

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 Ryley, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from Beaver County.

BEFORE:

Members:

R. McDonald, Presiding Officer
J. Fleming, Member
G. Zaharia, Member

Secretariat:

R. Duncan, Case Manager

SUMMARY

After examination of the submissions from the Village of Ryley, Beaver County, affected landowners, and other interested parties, the Municipal Government Board (Board) makes the following recommendation for the reasons set out in the Board 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, 2016, the land described in Appendix A and shown on the sketch in Appendix B is separated from Beaver County and annexed to the Village of Ryley,

- (b) any taxes owing to Beaver County at the end of December 31, 2015 in respect of the annexed land are transferred to and become payable to the Village of Ryley together with any lawful penalties and costs levied in respect of those taxes, and the Village of Ryley upon collecting those taxes, penalties and costs must pay them to Beaver County, and
 - (c) the assessor for the Village of Ryley must assess, for the purposes of taxation in 2017 and subsequent years, the annexed land and the assessable improvements to it,
- and makes the Order in Appendix C.

Dated at the City of Edmonton, in the Province of Alberta, 10th day of November 2015.

MUNICIPAL GOVERNMENT BOARD



R. McDonald, Presiding Officer

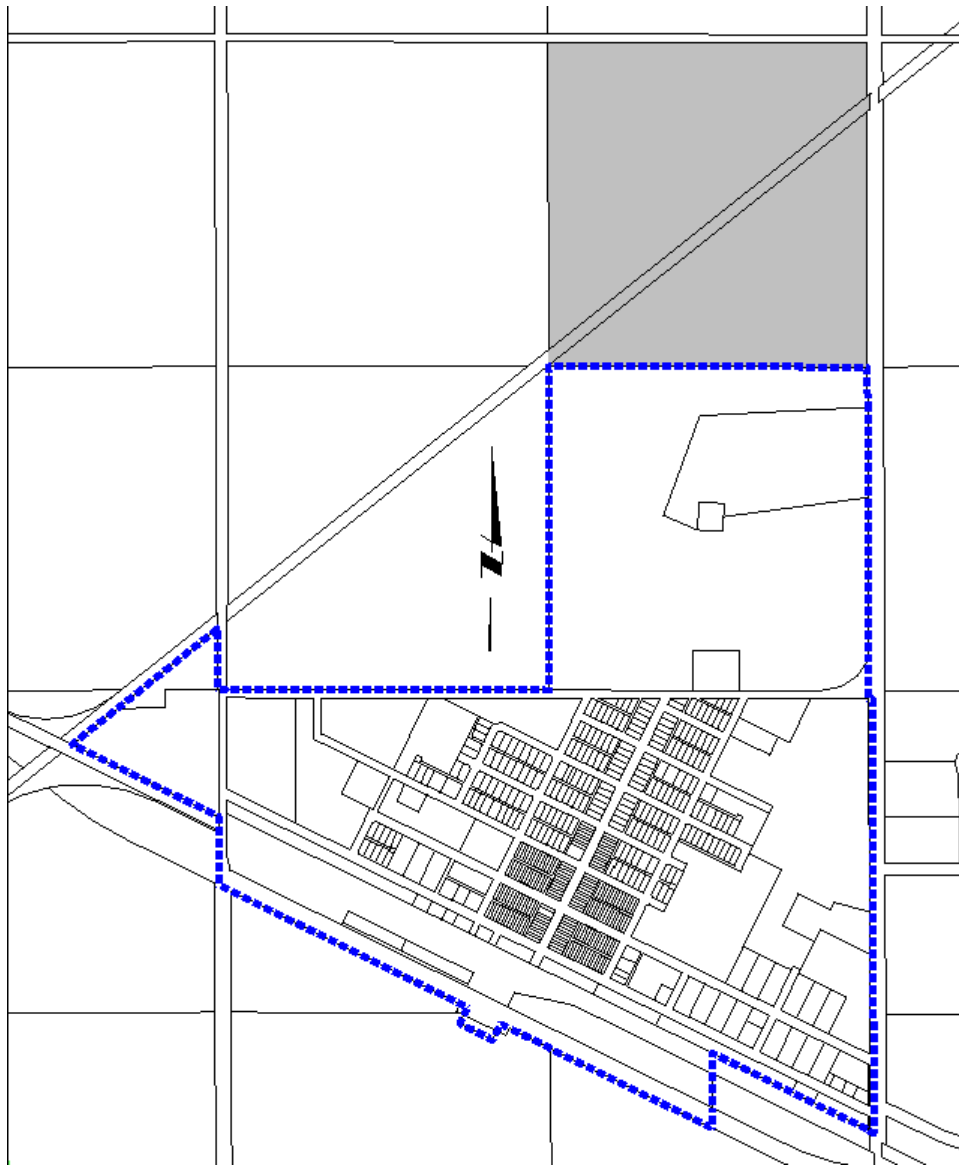
APPENDIX A

**DETAILED DESCRIPTION OF THE LANDS SEPARATED FROM
BEAVER COUNTY AND ANNEXED TO THE VILLAGE OF RYLEY**

THE NORTHEAST QUARTER OF SECTION NINE (9), TOWNSHIP FIFTY (50), RANGE SEVENTEEN (17), WEST OF THE FOURTH MERIDIAN EXCEPTING THEREOUT PLAN 7521617.

