

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/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 Forestburg, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from Flagstaff County.

BEFORE:

Members:

L. Patrick, Presiding Officer
T. Golden, Member
R. Strauss, Member

MGB Staff:

R. Duncan, Case Manager
M. Yu, Assistant Case Manager

SUMMARY

After careful examination of the submissions from the Village of Forestburg (Village), Flagstaff 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 Flagstaff County and annexed to the Village of Forestburg,
- (b) any taxes owing to Flagstaff County at the end of December 31, 2010 in respect of the annexed lands are transferred to and become payable to the Village of Forestburg together with any lawful penalties and costs levied in respect of those taxes, and the Village of Forestburg upon collecting those taxes, penalties and costs must pay them to Village of Forestburg,

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

- (c) the assessor for the Village of Forestburg must assess, for the purposes of taxation in 2011 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, 31st day of August, 2010.

MUNICIPAL GOVERNMENT BOARD

(SGD.) L. Patrick, Presiding Officer

APPENDIX A

DETAILED DESCRIPTION OF THE LANDS SEPARATED FROM FLAGSTAFF COUNTY AND ANNEXED TO THE VILLAGE OF FORESTBURG

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION THREE (3), TOWNSHIP FORTY-TWO (42), RANGE FIFTEEN (15) WEST OF THE FOURTH MERIDIAN NOT WITHIN THE VILLAGE OF FORESTBURG LYING NORTH OF THE NORTHERN BOUNDARY OF PLAN 822-1083 AND EXCLUDING THE ROAD SHOWN ON PLAN 002-4287.

ALL THAT PORTION OF THE EAST HALF OF SECTION THREE (3), TOWNSHIP FORTY-TWO (42), RANGE FIFTEEN (15) WEST OF THE FOURTH MERIDIAN CONTAINED WITHIN PLAN 3630BM.

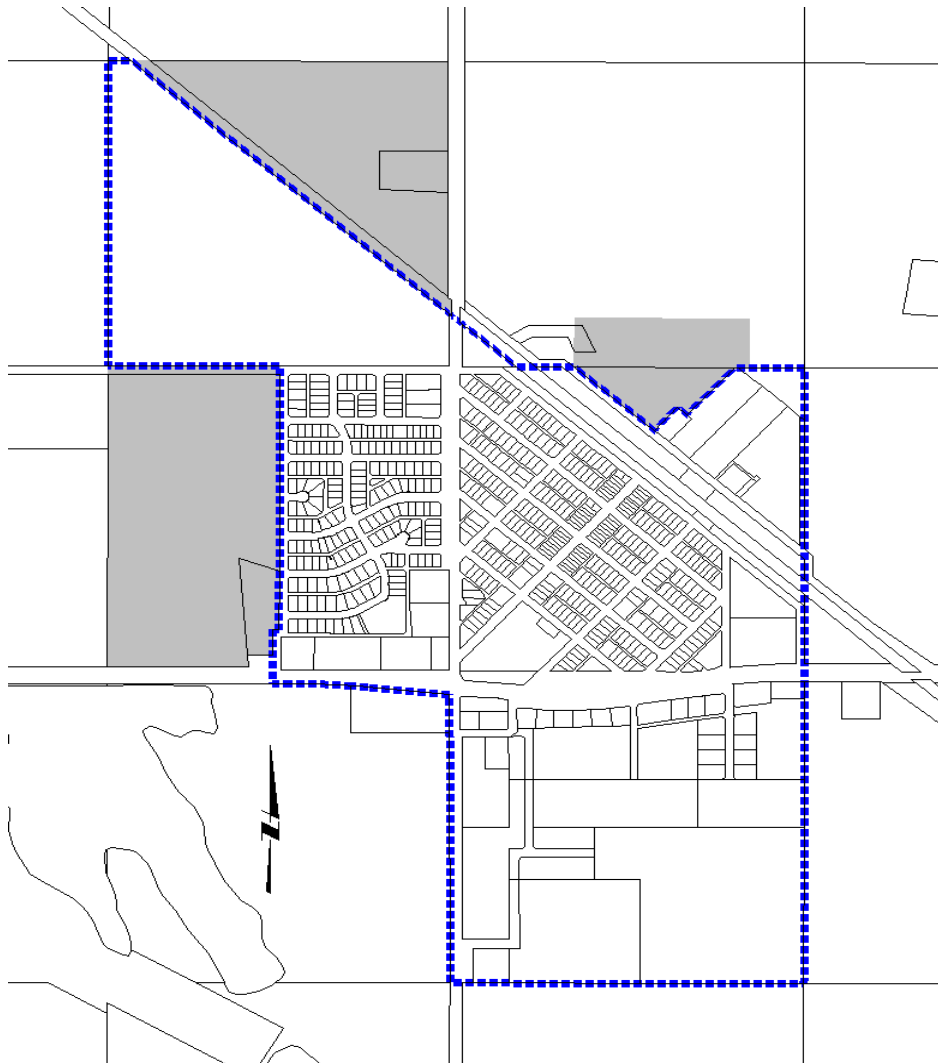
ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION THREE (3), TOWNSHIP FORTY-TWO (42), RANGE FIFTEEN (15) WEST OF THE FOURTH MERIDIAN LYING NORTHEASTERLY OF THE SOUTHEASTERLY LIMIT OF RAILWAY PLAN 2505CC AND WEST OF THE WESTERN BOUNDARY OF PLAN 022-1865.

