

**IN THE MATTER OF THE** "*Municipal Government Act*" being Chapter M-26.1 of the Statutes of Alberta 1994 (the "Act").

**AND IN THE MATTER OF** an application made by the Town of Bow Island (the "Town") to annex certain territory from the County of Forty Mile No. 8 (the "County").

**BEFORE:**

Members

W. Morgan, Presiding Officer  
R. Telford, Member  
J. Gilmour, Member

Secretariat Advisor

D. Hawthorne

This is an application to the Municipal Government Board (the "MGB") respecting the annexation application made by the Town to annex Lot 1, Block 4, Plan 941 1499 from the County.

Upon written notice being given to the interested parties and advertisements giving notice published in the Bow Island Commentator, the MGB conducted a public hearing in the Town of Bow Island, in the Province of Alberta, on March 1, 2001.

**PROPOSAL**

The Town's application is to annex a 6.87-acre parcel of land from the County. The parcel is located adjacent to the southwesterly Town boundary, approximately two blocks south of Highway 3. Highway 3 bisects the Town.

The subject site presently encompasses a residence that is connected to the Town's water and sewer systems. The landowner intends to stay in the residence and subdivide and sell the remainder of the parcel to a separate party. The prospective purchaser intends to construct a farm residence on the new parcel and develop a small agricultural greenhouse operation.

**BACKGROUND**

On December 7, 2000, the Town made an application to the MGB to annex the subject parcel of land from the County.

On December 31, 2000 the County, the landowner and the prospective purchaser of the subject land advised the MGB that they objected to the proposed annexation.

On January 5, 2001 the MGB decided there was no general agreement respecting the application and directed that a public hearing be held.

During the weeks of February 5 and 12, 2001 the MGB provided written notice to the directly affected parties, including Alberta Infrastructure and the St. Mary Irrigation District, and placed an advertisement in the local newspaper indicating that a public hearing would be held on March 1, 2001.

The MGB conducted a public hearing on March 1, 2001 in the Town office and the following parties were in attendance.

<u>IN ATTENDANCE</u>	<u>CAPACITY</u>	<u>POSITION ON ANNEXATION</u>
Alan Hyland	Town Mayor ,	In Favour
Susan Koots	Town Administrator	In Favour
Leonard Mitzel	County Reeve	Opposed
Dale Brown	County Administrator	Opposed
Abram Heinrichs	Landowner	Opposed
Richard Mitchell	Prospective Purchaser	Opposed

**LACK OF MEDIATION**

Section 117 of the Act requires that the municipalities attempt to use mediation when there are annexation matters on which there is no agreement. Section 112.1 of the Act defines mediation as a process involving a neutral person as mediator who assists the initiating municipal authority and the one or more municipal authorities from which the land is to be annexed, and any other person brought in with the agreement of those municipal authorities, to reach their own mutually acceptable settlement of the matter by structuring negotiations, facilitating and communication, and identifying the issues and interests of the participants.

The Town advised the MGB that the Town and County agreed that there was little to negotiate and that mediation did not seem appropriate. This consensus was reached following a number of meetings between the County, the Town, and the landowner before the annexation application was made.

**POSITION OF THE PARTIES**

In the opinion of the Town the annexation should be approved for the following reasons:

1. The subject land is bounded on two sides by the present Town boundary and is a natural consideration for annexation.
2. The parcel can only gain access from the Town road fronting the property.
3. The subject land is serviced by Town's water supply, sewage collection system and garbage pick-up.
4. The Town should have assessment and taxation control over the site due to the present level of servicing and the potential for more intense land use and subdivision.
5. By virtue of its location the subject land enjoys all the urban benefits, but is not subject to urban bylaws such as land use, business, dog control and noise control.

In the opinion of the landowners the annexation should be refused for the following reasons:

1. Once the new parcel is created, a new access route is planned over adjacent land to Highway 3. The new parcel would not use the Town road for access.
2. The new residence and greenhouse operation would be self sufficient for services because sewage can be accommodated on-site, while the St. Mary Irrigation District has already agreed to supply water for the new house and greenhouse.
3. Taxation would substantially increase for the subject property. At present, a farmhouse receives a partial exemption from assessment, however residences in Town do not. Further, greenhouses in the County are agricultural operations and the County exempts these operations from taxation. A greenhouse within the Town would be assessed and taxed as a business.
4. The Town already has a large amount of vacant land within its boundaries for future urban expansion.

