

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-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 City of Calgary, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from the Municipal District of Foothills No. 31.

**BEFORE THE MUNICIPAL GOVERNMENT BOARD**

Members:

D. Thomas, Presiding Officer  
T. Robert, Member  
B. Ardiel, Member

Secretariat:

D. Hawthorne

After careful examination of the submissions from the City of Calgary (City), 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, 2005, the land described in Appendix A and shown on the sketch in Appendix B is separated from the Municipal District of Foothills No. 31 and annexed to the City of Calgary,
- (b) any taxes owing to the Municipal District of Foothills No. 31 at the end of December 31, 2004 in respect of the annexed land are transferred to and become payable to the City of Calgary together with any lawful penalties and costs levied in respect of those taxes, and the City of Calgary upon collecting those taxes, penalties and costs must pay them to the Municipal District of Foothills No. 31, and

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

- (c) the assessor for the City of Calgary must assess, for the purpose of taxation in 2005 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, this 9<sup>th</sup> day of December 2004.

MUNICIPAL GOVERNMENT BOARD

(SGD). T. Robert, Member

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

**APPENDIX A**

**DETAILED DESCRIPTION OF THE LANDS RECOMMENDED FOR SEPARATION  
FROM THE MUNICIPAL DISTRICT OF FOOTHILLS NO. 31  
AND ANNEXATION TO THE CITY OF CALGARY**

SECTIONS TEN (10), ELEVEN (11), TWELVE (12), THIRTEEN (13), FOURTEEN (14), FIFTEEN (15), AND SIXTEEN (16) ALL WITHIN TOWNSHIP TWENTY-TWO (22), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN.

SECTIONS SEVEN (7) AND EIGHTEEN (18) ALL WITHIN TOWNSHIP TWENTY-TWO (22), RANGE TWENTY-NINE (29), WEST OF THE FOURTH MERIDIAN.

ALL THOSE PORTIONS OF SECTIONS EIGHT (8), NINE (9), AND SEVENTEEN (17), ALL WITHIN TOWNSHIP TWENTY-TWO (22), RANGE TWENTY-NINE (29), WEST OF THE FOURTH MERIDIAN, LYING SOUTHWEST OF THE LEFT BANK OF THE BOW RIVER AND WEST OF THE MOST WESTERLY ROAD RIGHT-OF-WAY OF DEERFOOT TRAIL.

ALL ADJOINING AND INTERVENING GOVERNMENT ROAD ALLOWANCES, ROAD AND HIGHWAY PLANS AND INTERSECTIONS EXCEPT:

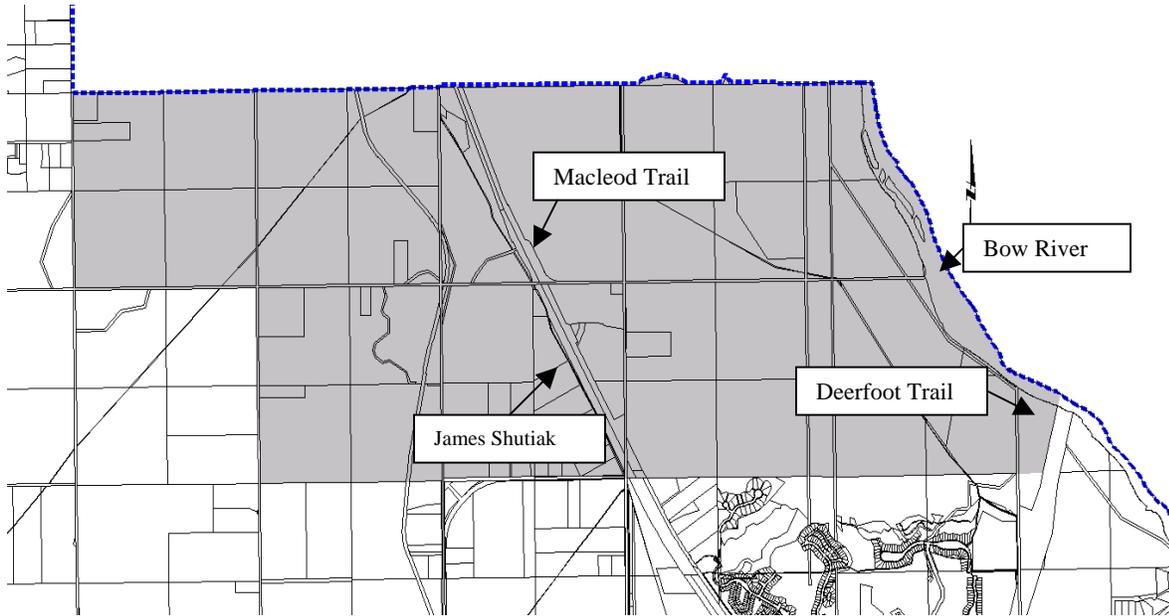
THAT PORTION OF THE ROAD LYING WEST OF AND ADJACENT TO SECTION SIXTEEN (16), TOWNSHIP TWENTY-TWO (22), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN THAT EXTENDS SOUTH FROM A POINT FOUR-HUNDRED (400) METRES SOUTH OF THE SOUTHWEST CORNER OF SECTION TWENTY-ONE (21), TOWNSHIP TWENTY-TWO (22), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN, AND CONTINUES FOR A DISTANCE OF FOUR-HUNDRED (400) METRES.

