

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 Town of Drayton Valley, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from Brazeau County.

BEFORE:

Members:

H. Kim, Presiding Officer
K. Kelly, Member
L. Yakimchuk, Member

Secretariat:

R. Duncan, Case Manager

SUMMARY

After careful examination of the submissions from the Town of Drayton Valley, Brazeau County, affected landowners, and other interested parties, the Municipal Government Board (Board) makes the following recommendation for the reasons set out in the Board 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, 2012, the land described in Appendix A and shown on the sketch in Appendix B is separated from Brazeau County and annexed to the Town of Drayton Valley,
- (b) any taxes owing to Brazeau County at the end of December 31, 2011 in respect of the annexed land are transferred to and become payable to the Town of Drayton Valley together with any lawful penalties and costs levied in respect of those taxes, and the Town of Drayton Valley upon collecting those taxes, penalties and costs must pay them to Brazeau County, and

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- (c) the assessor for the Town of Drayton Valley must, for the purposes of taxation in 2012 and subsequent years, assess 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, 21st day of March 2012.

MUNICIPAL GOVERNMENT BOARD

A handwritten signature in black ink, appearing to read 'H. Kim', is written over a horizontal line.

H. Kim, Presiding Officer

APPENDIX A

**DETAILED DESCRIPTION OF THE LANDS SEPARATED
FROM BRAZEAU COUNTY AND ANNEXED TO
THE TOWN OF DRAYTON VALLEY**

ALL THAT PORTION OF THE WEST HALF OF SECTION TWENTY-ONE (21), TOWNSHIP FORTY-NINE (49), RANGE SEVEN (7) WEST OF THE FIFTH MERIDIAN NOT WITHIN THE TOWN OF DRAYTON VALLEY LYING EAST OF THE EAST BOUNDARY OF PLAN 2502JY AND LYING SOUTH OF THE SOUTH BOUNDARY OF PLAN 782 1189 AND EXCLUDING PLAN 832 2156.

ALL THAT PORTION OF THE EAST HALF OF SECTION TWENTY-ONE (21), TOWNSHIP FORTY-NINE (49), RANGE SEVEN (7) WEST OF THE FIFTH MERIDIAN NOT WITHIN THE TOWN OF DRAYTON VALLEY LYING SOUTH OF THE SOUTH BOUNDARY OF PLAN 772 1918.

ALL THAT PORTION OF THE WEST HALF OF SECTION TWENTY-TWO (22), TOWNSHIP FORTY-NINE (49), RANGE SEVEN (7) WEST OF THE FIFTH MERIDIAN LYING SOUTH OF THE SOUTH BOUNDARY OF PLAN 002 2846 INCLUDING ALL THAT PORTION OF THE NORTH-SOUTH ROAD ALLOWANCE AND ROAD WIDENING ADJACENT TO THE WEST SIDE OF SAID HALF SECTION LYING SOUTH OF THE PROJECTION WEST OF THE SOUTH BOUNDARY OF PLAN 002 2846.

ALL THAT PORTION OF THE EAST HALF OF SECTION TWENTY-TWO (22), TOWNSHIP FORTY-NINE (49), RANGE SEVEN (7) WEST OF THE FIFTH MERIDIAN LYING SOUTH OF THE SOUTH BOUNDARY OF PLAN 002 2846.

THE NORTH HALF OF SECTION FIFTEEN (15), TOWNSHIP FORTY-NINE (49), RANGE SEVEN (7) WEST OF THE FIFTH MERIDIAN.

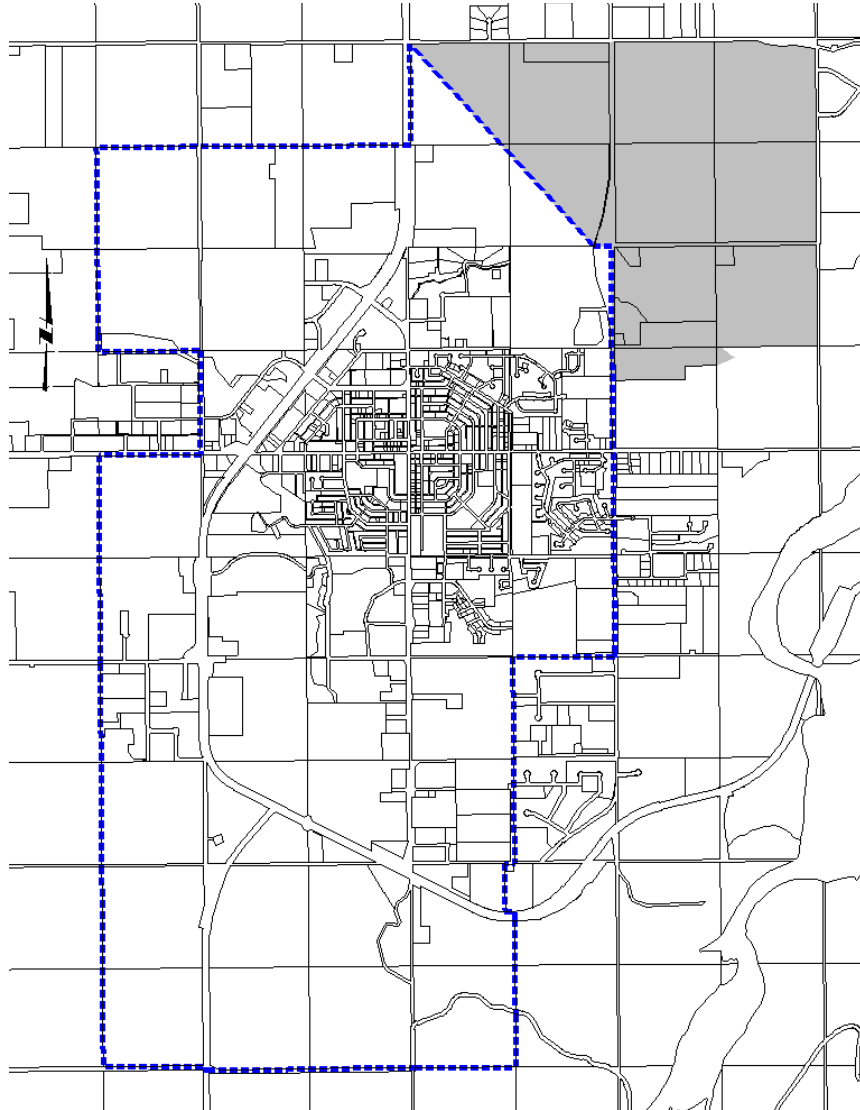
ALL THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION FIFTEEN (15), TOWNSHIP FORTY-NINE (49), RANGE SEVEN (7) WEST OF THE FIFTH MERIDIAN LYING NORTH OF THE SOUTH BOUNDARY OF PLAN 882 2078, LOT 1 AND EXCLUDING ALL THAT PORTION OF THE NORTH-SOUTH ROAD ALLOWANCE LYING SOUTH OF THE PROJECTION WEST OF THE SOUTH BOUNDARY PLAN 882 2078, LOT 1 TO THE EAST BOUNDARY OF PLAN 2998JY.