ALL THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION TWO (2), TOWNSHIP FORTY-TWO (42), RANGE FIFTEEN (15) WEST OF THE FOURTH MERIDIAN NOT WITHIN THE VILLAGE OF FORESTBURG.

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION TWO (2) TOWNSHIP FORTY-TWO (42), RANGE FIFTEEN (15) WEST OF THE FOURTH MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LIMIT OF THE RAILWAY AVENUE AS SHOWN ON SUBDIVISION PLAN 310HW AND THE SOUTHERN BOUNDARY OF THE SAID QUARTER SECTION; THENCE EASTERLY ALONG THE SAID SOUTHERN BOUNDARY FOR THIRTEEN HUNDRED AND FORTY (1340) FEET; THENCE NORTHERLY AND AT RIGHT ANGLES TO THE SAID SOUTHERN BOUNDARY FOR FOUR HUNDRED AND TWENTY-FOUR AND ONE-HALF (424.5) FEET; THENCE WESTERLY AND PARALLEL TO THE SAID SOUTHERN BOUNDARY FOR THIRTEEN HUNDRED AND FORTY (1340) FEET, THENCE SOUTHERLY AND AT RIGHT ANGLES TO THE SAID SOUTHERN BOUNDARY TO THE POINT OF COMMENCEMENT.

APPENDIX B

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



Legend



Existing Village 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 2011 and in each subsequent year up to and including 2020, the annexed land and the assessable improvements to it
 - (a) must be assessed by the Village of Forestburg on the same basis as if they had remained in Flagstaff County, and
 - (b) must be taxed by the Village of Forestburg 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 Flagstaff County, or
 - (ii) the municipal tax rate established by the Village of Forestburg,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, except for the subdivision of an existing farmstead from a previously unsubdivided quarter section,
 - (b) becomes a residual portion of 16 hectares or less as the result of the creation of a parcel referred to in clause (a),
 - (c) is redesignated, at the request of or on behalf of the landowner under the Village of Forestburg Land Use Bylaw, to a designation other than agricultural or urban reserve,
 - (d) becomes the subject of a local improvement project described in a local improvement bylaw that is initiated by or with the support of the landowner and under which water and sewer services are made available to the land by the Village of Forestburg, or

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

- (e) becomes connected to water or sanitary sewer services provided by the Village of Forestburg,

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

- 4 After section 2 ceases to apply to a portion of the annexed land in any taxation year, that portion and any 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 Forestburg is assessed and taxed.

APPENDIX “D”

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

Table of Contents

EXECUTIVE SUMMARY	8
INTRODUCTION	10
PART I: ROLE OF THE MGB, THE MINISTER AND THE LIEUTENANT GOVERNOR IN COUNCIL.....	11
PART II ANNEXATION APPLICATION.....	12
Annexation Documentation	12
Annexation Application Summary	12
Annexed Lands and Proposed Development	12
Inter-municipal Cooperation.....	13
Fiscal Impact on Municipalities.....	13
Minimizing Impact on Property Owners and Citizens	14
Growth Projections	14
Overview of Servicing	14
Environmental Stewardship.....	14
Statutory Plans	15
Affected Agencies.....	15
Public Consultation Process.....	15
Response from information session and objection letters.....	15
PART III MGB MERIT HEARING.....	16
Merit Hearing Notification Process	17
Merit Public Hearing.....	17
Village’s Submission	17
County’s Submission	18
Landowner/Public Submissions.....	18
Village’s Response to Landowner/Public Submissions and Summary	20
County Response	20
PART IV: MGB FINDINGS AND REASONS	21

EXECUTIVE SUMMARY

The Village of Forestburg (Village) is located approximately 80 kilometres southeast of Camrose near the intersection of Highway 53 and secondary road 856. On September 16, 2009 the MGB received an annexation application from the Village to annex approximately 151 acres of territory from Flagstaff County (County).

Objections Received

The Village and the County were in agreement with the proposed annexation. Although the application submitted by the Village stated there were no known objections to the proposed annexation, the MGB noted that the Village did not provide the required consent documentation from all the affected landowners. In accordance with section 120(1) of the Act the MGB notified all the local authorities it considered would be affected by the annexation, the landowners within the annexation area and the public in the general area of the proposed annexation. The notifications identified that the MGB would make its recommendation to the Minister of Municipal Affairs without conducting a hearing unless objections were filed with the MGB by April 9, 2010. An objection was filed and, in accordance with section 120(3) of the Act, the MGB held a public hearing on June 15, 2010.

Recommendation

After reviewing all the written and oral submissions, the MGB recommends that the annexation be approved as applied for by the Village.

Reasons

The MGB reviewed the documentation provided prior to the hearing, and listened to presentations by the parties affected by the proposed annexation. The MGB finds that the purpose of the annexation and amount of land being requested by the Village is consistent with the analysis presented and that the concerns of affected landowners have been given proper consideration.

The MGB placed significant weight on the annexation agreement between the Village and the County. Their collaboration meets the objectives of intermunicipal cooperation outlined in Provincial Land Use Policies, the annexation principles established by the MGB, and the Act.

