905.00 on or before June 30, 2014,
- (e) \$905.00 on or before June 30, 2015,
- (f) \$905.00 on or before June 30, 2016,
- (g) \$905.00 on or before June 30, 2017,
- (h) \$905.00 on or before June 30, 2018,
- (i) \$905.00 on or before June 30, 2019, and
- (h) \$905.00 on or before June 30, 2020.

**APPENDIX D  
MUNICIPAL GOVERNMENT BOARD REPORT  
TO THE MINISTER OF MUNICIPAL AFFAIRS  
RESPECTING THE VILLAGE OF WARBURG PROPOSED ANNEXATION OF  
TERRITORY FROM LEDUC COUNTY**

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### **Executive Summary**

The Village of Warburg (Village) is located on Highway 39 approximately 55 kilometres west of the City of Leduc. On July 21, 2008, the Municipal Government Board (MGB) received an annexation agreement signed by the Village and Leduc County (County) with respect to the proposed annexation. The proposed annexation consists of approximately 104 acres (42 hectares) of land and would square off the northern boundary of the Village at Highway 39. The Village currently has no available industrial/commercial land within its boundary and intends to zone the lands within the proposed annexation area industrial/commercial.

### **Objections Received**

The annexation application was not complete, lacking the necessary consent forms from all of the affected landowners. The MGB received an objection to the proposed annexation from one of the affected landowners who, subsequent to negotiations, withdrew his objection. However, one of the landowners of the second parcel filed an objection during the notice period and in accordance with section 120(3) of the Act, the MGB held a public hearing on November 24, 2009 to receive information, evidence and argument on the annexation proposal. The MGB received presentations from the Village, the County, and the objecting landowner at the hearing.

### **Recommendation**

After reviewing all the written and oral submissions, the MGB recommends that the annexation of the lands be approved as applied for by the Village. The MGB does not recommend that the assessment and taxation transition conditions be removed if a development permit is issued.

### **Reasons**

After reviewing the documentation provided, as well as hearing the presentation by the objecting landowner affected by the proposed annexation, the MGB finds that the purpose of the annexation and amount of land being requested by the Town is reasonable and that the concerns of the affected landowners have been given proper consideration.

The collaboration between the two municipalities meets the objectives of intermunicipal cooperation outlined in the Provincial Land Use Policies and the annexation part of the Act.

The 15 year assessment and taxation transition period included in the annexation agreement, while at the maximum of the normal recommended range, will serve to provide a period of adjustment and certainty for the affected landowners.



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The negotiated compensation by the Village to the County of 50% of all property taxes collected yearly on the annexed lands over a period of ten years, based on the 2009 assessment, is reasonable and not overly onerous to the Village.

The MGB recommends that the assessment and taxation transition period not be removed if an industrial or commercial use development permit is issued. In response to concerns by affected landowners, the Village stated that the annexation area will be zoned Urban Reserve to allow the continuation of the existing uses. It would be unreasonable for the assessment and taxation transition provisions to be removed because a landowner requires an industrial or commercial development permit for an existing discretionary use.

The MGB reviewed the arguments and evidence of all the parties and concluded it was in the greater public interest to recommend approval of the annexation. The detailed analysis and reasons of the MGB are contained in Part VII of this report.

**Part I Introduction**

The Village of Warburg (Village) is situated on the south side of Highway 39 approximately 55 kilometres west of the City of Leduc and 50 kilometres east of the Town of Drayton Valley. The Village currently has no available land for industrial or commercial uses and is not able to respond to the numerous requests for industrial/commercial lots. The Village has therefore applied to annex approximately 42 acres (17 hectares) of territory from Leduc County (County) to address this need. The area being proposed for annexation would provide the Village with industrial and commercial land that has access to the highway. Map 1 shows the proposed annexation area and the two affected parcels of land.

Map 1: Village of Warburg Proposed Annexation Area



Legend Village of Warburg Boundary  
Proposed Annexation Area

Source: Village of Warburg Municipal Development Plan

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The following report outlines the role of the MGB, provides a brief overview of the Village's annexation application, identifies adjacent landowner issues, identifies the MGB annexation processing methodology, summarizes the public hearing held on November 24, 2009, and provides a recommendation to the Minister of Municipal Affairs (Minister) regarding this matter.