APPENDIX B

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



Legend



Existing Village of Ryley Boundary



Annexation Area

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 2016 and in each subsequent year up to and including December 31, 2030, the annexed land and the assessable improvements to it
 - (a) must be assessed by the Village of Ryley on the same basis as if they had remained in Beaver County, and
 - (b) must be taxed by the Village of Ryley in respect of each assessment class that applies to the annexed land and the assessable improvements to it using
 - (i) the municipal tax rate established by Beaver County, or
 - (ii) the municipal tax rate established by the Village of Ryley,whichever is lower.
- 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 Ryley’s Land Use Bylaw to another designation, or
 - (c) is connected, at the request of or on behalf of the landowner, to the Village of Ryley’s water and sewer services,

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 a portion of it, 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 Ryley is assessed and taxed.

APPENDIX D

**MUNICIPAL GOVERNMENT BOARD REPORT TO THE
MINISTER OF MUNICIPAL AFFAIRS
RESPECTING THE VILLAGE OF RYLEY PROPOSED ANNEXATION
OF TERRITORY FROM BEAVER COUNTY**

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EXECUTIVE SUMMARY

[1] The Village of Ryley (Village) is located approximately 85 kilometers east of Edmonton. On December 12, 2014, the Municipal Government Board (MGB) received an application from the Village to annex approximately 158 acres (64 hectares) of land from Beaver County (County). Although the two municipalities were able to negotiate an annexation agreement, it was unclear whether there were any concerns about the proposed annexation from the affected landowner and/or the public. As a result, the MGB published a notice in the local newspaper about the proposed annexation. In response to the public notice, a written objection was filed with the MGB. In accordance with the *Municipal Government Act* (Act), the MGB established convened a public hearing on March 18, 2015 to receive information, evidence and argument regarding the proposed annexation.

[2] The purpose of the proposed annexation is to provide the Village with land for future industrial development. The annexation was undertaken in response to a request from Clean Harbours Environmental Services (Clean Harbours). Clean Harbours operates a landfill and is the largest industrial company in the Village. Submissions supporting the annexation were received from both municipalities, a member of the public, a representative from Clean Harbours, and the affected landowner.

[3] The objection from D. Fenske provided some background history regarding the landfill as well as County Bylaw 541 from 1982, which is no longer in effect. The objection states Canadians have no property rights and suggests the MGB should consider a County plebiscite. The written submission from Mr. Fenske received by the MGB prior to the public hearing stated that the 1996 Free Trade Agreement gave foreign owners property rights not enjoyed by Canadians, indicated that a proposition of this type in the United States would be put to a vote. It also asserted that given the 30-year process of predetermined government interference, the objection asserted the MGB involvement would only be feigning review of the application, and suggested the MGB postpone the hearing sine die pending the granting of “basic human property rights” to all Canadians. Mr. Fenske identified he would reserve his right to appeal the process under the *Canada Health Act* and *Environmental Protection and Enhancement Act*.

Recommendation

[4] After reviewing the written and oral submissions from the Village, the County, the affected landowner, and members of the public, the MGB finds the annexation request to be reasonable. Therefore, the MGB recommends the annexation of the land identified in the Village’s annexation application with an effective date of January 1, 2016.

Reasons

[5] The MGB's reasons for its recommendation have been identified below.

Annexation Process

[6] The Village and the County negotiated in good faith and were able to reach an annexation agreement. Therefore, the MGB concludes the negotiation process was complete and effective.

[7] The Village consulted with affected landowners and the public. It is reasonable to accept the annexation will not have a negative impact on the affected landowner as he provided a letter confirming his support for the annexation. The open house held by the Village was followed up with the distribution of a bulletin which listed the questions received and the Village's responses to these questions. The fact that copies of the bulletin were made available to members of the public demonstrates the desire of the Village to ensure the consultation process was inclusive.

[8] The Village consulted with the affected municipal authorities and agencies. The notice of intent to annex was sent to the affected local authorities and agencies at the start of the annexation process. This provided all the organizations with the opportunity to express their opinion even before the two municipalities met to discuss the proposed annexation. The only correspondence from these affected municipal authorities and agencies was from Alberta Transportation, which confirmed it does not object to the proposed annexation.

[9] The requirements of the Act ensure the annexation process is open and transparent. Opportunities were made available by the Village for residents of both municipalities as well as members of the public to voice their opinions about the proposed annexation during the Village's consultation process as well as at the public hearing conducted by the MGB. As no other objections or concerns were brought forward, it would be inappropriate to recommend a plebiscite as suggested by Mr. Fenske.

Planning

[10] The Village of Ryley/Beaver County Intermunicipal Development Plan (IDP) encourages the Village to maintain a 20 year land inventory within its boundary. The IDP, coupled with the ability of the Village and the County to negotiate an annexation agreement, demonstrates the high degree of intermunicipal planning between the two municipalities.

[11] The Village's Municipal Development Plan requires it to maintain an adequate supply of industrial land to meet future industrial needs. As Clean Harbours is the largest industrial company in the Village, it is reasonable to expect the municipality would agree to annex enough land to assist the strategic growth of the company. The annexation area is adjacent to the north boundary of the Clean Harbours facility and extends away from Village's residential development. The land is also within the

urban growth area agreed upon by the two municipalities. The MGB finds the amount of land being requested is reasonable as it will accommodate the Village's short-term and long-term growth.