ALL THAT PORTION OF PROVINCIAL HIGHWAY 552 LYING SOUTH OF AND ADJACENT TO SECTION ELEVEN (11), TOWNSHIP TWENTY-TWO (22), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN.

THE SOUTHERLY FIVE-HUNDRED AND THIRTY-SEVEN (537) METRES OF THE ROAD ALLOWANCE LYING BETWEEN SECTIONS NINE (9) AND TEN (10), TOWNSHIP TWENTY-TWO (22), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN.

**APPENDIX B**

**A SKETCH SHOWING THE GENERAL LOCATION OF THE AREA  
RECOMMENDED FOR ANNEXATION TO THE CITY OF CALGARY**



**LEGEND**



**AREA ANNEXED TO THE CITY OF CALGARY**

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

**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 Subject to section 3, for taxation purposes in 2005 and later years up to and including 2019, the annexed land and the assessable improvements to it must be taxed by the City of Calgary in respect of each assessment class that applies to the annexed land and the assessable improvements to it using the municipal tax rate established by the Municipal District of Foothills No. 31.

3 Section 2 ceases to apply to a portion of the annexed land and the assessable improvements to it in the taxation year immediately following the taxation year in which

- (a) the portion becomes a new parcel of land less than 16 hectares in size created as a result of subdivision or separation of title by registered plan of subdivision or by instrument or any other method that occurs at the request of, or on behalf of, the landowner,
- (b) the portion is redesignated, at the request of or on behalf of the landowner, under the City of Calgary Land Use Bylaw to a designation other than urban reserve,
- (c) the portion is the subject of a local improvement project described in a local improvement bylaw initiated by or with the support of the landowner pursuant to which the City of Calgary water and sewer services are made available to the land, or
- (d) the portion is connected to the water or sanitary sewer services provided by the City of Calgary.

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

**APPENDIX D**

**MUNICIPAL GOVERNMENT BOARD REPORT TO THE MINISTER OF  
MUNICIPAL AFFAIRS RESPECTING THE CITY OF CALGARY  
PROPOSED ANNEXATION OF TERRITORY FROM  
THE MUNICIPAL DISTRICT OF FOOTHILLS NO. 31**

**Table of Contents**

**Executive Summary**

**Part I Introduction**

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

**Part III Annexation Application**

**- Description of the Public Consultation Process**

**- The Annexation Agreement with the Municipal District of Foothills**

**Part IV Landowner Issues**

**Part V The MGB Process and Public Hearing**

**Part VI MGB Recommendation and Reasons**

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

**Executive Summary**

The City of Calgary (City) has applied to annex approximately 5,600 acres of land from the Municipal District of Foothills (MD). The annexation area is located south of the City and west of the Bow River. Highway 2 bisects the area in a northwest/southeast direction. The area has been identified by the municipalities as the south growth corridor where the MD has maintained the area in a relatively unsubdivided state in accordance with the Inter-Municipal Development Plan previously adopted by both municipalities.