### **Part II      Role of the MGB, the Minister and the Lieutenant Governor in Council**

A municipality seeking annexation must initiate the process, pursuant to section 116 of the Act, by giving written notice of the proposal to the municipal authority from which the land is to be annexed, and to the MGB and any local authority considered to be affected by the proposal. The notice must describe the land proposed for annexation, set out the reasons for annexation and include proposals for consulting with the public and meeting with the landowners. Once notice has been given to the other municipality, the municipalities must negotiate in good faith and if agreement cannot be reached the municipalities must attempt mediation to resolve the outstanding matters.

At the conclusion of the negotiations, the initiating municipality must prepare a report describing the results of the negotiations. The report must include a list of agreed matters, as well as a list of matters in which there is no agreement. Where there is no agreement, the report must state what mediation attempts were undertaken or give reasons why there were none. The report must also include a description of the public consultation process and the views expressed during this process. The report is then signed by both municipalities; alternatively, the municipality that did not sign must provide their reasons for not signing.

The report is then submitted to the MGB and it becomes the application for annexation pursuant to section 119. If the MGB is satisfied that the affected municipalities and public are generally in agreement, the MGB notifies the parties of their findings and unless there are objections to the annexation filed with the MGB by a specific date, the MGB will make its recommendation to the Minister without holding a public hearing.

If the MGB finds that there is no general agreement, the MGB must notify the parties of its finding and conduct one or more public hearings. The MGB only has authority to make findings of fact and recommendations to the Minister and the Lieutenant Governor in Council (LGC). The Minister and the LGC have the authority to accept in whole or in part or completely reject the findings and recommendations of this report.

### **Part III      Annexation Application**

On September 18, 2007 the Village filed notification of its intent to annex certain lands from the County. Public consultation was conducted in accordance with the requirements of the Act and the Village Council held a public hearing with no submissions or objections to the proposal. Accordingly, an annexation agreement was executed between the Village and the County. The

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Village submitted the application July 21, 2008 to the MGB. The application requested the annexation of approximately 42 acres (17 hectares) of land from the County, included an Annexation Agreement between the Village and the County dated June 23, 2008, provided the required application fee and suggested an effective date of January 1, 2009.

A review of the application determined that it did not include necessary documentation, including the signed consent forms from all the affected landowners, excerpts from the Village's Municipal Development Plan (MDP), copies of the land title certificates for the annexation lands, information regarding the provision of water, wastewater and stormwater management, and confirmation regarding the amount of compensation to be paid from the Village to the County. The Village provided information regarding the municipal services, the MDP excerpts and the compensation clarification by letter dated December 2, 2008.

### **Statutory Plans**

The Village's MDP is reviewed annually and was updated in 2009 replacing the previous MDP which dated from 1985. The excerpt from the 1985 MDP, provided with the application, identifies the lands as Future Industrial Expansion (annex when needed). The Village has experienced steady growth from 560 in 2004 to 696 in 2009 and in the 2009 MDP estimated an annual growth rate of 3 - 4% between 2006 and 2026. It anticipates that growth of the Village could be sustained by prospects for becoming an industrial node and identifies the subject lands as "Future annexation area light industrial business". The Village has sufficient residential lands to support additional business and industrial uses. Since the Village has a population of less than 3,500 people, it was not required to adopt a MDP, but has done so to voluntarily facilitate municipal planning.

An Intermunicipal Development Plan (IDP) is not a required statutory plan under the Act. The Village identified that it does not have an IDP in place with the County. However the Village's MDP does contain provisions for intermunicipal cooperation.

### **Servicing Overview**

The proposed annexation area is currently farmland. Stormwater drainage is by natural drainage; therefore services will not be required. Upon development, the extension of the Village's potable water supply and sanitary sewer systems will be required from the industrial road located east of Highway 770 (50<sup>th</sup> Street). The cost of extending these services will be born by local improvement charges or by the developer. Required infrastructure upgrades are unknown at this time and will depend on what types of businesses are developed.

The Village anticipates its current population of 696 to at least double in the next 30 years. The Village's current potable water supply is adequate to supply a population of 1200, although there are occasional shortfalls in the summertime; however, the Village is drilling a new well to

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address this issue. The sewage lagoon is in the northeast portion of the Village and is adequate for a population of 2,100.