PLAN 932 3520.

ALL INTERVENING ROAD ALLOWANCES, ROADS AND HIGHWAY PLANS AND INTERSECTIONS.

APPENDIX B

A SKETCH SHOWING THE GENERAL LOCATION OF THE AREAS ANNEXED TO THE TOWN OF DRAYTON VALLEY



Legend



Existing Town of Drayton Valley Boundary



Annexation Area

APPENDIX C

ORDER

- 1 In this Order,
 - (a) “annexed land” means the land described in Appendix A and shown on the sketch in Appendix B;
 - (b) “Brazeau County’s Land Use Bylaw” means Brazeau County’s Land Use Bylaw as it stood on November 15, 2010, and does not include any subsequent amendment to the bylaw.

- 2 For the purposes of taxation in 2012 and in each subsequent year up to and including 2062, the annexed land and the assessable improvements to it
 - (a) must be assessed by the Town of Drayton Valley on the same basis as if they had remained in Brazeau County, and
 - (b) must be taxed by the Town of Drayton Valley 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 Brazeau County, or
 - (ii) the municipal tax rate established by the Town of Drayton Valley,whichever is lower.

- 3 Where, in any taxation year, a portion of the annexed land
 - (a) becomes a new parcel of land 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, except for the subdivision of an existing farmstead from a previously unsubdivided quarter section,
 - (b) ceases to be used as farmland or for any other use that Brazeau County’s Land Use Bylaw authorizes for the Agriculture District established by the Bylaw, or
 - (c) ceases to be used for an industrial use that is authorized by Brazeau County’s Land Use Bylaw and that
 - (i) is a non-conforming use, or
 - (ii) is authorized by a development permit issued before January 1, 2012,

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

- 4 The Town of Drayton Valley shall pay to Brazeau County the amount of two million five hundred and fifty thousand five hundred and fifty-three dollars (\$2,550,553.00) not later than 90 days after the date this Order in Council is made by the Lieutenant Governor in Council.

APPENDIX D

**MUNICIPAL GOVERNMENT BOARD REPORT TO THE
MINISTER OF MUNICIPAL AFFAIRS
RESPECTING THE TOWN OF DRAYTON VALLEY PROPOSED ANNEXATION
OF TERRITORY FROM BRAZEAU COUNTY**

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EXECUTIVE SUMMARY

[1] The Town of Drayton Valley (Town) is located about 140 km southwest of Edmonton. On April 29, 2011, the Municipal Government Board (Board) received an application from the Town to annex approximately 526 hectares (1,300 acres) of land from Brazeau County (County). The purpose of the proposed annexation is to provide the Town with enough land to meet its residential growth requirements for the next 50 years.

[2] Although the negotiation process was difficult, the two municipalities were eventually able to reach an annexation agreement. However, a review of the application submitted by the Town determined that during the March 23, 2011 open house, landowner and public concerns were expressed regarding snow removal for seniors, the possible impact on school bus service, the fragmentation of farmland, the Drayton Valley Rural Electrification Association (DVREA) shareholder equity matters, the burning of brush on land within the proposed the annexation area, and hunting within the proposed annexation area. Subsequent written submissions received by the Board expressed concerns about the continuation of snowplowing of driveways for seniors, the size of the annexation, the loss of municipal taxes by the County, and the distribution of electricity in the annexation area. The Board scheduled a public hearing on December 7, 2011, to receive information, evidence and argument regarding the annexation proposal.

Recommendation

[3] After reviewing the submitted documentation and hearing from the Town, the County, the affected landowners, and the public, the Board finds the annexation application to be reasonable. Therefore, the Board recommends the annexation of the land as requested by the Town, with an effective date of January 1, 2012.

Reasons

[4] The Board understands that the relationship between the Town and the County has been somewhat strained over the years. However, the Annexation Settlement Agreement (ASA), Memorandum of Understanding (MOU) and Intermunicipal Development Plan (IDP) clearly demonstrate a desire by both municipalities to work collaboratively. Subsequent agreements, such as weed control and the provision of water show that the two municipalities are now cooperating a way that will be beneficial for the entire region.

[5] The expansion of the Town's residential land inventory to the north east is logical. Information from the Town's engineer established that the annexation area could easily be serviced in the future by extending the existing water and wastewater infrastructure.

[6] The Board typically considers annexations with a 30 to 35 year time horizon. However, there has been a long history of land use planning and related conflict between the Town and the County, which is readily apparent by the fact that the municipalities have been discussing annexation in some form or another for the last 10 years, and by the number of intermunicipal dispute appeals filed with the Board. Although the two municipalities are now actively

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cooperating, the Board finds that it is reasonable in this case to allow the annexation of a larger tract of land to promote positive and long term planning in this region. The Board believes this annexation combined with the new IDP and other agreements will facilitate long-term land use planning certainty for the two municipalities, the affected landowners and public.

[7] Evidence provided by the Town and the County identified that the proposed annexation would not be an undue financial burden to either municipality. The ASA states that Town is to pay the County \$2,550,533 to cover the cost of the debenture that was acquired to construct the Coulee Road. The independent financial analysis provided by the Town concludes that the required capital improvements would not pose any issues with the Town's debt limit or debt servicing limit. The analysis also estimates that the County's net operating expenses as a result of the annexation will decrease by \$41,705 annually. Therefore, the Board does not consider the annexation to be a "tax grab" as has been alleged.

[8] The Board is satisfied that the Town consulted with the local authorities that may be affected by the annexation. Information received by the Board subsequent to the hearing identifies that Alberta Transportation has no objections to the proposed annexation.

[9] The ASA states that the customers within the annexed land are to be served by the Evergreen Gas Co-op for a period of 50 years from the effective date of the annexation. S. 45 of the *Municipal Government Act* (Act) allows a municipality to "grant a right, exclusive or otherwise, to a person to provide a utility service in all or part of the municipality, for not more than 20 years". As the Town does not have an agreement of this type for the provision of natural gas services, it can take steps to enter into this type of agreement with the Evergreen Gas Co-op. The Board considers this arrangement to be a local matter that is best dealt with by the Town in the manner set out by the Act.