[12] Municipal services can be extended by the Village from its existing infrastructure. The annexation area is adjacent to Highway 854. AT has stated that it does not object to the proposed annexation, but has advised that the Village or the developer may be responsible if a proposed subdivision, development or expansion necessitates highway improvements. The MGB is confident AT will exercise its ability to appeal any future subdivision that may impact Highway 854 and will use its authority to limit the location and number of accesses along Highway 854 at the appropriate time.

[13] County Bylaw 541 is not in effect and property rights are beyond the scope of an annexation proceeding. Although the annexation area is currently used for agricultural purposes, it was redistricted by the County in 2013 to Landfill and Composting, which will not allow the development of a Class 1 Landfill. In accordance with the Act, the bylaws of the old municipality that apply specifically to the annexation areas continue to apply to it until repealed or changed by the new municipality. Therefore, the annexation area land use district will remain as it is in the County until it is changed by the Village. Any change to allow a Class 1 Landfill would require amendments to the Villages MDP, IDP, and Land Use Bylaw. This would require the Village to conduct a public hearing, which would give the residents an opportunity to bring forward their concerns regarding possible redistricting changes.

[14] The MGB Annexation Procedure Rules allow the MGB to postpone a hearing without designating a future date for the resumption of the proceedings. However, in granting such a request, the Rules identify the MGB is to consider a number of factors, including the degree and likelihood of cost to the other party as well as whether a court decision is expected within 30 days and whether the relevant proceedings have been pursued expeditiously. The Village has demonstrated the need for additional lands and granting an indefinite postponement would restrict the Village's ability to achieve orderly, economical, and beneficial future development. Moreover, no evidence was provided to determine if there was a pending relevant court decision regarding the Free Trade Agreement, the granting of basic human property rights for Canadians, the *Canada Health Act*, or the *1996 Environmental Protection and Enhancement Act* that would impact the annexation. Therefore, a sine die postponement would be unreasonable.

Environment

[15] Environmental concerns must be taken seriously in order to ensure safe and viable development and safeguard the health and welfare of residents. AESRD is responsible for landfill monitoring and the enforcement of the Standards for Landfills in Alberta. The MGB trusts AESRD will ensure any future landfills will comply with the legislation and the standards in a manner that will protect the environment. Moreover, the MGB trusts the appropriate provincial and federal government departments will ensure any future development on the annexed lands will comply with the applicable legislation.

Financial

[16] The assessment for the annexation area in 2014 was \$29,350.00, which resulted in \$524.29 in taxes. The amount is minimal, so the annexation cannot be considered to a tax initiative. The renegotiation of the Memorandum of Understanding between the Village and Clean Harbours is a local matter and that should be addressed at the local level. To facilitate the efficient and coordinated transfer of the annexation area, the MGB recommends the effective date for the annexation should be January 1, 2016.

Conclusion

[17] The MGB finds that annexation proposed by the Village complies with the Act and the MGB annexation principles. Moreover, the purpose of the annexation and amount of land being requested by the Village is reasonable and that the concerns of affected landowners and the public have been given proper consideration. Therefore, the MGB recommends the annexation.

INTRODUCTION

[18] The Village of Ryley (Village) is located approximately 85 kilometers east of Edmonton. This vibrant, family-oriented community has a population of 497. Serving primarily as an agricultural centre, the businesses of the Village cater to the grain and cattle producers of the area.

[19] On December 12, 2014, the Municipal Government Board (MGB) received an application from the Village to annex approximately 158 acres (64 hectares) of land from Beaver County (County). The Village identified that the annexation area was for future industrial development and was undertaken in response to a request from Clean Harbours Environmental Services (Clean Harbours). The company requested the annexation so the land they are negotiating to purchase will be in the same municipality as their current facility. Clean Harbours operates a hazardous waste transfer station and secure landfill in Ryley. The expansion will facilitate future strategic growth for the company.

[20] Although the two municipalities were able to negotiate an annexation agreement, it was unclear whether there were any concerns about the proposed annexation from the affected landowner and/or the public. As a result, the MGB published a notice in the local newspaper about the proposed annexation. In response to the public notice, an objection was filed with the MGB. Pursuant to Section 120(3)(b) of *Municipal Government Act* (Act), the MGB established a document exchange process and convened a public hearing on March 18, 2015 to receive information, evidence and argument regarding the proposed annexation.

[21] The following report outlines the role of the Board, provides an overview of the Village's annexation application, summarizes the public hearing held on March 18, 2015, and provides a recommendation to the Minister of Municipal Affairs (Minister) regarding this matter.

PART I – ROLE OF THE MGB, THE MINISTER AND THE LIEUTENANT GOVERNOR IN COUNCIL

[22] The MGB is an independent and impartial quasi-judicial board established under the Act to make decisions about land planning and assessment matters. The Act gives the MGB the authority to “deal with annexation”. The Act also allows the MGB to “establish rules regulating its procedures”. The MGB Annexation Procedure Rules have been adopted to provide information about annexation proceedings, facilitate a fair and open process, and increase the efficiency and timeliness of the proceedings.