The MGB recommends an assessment and taxation transition period of ten years. The MGB finds this period will provide the affected landowners sufficient period of adjustment and certainty.

BOARD ORDER NO. MGB 102/10

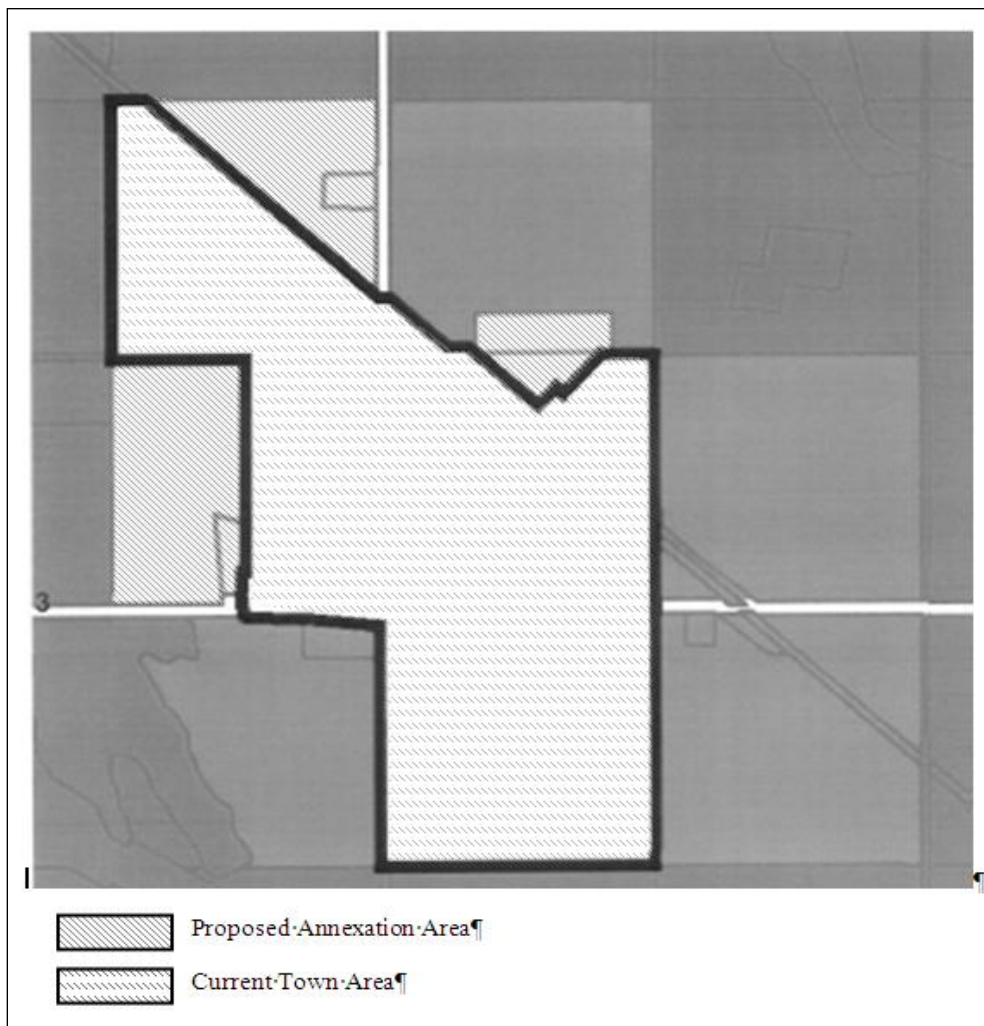
FILE: AN09/FORE/V-01

The MGB reviewed the arguments and evidence of all the parties and concluded that 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 IV of this report.

INTRODUCTION

The Village of Forestburg (Village) is located in the southwest area of Flagstaff County (County), approximately 80 kilometres east of Camrose at the intersection of Highway 53 and secondary road 856. The Village filed its formal notice of annexation to the MGB pursuant to section 116 of the *Municipal Government Act* (Act) on September 16, 2009. The notice proposed the annexation of approximately 151 acres (61 hectares) of land from Flagstaff County. On February 1, 2010, the MGB received the required Negotiation Report and application fee from the Town. Map 1 below shows the annexation area proposed by the Village.

Map 1: Village of Forestburg Proposed Annexation Area



Source: Village of Forestburg

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

The documentation submitted by the Village to the MGB indicated that there were no objections to the proposed annexation; however, the MGB noted that not all the landowners had submitted documentation consenting to the proposed annexation. Pursuant to section 120(1) of the Act, the MGB notified the appropriate local authorities, the affected landowners and the public of the proposed annexation and requested that any objections to be filed by a specified dates. An objection was filed with the MGB; therefore, in accordance to section 120(3) of the Act, the MGB held a public hearing on June 15, 2010 to receive information, evidence and argument on the annexation proposal.

The following report is divided into four parts. The first part outlines the roll of the MGB in the annexation process. The second part provides a summary of the Village's annexation application. The third part describes the hearing process and summarizes the June 15, 2010 merit hearing. The final section identifies the findings and reasons for the recommendation of the MGB to the Minister. This report fulfills the MGB's annexation duties in accordance with the Act.