[10] The ASA identifies that, if legally possible, the DVREA is to continue to serve its customers in the annexation area for 50 years. Evidence from both the Town and FortisAlberta Inc. (FortisAlberta) confirms that these parties have entered into an Electric Distribution System Franchise Agreement (EDSFA). The Alberta Utilities Commission (AUC) clearly has the expertise to deal with the distribution of electricity in Alberta. In the Board's view, the AUC is the appropriate body to consider issues that may alter the provision of electrical service in the annexed area. The Board trusts the Town and FortisAlberta will comply with their obligations as identified by the EDSFA. The Board notes that Section 24 of the EDSFA identifies a dispute settlement agreement. The Board expects that the two parties will avail themselves of the resolution process if there is a disagreement.

[11] In regard to the DVREA owner equity matter, the Board expects the Town will take reasonable steps to work with the owners of the annexed land to address the financial impact of the possible loss of share equity in the DVREA as stipulated in the ASA.

[12] The Board accepts the Town will continue to provide services to the proposed annexation area at the same level, or better, than that currently being provided by the County. The Town verified that it intended to maintain snow removal practices and procedures to the same standard

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as are currently in the County. The Board also accepts the Town's assertion that because the two municipalities have the same fire chief, the practices of the County regarding brush burning will continue to apply in the annexation area. In response to an oral submission during the hearing, the Town also stated that it will explore contracting with the County to control feral dogs impacting livestock.

[13] The Board was concerned that during the hearing the Town was not able to confirm if it had a bylaw in place to address hunting or the discharge of firearms within its jurisdiction. This was especially troubling since the hunting issue had been identified by the same affected landowner to the Town during the March 23, 2011 open house. However, as the affected landowner did not object to the proposed annexation or make a request to not have his land annexed, the Board finds no reason to exclude this parcel from the annexation recommendation. It is expected that the Town and the landowner can resolve this issue in a timely manner such that the safety of the public and the interest of all parties are recognized.

[14] Given that the annexation hearing was held on December 7, 2011, the Board finds it would be inappropriate to recommend the effective date of the annexation be January 1, 2011 as identified in the ASA. The Board would not normally recommend that the dollar amount of the Coulee Road debenture be included as part of the recommended Order in Council presented to the Lieutenant Governor in Council, as this matter is addressed by s. 138(1)(b) of the Act. However, because the Board is recommending the effective date be January 1, 2012, the Board finds that the debenture amount should be specified in the Order in Council to provide certainty as to the amount.

[15] For these reasons, the Board finds that the purpose of the annexation and amount of land being requested by the Town is reasonable, and the concerns of affected landowners and the public have been given due and proper consideration.

Introduction

[16] The Town of Drayton Valley (Town) is located about 140 km southwest of Edmonton. On April 29, 2011, the Municipal Government Board (Board) received an application from the Town to annex approximately 526 hectares (1,300 acres) of land from Brazeau County (County). The Town contends that the proposed annexation will provide it with enough land to meet its residential growth requirements for the next 50 years. Although the two municipalities were able to negotiate an annexation agreement, objections to the proposed annexation were filed with the Board. In accordance with s. 120(3) of the *Municipal Government Act* (Act), the Board held a public hearing on December 7, 2011, to receive information, evidence and argument regarding the annexation proposal.

[17] The following report outlines the role of the Board, provides an overview of the Town's annexation application, summarizes the December 7, 2011 public hearing, and provides a recommendation to the Minister of Municipal Affairs (Minister) regarding this matter.

Part I Role of the Board, the Minister and the Lieutenant Governor in Council

[18] Pursuant to s. 116 of the Act, a municipality seeking annexation must initiate the process by giving written notice to the municipal authority from which the land is to be annexed, the Board, and any other local authority the initiating municipality considers may be affected. The notice must describe the land proposed for annexation, set out the reasons for the proposed annexation and include proposals for consulting with the public and meeting with the landowners. Once the notice of intent to annex has been filed, the municipalities involved with the proposed annexation must negotiate in good faith. If the municipalities are unable to reach an agreement, they must attempt mediation to resolve any outstanding matters.

[19] At the conclusion of the negotiations and the consultation process, the initiating municipality must prepare a report. This report must include a list of issues that have been agreed to by the two municipalities and identify any issues the two municipalities have not been able to agree upon. If the municipalities were unable to negotiate an annexation agreement, the report must state what mediation attempts were undertaken or, if there was no mediation, give reasons why. The report must also include a description of the public and landowner consultation process as well as provide a summary of the views expressed during this process. The report is then signed by both municipalities. Should one of the municipalities not wish to sign the report, it has the option of including the reasons why it did not sign.

[20] The report is then submitted to the Board. If the initiating municipality requests the Board to proceed, pursuant to s. 119, the report becomes the annexation application. If the Board is satisfied that the affected municipalities and public are generally in agreement, the Board notifies the parties of its findings. Unless objections are filed with the Board by a specific date, the Board makes its recommendation to the Minister without holding a public hearing. If an objection is filed, the Board must conduct one or more public hearings.

[21] The Board has the authority to investigate, analyze and make findings of fact about the annexation, including the probable effect on local authorities and on the residents of an area. If a public hearing is held, the Board must allow any affected person to appear and make a submission. After hearing the evidence and submissions from the parties, the Board must prepare a written report of its findings and recommendations and send it to the Minister. The Minister has the authority to accept in whole or in part, or completely reject the findings and recommendations made by the Board. The Minister may bring a recommendation forward for consideration to the Lieutenant Governor in Council (LGC). After considering the recommendation, the LGC may order the annexation of land from the one municipality to the other.

Part II Annexation Application

[22] Part II is divided into two sections. The first section presents background information, while the second section provides a brief summary of the application.

Background Information

[23] On February 11, 2010 the Town filed an annexation application with the Board to annex approximately 11,040 acres (4,468 hectares) of territory from the County. The application stated that the two municipalities were unable to negotiate or mediate an agreement. After a series of preliminary hearings, the Board scheduled the merit hearing to commence on November 15, 2010. Between February and November 2010, the Town also filed four intermunicipal dispute appeals with the Board regarding statutory plan bylaws passed by the County.

[24] At the start of the November 15, 2010 merit hearing representatives from both the Town and the County informed the Board they had negotiated an Annexation Settlement Agreement (ASA). The ASA reduced the annexation area and included additional lands not identified in the Town's application. The Board was also informed that the Memorandum of Understanding (MOU) and Implementation Plan agreed to by the two municipalities would allow the Town to withdraw its intermunicipal dispute appeals. Based on the late settlement, the Board adjourned the merit hearing until December 16, 2010 to allow the affected landowners and the public an opportunity to review the ASA and other documents submitted by the two municipalities.