In the opinion of the County the annexation should be refused for the following reasons:

1. The County supports and encourages the development of small and large agricultural operations.

2. The Town's bylaws could make the establishment of the greenhouse impossible due to the imposition of urban taxation and urban bylaw restrictions.
3. There is no need for the Town to include the site within its boundaries when there is other land in the Town available for urban style development.
4. The County supports the position of its ratepayers in this case.

There were no written or verbal submissions made to the MGB by Alberta Infrastructure, the St. Mary Irrigation District, nor any other government agency or interested party.

## ANALYSIS

### Legislation

The Act and the Provincial Land Use Policies (LUPs) emphasize the need for inter-municipal cooperation for, among other things, annexation and land use planning. Although other important factors are involved in the annexation process, the underlying purpose of annexation is to provide land use planning control for municipalities contemplating growth.

### *Municipal Government Act*

Section 617 of the Act provides municipalities and citizens' guidance respecting the application of land use planning principles in Alberta. The section states:

*"The purpose of this Part and the regulations and bylaws under this Part is to provide a means whereby plans and related matters may be prepared and adopted (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta, without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest."*

### **Provincial Land Use Policies**

With respect to the LUPs, principles have been established to promote efficient and effective land use, in several categories. These principles recognize that all municipalities are on an equal footing respecting land use, whether or not the municipalities are considered to be rural, urban or urbanizing entities. The LUPs also recognize the importance of careful planning for the fringe areas established by municipal boundary lines. With respect to evaluation of the Bow Island annexation application, the MGB placed emphasis on the following policies:

### **Intermunicipal Cooperation**

Section 3.0 of the LUPs was specifically designed to foster cooperation and coordination between neighbouring municipalities and between provincial departments and other jurisdictions in addressing planning issues and implementing plans and strategies. Section 3.2 provides strong guidance in recognizing concerns of an inter-municipal nature. This section encourages municipalities to cooperate in the planning of future land uses in the vicinity of their adjoining municipal boundaries respecting the interests of both municipalities and in a manner, which does not inhibit or preclude appropriate long-term use nor unduly interfere with the continuation of existing uses. Adjoining municipalities are also encouraged to jointly prepare and adopt intermunicipal development plans for critical fringe areas; these plans may involve lands which are in both of the adjoining municipalities.

### **Municipal Services**

With respect to municipal services, Section 4.6 of the LUP's encourages municipalities to establish land use patterns commensurate with the level of infrastructure and services, which can be provided, regardless of whether the infrastructure and services are provided municipally, communally, individually, or by a utility company. Municipalities are encouraged to coordinate the provision of infrastructure and services with neighbouring municipalities.

### **The County of Forty Mile No. 8 Rural Urban Fringe Agreement**

In 1999, the Town and the County adopted an agreement as a precursor to the development of an intermunicipal plan for the fringe area surrounding the Town. Among other things, the stated purpose of the document is to prevent future problems from arising through the provision of planning policies governing control of specific land uses in the rural-urban fringe. The fringe plan for the Town extends approximately two miles beyond the present Town boundary. This area is a referral area for applications for discretionary use development permits, statutory plan, or land use bylaw amendments and subdivision.

The fringe agreement is limited in scope and does not provide for policy direction on land use patterns.

### Annexation Logic

Section 76(1) of the Act states that the Minister (Municipal Affairs) may establish principles, standards and criteria that are to be taken into account in considering the formation, change of status or dissolution municipalities and the amalgamation of, or annexation of, land from municipal authorities. These principles, standards and criteria have not been established.