PART 1: ROLE OF THE MGB, THE MINISTER AND THE LIEUTENANT GOVERNOR IN COUNCIL

A municipality seeking annexation must first 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, the MGB and any local authority considered to be affected by the proposed annexation. The notice must describe the land proposed for annexation, set out the reasons for the annexation and include proposals for consulting with the public as well as 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 matters that have been agreed to by the municipalities, as well as a list of matters in which there is no agreement. If there is no agreement between the municipalities, the report must state what mediation attempts were undertaken, or else explain why no mediation occurred. 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 and if not, the municipality that did not sign must provide their reasons for not signing.

Once the report is submitted to the MGB and the initiating municipality requests the MGB to proceed with the annexation, the report becomes the annexation application pursuant to section 119(2). If the MGB is satisfied that the affected municipalities and public are generally in agreement, the MGB notifies the parties of its findings. Unless objections are filed with the MGB by specific date, the MGB will make its recommendation to the Minister without conducting a public hearing.

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

The MGB only has authority to make findings and recommendations to the Minister of Municipal Affairs (Minister) and the Lieutenant Governor in Council (LGC). The Minister and the LGC have authority to accept in whole or in part or completely reject the findings and recommendations of this report.

PART II ANNEXATION APPLICATION

This part has been divided into two sections. The first section provides a brief discussion of the annexation documentation in relation to the Act. The second section provides a brief summary of the annexation application submitted by the Village.

Annexation Documentation

In accordance with section 116 of the Act, the MGB received a copy of a notice of intent to annex from the Village to the County on September 16, 2010. The notice of intent identified the lands to be annexed from the County, stated the reasons for the proposed annexation and clearly demonstrated that the MGB and the other local authorities the Village considers would be affected by the proposed annexation had been notified.

In accordance with section 118 of the Act, the required Negotiation Report was received by the MGB on February 1, 2010. The application submitted by the Village included a copy of the Annexation Agreement between the Village and the County, and a cheque for the annexation fees. Although the Village and the County were in agreement with the proposed annexation, not all landowners provided consent to the proposed annexation.

Annexation Application Summary

The following provides an overview of the annexation application submitted to the MGB by the Village prior to the start of the June 15, 2010 merit hearing. The application stated that the request was the result of a year's effort, which has resulted in the preparation of an Intermunicipal Development Plan (IDP) between the County and the Village. The following summary outlines the annexation application submitted by the Village.

Annexed Lands and Proposed Development

The Village believes that one of its main attractions is the generous size of its residential lots. The Village submits that this annexation proposal will assist it to achieve its growth objectives for the next twenty years.

The annexation boundaries include 151.20 acres of land. The West 80 refers to approximately eighty acres of farm land in SE 3-42-15-4 lying west of Village, north of the Highway 57 and south of 50 Avenue. Shauna Leduc owns 4.6 acres in the southeast corner of the West 80, and Mary McNabb owns the remaining 71+ acres. According to the MDP, most development of the

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

West 80 will likely be single detached houses. Manufactured housing may be allowed on lots at the southern end of this area. The Village submits that the annexation of this area will yield about 105 single detached houses as well as an additional 50 lots for medium density multi-family housing.

The annexation area located north of the railway tracks and east of Highway 865 (NE 3-42-15-W4 or the Bradley and Roseann McNabb) property may be used for large lot estate style housing. Additionally, the Village is considering the development of residential mixed use properties for small scale storage and business uses immediately east and north of the railway tracks.

The small annexation area adjacent to the north east part of the Village is to be used for mixed residential use.

Inter-municipal Cooperation

The Village and the County reached an agreement regarding the proposed annexation and have entered into an IDP. The IDP forms the basis of the cooperative effort between the Village and the County. There are no outstanding issues between the Village and the County with regard to the proposed annexation.

Both municipalities believe that the IDP represents the preferred method of addressing intermunicipal land use policies. There is an interest in growth adjacent to Highway 53 and Highway 856, which lie outside of the annexation area. Policy 1.8(5) of the IDP states that one of the guiding principles is the “development of land use policies to provide for and in support of economic development that will benefit the two municipalities economically and socially.” The annexation proposal identifies short term annexation areas as well as urban expansion areas for future development.

The County has agreed to transfer all municipal reserve, environmental reserve, public utility lots and road rights-of-way within the annexation area to the Village at no cost. All interest in the land, including deferred reserve caveats, easements and utility rights-of-way in the County’s favour will also be transferred to the Village.

Fiscal Impact on Municipalities

There is significant disparity between the municipal taxes in the Village versus the municipal taxes in the County. The assessment of the annexation area includes farmland, residential and non-residential. The Village is requesting a 10 year assessment and taxation transition period. The effect of the annexation in terms of the lost assessment to the County will be minimal (projected loss of \$500,000 or -0.04%). The Village will realize a modest gain of \$500,000 or +1.32%.

Minimizing Impact on Property Owners and Citizens

The Village and County Intermunicipal Planning Committee have agreed that the treatment of annexed properties is an issue between the Village and affected landowners. In order to minimize the impact of the annexation on the property assessment of landowners affected, conditions for a ten year transition period were proposed.

Farming practices are to be protected through the Village's Land Use Bylaw, which considers farms a permitted land use.