The annexation has been proposed in order to meet the projected 30-year residential growth demands in the south part of the City. Once the City filed notification of its intent to annex, the City and MD formed an annexation negotiation committee which was also responsible for both the landowner and public participation process. This process included the mailing of three separate newsletters to all known interested parties, two open houses and two public hearings. The newsletters provided an overview of the negotiations, future planning for the annexation area and notification of the upcoming open houses and public hearings. The open houses were well attended and the negotiation committee included the feedback from the open houses in their negotiations. In addition, each municipality held an advertised public hearing at which the identified concerns were addressed by the municipalities to the satisfaction of the interested parties in attendance.

As a result, the City and MD negotiated an annexation agreement which addresses, among other things, compensation and taxation stability for a transition period. Compensation for the MD is \$800,000 for lost revenues for a five-year period and \$500,000 as further compensation for the MD maintaining the annexation territory in an unfragmented state which will greatly facilitate future urban development.

Only one objector came forward following the filing of the annexation application. The objector's land is located on the west side of Highway 2 in the middle of the annexation area. The objector expressed concern with the impact of two of the City's bylaws on his farming operation. The two bylaws restrict the discharge of firearms and the height of grass. The City explained that agricultural operations are exempted from the restriction on the height of grass, however, due to the small size of the objector's parcel and the closeness of his neighbors, the City could not issue a special permit for the discharge of a firearm. The City did suggest alternatives that would allow the landowner to control pests and birds. The objector also stated that the tax protection benefit outlined in the agreement should be extended from 15 years to 30 years. The municipalities have agreed that the City will use MD tax rates for 15 years provided the use of the property does not change. The City showed that if the use of the objector's parcel remained unchanged for 30 years, any increase in taxes would be relatively minor. The MGB has determined that the impact on this single property owner is minor. Considering that his land is in the middle of the annexation area, the MGB finds it impractical to exclude this land without excluding other lands further to the south.

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

The MGB is recommending approval of the annexation in full. The City, MD, and the general public fully support the annexation. The MGB is confident that the negotiating committee has successfully addressed the concerns of both municipalities, the general public and the majority of landowners. For the one objecting landowner, the MGB finds that while the impact of the City's bylaws represents an inconvenience, it is not sufficient to warrant overriding the greater public benefit.

The MGB is also confident that the both the City's growth studies and market demand studies support the need for annexation. The annexation territory will provide sufficient territory to enable the City to meet future residential needs over the coming years.

**Part I Introduction**

Originally, the City of Calgary provided notification to the municipalities of Rocky View and Foothills, the MGB, and other local authorities of the City's intent to seek annexation of approximately 29,000 acres from Rocky View and Foothills for territory located to the northwest, north, east and south of the City. This notification was filed on October 17, 2002 and included a description of the lands considered for annexation, a public and landowner consultation process and a proposal for the striking of an inter-municipal negotiation committee composed of representatives of the City and the other two municipalities.

Following notification of the City's intent to consider annexation, the City limited the annexation application to those lands lying to the south of the City within the Municipal District of Foothills (MD). As a result the application is for the annexation of approximately eight and one half sections of land (5,600 acres, more or less). The annexation is for the purpose of meeting the long-term suburban growth demands within the Primary Urban Growth Corridor identified in the MD/City Intermunicipal Development Plan.

The annexation application was formally filed with the MGB under the date of April 7, 2004. Based on the full agreement of the MD and the results of the landowner and public consultation process, the MGB found general agreement to the annexation and so advised the City, the MD, the landowners and the general public via public notice published in a local newspaper. The public notice advised that if anyone objected to the annexation they would be required to file an objection by May 28, 2004. The MGB received an objection to the annexation within the required time and as a result, held a public hearing to investigate the objection within the context of the annexation application.