[25] At the resumption of the merit hearing on December 16, 2010, the Town and the County acknowledged that previous Board decisions had established that the Board would not recommend the inclusion of lands not identified in the application submitted by the initiating municipality. As such, the Board was requested to consider the annexation of only the twenty quarter sections of land identified in the ASA that were already specified in the Town's existing application. The Town stated that it would develop a second annexation application for the additional seven quarter sections. The Board granted the request and continued the public hearing with regard to the lands identified in the ASA that were specified in the Town's original annexation application of December 11, 2010. The Board's recommendation was forwarded to the Minister of Municipal Affairs as required by the Act and Order in Council 476/2011 was signed by the LGC on December 1, 2011.

[26] After consultation with the public and landowners, the Town submitted the second annexation application to the Board on April 29, 2011 for the additional 526 hectares (1,300 acres) of land not considered during the December 16, 2010 public hearing. The letter accompanying the application stated that the Town would be submitting an additional report that would address the financial impact of the proposed annexation. This report was received by the Board on October 5, 2011.

[27] During the period required by the Town to produce the financial report, the County passed amendments to its four statutory plan bylaws, which allowed the Town to withdraw its four intermunicipal dispute appeals.

Application Summary

[28] This section will provide a brief summary of the annexation application submitted by the Town on April 29, 2011. The summary has been broken down into five major sub-sections: application process, growth and the need for land, planning and development, environmental considerations, and financial impacts.

Application Process

[29] In accordance with s. 117 of the Act, the Town filed the required “Notice of Intent to Annex” with the County and the Board on January 21, 2011. Letters advising of the proposed annexation were also sent to the Wild Rose School Division No. 66, the St. Thomas Aquinas Roman Catholic School, the Wetaskiwin Community Health Centre, and Drayton Valley Community Health Centre.

[30] The Town’s consultation process consisted of letters to the affected landowners (March 14, 2011), annexation update postings placed on both the Town and the County websites, and an open house on March 23, 2011. The open house was advertised in the **Drayton Valley Western Review** on March 8 and 15, 2011. The Town’s documentation reported that landowner and public concerns expressed at the March 23, 2011 open house were related to: the removal of snow for seniors given the annexation period is 50 years; the possible impact on school bus service; the fragmentation of farmland; DVREA shareholder equity matters; and the burning of brush/hunting on land within proposed the annexation area. In response to the concerns arising from the open house, the Town committed that all services will be maintained. The Town also contacted the school board about the bussing issue and was informed that there would be no impact on school bus service. With regard to concerns about the premature fragmentation of farmland, the Town identified that development would take place only if the landowner chose to do so. The Town suggested that it would be best for the person questioning the DVREA matter identified in the previous annexation to contact the Board to ensure the matter had been dealt with. Regarding the brush burning and hunting issues, the Town proposed a meeting between the affected landowner and the Mayor to discuss solutions that would work for everyone. However, the Town also informed the affected landowner that he would have an opportunity to bring these matters to the Board before any annexation took place between them.

[31] On April 29, 2011, the Town submitted the required Negotiation Report as well as a letter requesting the Board to proceed. The documentation identified that both municipalities were in agreement with the proposed annexation and that there were no outstanding issues.

Growth and the Need for Land

[32] The application states that the proposed annexation is a logical extension of the Town's residential area. It is expected that the population of the Town and its urban fringe will grow from an estimated 8,818 in 2006 to 30,308 in 2053. The 50-year time frame is consistent with the trend in Alberta toward longer-term planning. The Land Use Planning Analysis Report submitted by the Town discusses the long-term growth requirements of the Town based on the boundaries identified in the ASA. The Report explains that this annexation would present an opportunity for the development of a new residential sector to the northeast of the established Town core. Growth in this direction will allow contiguous and cohesive residential development that will provide the Town with an adequate supply of residential land for several decades. Given that the amount of land being requested is relatively small compared to the rest of the County, the Report concludes that the proposed annexation will not restrict the County's future growth.

[33] Based on an urban density of 10 units per gross hectare, the Town projects it will require an additional 680 hectares of land to meet its residential growth for the 50 year planning horizon. This annexation will provide 433 hectares of gross developable land, which in conjunction with the existing vacant land already in the municipality, the previous annexation area, and the developed area to the east of the Town, should adequately meet the long term residential growth needs of the community.

Planning and Development

[34] The Town already provides or has agreements to provide municipal services to portions of the proposed annexation area. Agreements are being contemplated that will expand the scope of infrastructure and services to be jointly provide by the Town and the County. The Town retained the services of ISL Engineering and Land Services (ISL) to provide an opinion with respect to servicing this annexation area. In ISL's opinion, the Town is able to provide water and sanitary services to the annexation area. Preliminary cost estimates and maps were provided as part of the application. ISL noted that it would be more efficient to expand the Town's water and wastewater systems to this area than to allow it to be serviced by stand alone systems. ISL also stated that there is adequate stormwater drainage capacity to accommodate the projected future population of the Town.

[35] The Town and the County have approved an Intermunicipal Development Plan (IDP) to address development in the area surrounding the proposed expanded Town boundaries. The County has also amended its Municipal Development Plan and three Area Structure Plans to conform with the IDP.

Environmental Considerations

[36] The only significant environmental feature in the proposed annexation area is the ravine that runs through Sections 15 and 21, Township 49, Range 7, West of the Fifth Meridian. The application identifies a concept plan has been developed for this area. The application also states that the Town is committed to the conservation of this environmentally sensitive area and will take the necessary measures to ensure its protection.

Financial Impacts

[37] The Town retained a consultant to assess the financial impact of the second annexation. This analysis assumes an annual growth rate of 2.5 percent, residential density of 10.0 units per hectare and 2.6 persons per household, which the report states is the same as the assumptions in the Land Use Planning Analysis Report. Although the annexation has a 50 year time horizon, it is expected that the residential land in this annexation would be developed in approximately 25 hectare sized pieces from 2035 to 2052. The financial analysis concludes that the required capital improvements resulting from this annexation would not be detrimental to the Town and that the tax rate impact on the Town is reasonable. The analysis further clarifies that the County will experience a nominal tax saving because the reduction in expenses (\$92,632) associated with the provision of services to the area will more than offset the decrease in municipal tax revenues (\$50,626) generated by the annexed lands. In effect, the annexation would result in an operating cost savings to the County of \$41,705 annually. The analysis also concludes that the financial impact to the landowners in the proposed annexation area will be minimized as they have been afforded tax protection for 50 years, assuming they do not undertake actions that will activate the “subject to removal” clauses requested in the ASA.