Growth Projections

As part of Municipal Development Plan (MDP) process, the Village developed a growth strategy which identified lands required for future urban growth. In 2006, the population of the Village was 895. The Village has projected an annual growth of 1.5%, resulting in a population of 1,297 in the year 2030. Assuming a density of 1.25 units per acre and two residents per unit, the Village calculates that it would need approximately 161 acres of land to provide a twenty year inventory. Although the land annexed exceeds the land requirements, large portions are currently already utilized by existing acreages.

Overview of Servicing

The IDP identifies the need for the two municipalities to work cooperatively to develop future services to the annexation area. All lands subject to the annexation are adjacent to the Village and can be serviced via the Village's road, water and sewer system subject to infrastructure improvements.

The West 80 lies lower than the adjacent developed lands, but is serviceable by gravity sewer. Municipal sewer service would likely not be economical for the McNabb property, but piped water would be feasible. The small annexation area adjacent to the north east part of the Village proposed for residential mixed use already has road access to the Village. Water can be made available to this area and wastewater service can be provided by gravity sewer.

Through the development of the IDP and annexation negotiations, the Village and County agreed that joint servicing agreements will be utilized in lieu of revenue sharing. The annexation will include Township Road 421 between NE 3 and SE 3-42-15-W4. The Village will assume responsibility of this quarter mile of road, while in turn the County will not seek compensation.

Environmental Stewardship

The IDP states that the municipalities will "continue to protect and enhance the existing open spaces." It identifies key environmental features that must be protected across municipal boundaries and environmentally sensitive lands have been identified. Land suitable for

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

Environmental Reserve is to be identified during the subdivision application stage, and designated as environmental reserve parcel or easement, or conservation easement.

Statutory Plans

The annexation application was undertaken following the development of the Village's MDP and the completion of the IDP. The public consultation component of the annexation application was undertaken concurrently with the development of the IDP. Both municipalities agreed on the need to work cooperatively to develop future services to the annexation area and to the adjacent area within the County.

The Village will allow agricultural operations to continue. Agricultural operations are protected under the Village's Land Use Bylaw, which consider farms a permitted use in Urban Expansion District.

Affected Agencies

The Village circulated a copy of the letter to initiate annexation to all the agencies required under the Act. Additionally, the Village consulted with the required agencies in the development of the MDP.

Alberta Transportation (AT) reviewed the proposed annexation plans and has no objections to the proposal. However, AT did advise that at the subdivision development stage, any local road access to either of the highways must be identified and approved by AT. The Village was also advised that the Village would be responsible for the costs related to any required intersection improvements and that these intersection improvements were to be constructed to the satisfaction of AT.

Public Consultation Process

The Village identified three main target groups for its public consultation process: landowners within the proposed annexation areas, owners of properties adjacent to the proposed annexation areas, and the general public. Public consultation included placing information on the internet, sending notices and information packages by mail, conducting a public meeting and holding one-on-one discussions with affected landowners. A map of the short term annexation lands was mailed out to landowners as well as neighbours within one mile of the annexation areas. The mailout also included an invitation to attend a landowner information meeting to discuss both the proposed annexation and the IDP.

Response from information session and objection letters

A landowner information session and public session concerning the proposed annexation and the IDP was held June 29, and September 23, 2010 respectively. Many of the questions raised by the

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

landowners were covered through phone calls and e-mails prior to and after these sessions. Following the meetings, consent letters were presented to the landowners, and over the next month, the village made attempts to seek consent from all landowners within the proposed annexation area.

Residents expressed concerns about the timeline, when land would be ready for development, the planning process and the costs associated with accessing municipal services. Landowners also expressed concerns regarding the possibility of an overnight tax increase. The Village received no objections to the proposed annexation during these meetings.

The Village was unable to obtain consent forms from two landowners, and two landowners provided consent with conditions attached. Brad and Roseann McNabb believed that they should not lose the benefit of the ten year assessment and taxation transition provisions following landowners agreeing to local improvements or the connection of parcels to Village water and sanitary sewer services. They submit that acreage parcels should have the opportunity to use private water and sewer unless it is more cost effective to use the Village's services.

Ms. Leduc requested that the 10 year tax transition period remain in effect for her entire 4.6 acre parcel including the portion of the property that is already connected to water/sewer services. In addition, she requested that the transition conditions remain regardless of a change of ownership, and that the Village not charge the current and future landowners for garbage services unless it is requested.

The Village responded to Ms. Leduc through a letter dated November 13, 2009, indicating that they were not able to agree with the conditions placed on the annexation. Table 1 below identifies the annexation consent status contained in the annexation application.

Table 1: Lands to be Annexed and Consent Status

Parcel	Legal	Area	Name	Consent
1	NW/SW 2-42-15-W4	21.17	Bruce McNabb, Brian McNabb and Brenda Grymaloski	Yes
2	NE 3-42-15-W4	49.84	Bradley and Roseann McNabb	Conditional
3	Plan 9023367 Lot 1	4.23	Brian Shirliff	No Response
4	Pt. SE 3-42-15-W4	71.36	Mary McNabb	No Response
5	Plan 0024287	4.60	Shauna Leduc	Conditional
	Total	151.20		

PART III MGB MERIT HEARING

The merit hearing with regard to the Village's annexation application was convened on June 15, 2010. The following section briefly describes the hearing notification process used by the MGB and summarizes the presentations and submissions received by the MGB.