In the absence of specific principles, criteria and standards, and in the absence of an agreement between the parties, the MGB looks to the proponent of annexation to provide certain types of information in order to evaluate the proposal. For example:

1. A demonstrated need for short and long term municipal growth, including expected population increases and the related land requirement.
2. Assurance that the annexation is environmentally sound and recognizes unique physical features.
3. Support for annexation based on well-developed growth strategies; municipal development plans including an in-depth study for upgrading and extending hard municipal services such as water and sewer.
4. Demonstration that the annexation is not solely for revenue acquisition.
5. Demonstration that other public authorities are not negatively impacted or that the impacts can be reasonable mitigated.
6. Demonstration that individual property owners do not suffer major impacts or those steps can be taken to soften potential negative impacts.
7. Clear demonstration that the annexing municipality is financially capable of accommodating the expected growth and a clear demonstration that the municipality losing the territory is not severely impacted financially.

## **FINDINGS**

1. The Town and the County did not attempt mediation after it was determined that an annexation agreement could not be negotiated.
2. The Town has no municipal development plan, future growth plan and has not carried out studies to determine patterns for future land uses, engineering studies to determine infrastructure needs, population projections to determine land area needs or development of a financial strategy to maintain a healthy Town economy.
3. The Town has approximately three quarter sections of undeveloped land presently within its boundaries.

4. The existing development on the subject land receives water, sewer and garbage pick-up services from the Town. The proposed development of a farmhouse and greenhouse can accommodate sewage onsite and can acquire water from the St. Mary Irrigation District.
5. The existing development gains access from the frontage road under the Town's jurisdiction. The proposed development can gain access from the Town's road but has no firm commitment from adjacent property owners or Alberta Infrastructure to gain access across other land to Highway 3.
6. The proposed annexation does not represent a severe financial impact to the County nor would it provide a substantial financial gain for the Town.
7. Taxation for a greenhouse in the County is less than taxation for a greenhouse in the County.

## **RECOMMENDATION**

In consideration of the above, the MGB makes the following recommendations for the reasons set out below:

The MGB recommends to the Minister of Municipal Affairs that the annexation application be denied.

## **REASONS**

### Mediation Mandatory

During the hearing, the MGB was advised by the Town and the County that mediation was not attempted because the issues were very straight forward and neither party found there to be anything to mediate. While the parties may have felt mediation would not be beneficial, this does not absolve the parties from the mandatory requirement pursuant to section 117 of the Act. Without an attempt at mediation, the MGB and the Minister cannot determine whether or not some of the issues could have been resolved.

### Intermunicipal Cooperation Lacking

In addition to the non-compliance with the requirements of the Act, the main difficulty with this annexation proposal is that the most affected parties, the County and the landowner, simply do not wish to be annexed into the Town. Further, there has been no attempt by either municipality to meet the LUP principle of intermunicipal cooperation for this particular situation. While there is an intermunicipal agreement between the Town and the County, the agreement is very limited and does not demonstrate the level of commitment needed by both municipalities to adopt an

effective and progressive intermunicipal development plan. The subject annexation proposal is shortsighted, piecemeal and does not reflect the vision needed for the benefit of the Town's strategic growth over the long term.

Site Can be Developed and Serviced in County

The MGB understands the Town's position with respect to the Town's infrastructure being available to the subject land. Under normal circumstances, the inclusion of this site into the Town appears to be logical, however it is the Town's prerogative as to whether or not it wishes to supply sewer and water services to territory outside the Town boundaries. Indeed the LUP's encourage adjoining municipalities to find ways to share the burden of providing services across municipal boundaries for the benefit of all taxpayers. The MGB must take into account the guiding principles of the Act and the LUP's. Every municipality in Alberta is urban, rural or somewhere in between. Each municipality has the same right to adopt plans in order to achieve orderly, economical and beneficial development whether or not that municipality is urban, rural or urbanizing.

No Growth Plan

In the MGB's view, the Town does not need the subject land to accommodate future growth because there is a substantial amount of undeveloped land already within the Town boundary. Accordingly the annexation application is considered to be premature until a future growth strategy for the Town is in place. Such a strategy could be developed through the preparation and adoption of the inter-municipal development plan as promised by the present fringe agreement between the Town and the County.