[38] In addition to the Land Use Planning Analysis Report, the ASA outlines other proposed conditions with possible financial implications. These conditions include:

- The effective date of the annexation should be January 1, 2011,
- The annexed lands must be assessed in the same manner as if they had remained in the County,
- The annexed lands must be taxed at the lower of the tax rates established by the Town and the County,
- The 50 year assessment and taxation transition conditions are to be removed if the land is subdivided at the request of or on behalf of the owner or the land ceases to be used as farmland in accordance with the County’s Land Use Bylaw,
- Non conforming industrial uses are to be protected unless they are subdivided
- The Town is to pay the County \$2,550,533 for the County’s debenture of Coulee Road. The Town is also to pay verifiable expenses for 2011,
- Evergreen Gas Co-op customers will be continued to be served by that utility provider for 50 years unless the company ceases to exist, and
- If legally possible, DVREA customers shall continue to be served by that company for 50 years or until the company ceases to exist. If this is not legally possible, the Town shall take reasonable steps to work with the owners of the annexed land to

address the financial impact of their loss of share equity in the DVREA, if the owners of the annexed land have share equity in it.

Part III Public Hearing

[39] In accordance with s. 120(3) of the Act, the Board held a public hearing on December 7, 2011, to receive information, evidence, and argument on the proposed annexation. Hearing notices were published in the **Breton Booster** and **Drayton Valley Western Review**, newspapers circulating in the affected area, the weeks of November 14 and 21, 2011. Hearing notification letters were also sent to all known affected landowners on November 7, 2011. The following provides a summary of the written and oral submissions received by the Board from the Town, the County and the affected landowners/members of the public.

Town Presentation

[40] During the public hearing, the Town presented an overview of the annexation application and provided additional information concerning the annexation proposal.

Application Process

[41] The Town submitted that the creation and implementation of the ASA and MOU was a difficult process, but that both municipalities are now working together. The County recognizes the need for the Town to expand and additional agreements between them will help the two municipalities shift to a more trusting and harmonious relationship. It is believed that this paradigm shift will benefit the entire region. The annexation is designed to give the Town the land it needs for the next 50 years. Although there has been a history of conflict between the two municipalities and the process has been somewhat difficult, Town Council is in full support of the proposed annexation. Moreover, the Town has received a tremendous amount of support from the community for its efforts.

Additional Information

[42] It was confirmed that the purpose of this annexation is to provide the Town with residential land. Intermunicipal cooperation has been demonstrated by the two municipalities having approved an IDP to address development in the area around the Town. The Intermunicipal Cooperation Agreement signed by both municipalities sets out the framework for the negotiation of agreements, which may include such things as joint infrastructure development, joint service delivery and cost sharing. The proposed annexation area is a logical extension of the existing residential area of the Town. Also, the extension of the Town's municipal services to this area is a more desirable servicing option. The 50 year planning horizon for the annexation ensures that the two municipalities are not likely to be dealing with the same issues in a relatively short period. The financial, infrastructure and administrative impact of the annexation on the Town is reasonable. The proposed annexation 50 year assessment and taxation transition provisions mitigate any financial impact on the affected landowners. The Town also stated that in assessing farmland, the intent was to only remove the assessment and taxation

transition provisions if there was development on the land other than for farming use or “AG” as defined by the County’s Land Use Bylaw.

[43] It was explained that the boundary roads identified in the annexation application were inaccurate. The Town clarified that the roads to the north and the east of the annexation area were to remain within the County and are not part of the annexation request. The Town agreed to provide the Board with an updated land description listing. In response to questions, the Town explained that it had notified Alberta Transportation (AT) about the proposed annexation, but that AT had not provided a response. Although it is presumed that AT did not object to the proposed annexation, the Town agreed to ask AT to provide a written confirmation.

[44] The process used to develop the annexation application provided significant opportunities for public input. With regard to concerns that this annexation application was a “tax grab” the Town reported that the area being requested is largely undeveloped and has very little assessment value. Furthermore, the County concurs with this view, and is satisfied with the proposed annexation. In response to a request for clarification about snow removal for seniors, the Town confirmed that it would continue to keep the services the same level as if they had remained in the County.

[45] The Town stated it was somewhat confused by the written submission from FortisAlberta Inc. (FortisAlberta). FortisAlberta did not take part in the consultation process and the first the Town heard of the concern was in the letter dated November 25, 2011 that FortisAlberta submitted to the Board. In a letter submitted to the Board during the hearing, the Town verified that the Town and FortisAlberta entered into an Electric Distribution System Franchise Agreement (EDSFA) which grants FortisAlberta an exclusive right to construct, obtain and maintain an electric distribution system within the municipality. Section 12 of the EDSFA identifies that if an annexation is greater than 640 acres 25 percent of the current area the Town shall have the right to:

Purchase the portion of the Distribution System within the increased area provided that the Municipality gives notice in writing to the Company of its intention to purchase within ninety (90) days of the effective date of the increase in area

[46] The Town noted that it is aware of its legal obligations under the EDSFA and the ASA provisions regarding the DVREA are only applicable “if legally possible”. It was clarified that the ASA only commits the Town to help owners with share equity in the DVREA. The Town does not understand how this would be a breach of the EDSFA.

[47] The Town will contract weed control services for the annexed area with the County. It was explained that in accordance with the Intermunicipal Cooperation Agreement that the County would provide these services to the Town on a cost recovery basis. It was confirmed that the County has the capacity and the equipment to provide these services.

County Presentation

[48] During its presentation the County confirmed that it was in favour of the proposed annexation as it was negotiated by the two municipalities and balances the needs of both the Town and the County. The Board was informed that the annexation agreement was a successful compromise. They argued that the annexation process is never easy because people are adverse to change; however, it is inevitable that the Town will grow and the proposed annexation will allow everyone to move forward in a planned and positive manner. With approval of this, the second annexation, the two municipalities will attempt to make the transition as easy as possible for all the affected landowners.

[49] The County indicated that the region had lost a number of opportunities because of the ongoing poor relations between the two municipalities. After the last municipal election the County shifted towards interest-based negotiating. During the negotiation process that lead to the ASA the County identified its interests as: ensuring the County's autonomy was not infringed, minimizing population loss, and reducing the amount of assessment loss. The Town's interests were: the acknowledgement of the need for the annexation, the need for certainty, and the need for future growth management. The County believes that the interests of both municipalities were addressed in the ASA. The County is also of the opinion that the annexation is in the best interests of the region.