## **BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

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

A municipality seeking annexation must first initiate the process 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 proposal. The notice must describe the land proposed for annexation, set out the reasons for annexation and include proposals for consulting with the public and meeting with the landowners. Once notice has been given to the other municipality, the municipalities must negotiate in good faith and if agreement cannot be reached, the municipalities must attempt mediation to resolve the outstanding matters.

At the conclusion of the negotiations, the initiating municipality must prepare a report describing the results of the negotiations. The report must include a list of matters agreed to, as well as a list of matters in which there is no agreement. If no agreement, the report must state what mediation attempts were undertaken or, if no mediation, reasons must be provided. 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.

The report is then submitted to the MGB and it becomes the application for annexation. 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 there are objections to the annexation filed with the MGB by a specific date, the MGB will make its recommendation to the Minister without holding a public hearing.

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

### **Part III Annexation Application**

#### **The Public Consultation Process**

The City of Calgary undertook a comprehensive program of public consultation that included newsletters, open houses, a public hearing and a non-statutory public meeting.

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

Newsletters

The public consultation program included the mailing of three newsletters to the landowners within the proposed annexation area, and those located within one half mile of the boundaries of the area. In addition, any other person expressing an interest in the proposal was also included on the mailing list.

The first newsletter was mailed in November of 2002. The purpose of this newsletter was to inform the interested parties of the City's intent to proceed with annexation, announce the dates of the first series of open houses, provide general information on the annexation proposal, and outline the process and anticipated timing. In addition, the newsletter described how to become involved in the annexation process.

The second newsletter was mailed on June 12, 2003 to update the landowners and other interested parties about the negotiation process and to notify the parties of the City's intent to hold an open house sometime in the future.

The third newsletter was mailed on December 15, 2003. This newsletter updated the interested parties on the process, as well as providing notice of an upcoming open house and public meetings scheduled by the City and MD of Foothills.

As part of the public consultation program, the City intends a fourth newsletter to advise all parties of the results of the annexation application and, if successful, to provide details of the implementation of the annexation.

Open Houses

The first of the open houses was held over a two-day period commencing December 4, 2002 at the DeWinton Community Hall. Notice of the open house was given in three newspapers circulating within the region and the first newsletter. The purpose of this open house was to provide information regarding the proposed annexation and solicit comments from the public. The information provided included an overview of the annexation process, the proposed annexation boundary, the City's initial position on tax mitigation for landowners and the reasons for the annexation.

Approximately 163 people attended this open house and questions and concerns expressed covered a wide variety of issues that included annexation rationale, property tax, transportation, Pine Creek Cemetery, Pine Creek Wastewater Treatment Plant site, discharge of firearms, as well as comments ranging from no annexation to request to have additional lands included.

The second open house was held on January 8, 2004 at the Red Deer Lake Community Centre with 72 people attending. Again, notice of the open house was given in the three newspapers

## **BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

circulating in the area and in the third newsletter which was mailed to approximately 500 landowners and interested parties.

At this open house, the City provided a map showing the boundaries of the negotiated annexation, update as to the progress in the public consultation process as well as the City Council approval of a property tax mitigation program and rationale for the annexation. In addition, information was provided about the upcoming public hearings.

### **Public Hearings**

The first was the statutory public hearing held by the MD of Foothills on January 15, 2004 for the purpose of hearing representations from the general public. Notice of the hearing was placed in the December 31, 2003 and January 7, 2004, issues of the Okotoks Western Wheel, a newspaper having general circulation within the community.

Five members of the public addressed the MD Council, with four speaking in favour of annexation and one expressing traffic concerns. In addition, four letters were filed in advance of the hearing. Two expressed concern with an undeveloped road allowance being included in the proposed annexation. One letter explored a variety of issues that included road maintenance, need for traffic signals and farm tax rates. The final letter is from a landowner within the proposed annexation area objecting to the annexation due to the insufficient length of the tax mitigation period and the inability to discharge firearms if his land is annexed.

The second public meeting was not a statutory hearing but was held by City Council to enable members of the public to directly address Council with respect to the annexation proposal. This hearing was held on January 19, 2004 and the concerns expressed both orally and in writing at the MD of Foothills public hearing were also made available to Council. Notification of this public hearing was placed in the December 31, 2003 issues of the Calgary Herald and Calgary Sun.

