

LOCAL AUTHORITIES BOARD

ORDER NO. 4095

FILE: SF.40

WEDNESDAY—THE TWENTY-SIXTH DAY OF MARCH, 1969

Before:

The Local Authorities Board  
for the Province of Alberta.

In the matter of The Local  
Authorities Board Act:

And in the matter of an appli-  
cation by Kathleen Joan Boyd of  
Longview, Alberta, for separa-  
tion of certain lands from the  
said village.

Pursuant to an application from Kathleen Joan Boyd of Longview, Alberta, petitioning for the separation of the north half of legal sub-division 13 of section 16, township 18, range 2, west of the fifth meridian from the Village of Longview, the Board conducted a public hearing of this matter in the said village on September 11th, 1968.

**Counsel for the applicant was Frank L. Burnet, Q.C. of Burnet, Duckworth, Palmer, Tomblin and O'Donoghue, barristers and solicitors, Calgary, Alberta.**

**C. R. Arnold, of Arnold and Arnold, High River, Alberta, appeared as counsel for the Village of Longview.**

**It was represented by the applicant generally that the Boyd lands should be separated from the Village of Longview because:**

- (a) **The lands comprising about twenty (20) unsubdivided acres were included in the village on its incorporation on January 1st 1964, against the owner's wishes, and at which time several shacks, mostly unoccupied, and other buildings not owned by the applicant were situated on the subject land.**

**None of the former building improvements were connected to the village's water and sewer systems at any time and the applicant, after succeeding in having all the buildings removed at a great expense and for the public good now uses the twenty (20) acres as a part of her farm and ranch unit comprising one thousand and thirty acres (1030).**

- (b) **The applicant has no intention of subdividing the area (20 acres) contained in the village and has been grossly over-charged for frontage taxes for sewer and water facilities which have not and will not be used by the applicant**

**1968 taxation on the twenty (20) acres amounts to four hundred twenty-four dollars and ninety cents (\$424.90) of which three hundred ninety-two dollars (\$392.00) is annual sewer and water frontage tax, the total land assessment being four hundred and seventy dollars, (\$470.00) in 1968.**

**Counsel for the village, C R Arnold, represented generally that the Boyd lands should not be separated from the village because**

- (1) **The Boyd land—twenty (20) acres—at a main intersection—is served by the village's sewer and water system on its north boundary and by the water system on its west boundary.**

(2) **The land is suitable for residential or business development by the present or future owners of the land, and the village is short of suitable land areas for purposes of subdivision to meet expansion.**

(3) Separation of the land would unjustifiably transfer the applicable sewer and water debenture payments from the present land owner to the village at large and would lead to owners of other land areas applying for a separation to the financial detriment of the remaining village properties

The Village would lose the tax revenue from the land similar to the situation where the Board, in 1965, deprived the village of such tax revenues in the case of the lands owned by Messrs Gallup

The Municipal District of Foothills No. 31, represented by Secretary-Treasurer Leonard Van Tighem, expressed no opposition to the application being granted.

The Department of Highways in a letter to the Board dated July 8, 1968, stated that it had no opposition to the proposal, but favoured inclusion of the highway to the west of the Boyd land in the separation if it is to be granted

The Calgary regional planning commission in a letter to the Board dated July 18, 1968, and pursuant to an extract from minutes of the commission's meeting of July 5, 1968, submitted that it saw no reason for the land to remain in the village limits provided services will not be required and further that it appeared that there was ample serviceable land left, to the west of the highway, and within the village for expansion for many years to come.

After reviewing the evidence presented to it, the Board has come to the following substantial conclusions in respect to the application:

A There is some doubt in the Board's mind as to whether the village would have in its limits sufficient expansion lands for ten (10) or so years if the Boyd lands were separated.