Merit Hearing Notification Process

In accordance with section 120(1) of the Act, the MGB notified all affected parties of the proposed annexation. The MGB published a notice in the **Community Press**, a newspaper circulating in the affected area, during the weeks of March 23 and 29, 2010. The notifications stated that unless objections to the proposed annexation were filed with the MGB by April 9, 2010, the MGB would make its recommendation to the Minister without conducting a public hearing.

On April 23, 2010, David Francoeur, the solicitor for Shauna Leduc, submitted a letter on her behalf stating that the Village failed to meet his client's conditions for approval. Therefore, consent was withdrawn and an objection to the annexation was filed. In accordance to section 122(1) of the Act, the MGB published hearing notifications in the **Community Press** newspaper during the weeks of May 24 and 31, 2010. The MGB also sent hearing notification letters to affected parties on May 3, 2010.

Merit Public Hearing

A total of eight people attended the June 15, 2010 merit hearing. Mr. David Francoeur acted for Ms. Shauna Leduc, and Mr. Dale McNabb represented his mother, Ms. Mary McNabb. The MGB received oral submissions from the Village, the County, landowners in the annexation area, and other affected landowners.

Village's Submission

The Village submitted that the annexation request adheres to the fifteen annexation principles established in MGB Board Order 123/06 and had been approved by Village Council. The Village has worked closely with the County in serving the needs of their communities, and compatible development on the Village's borders is possible subject to servicing.

The Village wishes to provide improved service to its residents and has determined that growth is required to make the provision of these services more economical and efficient. The Village estimates there are 10 privately owned vacant lots available at this time. Other than these lots, the Village has no land inventory within its current boundary at this time. The Village acknowledged that the amount of land being annexed (151 acres) appears to be quite large as compared to the projected population growth. However, a portion of the land being proposed for annexation is low lying area and undevelopable. The Village describes itself as a retirement community, where demand for housing by large families is rare. Therefore, estimating permanent residents at 2.0 persons/unit and 1.25 units per acre for land requirements is justified.

The lands being proposed for annexation are all adjacent to the Village and are a logical extension of its current boundary. The Village water supply comes from three underground water

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

wells. The water system would be able to accommodate the increased demand following capacity upgrades that have already been planned. There are no intentions to drill any new wells in the area. The Village noted that the Leduc property is already on the Village's water and sewage systems.

Letters were sent to AT and the Battle River School Division regarding the proposed annexation. The Village acknowledges the concerns of AT and will deal with them at the development stage. The Village fully expects the recently renovated local school to be able to accommodate any increased enrolment resulting from the proposed annexation.

In its summary, the Village discussed how the annexation application has met all the principles that had been established by the MGB in the St. Albert/Sturgeon County annexation (MGB Board Order 123/06). Both the Village and the County have also made attempts at reducing any financial or lifestyle changes to landowners and are willing to continue working with them.

County's Submission

The County stated that its policy is to support the various urban municipalities within its boundaries. In 2009, the County developed a new MDP, four IDPs with various urban municipalities, and updated its LUB. The MDP specifically protects viable agricultural land, while simultaneously allowing urban expansion in neighbouring municipalities. Based on these principles, the County entered negotiations with the Village and agreed to the need for growth in the area. The annexation application submitted by the Village has the full support of the County and there are no outstanding issues to be resolved.

The taxation conditions presented by the Village were accepted and no additional compensation is required. Additionally, there is agreement that road maintenance will become the responsibility of the Village. If there are any disputes between the County and any other municipality, issues are first resolved on a local basis through the Chief Administrative Officers and Intermunicipal Development Committees. If the parties are unable to resolve their differences, they would pursue mediation and finally refer the matter to the MGB.

Landowner/Public Submissions

At the hearing, the MGB received presentations from two landowners. A summary of each submission is provided below.

Ms. Shauna Leduc

Mr. David Francoeur gave the main presentation with respect to Ms. Leduc's position, but Ms. Leduc also provided the MGB with a personal statement.

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

Previously, Ms. Leduc had submitted a conditional agreement to annex her lands. She requested that the tax transition provisions remain in effect for 10 years for her entire 4.6 acre parcel. The provisions also would not be lost as a result of already having village water and sewage service, regardless of any change in ownership. The County bylaws would remain in effect for the entire 4.6 acre parcel until the land is subdivided with the intent to be developed. She also requested that the Village will not charge the landowner for garbage service until it is requested.

Mr. Francoeur submitted that under the County's Land Use Bylaw (LUB), Ms. Leduc's property falls within the Highway Commercial District, which has a permitted usage identical to those listed under the Agricultural District. The use of land is considered Country Residential which allows Ms. Leduc and her family to raise two horses. Under the Village LUB, neither R-1 (low residential) nor R-2 (all residential) districts, which the MDP recommends for her land, would allow her to keep non domestic animals. According to principle 11 of the 15 annexation principles (MGB Board Order 123/06), reasonable solutions to impacts on property owners and citizens must be made. Where the property contains a use that is currently lawful under the current LUB, it would be reasonable to protect the legal non-conforming use.