The Town did not provide convincing evidence that the greater public interest would be better served by annexing the subject land into the Town. There are other remedies for the Town to pursue respecting concerns about potential development for this site. For example, the fringe agreement between the Town and the County provides the Town with input into any proposals for this land. There are also appeals from certain development permit, subdivision and planning bylaw decisions made by the County. Indeed, the County and the Town assured the MGB at the hearing that both municipalities have always enjoyed a good working relationship due, in part, to a strong agricultural heritage and the common agricultural business interests of both.

Dated at the City of Edmonton, in the Province of Alberta this 9th day of May 2001.

MUNICIPAL GOVERNMENT BOARD



W. Morgan, Presiding Officer



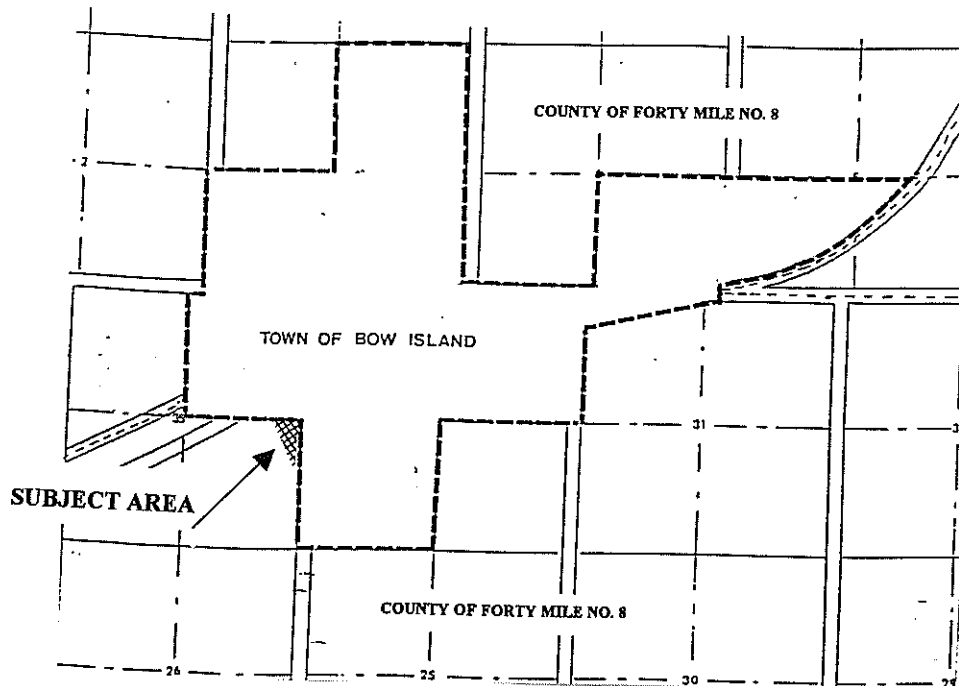
**APPENDIX "A"**

**DETAILED DESCRIPTION OF THE LANDS**

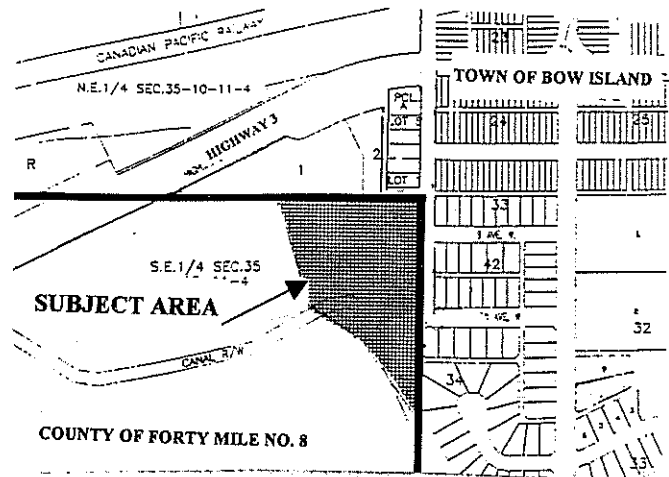
LOT 1, BLOCK 4, PLAN 941-1499

**APPENDIX "B"**

**A SKETCH SHOWING THE GENERAL LOCATION OF THE AREA**



**OVERALL VIEW**



**DETAIL VIEW**