Some evidence was presented by the village to indicate that the supply of residential lots was quite limited, however, evidence was not produced to show that the village had or had not firmly planned developments—residential or commercial—for the Gallup, Boyd, or other developable areas in the village

B Separation of the Boyd lands from the village would not in itself relieve the separated lands from any proper frontage charges to which the lands are presently subject (section 120(2) of The Local Authorities Board Act refers).

The evidence presented in respect to frontage charges made against the Boyd lands indicates that an improper charge of nine hundred and eighty (980) feet annually for each of the sewer and water services has been levied against the said land. This assessed footage at the annual frontage rate of forty cents (twenty three cents for sewer and seventeen cents for water) produces an annual charge of three hundred and ninety-two dollars (\$392 00)

The Board's files, in respect to the village's Water and Sewer By-laws No 9 and 10 and their attached advertised schedules, indicate that the footage applicable to the Boyd lands should be only four hundred and ninety (490) feet annually for each of the two systems and that the resultant annual charge should be one hundred and ninety six dollars (\$196 00) rather than three hundred and ninety two dollars (\$392 00)

The Board is not aware of any amendments to the aforementioned by-laws and their schedules which provide for a basis of special assess-

ment different than that originally advertised By-laws 9 and 10 and the supporting proposed engineering layouts indicate that the village's water and sewer systems were to run only a distance of about four hundred and ninety (490) feet or so along the north boundary of the Boyd property (Kee Drive) and that the proposed water line was not to run south on the west boundary of the Boyd land (i.e. along the southerly extension of Morrison Road)

The accuracy of many of the statements made by counsel for the village in the summation dated September 30, 1968, is open to serious question in light of the aforementioned conflicting information

- (a) Information at item 2 conflicts with that set forth in By-laws 9 and 10
- (b) Item 3 when read with item 2 seems to imply that the Boyd land is being assessed for water frontage along its west boundary By-laws 9 and 10 as advertised and finally passed show provision for no such special assessment
- (c) Item 4 appears to contain erroneous amounts of water and sewer frontage assessments, as previously explained
- (d) Item 11 is distasteful to the Board, not only because it is inaccurate as to village revenues from the Boyd lands, but because it fails to mention at least two basic premises respecting the granting of Board Order No 2491.

*Firstly* the submission ignores the fact that the assessment and taxation provisions of Order No. 2491 were instituted after a public hearing and with active representation and support of the village council, to honour an arrangement made with the Gallups at the time of the formation of the village

*Secondly* the submission disregards mention of Condition 2 of the Order—a condition drawn to the attention of counsel for the village at the public hearing on September 11, 1968—and which condition provides that the village may at any time apply ' . . . for an Order to vary the said basis of assessment and taxation, or either of them "

*Thirdly* the statement " . . . and the only revenue the village receives is from sewer and water frontage tax " is not correct since the village, under Clause 2 of Order No 2491 is entitled to receive the taxation from the assessment of the farm land in addition to any valid sewer and water frontage assessments.

- (e) Item 13 is based on a submission that the Village has made a valid special assessment for water frontage on the Boyd land along its west boundary. The Board's records do not support such a contention
- (f) Item 14 appears to recite an improper amount of three hundred and ninety two dollars (\$392.00) annual water and sewer frontage assessment for the Boyd land. The Board's records indicate that this annual charge should be for an amount of one hundred and ninety six dollars (\$196 00)

Because of the aforementioned conclusions "A" and "B", and because there is some question as to the Board's jurisdiction in separating lands which may not be deemed to be a "parcel" within the meaning of The Municipal Government Act or The Municipal Taxation Act, the Board does hereby order that the application of Kathleen Joan Boyd of Long-

view in the Province of Alberta for separation from the Village of Longview of the north half of legal subdivision 13 of section 16, in township 18, range 2, west of the fifth meridian, containing twenty (20) acres more or less, be refused.

Certified a true copy,

W. C. ELLIOTT (Secretary).

LOCAL AUTHORITIES BOARD,  
C. G. MACGREGOR (Chairman)  
I. MORRIS (Member).