The public meeting that the Village held in June 2009 failed to address Ms. Leduc's concerns; therefore, she remains opposed to the annexation. The Village failed to confirm whether the property would be zoned as Urban Expansion District or DC; therefore whether Ms. Leduc and her family will be allowed to continue to keep the two horses is uncertain.

Mr. Francoeur also raised concerns over Ms. Leduc's interest in using the Agricultural Canada Shelterbelt Program. If her property is annexed to the Village, the advantages of the program will no longer be available to her in the future.

Ms. Leduc submits that her land constitutes a small portion of the total areas that the Village is requesting to be annexed. Therefore, it would be possible for the Village to continue with the proposed annexation without her land.

Mr. Dale McNabb

Mr. Dale McNabb produced a written note from Ms. Mary McNabb indicating her consent to Mr. McNabb appearing on her behalf at the MGB annexation meeting. Mr. McNabb expressed concerns over the effect that Village bylaws would have on his agricultural practices. Additionally, he felt that the proposed annexation would eliminate access to the remaining farmland, and would reduce the value of the family farming operation.

Mr. McNabb expressed his willingness to collaborate with the municipalities, and had proposed the option of retaining approximately a five-acre parcel of land containing the home with the remnant parcel to be annexed. Doing so would provide continued access to the property located west of the annexation boundary and minimize the impact on current farming operations and the

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

future sale of the farm. Mr. McNabb does not want to inhibit the growth of the community, but does not want his farming operations to be affected adversely.

Village's Response to Landowner/Public Submissions and Summary

The Village stated that they are willing to work with all affected landowners to ensure that their concerns are properly dealt with. The Village restated that it does not currently have the land inventory for it to grow and to be able to provide the suitable selection of housing for future residents of the community. The Village submitted Municipal Development Plan Map 4, outlining the staged development of the West 80 and emphasized that development would not be possible without the annexation. A portion of the lands which will not be suitable for residential properties will be dedicated for the creation of park space. Both the McNabb and Leduc properties are required by the Village. In addition, the school board would likely oppose development south of Highway 53.

The Village pointed to a number of current and future economic driving forces in the area including the ATCO power generating station which employs approximately 150 people, the Prairie mine, local oil and gas and agricultural industries.

It would be in the best interest for the Village to have Mr. McNabb continue to farm on his property until development begins in order to reduce weed growth and other associated problems with unfarmed land. The Village is willing to accommodate his needs.

Urban Expansion District would allow for agricultural land uses with the exception of intensive livestock and spreading of manure. The Village is unable to adopt the bylaws of another municipality, but land zoned as Urban Expansion District would allow Ms. Leduc to keep her horses should she choose to do so.

An earlier letter to Ms. Leduc on November 13, 2009 had addressed concerns with respect to the property tax conditions and local waste disposal. The Village indicated that the assessment and taxation transition period was set at 10 years subject to the conditions listed in the consent letter that had been sent out to all affected land owners. The Village informed Ms. Leduc that the municipality is billed by the Flagstaff Regional Waste Authority on a per household basis and all Village residents must pay the same monthly fee.

County Response

The County also emphasized its willingness to work with affected landowners through the annexation process. The County notes that they would only support an annexation application if it does not involve highly capable land for agricultural purposes, has an IDP in place, and only when the annexation is justified by the Town. The County submits that these criteria have been met.

PART IV: MGB FINDINGS AND REASONS

After reviewing the documentation provided prior to the hearing, as well as listening to the presentations provided by the Village, County and the parties affected by the proposed annexation, the MGB recommends that the annexation should be approved as follows:

- the lands to be annexed are to be consistent with the lands identified in the Village's annexation application,
- the effective date of the annexation is to be January 1, 2011,
- the lands within the annexation area are to be assessed and taxed based on the ten year transition period outlined in the Village's annexation application.

Municipal Agreement

The MGB acknowledges that the Act and the Alberta Provincial Land Use Policies (PLUP) encourage municipalities to cooperate and collaborate. With respect to annexations, the Act requires municipalities to negotiate in good faith and, if they are unable to reach agreement, attempt mediation. The negotiation and/or mediation process allows the municipalities to meet, identify issues of mutual concern, discuss solutions, and reach an understanding with regard to a proposed annexation.

The Village and County have demonstrated the ability to discuss a wide variety of issues including environmental stewardship and servicing issues. In accordance with the PLUP, the MGB finds that the application filed by the Village as well as the submissions of the Village and the County at the public hearing demonstrate a high level of cooperation and collaboration between the two municipalities. The MGB is satisfied with the efforts of the Village to solicit input from other local authorities as well as government departments and agencies.

The MGB is satisfied that the normal planning requirements have been met and the financial arrangements contained in the application will not cause particular hardship to either municipality. In this instance, compensation was not an issue nor was it required in the first place. The County has clarified the amount of roadway that the Village will become responsible for maintaining. The MGB is satisfied with the Village's ability to provide municipal services to the proposed annexation area.