[50] The Board was informed that the County does not consider the proposed annexation to be a "tax grab". It was explained that this annexation generates approximately \$90,000 in municipal taxes. The County's total budget for 2011 was estimated to be over \$20 million. As the County derives over 85 percent of its municipal tax revenue from linear and non-residential assessment, the municipal tax loss is considered by the County to be negligible. The ASA identifies that the Town is to compensate the County for all verifiable costs associated with the proposed annexation. However, following the hearing the County confirmed there were no verifiable costs.

[51] The County observed that this annexation meets the Board annexation principles. The County also agreed that it would work with the Town to clarify the legal land descriptions for the boundary roads.

Landowner/Public Submissions

[52] The Board received both written and oral submissions regarding this matter. The following provides a brief summary of these submissions.

Written Submissions

[53] The following people provided written submissions to the Board in response to the hearing notifications, but did not make an oral presentation at the December 7, 2011 hearing.

D. and G. Belcher

[54] A letter from Dr. and Ms. Belcher identified that they were generally in agreement with the terms of the annexation. The letter states that the County supplies snowplowing of seniors' driveways free of charge. They expressed concern that although they have been given assurances that the services provided by the County will be continued by the Town they see no mention of this in the annexation agreement.

P. Schmitt and L. Oberle

[55] Correspondence from Ms. P. Schmitt and Mr. L. Oberle argue that since the proposed annexation is a major decision that will affect all County residents, a plebiscite should have been used to determine if there was agreement. Ms. Schmitt and Mr. Oberle indicated that the economy of the Town is oil-based and identified that there is a lot of land within the Town that is not being utilized. Since oil production is at its peak, they question whether the Town needs the additional land. Ms. Schmitt and Mr. Oberle stated that the annexation area is a heavy tax contributor and that the County will lose over \$550,000 annually in taxes. They conclude that there is no empirical evidence for the annexation and that the proposed annexation is nothing but a "tax grab".

I. Holmgren

[56] The letter from I. Holmgren contends the Town is being greedy and that the annexation is a tax grab. To her knowledge there is no development coming to the Town that would generate a need for more land. She acknowledges that the oil sector is doing well, but that this is only in the drilling area, which is only short term. Ms. Holmgren questions the need for the additional land.

R. and J. Gates

[57] The letter from R. and J. Gates indicated that they are taxpayers in the County and stated that they are opposed to the proposed annexation. They explained that years ago they had been annexed from Leduc County to make the County more viable and questioned why the Town should be able to annex County land.

Written and Oral Submissions

[58] The following people and organizations provided written submissions to the Board in response to the hearing notifications and made oral presentation at the December 7, 2011 hearing.

Fortis Alberta – D. Hunka/H. Steblyk

[59] The Board received correspondence from D. Hunka, the Manager of Customer Relations with FortisAlberta. The letter states that FortisAlberta has a franchise agreement for the provision of electricity with the Town that provides FortisAlberta with the exclusive right to provide this service. The letter expressed concern about the ASA allowing the DVREA to

continue to serve customers within the annexation area for 50 years. It is suggested that the appropriate method to deal with this matter would be for FortisAlberta to purchase the distribution facilities from the DVREA.

[60] During the hearing the Board received an oral presentation from H. Steblyk, a lawyer with FortisAlberta. Mr. Steblyk clarified that FortisAlberta is not opposed to the proposed annexation. However, FortisAlberta's position is that the Alberta Utilities Commission (Commission) is the appropriate regulator authority for any determination relating to electric distribution systems. Mr. Steblyk stated that pursuant to the *Electric Utilities Act* and the *Hydro and Electric Energy Act* (HEE) the Commission is charged with:

- i. providing for the economic, orderly and efficient development and operation, in the public interest, of Alberta's electric distribution systems,
- ii. making determinations regarding the service areas of electric distribution service providers within the Province, and
- iii. making determinations relating to the compensation, if any, that may be payable in connection with any changes to an electric distribution service provider's service area.

[61] Specifically, FortisAlberta pointed out that s. 2 of the HEE states that the purposes of this Act is:

- (a) to provide for the economic, orderly and efficient development and operation, in the public interest, of hydro energy and the generation and transmission of electric energy in Alberta,
- (b) to secure the observance of safe and efficient practices in the public interest in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta,
- (c) to assist the Government in controlling pollution and ensuring environment conservation in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta, and
- (d) to provide for the collection, appraisal and dissemination of information regarding the demand for and supply of electric energy that is relevant to the electric industry in Alberta.

[62] FortisAlberta also brought to the Board's attention that s. 25 of the HEE identifies that the Commission is responsible for approving any alteration of the electrical distribution system and must be satisfied that this is in the public interest.

- 25(1) Notwithstanding anything in any other Act or in any approval or order issued pursuant to any other Act, no person shall construct or operate an electric distribution system or alter the service area of an electric distribution system without the approval of the Commission, which approval shall include the designation by the Commission of the person's service area.
- (2) Approval under this section shall not be given unless the Commission is satisfied, having regard to the availability of any other source of electric energy and to any other circumstances, that it is in the public interest having

regard to those circumstances and the present and future need for the extension of electric service throughout Alberta.

[63] FortisAlberta's position is that it would be inappropriate for the Board to recommend matters related to the electrical distribution to the Minister and submitted that the public interest would best be served if these matters are left to be determined by the Commission at a later date.

R. Beckett

[64] R. Beckett identified himself as a landowner in the proposed annexation area. He identified his land as being the northeast quarter of section fifteen, township forty-nine, range seven west of the fifth meridian. Mr. Beckett contends that the landowners in the proposed annexation area had no intention of developing their property. In his opinion, the annexation of land to the northeast was sacrificial in that the Town's expansion into other areas would have cost millions of dollars.

[65] Mr. Beckett stated that he attended the Town's March 23, 2011 public hearing and asked about how the proposed annexation would affect activities such as burning of brush and hunting on his property. He identified that he collects brush all year long and during the winter he obtains a permit from the County to burn the brush. He explained that he encourages hunting on his property as a way to control the elk and deer that eat the hay that is set aside for feeding his cattle. He also reported that he has established an informal shooting range on his property. The shooting range points in the general direction of the Town, but is directed to the bottom of the 100-foot deep coulee. In response to questioning from the Board, Mr. Beckett emphasized that the Town did not provide any response to these concerns.

[66] Mr. Beckett noted that he has carried out the snow removal for the road on the east side of his property for years. He also expressed concern that the Town would be gaining some type of monetary advantage if the DVREA was dissolved.