Six people spoke at the public hearing, all supporting annexation. However, one individual, while supporting annexation did speak to the importance of developing the infrastructure prior to annexation. No written submissions were filed with City Council, either prior to or during the public hearing.

### **The Annexation Agreement with the Municipal District of Foothills**

#### **Intermunicipal Negotiations Committee**

Following notice of the City's intent to consider annexation, the City of Calgary and the Municipal District of Foothills established an Intermunicipal Negotiations Committee comprised of representatives from both municipalities. In addition to negotiating a wide range of annexation

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

related matters, the Committee also provided direction to staff managing the annexation process, as well as participating in the public consultation process.

**Intermunicipal Agreement**

The Intermunicipal Agreement is a comprehensive document that addresses a wide range of issues. Generally, the agreement, in addition to providing agreement for the annexation of the territory outlined in Appendix A to this order, addressed issues of mutual cooperation, the selling of municipally owned land within the annexation territory, roadway maintenances and jurisdiction, assessment and taxation within the annexed lands, compensation, and miscellaneous policies.

**Municipal Cooperation**

Provides for the orderly transition of jurisdiction over the annexation territory.

**Municipally Owned Land**

The MD agrees not to sell any land within the annexation territory owned by the MD as of December 31, 2003 and thereby facilitating in the transfer of such lands to the City upon annexation. In addition, the City agreed that ownership of Pine Creek Cemetery would remain with the MD.

**Roadway Maintenance and Jurisdiction**

The City agrees to maintain public roadways to a specific minimum standard. Provides clarification of which public roadways on the periphery of the annexation territory are to remain with the MD and provides for the MD to maintain a specific road for a period of time. In addition, the agreement requires consultation with the other municipality, general public and affected landowners prior to any request for additional access on to Deerfoot Trail.

**Assessment and Taxation**

The agreement addresses the maintenance of existing taxation of farm residences and farm buildings for a period of 15 years. The agreement also addresses the circumstances that would lead to a change in manner of taxation prior to the conclusion of the 15-year period. The manner and means of maintaining the existing taxation and the events that would cause a change are outlined in detailed in clause 2 and 3 of Appendix C to this Order. With respect to the methods of assessment, the City and MD have agreed that all property assessment in the annexation area will be completed using the City's assessment methods.

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

Compensation

The City has agreed to pay to the MD the amount of \$800,000, being the compensation for lost municipal revenues that would be generated by the annexation territory over a period of five years. The City also agreed to pay to the MD an amount of \$500,000 in recognition and consideration of the MD maintaining the annexed territory in a relatively unfragmented state. The agreement also provides for a payment of \$7,500 per month to the MD for the operation of a landfill site within the annexed area.

In regard to the compensation provisions of the agreement, both parties request that if the annexation is not approved in full, they be given an opportunity to recalculate the amount of compensation prior to any approval of the lesser area.

Miscellaneous Policies

This section of the agreement addresses the continued maintenance of existing parks until incorporated into future development and allows for the continued expansion of legal businesses and farming operations, subject to meeting all applicable statutes, regulations and bylaws.

**Part IV Landowner Issues**

During the course of the open house and public hearings a number of concerns were expressed by individuals, however, during the course of the process, most, if not all, of the concerns were addressed by either increased knowledge of the proposal or the negotiated agreement between the two municipalities.

Based on the lack of objection to the proposal at the time of the City filing the application for annexation, the MGB found there was general agreement with the proposed annexation. With a finding of general agreement, the MGB is required to give notice of its finding to the municipalities involved, other local authorities, known interested parties and the general public. The MGB gave notice of its findings and, in doing so, gave parties the opportunity to file, within a reasonable time, objections to the annexation. In this case, James Shutiak, a landowner within the annexation territory, filed an objection to the proposed annexation of his land. The initial correspondence from Mr. Shutiak, dated May 11, 2004, outlined the following concerns.