The MGB finds that the population projections presented by the Village are reasonable, and support the amount of land that the Village requests to be annexed from the County. The MGB is satisfied that there is currently no land inventory in the possession of the Village, and for development to occur the annexation request must proceed. The annexed lands would provide the Village with the twenty year inventory that it needs. The MGB is satisfied that density level used to calculate the amount of land required to meet the Village's projected population growth is appropriate. In reaching this conclusion, the MGB notes the following factors: the Village's

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

assertion that it is a retirement community; that some of the annexed lands are already occupied by acreages; and not all of the annexed lands are developable.

Affected Persons Concerns

The MGB acknowledges the efforts that both municipalities have made in addressing the issues raised by landowners affected by the proposed annexation through public hearings, and personal communications. The MGB appreciates the concerns that were expressed by both Mr. McNabb and Ms. Leduc, and found their comments to be reasonable from landowners that face the prospect of being included in a growing urban area. The livelihood of the landowners is an important consideration, and any effects of an annexation on an individual must be balanced with the greater overall public interest.

The MGB is satisfied that the Village has addressed the issue regarding the keeping of horses by affected landowners. The MGB understands the importance of the two horses that Ms. Leduc has been enjoying on her property, and notes that the Village is willing to work with her in maintaining this use of her land. The MGB accepts that the Village is to designate this area as an Urban Expansion District and that the existing animals will be permitted in the area unless the landowner increases the number of animals to the extent that this would constitute an intensive livestock operation. The MGB heard no evidence to indicate that Ms. Leduc was spreading manure in a manner that would constitute a contravention of Village Bylaws. The MGB is unable to bind the Village with any conditions, but places weight on the Village's representation that they will act in good faith and work with landowners to allow existing land uses to continue.

The MGB recognizes the opportunity that Ms. Leduc has for applying to the Agricultural Canada Shelterbelt program, but finds that there is no clear documentation that this program was being actively pursued, nor is there sufficient evidence to show that the application would have been successful.

The MGB finds the assessment and taxation condition period of 10 years as requested by the Village to be reasonable. These special conditions allow affected landowners time to adjust to the taxes rates of the new municipality. The submissions by Ms. Leduc requested an assessment and taxation transition period of 10 years and the MGB received no other submissions regarding this issue. The 10 year transition period proposed in the annexation application is within the general guidelines suggested by the MGB and should not create inequities between new and existing landowners in the same assessment classification.

The MGB finds that the 10 year assessment and taxation conditions should remain in effect if there is a change in ownership of the property as it exists at the time of the annexation. The MGB accepts that there are a number of conditions that could cause a change in ownership. The fact that the ownership of a parcel of land changes does not necessarily mean the land use will change. The MGB notes that the Village has not requested the removal of the assessment and

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

taxation conditions if the ownership of the parcel changes and therefore has not recommended this to the Minister.

The MGB finds that the 10 year assessment and taxation conditions should be removed if the land is subdivided. The subdivision of a parcel of land using urban standards can significantly increase density levels. This can increase the costs to the annexing municipality associated with the provision of such things as protective services, recreation, road maintenance and social services. Since the taxes required to pay for the increase in these costs could not be recouped from the subdivided land in the annexation area, this would be an unfair burden for the current residents of the Village.

The MGB noted that the annexation application contained a clause that would remove the assessment and taxation transition conditions if an existing parcel of land was connected to Village water or sanitary sewer services. The MGB heard that the Leduc property is already connected to the Village systems. An enquiry by the MGB after the hearing confirmed that the Village did not intend that the Leduc property would lose the assessment and taxation as a result of the annexation because it was already connected to the Village systems. Therefore, the MGB recommends the modification of this clause to ensure that it applies only to new connections.

The Village did not request any condition that would require the annexed lands to connect to the Village water and wastewater services, so this issue was not considered by the MGB.

The MGB finds it is reasonable for the assessment and taxation transition provisions to be removed if a local improvement project described in a local improvement bylaw is initiated by or with the support of the landowner. The MGB notes that the public consultation process required by the Act in relation to a local improvement would provide the landowners in question the opportunity to make their views known to the elected officials at the time.

The MGB is convinced that the Village will work with the landowners with regard to its bylaws. An annexation or annexation conditions should not infringe on local autonomy unless provisions of the Act have been breached or individual rights have been unduly impacted. The MGB finds that the rights of Ms. Leduc to access solid waste facilities are not unduly impacted by the annexation. Moreover, she can approach the Village and request that they waive the solid waste fees. Local autonomy is preserved by allowing the Village Council to make a decision that it is allowed under the Act.

The MGB also noted the importance of minimizing the effects on Mr. McNabb's farming operations. With respect to Mr. McNabb's concerns over loss of access to his property, the MGB finds that the concern is outside the parameters of the annexation approval. The annexation itself will not affect his ability to access his lands that is not within the annexation area. The MGB finds that financial impact resulting from the annexation on both landowners will be minimal. The Village has demonstrated their intention to protect landowners from fluctuating tax rates through the taxation of the annexed properties based on the lower rate of the two municipalities

BOARD ORDER NO. MGB 102/10

FILE: AN09/FORE/V-01

for a period of 10 years. In summary, both the Leduc and McNabb properties are integral part of the annexation and should be included.

Conclusion

The Annexation Agreement meets the criteria of outlining conditions that are certain, enforceable and time specific. The MGB recommends the effective date of the annexation be January 1, 2011 and that the Order in Council include the assessment and taxation conditions as identified in Appendix A to C.