BOARD ORDER NO. 19296 FILE NO. DIDS/T-4

BEFORE THE: LOCAL AUTHORITIES BOARD FOR THE PROVINCE OF ALBERTA

IN THE MATTER OF THE "Municipal Government Act":

AND IN THE MATTER OF THE "County Act":

AND IN THE MATTER OF an application by the Council of the Town of Didsbury, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto, and thereby its separation from the County of Mountain View No. 17.

Pursuant to Section 20 of the Municipal Government Act, the Council of the Town of Didsbury, in the Province of Alberta, petitioned the Local Authorities Board for the Province of Alberta for annexation to the Town of all that territory described as follows:

ALL THAT PORTION OF THE NORTH WEST QUARTER OF SECTION SEVENTEEN (17), TOWNSHIP THIRTY-ONE (31), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN, WHICH LIES SOUTH WEST OF THE SOUTH WESTERLY LIMIT OF ROAD PLAN 5216 J.K. AND NORTH WEST OF THE NORTH WESTERLY LIMIT OF ROAD PLAN 1136 I.X.

ALL THAT PORTION OF THE NORTH SOUTH GOVERNMENT ROAD ALLOWANCE ADJOINING THE WEST BOUNDARY OF THE NORTH WEST QUARTER OF SECTION SEVENTEEN (17), TOWNSHIP THIRTY-ONE (31), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN, WHICH LIES SOUTH OF THE PRODUCTION NORTH WEST AND SOUTH EAST OF THE SOUTH WESTERLY LIMIT OF ROAD PLAN 5216 J.K. AND NORTH OF THE PRODUCTION SOUTH WEST AND NORTH EAST OF THE NORTH WESTERLY LIMIT OF ROAD PLAN 1136 I.X.

ALL THAT PORTION OF THE SOUTH WEST QUARTER OF SECTION NINETEEN (19), TOWNSHIP THIRTY-ONE (31), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN, NOT WITHIN THE TOWN OF DIDSBURY.

THE ABOVE DESCRIBED LANDS CONTAIN THIRTY AND SEVENTY-NINE HUNDREDTHS (30.79) HECTARES (76.09 ACRES), MORE OR LESS

(hereinafter called "the said territory")

which lies immediately adjacent to the Town and thereby its separation from the County of Mountain View No. 17 and in respect to which the Board held a public hearing into the matter on November 30, 1989.

Mike Storey, Town Administrator, appeared on behalf of the Town of Didsbury.

The County of Mountain View No. 17 was represented by Herman Epp, County Commissioner and Luke Craven, Development Officer.

Representing the Red Deer Regional Planning Commission were Bill Neuman, Planner and Allen Ward, Planning Adviser for the County of Mountain View No. 17.

Mary Emily Molye, landowner, was represented by Scott C. Frank of the firm of R.R. Berrien Associates (Rural) Ltd.

Alberta Transportation and Utilities, Alberta Environment and the Energy Resources Conservation Board had earlier submitted written briefs. Alberta Agriculture did not submit a written brief, nor was the Department represented at the hearing.

The territory proposed for annexation to the Town of Didsbury consists of two separate areas and for identification purposes will be titled Blocks 1 and 2. Block 1 is a rectangular parcel bound on the north east by Secondary Highway No. 582, on the south by the main access road to the Town and on the west by the Town's east boundary. The Block consists of the hillside and bottom land of the Rosebud River Valley and is developed as the town owned Didsbury Municipal Park.

Block 2 consists of two parcels bound on three sides by the boundaries of the Town of Didsbury and on the north by the north boundary of the quarter section. The land is level and cultivated with an oil well located near the north east corner. Secondary Highway No. 582 bisects the Block in an east west direction and the Canadian Pacific Railway right of way abuts the west boundary. The majority of the land is owned by Mary Emily Molye with the County of Mountain View No. 17 having title to a small parcel in the extreme south west of the Block.

The Town of Didsbury proposes to consolidate Block 1, located on the east side of Town and presently developed as a park and campground, with a Town owned parcel to the west in order to expand and more fully develop the Rosebud Valley Park.

The Town of Didsbury submitted that Block 2 would increase the industrial development potential of the Town by providing land adjacent to existing rail service. The Block would enable the development of large size industrial sites with access to spur trackage or sidings off the main rail line.