Alberta Transportation (AT) by letter dated April 3, 2008 states that AT has no objections to the proposed annexation. However, the Village will have to address concerns regarding Highway 770 and Highway 39 during the subdivision and area structure plan stage.

### **Public Consultation Process**

The landowner/public consultation consisted of a public hearing held by Village Council on February 19, 2008 which was advertised in accordance with the Act, and notification sent by letter to affected landowners. No submissions or objections were received at the public hearing and the Village proceeded with the annexation application.

On December 29, 2008, the MGB received an objection from one of the landowners, Julian Prenioslo objecting to the proposed annexation. The County advised that discussions between Mr. Prenioslo, the Town and the County may resolve the objection and requested the MGB to delay initiating action related to a public hearing. On May 20, 2009, Mr. Prenioslo withdrew his objection to the proposed annexation with the understanding that the Village would abide by the conditions as attached to his letter.

A revised annexation agreement signed by the Village and County on April 27, 2009 was received by the MGB, which then forwarded the application to Alberta Municipal Affairs (AMA) for processing as an uncontested annexation.

### **The Annexation Agreement**

The revised annexation agreement provides for the Village to assess residential, business and farm properties on the annexed lands in a manner similar to the practice in the County for a period of 15 years. It also provides for an Annexation Tax Stability District in which the Village is to apply a special mill rate in order to approximate the taxes levied on similar property in the County as changed from year to year. This District will include properties in the annexed lands used for residential, business and farm purposes until the land use of a property is changed. Land use change is deemed to occur when a property owner applies to the Village for a commercial or industrial development permit, or there is an application for a change in the district under the Land Use Bylaw.

The Village will be responsible for seeking approval from AT for any approaches from the annexed lands, and to construct and finance any improvements to accommodate any changes in traffic flows or volumes without cost to the County.

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The Village and the County agree to mutually investigate, upon request of one of the two municipalities, an extension of the Village's potable water supply and sanitary sewer systems to serve an intermunicipal area.

The Village will compensate the County 50% of all property taxes collected yearly on the annexed lands for a period of 10 years based on the 2009 assessment.

### **Requirement for Public Hearing**

Upon submission of the completed annexation application, Alberta Municipal Affairs (AMA) identified the application did not contain the signed consent from the second landowner. On October 14, 2008, subsequent to the September 17, 2007 filing of the notification of intent to annex, the title to the second parcel had transferred. The MGB was informed that the new landowner would not sign the consent form. In accordance with Section 120(1) of the Act, the MGB published a notice of annexation in the **Leduc Republic** and **Pipestone Flyer**, the two local newspapers circulating in the Warburg area, the weeks of September 7, 14 and 21, 2009. On October 2, 2009 the MGB received an objection to the proposed annexation from Darren Ryall, one of the landowners of the second parcel; therefore, in accordance with section 120(3) of the Act, a public hearing was required.

### **Part IV Public Hearing**

#### **Submission of Landowners**

Landowners of both affected parcels were present at the public hearing; however only Mr. Darren Ryall and Ms. Bridget Aboussafy, owners of the second parcel, made presentations.

Mr. Ryall and Ms. Aboussafy indicated that they had purchased the property in September 2008 in order to move out of the City and start a self-sustaining farm, with a market garden and micro dairy. The parcel has a home and outbuildings, including a quonset, and had served as the Warburg airport, a bottle depot and a welding shop at various times in its history. Across the street from their parcel is a slaughterhouse, a carwash and a grader yard. To the south of their land is the John Deere shop. Their home is serviced by a well that produces four gallons per minute (gpm). The landowners contend that their water tastes better than the Village's, which is chlorinated. Moreover, they have concerns about contaminants from future neighbouring industrial and commercial uses. They have livestock and four dogs, neither of which are permitted under Village bylaws. The landowners stated that they do not want to be part of the Village and would like to maintain agricultural zoning and remain in the County. Under the County bylaws they are zoned agricultural, and while a seven acre parcel is small, the agricultural uses they would like to pursue would not require a development permit. When they purchased the property, they were advised by the previous owner that there were proposals to annex the parcel into the Village but was she was unsure of the status. They met with the Village

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last December but did not reach agreement. The Village is proposing a 15 year assessment and taxation transition period whereas the landowners were looking for a 30 year transition period.