[23] A municipality initiates the annexation process by giving written notice to the municipal authority from which the land is to be annexed, the MGB, and any other local authority the initiating municipality considers may be affected. The notice must describe the land proposed for annexation, set

out the reasons for the proposed annexation, and include proposals for consulting with the public and meeting with the affected landowners. Once the notice has been filed, the municipalities involved with the proposed annexation must meet and negotiate in good faith. If the municipalities are unable to reach an agreement, they must attempt mediation to resolve any outstanding matters.

[24] At the conclusion of the negotiations and the consultation process, the initiating municipality must prepare a negotiation report. This report must include a list of issues that have been agreed to by the two municipalities and identify any issues the two municipalities have not been able to agree upon. If the municipalities were unable to negotiate an annexation agreement, the report must state what mediation attempts were undertaken or, if there was no mediation, give reasons why. The report must also include a description of the public and landowner consultation process as well as provide a summary of the views expressed during this process. The report is then signed by both municipalities. Should one of the municipalities not wish to sign the report, it has the option of including the reasons it did not sign.

[25] The report is then submitted to the MGB. If the initiating municipality requests the MGB to proceed, pursuant to Section 119 of the Act, the report becomes the annexation application. If the MGB is satisfied that the affected municipalities and public are generally in agreement, the MGB notifies the parties of its findings and unless objections are filed by a specific date, the MGB makes its recommendation to the Minister without holding a public hearing. If an objection is filed, the MGB must conduct one or more public hearings. If the MGB is required to conduct a hearing, Section 122(1) specifies the MGB must public a notice of hearing at least once a week for two consecutive weeks in a newspaper or other publication circulating in the affected area, the second notice being not less than six days before the hearing.

[26] The MGB has the authority to investigate, analyze and make findings of fact about the annexation, including the probable effect on local authorities and on the residents of an area. If a public hearing is held, the MGB must allow any affected person to appear and make a submission. After hearing the evidence and submissions from the parties, the MGB must prepare a written report of its findings and recommendations and send it to the Minister of Municipal Affairs (Minister). The Minister has the authority to accept in whole or in part or completely reject the findings and recommendations made by the MGB. The Minister may bring a recommendation forward for consideration to the Lieutenant Governor in Council (LGC). After considering the recommendation, the LGC may order the annexation of land from the one municipality to the other.

PART II – ANNEXATION APPLICATION

[27] Part II is divided into two sections. The first section describes the process used by the Village to develop the negotiation report, while the second section provides a brief overview of the application.

Negotiation Report Development Process

[28] This section will describe the process used by the Village to develop its negotiation report and provide an overview of the open house conducted by the Village.

[29] The Village filed its notice of intent to annex on July 23, 2013. The notice identifies the document was distributed to: the County, the MGB, Alberta Health Services, Alberta Transportation, Atco Gas, the Battle River School Division #31, the Beaver Regional Waste Management Commission, Epcor, and the Highway 14 Regional Water Services Commission.

[30] The public consultation process undertaken by the Village targeted the owner of the land, the proposed developer, and the public. The activities undertaken by the Village included the distribution of information through the Village Office, a mail out notice and information package, an open house, and one-on-one discussions.

[31] The Village reported that 29 people attended the open house held on March 4, 2014 to ask questions and get more information about the proposed annexation. The information provided by the Village was documented and a Bulletin which summarized the questions and answers was distributed to everyone that attended the open house. Copies of this Bulletin were also made available to the public at the Village office. A brief summary of the Bulletin is provided below.

[32] It was explained that the proposed annexation was requested by Clean Harbours so that the company could operate within one jurisdiction. The land is currently zoned by the County's Land Use Bylaw as "Landfill and Composting District". The County's current zoning would not permit the operation of a Class 1 landfill and would not allow Clean Harbours to operate unless the company was to dispose of Class II or III waste. The proposed annexation conforms to the Beaver County and Village of Ryley Intermunicipal Development Plan (IDP) as it is within the IDP "Urban Fringe", which is the primary urban expansion area for the Village. Provincial setbacks for schools, hospitals, food establishments or residences are 450 meters from an operating landfill or 300 meters for the disposal area of an operating or non-operating landfill. Although Clean Harbours had requested the Village to annex the land and the company was in negotiations with the landowner, it was confirmed that the property had not been sold prior to the distribution of the Bulletin.

[33] The Village anticipated it would receive increased property taxes if the landfill expands. It was explained that the buildings, cells, and land used for the landfill business would be assessed and taxed at industrial rates once they were constructed, while the balance of the property would continue to be assessed at agricultural tax rates. The Village has a Memorandum of Understanding (MOU) with Clean Harbours which identifies certain funding agreements currently being paid by the company. It was reported that there was to be a rate increase in May 2014 and the funds being paid by Clean Harbours under the MOU to the Village are not mandatory. Village Council will consider the possibility of negotiating a new MOU before endorsing the annexation application. The Village suggested the

adjacent landowner should discuss concerns about “economic obsolescence” with the County Assessor.