[67] In response to questions from the Board, Mr. Beckett stated he was neither in favour nor opposed to the proposed annexation.

R. Domke

[68] R. Domke is a landowner in the first annexation area. Mr. Domke expressed concerns regarding dogs from the Town chasing his livestock.

Town Response to the Landowners/Public

[69] Prior to the hearing the Town submitted a letter to the Board with a copy of the Electric Distribution System Franchise Agreement (EDSFA) between the Town and FortisAlberta. Section 12 of the EDSFA states:

Where the Municipality increases its area through annexation or otherwise by the greater of 640 acres and 25% of the then current area, the Municipality shall have the right to:

- (i) purchase the portion of the Distribution System within the increased area provided that the Municipality gives notice in writing to the Company of its intention to purchase within ninety (90) days of the effective date of the increase in area; ...

[70] As the proposed annexation area is greater than 640 acres and 25 percent of the current Town area, the Town contends this clause of the EDSFA is applicable. The Town stated that it would take reasonable steps to facilitate discussions between FortisAlberta and the DVREA regarding the DVREA assets in the annexation area. The Town also stated that it is well aware of its legal obligations and that the ASA identifies that the provisions applicable to the DVREA only apply “if legally possible”. The Town also confirmed it would take reasonable steps to work with the owners of the annexed land to address the financial impact of their loss of share equity in the DVREA, if the owners of the annexed land have share equity in it.

[71] With regard to the hunting/shooting/burning concerns raised by Mr. Beckett, the Town produced a letter from the Mayor to Mr. Beckett dated May 3, 2011 requesting a meeting to seek out practical solutions to address the concerns brought forward during the open house. After reviewing the letter brought forward by the Town, Mr. Beckett stated he had never seen it. The Town stated that since Mr. Beckett did not respond, a meeting was never held. The Town indicated that the road being looked after by Mr. Beckett was to remain in the County, so road maintenance responsibilities would remain with the County. The Town has also committed to maintaining or improving the service levels currently provided by the County. The Town noted that the County had already passed an Area Structure Plan Bylaw for the second proposed annexation area that would allow urban development. However, as the area in question is not expected to be developed in the short term, there should be no significant changes to land uses for quite a while. Although there is nothing in the ASA regarding brush burning, the two municipalities utilize the same Fire Chief and the Town does not expect any significant changes. The Town asserted that it will not derive monetary benefit if there is a transfer of the DVREA assets.

[72] In response to questioning from the Board, the County stated that its Community Peace Officers were issued shotguns to deal with feral dog problems. The Town indicated that it intended to contract with the County for animal control of this type.

County Response to Landowners and/or the Public

[73] The County did not provide any additional comments.

Part V Board Recommendation

[74] After reviewing the submitted documentation and hearing from the Town, the County, the affected landowners, and the general public, the Board finds the annexation application to be

reasonable. Therefore, the Board recommends the annexation of the land identified in the Town's annexation application with an effective date of January 1, 2012.

Part VI Reasons

[75] The reasons for Board's recommendation are provided below.

Intermunicipal Cooperation

[76] The Board understands that the relationship between the Town and the County has been somewhat strained over the years. The ASA, MOU and IDP show that both municipalities are attempting to cooperate in a manner that will be beneficial for the entire region. The area structure plan bylaw amendments by the County, when combined with the Town withdrawing its appeals of these bylaws, clearly demonstrates that the two municipalities are positively and successfully collaborating. This is clearly in keeping with the spirit of the Act and the Alberta Provincial Land Use Policy.

[77] The Town and the County have used the autonomy afforded to municipalities by the Act to enter into the ASA and MOU. Moreover, the two municipalities have used this autonomy to enter into other mutually beneficial agreements, such as weed control and potable water distribution. The Board finds this annexation will not infringe upon the ability of either municipality to fulfill the duties required by the Act. This demonstrates the Town and the County are working together in positive ways that will benefit the residents of both municipalities.

Growth and Planning

[78] The Board finds that the expansion of the Town's residential land inventory to the northeast is a logical extension of historical growth patterns. Information from the Town's engineer established that the annexation area could easily be serviced in the future by extending the existing water and wastewater infrastructure in that direction. Moreover, the Board agrees that it would be more efficient to extend water and wastewater services to the annexation area from the Town than to potentially have a series of standalone systems.

[79] The Board typically considers annexations with a 30 to 35 year time horizon. However, as in the Town of Strathmore annexation (MGB Board Order 034/10), there has been a long history of land use planning conflict between the Town and the County. This is readily apparent by the fact that the municipalities have been discussing annexation in some way or form for the last 10 years, and by the number of intermunicipal dispute appeals filed with the Board. Although the two municipalities are now collaborating, the Board finds that it is not unreasonable in this case to allow the annexation of a larger tract of land to promote and facilitate long term planning in this region. The Board believes this annexation combined with the new IDP will facilitate land use planning certainty for the two municipalities as well as the landowners and public.

[80] The only significant environmental feature in the annexation area is the coulee. As a concept plan has already been developed, the Board is satisfied efforts will be made to protect this key environmental feature.

Financial Impact

[81] Evidence provided by the Town and the County identified that the proposed annexation would not be an undue financial burden to either municipality. The ASA states that the Town is to pay the County \$2,550,533 to cover the cost of the debenture that was taken out by the County to construct the Coulee Road. The independent financial analysis provided by the Town concludes that the required capital improvements would not pose any issues with the Town's debt limit or debt servicing limit. The oral submission from the County indicates that the tax loss for this annexation is negligible. In addition to this, the financial analysis conducted by the Town states that the County will in fact realize \$41,705 annually in operating cost savings. In light of these facts, the Board concludes the annexation will not significantly impact the financial position of either municipality.

[82] The Board heard no evidence to suggest there are any existing revenue generating areas within the proposed annexation, so a recommendation regarding revenue sharing of some type is not warranted. However, the Board notes that the existing contracts, and other agreements being contemplated by the two municipalities may create additional cost savings by making the administration and provision of municipal services more effective and efficient. As the County's operating expenses are calculated to be reduced by \$41,705 annually, and the County will be transferring the \$2,550,533 debenture associated with Coulee Road to the Town, the Board does not consider the annexation to be a "tax grab" as asserted by the written objections.