Discharge of Firearms

On Mr. Shutiak's property are two ponds formed by dams on a coulee. The ponds and dams are fairly extensive in that the smaller pond is 100 square feet in size and approximately 10 feet deep. This pond is maintained by a 15-foot earth filled dam with concrete and steel pipe spillway. The larger pond has a surface area of 1.8 acres and is 28 feet deep. This pond is

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

maintained by a clay core 30-foot earth filled dam with concrete spillway, pressure tank well, underground electrical and water pressure system to various places around the farmstead.

It is Mr. Shutiak's position that in order to maintain the integrity of the dam and protect the fish within the ponds, he must use a firearm to eradicate muskrats to prevent them burrowing into the banks and dams and also to scare off fish eating herons and osprey. In addition gophers and other pests need to be destroyed and a firearm is the most effect tool. If annexed into the City, the discharge of firearms on his property will by prohibited. Mr. Shutiak requests that he either be exempted from the bylaw or his land be excluded from the annexation territory.

**Assessment and Taxation**

Mr. Shutiak raised a concern regarding the provisions of the negotiation agreement regarding the maintenance of existing farm and farm building assessments for a period of 15 years, considering the City's objective of having a 30-year land supply. Mr. Shutiak suggested that if the City is annexing sufficient land to meet a 30-year demand, the assessment and tax condition should be in effect for a similar amount of time.

**Other Municipal Bylaws**

Mr. Shutiak expressed concern with a City bylaw limiting the height of grass to approximately six inches, in light of his need to maintain good pasture. In certain situations there is a need to maintain grass to a higher height as part of an agricultural operation.

**Part V The MGB Process and Public Hearing**

**Chronology of Events and Process**

The City filed the application seeking annexation of certain territory to the City and its separation from the MD under the date of April 7, 2004. Upon receipt of the application a panel of the MGB reviewed the application, negotiation report and the landowner public consultation process. As a result of this review, the panel found that there is full agreement between the two municipalities on the annexation of the land to the City and that the landowners and general public were in general agreement with the proposed annexation.

As required by the Act, the MGB notified the City, MD, other local authorities, landowners, other interested parties and the general public of that there was general agreement with the annexation. This notification was accomplished by direct correspondence to the City, MD, other local authorities, landowners and known interested parties. In addition, the MGB placed a notice of their finding in the May 3 and May 10, 2004 issues of the High River Times, a newspaper circulating within the area of the land proposed for annexation. In addition to the notification of

## **BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

the MGB finding, the MGB advised that it would receive written objections to the annexation if filed on or before May 28, 2004.

As a result of the notification of the MGB finding, the MGB received one objection from a landowner within the annexation territory. As a result of the filing of an objection that pertains to the annexation, the MGB is to investigate the objection and hold a public hearing. Therefore, the MGB scheduled a public hearing to be held on October 8, 2004 in the City of Calgary.

### **The Public Hearing**

The City of Calgary introduced the negotiation report and justification for the annexation application. The MGB then heard from Mr. Shutiak who stated the reasons for his objection to the annexation. In addition, two other landowners made brief presentations supporting annexation of their property. This was then followed by the City's response to the points raised by Mr. Shutiak.

### **Justification**

The City reviewed the annexation process commencing with the first of three open houses, the striking of the negotiating committee, the public hearings and concluding with the submission of the annexation application based on the acceptance of the negotiated agreement by both municipalities.

The proposed annexation territory is located immediately south of the City and west of the Bow River, with Highway 2 (Macleod Trail) bisecting the territory in a northwest/southeasterly direction. Proposed annexation territory is defined as being within the south growth corridor and the annexation is seen as providing, together with lands currently in the City, as providing sufficient lands to meet the south residential market demand for approximately 24 years.

The City's high projected growth rate for the period 2001 to 2033 anticipates a population of 1,464,000 by 2033. In order to determine the amount and location of suburban residential land requirements needed to meet the anticipated growth, the City looked at how much of the growth would be adsorbed by the suburban market, projected urban densities and occupancy rates. The City then looked at how each of the market sectors would share in this growth. Based on the market share, the City calculated the estimated suburban land requirements by market area.