[34] The Bulletin stated that Alberta Environment and Sustainable Resource Development (AESRD) is responsible for landfill monitoring and the enforcement of the Standards for Landfills in Alberta which outlines the minimum requirements for the development, operation, monitoring, closure and post-closure of landfills in Alberta. These Standards outline the Nuisance Management requirements, which are measures to control such things as litter, fires disease vectors, odours and dust. Any complaints or concerns respecting Clean Harbours should be made to AESRD, with the Village being copied so that it may follow-up on the concern.

[35] It was confirmed that someone from outside the annexation area could file an objection to the proposed annexation. Once the consultation process was completed, the Village would develop an annexation application. The County could either endorse or not endorse the application. The Village anticipated that upon receipt of the application, the MGB would conduct a public hearing to allow an opportunity for affected persons, business or agencies to voice their opinion. The provincial government makes the final decision on the annexation application.

[36] In accordance with Section 117 of the Act, the Village and the County met and were able to negotiate an annexation agreement. The two municipalities agreed to the annexation area, determined the annexation would not include any existing roads, and suggested the effective date should be January 1, 2015. Both municipalities also agreed the County would cooperate with the Village to ensure the approval of the annexation application and the Village would not be required to pay compensation to the County for lost municipal revenue. A letter from the County contained within the annexation application confirms the negotiation report accurately reflects the results of the negotiations between the two municipalities and verifies the County is in agreement with the annexation proposed by the Village.

[37] The Village and the County formed a committee which met a number of times in 2013 and 2014. During these negotiations, the two municipalities agreed that the Village does not need to pay compensation to the County in relation to the annexation area as these lands are currently in agricultural production and no revenue sharing is required. There were no issues in which the two municipalities were not able to reach agreement. The County also provided a letter to confirm it was in agreement with the annexation application.

[38] The Village submitted its negotiation report along with a letter requesting the MGB to proceed with the annexation on December 12, 2014. At that point, the Village’s negotiation report became its annexation application.

Application Overview

[39] The Village submitted its negotiation report with a letter requesting the MGB to process the annexation on December 12, 2014. Pursuant to Section 119(2) of the Act, the negotiation report became

the Village's application at that point. This section will provide an overview of the annexation application submitted by Village.

[40] The application states the annexation area is consistent with the Village's Municipal Development Plan (MDP) which identifies that the Village is to "ensure that there as an adequate supply of industrial land, within the Village boundaries and appropriately zoned, to meet future industrial needs. The proposed annexation is also consistent with the IDP, which forms the basis of the cooperative effort between the two municipalities. Provisions within the IDP establish that the County recognizes the Village's need for additional land to grow and will support annexations that provide for 20 years of projected growth for the Village. Both municipalities agree that the IDP is their preferred method of addressing intermunicipal land use issues and represents the best opportunity for their continued cooperative working relationship.

[41] A significant portion of the Village's municipal revenue is generated by Clean Harbours, a company which operates an industrial landfill within the municipality. Clean Harbours requested the Village to undertake this annexation to enable the company to implement its 20-year strategic plan. The annexation area is currently assessed as farmland and represents a small fraction of the total assessment of the Village and the County. However, the Village expects that municipal revenues generated through future landfill operations will be significant.

[42] Despite the possibility of an increase in future municipal revenue for the Village, the two municipalities have agreed there is no requirement for revenue sharing or compensation to the County for lost municipal tax revenue. However, the Village and the County resolve to work together to negotiate a permanent funding agreement with the landfill operator.

[43] The Village is requesting the annexation of 158 acres (64 hectares) to enable it to be sustainable and allow it to achieve its growth objectives for the next 20 years. The annexation area is contiguous with the north boundary of the Village and is a logical extension of the municipality. The annexation area is adjacent to Highway 854, which both municipalities have recognized as important to the growth of the Village. Although not required at this time, municipal services can be provided to the proposed annexation area by extending existing Village infrastructure. Moreover, the Village and the County have agreed to work cooperatively to develop future services to the areas outside the Villages boundary and have expressed a desire to ensure both municipalities are able to develop in a fair and equitable manner.

[44] The Village has reviewed the County's planning documents and conducted a site observation to determine if there are any environmentally sensitive areas within the proposed annexation area. The application states the Village is satisfied the lands contain no environmentally sensitive areas.

[45] There is a significant difference between the municipal taxes of the two municipalities. To protect the landowner, the application suggested a number of assessment and taxation transition provisions be afforded to the lands in the annexation area. In summary, the Village is prepared to assess

the annexation lands on the same basis as if they had remained in the County until December 31, 2029 and tax the annexation lands using the lower of the municipal tax rates established by the Village or the County. These assessment and taxation provisions would be removed if the land is subdivided, becomes a residual portion of 16 hectares or less, the lands are redesignated at the request of the landowner to a land use other than agriculture or urban reserve, is the subject of a local improvement, or the lands are connected to Village Sanitary sewer services. The effective date suggested was January 1, 2015.

[46] The application contains letters from the landowner and Clean Harbours agreeing to the proposed annexation.

MGB Notification Process

[47] In accordance with section 120(1) of the Act, the MGB notified the landowner, the local authorities, and the public that the two municipalities had reached an annexation agreement and there appeared to be “general agreement” with the proposed annexation. Annexation notification letters were sent to the affected parties identified by the Village and newspaper notifications were published in the **Tofield Mercury**, a newspaper circulating in the annexation area, the weeks of January 5, 12, and 19, 2015. The notifications stated that unless a written objection was filed with the MGB by noon on Wednesday, January 28, 2015, the MGB would make its recommendation regarding the proposed annexation to the Minister without conducting a public hearing.