### **Village Response**

The purpose of this annexation is to allow for growth of the Village, because at this point, the lack of available industrial/commercial land is an impediment. The Village and the County cooperate in providing services, for example the County provides the Village with safety codes services, and the Village provides water to acreage owners in the County to the south.

The Village is willing to work with the landowners. When the property is annexed the zoning will be Urban Reserve which allows existing uses to continue. The goal of the Village is to foster a healthy vibrant community with services such as the school to benefit all residents in the area.

### **Part V MGB Recommendation**

The MGB recommends that the annexation of the Area be approved as requested and with the conditions described in Appendix C above.

### **Part VI Reasons**

After reviewing the documentation provided, as well as hearing the presentation by the objecting landowners affected by the proposed annexation, the MGB finds that the purpose of the annexation and amount of land being requested by the Village is reasonable and that the concerns of the affected landowner have been given proper consideration.

The annexation agreement resulted from a high degree of cooperation between the Village and County. While there is no formal IDP, the recently adopted MDP provides for intermunicipal cooperation, and the reciprocal provision of services demonstrates this. The MGB recognizes the lack of available industrial/commercial land within the Village's boundary, and agrees this constitutes a reasonable justification for this annexation and represents a logical progression of growth. This land is contiguous with existing industrial/commercial uses in the Village, has access to the highway, and is separated from incompatible uses.

The MGB notes that the Village has notified relevant agencies including AT. Having received a response from AT, the Village is aware of the requirements regarding future transportation planning. The MGB is satisfied that AT does not object to the annexation proceeding.

The MGB finds that the public consultation was properly advertised and that the affected landowners were properly notified in writing. It was unfortunate that one of the parcels was sold after the initial annexation application was submitted, but the MGB is satisfied that the new owners were aware of the proposed annexation. It is unreasonable that a prudent purchaser

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would expect a parcel of land, contiguous and across the street from a Village boundary to remain unfettered from Village influences for decades. The provisions of the Urban Reserve district will allow for continuation of existing activities. This parcel is completely surrounded by the other parcel in the annexation area; therefore excluding it was not an option. The MGB accepts the submissions of the Village in agreeing to work with the owners.

The MGB finds that the 15 year assessment and taxation transition period, while on the high end of the range normally recommended for an annexation that will provide a municipality with a 30 year land inventory, will provide a sufficient timeline of adjustment and certainty for the affected landowners. A longer transition period of 30 years would be unreasonable and inconsistent with the reason for the annexation.

The MGB recommends that the assessment and taxation transition period should not be terminated if an industrial or commercial development permit is issued for the lands within the annexation area. During the hearing, landowners within the annexation area expressed concerns about how being annexed to the Village would constrain the use of their land. In response, the Village stated that the annexation area will be zoned Urban Reserve to allow the continuation of the existing uses. The Village also stated that it was willing to work with the landowners to ensure the existing uses continue. The MGB has consistently recommended against the use of a development permit as a “triggering” mechanism to halt the assessment and taxation transition period. The issuing of a development permit does not necessarily change the population density of a parcel of land nor does it inevitably lead to a change in the use of the land. The MGB acknowledges that there may be situations where an industrial or commercial permit is required for a discretionary land use; however, the land use district contemplates that these types of uses may be allowed under certain conditions. Application of the *Matters Related to Assessment and Taxation Regulation* for permitted development can allow the assessed value of the property to increase and will allow the Village to generate the appropriate tax revenue. Therefore, the MGB concludes it would be unreasonable for the assessment and taxation transition provisions to cease because a landowner requires an industrial or commercial development permit for an existing discretionary use.

The negotiated compensation by the Village to the County of 50% of all property taxes collected yearly on the annexed lands over a period of ten years, based on the 2009 assessment, is reasonable. The current uses are mostly farmland and the compensation payments would not be overly onerous to the Village.

In conclusion, the MGB finds that the proposed annexation reflects legitimate local needs and concerns as well as complies with the MGB’s annexation principles set out in previous recommendations. As such, the MGB is satisfied it is appropriate to recommend approval of the proposed annexation.