In the case of the south growth corridor, the City estimated that this market area would absorb approximately 16% of the growth over the period of 2001 to 2033. To service this residential market demand, the City estimated a requirement for 195 gross developable areas per year. The current supply in the south market sector is 1,861 acres, and to meet the demand to 2033, an additional 3,989 acres is required. The proposed annexation area is 5,674 gross acres; however,

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

of this area only 2,895 gross developable acres are available, leaving a short fall of 1,094 acres. This short fall translates to 5.6 years of supply.

**Mr. Shutiak's Objections**

Mr. Shutiak is the owner of a 27-acre parcel located approximately one and one half miles south of the current City boundary and fronting on to Highway 2. The parcel is bound on the north, south and west by similarly sized parcels. Mr. Shutiak is currently operating an agricultural operation on the parcel.

In regard to the assessment and tax provisions contained in the annexation agreement, Mr. Shutiak objected to the term being limited to 15 years when the City is seeking a 30-year development land supply. Mr. Shutiak's position is that the assessment and tax provisions should correspond to the development timeline for the annexed lands.

Mr. Shutiak objected to a 10% surcharge for utilities effective upon annexation. Mr. Shutiak's position is that the City is compensating the MD for lost revenue, therefore, the landowners should be compensated for the higher utility rates.

It is Mr. Shutiak's position that the City is unable to execute development in an orderly fashion. To support this position, Mr. Shutiak referenced the traffic congestion and gridlock in the south sector, as well as the poor location of an interchange, as examples of poor planning and the fact that urban sprawl does not work.

In respect of the application of City bylaws, Mr. Shutiak stated that upon annexation he would not be able to continue to control muskrats or scare off the fish eating birds by the use of a 22-calibre rifle. In addition, the City limits the height of grass to six inches which would impact his ability to properly manage and maintain pasture lands as part of his agricultural operation.

**Other Landowners**

Of the two landowner supporting annexation, one owns approximately 700 acres and supports annexation as the land is within a growth corridor. The other landowner farms land within the City and to the south of the City. Owning land presently in the City and in the annexation area, the landowners has not experienced a problem with either the City's planning of the south sector of the City or the limitations on the discharging of a firearm. Under the bylaw respecting the discharge of firearms, it is possible to obtain a permit to discharge a firearm within the City limits.

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

City Response

With respect to the bylaw issues, the City confirmed that an exemption from the provision of the bylaw restricting the discharge of firearms can be granted. In respect to this issue, the City introduced a representative of the City of Calgary Police Service who had inspected both Mr. Shutiak's property and the surrounding area. Mr. Shutiak's property is bounded on three sides by occupied residences and because of the closeness of the adjoining residences; the City would not authorize a permit in this case. In respect of the landowner who was granted a permit, the permit pertains to a quarter section of land and is limited to the discharge of a shotgun, as compared to Mr. Shutiak's use of a 22-calibre rifle.

The City suggested that there are businesses that provide animal control of the type required by Mr. Shutiak and the use of propane guns to scare birds are alternative means of addressing these types of problems.

As for the bylaw addressing the height of grass in the City, the City pointed out a provision in the bylaw that exempts farming operations from this provision.

As for Mr. Shutiak's issues respecting the long-term impact of urban assessment and taxation on his property, the City reviewed the current assessment and taxation of the property, immediate changes to the assessment and taxation on annexation if the assessment and tax conditions did not apply and the long-term impact of annexation.

The difference between the MD assessment of the property and the City assessment would remain unchanged. What would change is the farmland exemption applied to the residences would be reduced to zero and the farm building exemption would be reduced by 50%. The direct impact on Mr. Shutiak's total assessment is an increase of \$10,350 or 4%. As for the level of taxation, the difference between the MD's tax rate and the City's tax rate is 1.87% and 19.40% for the farmland. However, the assessment for the farmland is very minimal which would result in very little change in actual taxes paid. Following the expiry of the 15-year provision, Mr. Shutiak can expect only minor changes in property taxes based on today's numbers.