D. W. Fenske Written Objection Summary

[48] In response to the MGB’s annexation notifications, on January 27, 2015 an objection was filed by D. W. Fenske. The objection identified that in 1982 Alberta Municipal Affairs (AMA) took the County to court for establishing a bylaw to prevent the establishment of a hazardous waste industry. He indicated the Province changed a water definition to allow industrial pollution of the Beaverhills Watershed and had overridden the decision of an Environmental Board. The objection stated that at that time AMA allowed the County to covertly void the bylaw.

[49] Mr. Fenske noted the hazardous waste facility would not have been considered in the United States (US), but Canadians have no entrenched property rights. He suggested this is not a normal annexation for future industrial use, rather it is a three decades process of predetermined malicious interference by government agencies to site a democratically rejected industry. Mr. Fenske also suggested the MGB consider recommending a County plebiscite.

PART III – PUBLIC HEARING

[50] Part III will describe the pre-hearing process as well as summarize the submissions received during the annexation public hearing.

Pre-Hearing Process

[51] As a result of the objection, the MGB scheduled a public hearing in Ryley on Wednesday, March 18, 2015 to receive information, evidence and argument on the proposed annexation. Hearing notification letters were mailed to all parties and annexation public hearing notices were placed in the **Tofield Mercury** the weeks of February 23 and March 2, 2015. The notifications stated anyone interested in attending or making an oral presentation to the MGB was to advise the MGB by March 9, 2015. Written submissions regarding the proposed annexation were to be forwarded to the MGB by 12:00 noon on Monday, March 9, 2015.

[52] In response to public hearing notifications, the MGB received a written submission from Mr. Fenske on March 9, 2015 and from Alberta Transportation on March 16, 2015.

D. W. Fenske Written Submission Summary

[53] In brief, the written submission from Mr. Fenske indicated the lands owned by Clean Harbours contain two tributaries of Bible Creek and questioned why the Municipal Waste Commission was not sent a notification letter. Mr. Fenske maintained that under the 1996 Free Trade Agreement, foreign owners have basic human property rights not enjoyed by Canadians. He asserted that in the US a proposition of this type would be put to a vote of the people and he urged the MGB to recommend a proposition vote on this matter.

[54] Mr. Fenske indicated the annexation application is outside the narrow focus of the MGB and suggested the matter should be postponed sine die until basic human property rights are granted to all Canadians. Until then, he reserved his right to appeal the process under the *Canada Health Act* and premeditated poisoning of groundwater for corporate profit under the 1996 *Environment Protection and Enhancement Act*.

[55] Mr. Fenske did not appear at the public hearing.

Alberta Transportation Written Submission Summary

[56] Alberta Transportation (AT) stated that it has no objections to the proposed annexation. However, AT did identify that the Village or the developer would be responsible for improvements if a proposed subdivision or development accelerates the need for highway improvements. Access from Highway 854 to Clean Harbours will require some improvements prior to the expansion of the facility, so a plan should be developed for the approaches.

[57] AT did not appear at the public hearing.

Public Hearing Summary

[58] During the public hearing, the MGB received submissions from the Village, the County, and the public. A summary of these submissions is provided below.

Village Presentation

[59] During its oral presentation, the Village identified the annexation area is a logical extension of the industrial area on the north of the Village. This land will enable Clean Harbours to expand its operation within the Village. The Village is not considering the annexation of any additional land for residential or commercial as there is still a 20-year surplus of these land types within the municipality. It was explained that Clean Harbours had requested the annexation so that the land they are negotiating to purchase would be in the same jurisdiction as their current facility. The Village submitted that having the company in two jurisdictions would not be practical.

[60] The annexation will provide the Village with long term growth opportunities, which is consistent with the IDP. This statutory planning document specifies the Village is to maintain a 20-year land supply for its internal growth and this annexation will allow for this growth. Moreover, the proposed annexation will allow the Village to undertake long term infrastructure and capital planning. The Village confirmed that there are approximately 70 acres of vacant residential and commercial land within its boundary, which is projected to accommodate growth needs of these land use types for the next 20 years.

[61] It was explained lands in the annexation area had not been sold as yet. To accommodate the current landowner, the Village suggested the annexation area be taxed at the lower of the Village or County rate for 15 years. These assessment and taxation transition provisions would be removed if the land is subdivided, becomes a residual portion of 16 hectares or less, is rezoned under the Village's Land Use Bylaw to anything other than agriculture or urban reserve, is the subject of a local improvement for water or wastewater, or is connected to Village water or waste water services. The Village also highlighted that the landowner has provided a letter stating his support for the proposed annexation and agreeing to the assessment and taxation transition provisions.

[62] The open house conducted by the Village on March 4, 2014 attracted 29 people. This forum provided an opportunity for landowners and the public to meet with Village representatives to ask questions about the proposed annexation. The Village reported that at the conclusion of the open house it prepared a Question and Answer Bulletin that was distributed to the people that attended the open house and was made available to the public at the Village office.