Consultation

[83] The Board finds that the process used by the Town to solicit input from the public and the affected landowners was appropriate and reasonable. Information about the proposed annexation was mailed directly to the affected landowners. Annexation information and updates were posted on both the Town and the County websites. Although advertisements were placed in the local newspaper, only five people provided input either prior to or at the Town's open house held on March 23, 2011. While the Act does not detail the requirements for the consultation process, the Board accepts that the small number of attendees at the open house demonstrates that a plebiscite by the County was not required prior the County supporting the proposed annexation and the Town submitting its annexation application.

[84] The Board is satisfied that the Town consulted with the local authorities that may be affected by the annexation. Since none of the local authorities contacted provided a response, the Board concludes they do not object to the annexation. However, it is the practice of the Board to require the initiating municipality to provide written confirmation that AT does not object to the proposed annexation. In accordance with the request made by the Board during the hearing, subsequent correspondence received by the Board confirms that AT has no objections.

[85] The ASA states that customers within the annexed land are to continue to be served by the Evergreen Gas Coop for a period of 50 years from the effective date of the annexation. S. 45 of the Act allows a municipality to “grant a right, exclusive or otherwise, to a person to provide a utility service in all or part of the municipality, for not more than 20 years”. As the Town does not have an agreement of this type for the provision of natural gas services, it has the autonomy and legislative authority to take steps to enter this type of agreement should it wish to do so. It is noted that to comply with the 50 year service provision period, the Town would have to renew the agreement after 20 years. In accordance with s. 45(3), this will require the Town to advertise and seek approval of the Commission. As the agreement and possible future renewals are within the authority of the Town, the Board considers this to be a local matter that is best dealt with by the Town in the manner set out by the Act.

[86] The ASA identifies that, if legally possible, the DVREA is to continue to serve its customers for 50 years. Evidence from both the Town and FortisAlberta confirms that these parties have entered into an agreement that grants Fortis an exclusive right to construct, obtain and maintain an electric distribution system within the municipality. During its deliberations regarding the inclusion of the provisions in the Order in Council in its recommendation, the Board considered s. 127.1(2) of the Act which states:

- (2) An annexation of land does not affect any right under a utility agreement to provide a public utility on the annexed land unless the annexation order provides otherwise.

[87] It was noted that the purpose of the HEE is to provide for the economic, orderly and efficient transmission of electricity in Alberta. Moreover, the HEE states that despite anything in any other act the altering of an electrical distribution system requires the approval of the Commission and that this approval must not be given unless the Commission is satisfied that it is the public interest. The Commission clearly has the expertise and authority to deal with questions concerning the distribution of electricity in Alberta. In the Board’s view, the Commission would be the appropriate body to consider issues that may arise to affect electrical service after the annexation.

[88] The Board accepts that the EDSFA allows that the Town may have the option to purchase the portion of the electrical distribution system within the annexation area. The Board is confident the Town and FortisAlberta will comply with their obligations as identified by the EDSFA. The Board also notes that Section 24 of the EDSFA identifies a dispute settlement clause. The Board is expects that the two parties will avail themselves of this resolution process if there is a disagreement.

[89] In regard to the DVREA owner equity matter, the Board accepts that the Town will, at the appropriate time, take reasonable and timely steps to work with the owners of the annexed land to address the financial impact of the owners’ possible loss of share equity in the DVREA.

[90] The Board understands the Town will continue to provide road maintenance and other municipal services to the proposed annexation area at the same level and standards, or better,

than that currently being provided by the County. During the hearing the Town verified that it intended to maintain the current snow removal standards and practices as in the County, and stated that it is considering contracting with the County for this service. The Board accepts the Town's commitment and assertions that it fully intends to improve services in the annexation area over time.

[91] It is noted that s. 135(1)((d) of the Act establishes that the bylaws and resolutions of the County that apply specifically to the annexed area continue to apply until such time as they are changed, amended or repealed by the Town. The Board accepts that the Town expects to contract with the County to address issues around feral dogs and livestock, and that the Town intends to maintain snow removal practices as in the County. The Board also accepts the Town's assertion that because the two municipalities have the same fire chief the practices of the County regarding the onsite burning of materials will continue to apply in the annexation area. Although it was not within the Town's jurisdiction, the Board noted that the Town discussed the bussing issue with the local school board and was able to clarify this matter before the hearing.

[92] The Board was concerned that during the hearing the Town was not able to confirm if it had a bylaw in place to address hunting or the discharge of firearms within its jurisdiction. This was especially perplexing since the hunting issue had been identified by an affected landowner to the Town during the March 23, 2011 open house. Moreover, the Town did not provide any response during the hearing as to how it would address the hunting and firearm issue after the proposed annexation. The Board understands that the affected landowner did not respond to the Town's letter inviting him to meet with the Town's Mayor to discuss concerns about hunting, but this does not release the Town from preparing a response that would demonstrate how it would mitigate these concerns. Nevertheless, as the affected landowner did not object to the proposed annexation or make a request to have his land removed from the annexation area, the Board finds no reason to exclude this parcel from the annexation. It is expected that the Town and the landowner can reach an agreement regarding these matters that will ensure the safety of the public as well as satisfy the interests of all parties.

Conditions of Annexation

[93] It has been established in previous Board recommendations that annexation conditions must be certain, unambiguous, enforceable and time specific. The Board recognizes that s. 138(1)(a) of the Act allows for an annexation order to be retroactive. However, given that the additional submission from the Town was delayed and the hearing was not held until December 7, 2011, the Board finds it more appropriate to recommend the effective date of the annexation be January 1, 2012.

[94] The Board accepts and acknowledges the clarifying information provided by the Town and the County after the hearing regarding the specific boundary roads to be either included or excluded from this application. The Board accepts the accuracy of this information and will use it to develop its recommendation

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[95] The ASA signed by the two municipalities states the Town is to assume the debenture for the Coulee Road after the approval of the annexation. The Board acknowledges the agreement between the two municipalities regarding this matter. Since the Coulee Road is asset within the annexation area, the debenture is a liability associated with the annexation so it is reasonable for the Town to take over this financial burden. It is noted that s. 135(1)(b) of the Act would shift the obligation of the debenture from the County to the Town. As the Act deals with this matter, the Board would not generally recommend the amount be identified as part of the recommended Order in Council presented to the LGC. However, because the effective date has been changed, the Board finds that recommending this amount be specified in the Order in Council will provide certainty as to the amount of compensation. In addition, the Board understands that there are no other verifiable expenses associated with this annexation, and therefore does not recommend any other compensation.

Summary

[96] The Board finds that the intent and purpose of this annexation application, and the quantify of land being requested by the Town is appropriate and reasonable given all the circumstances surrounding this matter, The Board also finds and is satisfied that the concerns of the affected landowners and the public have been given proper consideration. Therefore the Board recommends that this annexation application be approved.