The Town of Didsbury General Municipal Plan and a proposed Joint General Municipal Plan identifies Block 2 for future industrial use. The Town currently has 80 acres of vacant industrial land with approximately 45 acres located to the west of Block 2. The addition of Block 2 will provide an industrial land base which the Town hopes will attract industries requiring large tracts of land. In order to aggressively market the industrial potential of the Town, an economic development officer is to be hired.

Block 2 together with the industrial lands to the west can be serviced with water and sewer. Annexation would also enable efficient servicing of the area north of the Secondary Highway by allowing the whole of the northern area of the Town to be serviced as one unit.

The County of Mountain View No. 17 generally has no objection to the annexation of the said territory but requested the dedication of a 100 foot right of way adjacent to and on each side of Secondary Highway No. 582 in order to protect the integrity of the highway by-pass. The by-pass was constructed fifteen years ago in order to eliminate the truck traffic through the built up area of the Town. With the heavy truck traffic generated by the Caroline Gas Field to the west, this traffic is expected to continue and the need for restricted access is necessary to retain the integrity of the highway. Sterilization of the lands adjoining the highway is not the intent of the County but is seen as a way of insuring that the present limited access is continued.

The Town of Didsbury objected to the dedication of the right of way as a condition of annexation and submitted that the question of access control would be more properly addressed in the development of an Area Structure Plan.

The Red Deer Regional Planning Commission confirmed that the proposed land use for the said territory conforms to the Town's General Municipal Plan and the pending Joint General Municipal Plan and that the lands can be serviced with municipal services. The Commission advised that the Town of Didsbury presently has a relatively low amount of land available for industrial development and the addition of industrial acreage will provide the land base to attract industries with large land requirements.

The Planning Commission also confirmed the importance of Secondary Highway No. 582 to both municipalities as an arterial route and stated that the highway should be protected through implementation of adequate access control.

Mr. Frank advised that the trustees of the estate of Mary Emily Molye, who has been adjudged by the Court to be a dependant adult, consented to the annexation of her property to the Town of Didsbury subject to the property taxes remaining at the same level as if the land had remained in the County. Mr. Frank also stated that the County's request for the dedication of 100 foot right of ways adjoining the Secondary Highway amounted to expropriation without compensation and that the question of access control is more properly addressed in an Area Structure Plan if and when development proceeds.

Further, the appointed trustees of the estate of Mary Emily Molye, Robert G. Black, Q.C., and the National Trust Company, directed Mr. Frank, pursuant to Section 59 of the Local Authorities Board Act, to request the Board to order that all costs incurred against the estate in this matter be recovered from the Town of Didsbury.

Alberta Transportation and Utilities offered no objection to the annexation application but recommended that the Town of Didsbury exercise sound access management for the Secondary Highway. Alberta Environment and the Energy Resources Conservation Board did not offer any objection to the annexation proposal.

The Board, having considered the evidence received at the hearing, has reached the following conclusions:

1. That the annexation of the Didsbury Municipal Park and its consolidation with lands to the west will enable the Town to expand and develop the recreational facilities of the Rosebud Valley Park.

2. That the Town of Didsbury does not have sufficient industrial land to attract industries in need of large tracts of land with rail access.

3. That the annexation of the said territory will enable the Town of Didsbury to develop and service the north area of the Town in an economical manner.

4. That access control of Secondary Highway No. 582 is a matter that concerns both the County and the Town although both parties disagree in the manner this may be accomplished. The owner's concern regarding the immediate dedication of right of ways and the suggestion that the matter is more properly addressed in an Area Structure Plan is proper and correct. It would appear that the proposed Joint General Municipal Plan Advocates the use of an Area Structure Plan and with input from both the County and the Town with respect to access control, the matter could be resolved to the satisfaction of all the affected parties.

5. That the request of the trustees of the estate of Mary Emily Molye for an order awarding costs in this matter has been considered and is refused.

6. That the application by the Council of the Town of Didsbury to annex to the Town the said territory should be granted IN FULL.

THEREFORE, subject to the Lieutenant Governor in Council approving this Order, or prescribing conditions that the Order is subject to and approving the Order subject to those conditions, or varying the Order and approving the Order as varied, IT IS ORDERED AS FOLLOWS:

I. That there be annexed to the Town of Didsbury, in the Province of Alberta, and thereupon be separated from the County of Mountain View No. 17, the following described territory:

ALL THAT PORTION OF THE NORTH WEST QUARTER OF SECTION SEVENTEEN (17), TOWNSHIP THIRTY-ONE (31), RANGE ONE (1), WEST OF THE FIFTH MERIDIAN, WHICH LIES SOUTH WEST OF THE SOUTH WESTERLY LIMIT OF ROAD PLAN 5216 J.K. AND NORTH WEST OF THE NORTH WESTERLY LIMIT OF ROAD PLAN 1136 I.X.