[63] The Village emphasized that it had been able to reach an annexation agreement with the County and that there were no outstanding issues between the two municipalities. The proposed annexation

also conforms to the MGB's 15 annexation principles. Moreover, the Village stated that the only object to the proposed annexation was from Mr. Fenske, a resident of Strathcona County whose objection deals with possible procedural issues from over 30 years ago.

County Presentation

[64] In its oral submission, the County confirmed that the two municipalities have an excellent relationship. The two municipalities formed a committee, which met a number of times in 2013 and 2014 to discuss the annexation. The County also conducted a public meeting on August 25, 2014. The County confirmed the annexation application is consistent with the content as well as the spirit of the IDP and stated that both municipalities negotiated the agreement in good faith. Although the proposed annexation lands are currently used for agricultural purposes, the lands were changed by County Council in 2013 to "Landfill and Composting Districting".

[65] The proposed annexation involves one parcel of land. In 2013, the assessment for this property was \$29,350, the tax rate was 0.0178634, and the total amount of taxes collected in 2014 was \$524.29. The County confirmed it does not require compensation from the Village and no cost or revenue sharing agreements are required. The two municipalities have also agreed upon the assessment and taxation conditions in order to protect the current landowner.

[66] The County concluded its presentation by stating County Council supports the annexation application as it will enhance the continued sustainability and viability of the Village.

S. Yuha

[67] S. Yuha, the Facility Manager for Clean Harbours, was present at the hearing. In response to a question from the MGB Panel, Mr. Yuha confirmed the Clean Harbours facility in Ryley had a Class 1 rating.

K. Bell

[68] K. Bell identified that he lived next to Clean Harbours property and found the company to be a good neighbor. The company is also good corporate citizen as it is involved in a number of projects in the Village and the area. Mr. Bell stated he had no objection to the proposed annexation.

County Response and Summary

[69] The County provided no response or summary.

Village Response and Summary

[70] In summary, the Village stressed the two municipalities were in agreement with the proposed annexation and that there were no objections from the residents from either the Village or the County. The Village also reiterated that the objection from Mr. Fenske was regarding an issue that happened over 33 years ago.

PART IV – MGB RECOMMENDATION

[71] After reviewing the written and oral submissions from the Village, the County, the affected landowner, and members of the public, the MGB finds the annexation request to be in the public interest. Therefore, the MGB recommends the annexation of the land identified in the Village's annexation application with an effective date of January 1, 2016. The Board also recommends the approval of the assessment and taxation transition provisions requested in the annexation application.

PART V – REASONS

[72] The MGB's reasons for its recommendation have been identified below.

Jurisdiction

[73] Section 488(1)(f) of the Act gives the MGB the authority to deal with annexations. The MGB is satisfied it is within its authority to make its recommendation to the Minister.

Annexation Process

[74] The Act requires the initiating municipality to meet and negotiate in good faith with the municipality from which the land is to be annexed. The Village and the County complied with this requirement as the two municipalities were able to reach an annexation agreement. As the two municipalities did not have any outstanding issues in which there was no agreement, the MGB concludes the negotiation process was complete and effective.

[75] The Village consulted with affected landowners and the public. The affected landowner provided a letter to the Village to confirm he supported the annexation of his land and was in agreement with the assessment and taxation transition provisions. Therefore, it is reasonable to accept there will be no negative impact to the landowner. The open house held by the Village was followed up with the distribution of a bulletin which listed the questions received by Village representatives and the responses the Village provided to these questions. This shows the Village was consulting with the public and keeping them informed. The fact that copies of the bulletin were made available to members of the public from the Village and the County that did not attend the open house demonstrates the desire of the Village to ensure the consultation process was inclusive.

[76] The Village effectively consulted with affected municipal authorities and agencies. The notice of intent to annex filed by the Village identifies Alberta Health Services, Alberta Transportation, Atco Gas, the Battle River School Division #31, the Beaver Regional Waste Management Commission, Epcor, and the Highway 14 Regional Water Services Commission were advised of the proposed annexation at the start of the process. This provided all the organizations with the opportunity to express their opinion even before the two municipalities met to discuss the proposed annexation. The only correspondence received from these affected municipal authorities and agencies was from AT,

which confirmed it does not object to the proposed annexation.

[77] With regard to Mr. Fenske's concern about the Beaver Regional Waste Management Commission being notified of the March 18, 2015 annexation hearing, the MGB notes that in accordance with section 122(1) of the Act, hearing notifications were placed in the local newspaper the weeks of February 23 and March 2, 2015. The Beaver Regional Waste Management Commission office is located in Ryley. It is reasonable to expect that if the Beaver Regional Waste Management Commission had any concerns about the proposed annexation it would have filed a written submission by the date specified by the published hearing notification or would have come forward to make an oral presentation at the March 18, 2015 public hearing. As the Beaver Regional Waste Management Commission provided no input, the MGB concludes this organization has no concerns with the proposed annexation.

[78] The requirements of the Act ensure the annexation process is open and transparent. Opportunities were made available by the Village for residents of both municipalities as well as members of the public to voice their opinions about the proposed annexation. The MGB received no correspondence or objection from any County residents in response to the notifications placed in the local newspaper regarding the proposed annexation or during the public hearing. Therefore, it would not be appropriate to recommend a plebiscite or proposition vote as suggested by Mr. Fenske.