**MGB Recommendation**

The MGB recommends the annexation be implemented in accordance with the City's application pursuant to Section 119 of the Act.

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

**Reasons**

Rationale for Annexation

In making the recommendation for this annexation, the MGB looked to the City's justification for the annexation in terms of the demand for suburban residential lands, the public and landowner participation and the negotiated agreement between the two municipalities.

In determining the future suburban residential land needs, with a focus on the south section, the City reviewed the historical population growth and projected the population and employment growth to the year 2033. Based on this growth projection, the City made estimates of the amount of the population growth that would be absorbed by the suburban market, the unit densities per acre, and the number of individuals typically residing in each unit. The City then forecasted how each suburban market sector would capture the anticipated growth and thereby arriving at the estimated amount of land would be required to meet the demand in each sector over the 30-year period. Based on this study, the MGB is comfortable in accepting the conclusions of the City as they related to the residential demands in the south sector. Therefore, the MGB sees no reason to deny annexation because the land is not needed over the projected 30-year growth period. The need is well demonstrated.

The City and MD, through the joint efforts of the negotiating committee, adopted a public and landowner participation process that kept both the interested public and landowners fully aware of the need for annexation, the impact of annexation, the planning for the future development in the south sector and the progress of negotiations between the City and MD. This is proven by the lack of substantial objections to the proposed annexation by either the landowners or general public. In addition, the negotiation committee showed their desire to listen and respond to the feedback generated through the open houses and public meetings. This is proven by the terms of the annexation agreement that address such things as taxation and the Pine Creek Cemetery.

General Concerns Raised

The only objection to the annexation was received by one of the landowners within the territory proposed for annexation. During the MGB hearing, the landowner addressed a number of issues mainly related to the cost of annexation through both taxation and utility rates and impact of City bylaws on his agricultural operation.

The City answered the landowner's concern regarding the length of the tax protection and future impact on his property tax. The City showed that even without the 15-year protection provided in the annexation agreement, the impact of annexation would have a very limited effect on the property tax. After 15 years, the anticipated change in taxation is minimal if the land continues in its present use. As for the increase in utility rates, the landowner did not provide information as to the direct impact on his farming operation. Without such information, the MGB is unable to

**BOARD ORDER: MGB 115/04**

**FILE: AN/04/CALG/C-01**

determine if it would cause a major impact on his operation or is of a relatively minor nature within the context of the landowner's total operation. In either case, this is not seen as a sufficient reason to justify denying the annexation of either the entire area or just his property and lands lying to the south of his property.

As for the impact of the City's bylaws on the landowner's agricultural operation, the City clearly showed that agricultural operations are exempted from the bylaw restricting the height of grass and therefore this bylaw would not impact the landowner. As for the discharging of a firearm, the MGB fully agrees with the City that such action could endanger the surrounding residents given the small size of the parcel and second, agrees that there are alternative means of addressing the landowner's problems with muskrats and fish eating birds. Therefore, the impact of the bylaws on this agricultural operation is insufficient reason to justify a change in the annexation boundaries.

The MGB understands the concerns raised by Mr. Shutiak, but finds that the City has made special efforts to effectively mitigate those concerns. The MGB must look to the overall greater public interest and, in this case, finds that the overall public interest in approving this annexation is warranted despite the concerns raised by individual landowners.

**Summary**

The City and MD have conducted a comprehensive negotiation process through the efforts of the negotiation committee. The basis for this agreement is predicated on past work undertaken by both municipalities in planning for the future through the use of a comprehensive Intermunicipal Development Plan that addresses the issue of annexation. It is clear from the terms of the agreement that both municipalities have recognized the need for annexation and the need to minimize the impact on the municipality losing the land.

The MGB fully supports the actions of both municipalities in first undertaking a comprehensive Intermunicipal Development Plan that set the groundwork for future annexation. Further, in the MGB's opinion, the joint undertaking for the public and landowner consultation process has been successful in addressing all annexation issues raised by the public and all the directly affected landowners.

Therefore, the MGB is recommending the annexation be granted in full, subject to the relevant conditions negotiated by the two municipalities.