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THE ABOVE DESCRIBED LANDS CONTAIN THIRTY AND SEVENTY-NINE HUNDREDTHS (30.79) HECTARES (76.09 ACRES), MORE OR LESS.

(A sketch showing the general location of the annexed lands is attached as Schedule "A".)

II. That any taxes owing to the County of Mountain View No. 17 as at December 31, 1989, in respect of the aforementioned properties shall transfer to and become payable to the Town of Didsbury together with any lawful penalties and costs levied thereon in respect of any such taxes; however, upon the Town of Didsbury collecting any or all of such taxes, penalties or costs, such collection shall forthwith be paid by the Town to the County of Mountain View No. 17.

III. (A) That the assessor for the Town of Didsbury shall, for taxation purposes in the year 1990, reassess the annexed lands and assessable improvements thereon, which are by this Order annexed to the Town of Didsbury so that the assessment thereof shall be fair and equitable with other lands and assessable improvements in the Town of Didsbury, and the provisions of the Municipal Taxation Act regarding the assessment roll shall mutatis mutandis apply to such assessment.

(B) That, notwithstanding Clause III (A), the assessor for the Town of Didsbury shall, for taxation purposes, classify and assess any farm land, farm residences and farm buildings located on a parcel of land annexed by this Order to the Town of Didsbury, as if the land, residences and buildings were farm land, residences and buildings located in a rural municipality, and which if located in the County of Mountain View No. 17 would be classified as farm land, residences and buildings pursuant to the Municipal Taxation Act.

(C) That such "farm land, residences and buildings" classification shall be given to such land, residences and buildings only for the years 1990 to 1993 inclusive after which time such classification shall immediately terminate; provided however:

(i) that if the land, residences and buildings located on the said parcel are, pursuant to Clause III (B) above, determined by the assessor for the Town of Didsbury as being no longer "farm land, residences and buildings", even if they had been located in the County of Mountain View No. 17 referred to in Clause III (B), then such classification of "farm land, residences and buildings" shall immediately terminate in respect of the said parcel; or

(ii) that if the Council of the Town of Didsbury, by Resolution, makes an application to the Local Authorities Board and establishes before the Local Authorities Board that, for good and sufficient reason, the provisions of Clause III should be varied prior to the date established in Clause III (C), the Local Authorities Board may vary the time such classification as "farm land, residences and buildings" shall remain in effect.

(D) The owner of a parcel annexed by this Order, or other interested person, with respect to that specific parcel, may apply to the Local Authorities Board for an extension of the time limit for the classification of "farm land, residences and buildings" as established in Clause III (C) and the Local Authorities Board may, for good and sufficient reasons, order that the provisions of Clause III (C) be varied, extended or rescinded with respect to that parcel.

IV. That the Chief Provincial Assessor, appointed pursuant to the provisions of the Municipalities Assessment and Equalization Act, shall for taxation or grant purposes commencing in the year 1990, reassess or revalue, as the case may be, all properties that are assessable or subject to valuation under the terms of the Electric Power and Pipeline Assessment Act and the Municipal and Provincial Properties Valuation Act, and which lie within the areas that are by this Order annexed to the Town of Didsbury, so that the assessment or valuation shall be fair and equitable with properties of a similar nature.

V. That the effective date of this Order is the Thirty-first (31st) day of December, 1989.

Dated and signed at the City of Edmonton, in the Province of Alberta, this 16th day of January, 1990.

LOCAL AUTHORITIES BOARD

(SGD.) B.T. CLARK,
ACTING CHAIRMAN

(SGD.) H.W. THIESSEN,
MEMBER

CERTIFIED A TRUE COPY:

RAY MYRONIUK, A/SECRETARY

SCHEDULE "A"

A SKETCH SHOWING THE GENERAL LOCATION OF THE AREAS AFFECTED BY BOARD ORDER No. 19296

EFFECTIVE DATE: DECEMBER 31, 1989

AFFECTED AREA(S)