Planning

[79] It is typical for an urban municipality to maintain land inventory within its boundary so that the municipality can plan future growth. The two municipalities have acknowledged this by including provisions within the IDP that allows the Village to maintain a 20-year land inventory within its boundary. The IDP coupled with the ability of the Village and the County to negotiate an annexation agreement demonstrates the high degree of intermunicipal planning between the two municipalities. Since the annexation area is within the urban growth area specified by the IDP, this shows the annexation will accommodate the growth of both municipalities.

[80] The Village's MDP requires it to maintain an adequate supply of industrial land to meet future industrial needs. As Clean Harbours is the largest industrial company in the Village, it is reasonable to expect the municipality would agree to annex enough land to assist the strategic growth of the company. The annexation area is adjacent to the north boundary of the Clean Harbours facility and extends away from Village's residential development. The annexation area is also within the urban growth area agreed upon by the two municipalities. The Village stated that has an adequate supply of residential and commercial land supply to accommodate its growth for 20 years. The MGB accepts the amount of land being requested is reasonable as it will accommodate the Village's enough land to ensure its short-term and long-term growth and provide it with reasonable growth options. Moreover, the annexation will not encumber the rational growth direction of either municipality.

[81] The annexation area is located adjacent to the north boundary of the Village. The MGB accepts municipal services can be extended by the Village from its existing infrastructure. The annexation area

is adjacent to Highway 854. AT has not objected to the proposed annexation, but has advised that the Village or the developer may be responsible if a proposed subdivision, development, or expansion necessitates highway improvements. The MGB is confident AT will exercise its ability to appeal any future subdivision that may impact Highway 854 or limit the location and number of accesses along this highway at the appropriate time.

[82] The MGB will not comment on the activities surrounding the 1982 County Bylaw 541 or the property rights issues identified by Mr. Fenske. County Bylaw 541 is not in effect and property rights are beyond the scope of an annexation proceeding. Although the annexation area is currently used for agricultural purposes, it was redistricted by the County in 2013 to Landfill and Composting, which will not allow a Class 1 Landfill. In accordance with section 135(1)(d) of the Act, “bylaws and resolutions of the old municipal authority that apply specifically to the areas of land continue to apply to it until repealed or others are made in their place by the new municipal authority.” Therefore, the annexation area will remain as it is in the County until it is changed by the Village. The MGB notes that any change to allow a Class 1 Landfill would require amendments to the Villages MDP and IDP as well as its Land Use Bylaw. These changes would require the Village to conduct a public hearing and give notice in accordance with section 606 of the Act. This would afford the landowners and the public an opportunity to bring forward their concerns regarding possible redistricting changes.

[83] The MGB considered Mr. Fenske’s assertion that the annexation application be postponed sine die pending the granting of basic human property rights to all Canadians. The MGB Annexation Procedure Rules do allow it to postpone a hearing without designating a future date for the resumption of the proceedings. However, in granting such a request, the Rules identify the MGB is to consider a number of factors, including the degree and likelihood of cost to the other party as well as whether a court decision is expected within 30 days and whether the relevant proceedings have been pursued expeditiously. The Village has clearly demonstrated the need for additional lands within its boundary. The denial of the entire annexation would restrict the Village’s ability to achieve orderly, economical and beneficial development. Moreover, no evidence was provided to determine there was a pending court decision that would impact the annexation in relation to the Free Trade Agreement, the granting of basic human property rights for Canadians, the *Canada Health Act*, or the 1996 *Environmental Protection and Enhancement Act*. Therefore, the MGB finds a sine die postponement would be unreasonable.

Environmental Considerations

[84] Environmental concerns must be taken seriously in order to ensure safe and viable development and in order to safeguard the health and welfare of residents. AESRD is responsible for landfill monitoring and enforces the Standards for Landfills in Alberta. Therefore, the MGB trusts AESRD will ensure any future landfills will comply with the legislation and the standards in a manner that will protect the environment. Moreover, the MGB trusts the provincial and federal government departments responsible will ensure any future development on the annexed lands will comply with the applicable legislation.

Financial Impact

[85] The assessment for the annexation area in 2014 was \$29,350.00, which resulted in \$524.29 in taxes. The municipalities have also agreed the Village will not pay any compensation to the County for lost municipal tax revenue associated with the annexation. Therefore, the annexation cannot be considered a tax initiative. Even considering the costs associated with the provision of the assessment and taxation transition provisions over a 10-year period, the financial implications of the annexation on the Village and the County will be minimal at best. With regard to the suggestion that the Village should renegotiate its MOU with Clean Harbours as a condition of the annexation, the MGB considers this to be a matter that should be addressed at the local level.

[86] The MGB considers the conditions of the annexation to be certain, unambiguous and enforceable. Given the timing of the annexation and to facilitate the efficient and coordinated transfer of the annexation area, the MGB recommends the effective date for the annexation should be January 1, 2016.

Conclusion

[87] The MGB finds that annexation proposed by the Village complies with the Act and complies with the MGB annexation principles. Moreover, the purpose of the annexation and amount of land being requested by the Village is reasonable and that the concerns of affected landowners and the public have been given proper consideration. Therefore, the MGB recommends the annexation.