

BOARD ORDER: MGB 054/08

FILE: AN06/PENH/T-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 Town of Penhold, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from Red Deer County.

BEFORE THE MUNICIPAL GOVERNMENT BOARD

Members:

D. Thomas, Presiding Officer
L. Lundgren, Member
D. Scotnicki, Member

Case Managers:

R. Duncan

After careful examination of the submissions from the Town of Penhold (Town), Red Deer County (County), affected landowners and other interested parties, the Municipal Government Board (MGB) makes the following recommendation for the reasons set out in the MGB's report, shown as Appendix D of this Board Order.

Recommendation:

It is recommended that the annexation be approved in accordance with the following:

The Lieutenant Governor in Council orders that

- (a) effective May 1, 2008, the land described in Appendix A and shown on the sketch in Appendix B is separated from Red Deer County and annexed to the Town of Penhold,
- (b) any taxes owing to Red Deer County at the end of April 30, 2008 in respect of the annexed land are transferred to and become payable to the Town of Penhold together with any lawful penalties and costs levied in respect of those taxes and the Town of Penhold upon collecting those taxes, penalties and costs must pay them to Red Deer County,
- (c) for the purposes of taxation in 2008, Red Deer County must assess and tax the annexed land the assessable improvements to it,

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- (d) taxes payable in 2008 in respect of the assessable land and any improvements to it are to be paid to and retained by Red Deer County,
- (e) any taxes owing to Red Deer County at the end of December 31, 2008 in respect of the annexed land are transferred to and become payable to the Town of Penhold together with any lawful penalties and costs levied in respect of those taxes and the Town of Penhold upon collecting those taxes, penalties and costs must pay them to Red Deer County,
- (f) any 2008 assessment complaints in respect of the annexed land received by the Town of Penhold or Red Deer County remain with Red Deer County, and
- (g) the assessor for the Town of Penhold must assess, for the purposes of taxation in 2009 and subsequent years, the annexed land the assessable improvements to it,

and makes the Order in Appendix C.

Dated at the City of Edmonton, in the Province of Alberta, this 23rd day of May 2008.

MUNICIPAL GOVERNMENT BOARD

(SGD.) R. Scotnicki, Member

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APPENDIX A

**DETAILED DESCRIPTION OF THE LANDS SEPARATED
FROM RED DEER COUNTY
AND ANNEXED TO THE TOWN OF PENHOLD**

WITHIN THE SOUTHWEST QUARTER OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN

ALL LANDS DESCRIBED AS SOUTHWEST QUARTER OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN;

THAT PORTION OF ROAD WIDENING PLAN 5935 MC AND HIGHWAY 592 ADJACENT TO AND LYING TO THE SOUTH OF SAID QUARTER SECTION;

That portion of the Canadian Pacific Railway Plan C&E 1 in said quarter section;
LOT 1, BLOCK 1, PLAN 942 0196.

WITHIN THE SOUTHEAST QUARTER OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN

ALL LANDS DESCRIBED AS THE SOUTHEAST QUARTER OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN;

THAT PORTION OF THE CANADIAN PACIFIC RAILWAY PLAN C&E 1 IN SAID QUARTER SECTION;

ROAD PLAN 002 0566;

THAT PORTION OF HIGHWAY 2A WITHIN SAID QUARTER SECTION;

THAT PORTION OF ROAD WIDENING PLAN 5935 MC AND HIGHWAY 42 ADJACENT TO AND LYING TO THE SOUTH OF SAID QUARTER SECTION;

THE GOVERNMENT ROAD ALLOWANCE LYING EAST OF SAID QUARTER SECTION.

WITHIN THE NORTHWEST QUARTER OF SECTION THIRTY-ONE (31), TOWNSHIP THIRTY-SIX (36), RANGE TWENTY-SEVEN (27) WEST OF THE FOURTH MERIDIAN

ALL LANDS DESCRIBED AS NORTHWEST QUARTER OF SECTION THIRTY-ONE (31), TOWNSHIP THIRTY-SIX (36), RANGE TWENTY-SEVEN (27) WEST OF THE FOURTH MERIDIAN LYING WEST OF THE WEST BANK OF WASKASOO CREEK;

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LOT A, PLAN 3591 NY;

THE GOVERNMENT ROAD ALLOWANCE WEST AND ADJACENT TO SAID QUARTER SECTION EXCEPTING ROAD WIDENING PLAN 5803 JY THAT LIES TO THE NORTH OF SAID QUARTER SECTION.

THE GOVERNMENT ROAD ALLOWANCE WEST AND ADJACENT TO THE SOUTHWEST QUARTER OF SECTION THIRTY-ONE (31), TOWNSHIP THIRTY-SIX (36), RANGE TWENTY-SEVEN (27) WEST OF THE FOURTH MERIDIAN.

WITHIN THE NORTHEAST QUARTER OF SECTION TWENTY-FIVE (25), TOWNSHIP THIRTY-SIX (36), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN

ALL LANDS DESCRIBED AS NORTHEAST QUARTER OF SECTION TWENTY-FIVE (25), TOWNSHIP THIRTY-SIX (36), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN;

THE MOST NORTHERLY 33 FEET THROUGHOUT THE QUARTER SECTION;

THAT PORTION OF PLAN 4244 RS IN SAID QUARTER SECTION;

THE GOVERNMENT ROAD ALLOWANCE LYING EAST AND ADJACENT TO SAID QUARTER SECTION.

WITHIN THE NORTHWEST QUARTER OF SECTION TWENTY-FIVE (25), TOWNSHIP THIRTY-SIX (36), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN

ALL LANDS DESCRIBED AS NORTHWEST QUARTER OF SECTION TWENTY-FIVE (25), TOWNSHIP THIRTY-SIX (36), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN;

THAT PORTION OF HIGHWAY 2A WITHIN SAID QUARTER SECTION;

THAT PORTION OF THE CANADIAN PACIFIC RAILWAY PLAN C&E 1 IN SAID QUARTER SECTION;

ROAD PLAN 882 1090;

ROAD PLAN 3249 ET;

THAT PORTION OF LOT 2, BLOCK 2, PLAN 002 3915 IN SAID QUARTER SECTION;

THAT PORTION OF SAID QUARTER SECTION COMMENCING AT THE NORTHEAST CORNER OF SAID QUARTER SECTION, THENCE WESTERLY ALONG THE NORTHERLY BOUNDARY TO THE EAST BOUNDARY OF HIGHWAY 2A, THENCE SOUTH WESTERLY ALONG THE EAST BOUNDARY OF HIGHWAY 2A TO A POINT 33 FEET IN PERPENDICULAR DISTANCE FROM THE NORTH BOUNDARY OF SAID QUARTER SECTION, THENCE EASTERLY AND PARALLEL TO THE

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NORTH BOUNDARY OF SAID QUARTER SECTION TO A POINT ON THE EAST BOUNDARY OF SAID QUARTER SECTION, THENCE NORTHERLY ALONG THE EAST BOUNDARY OF SAID QUARTER SECTION TO THE POINT OF COMMENCEMENT;

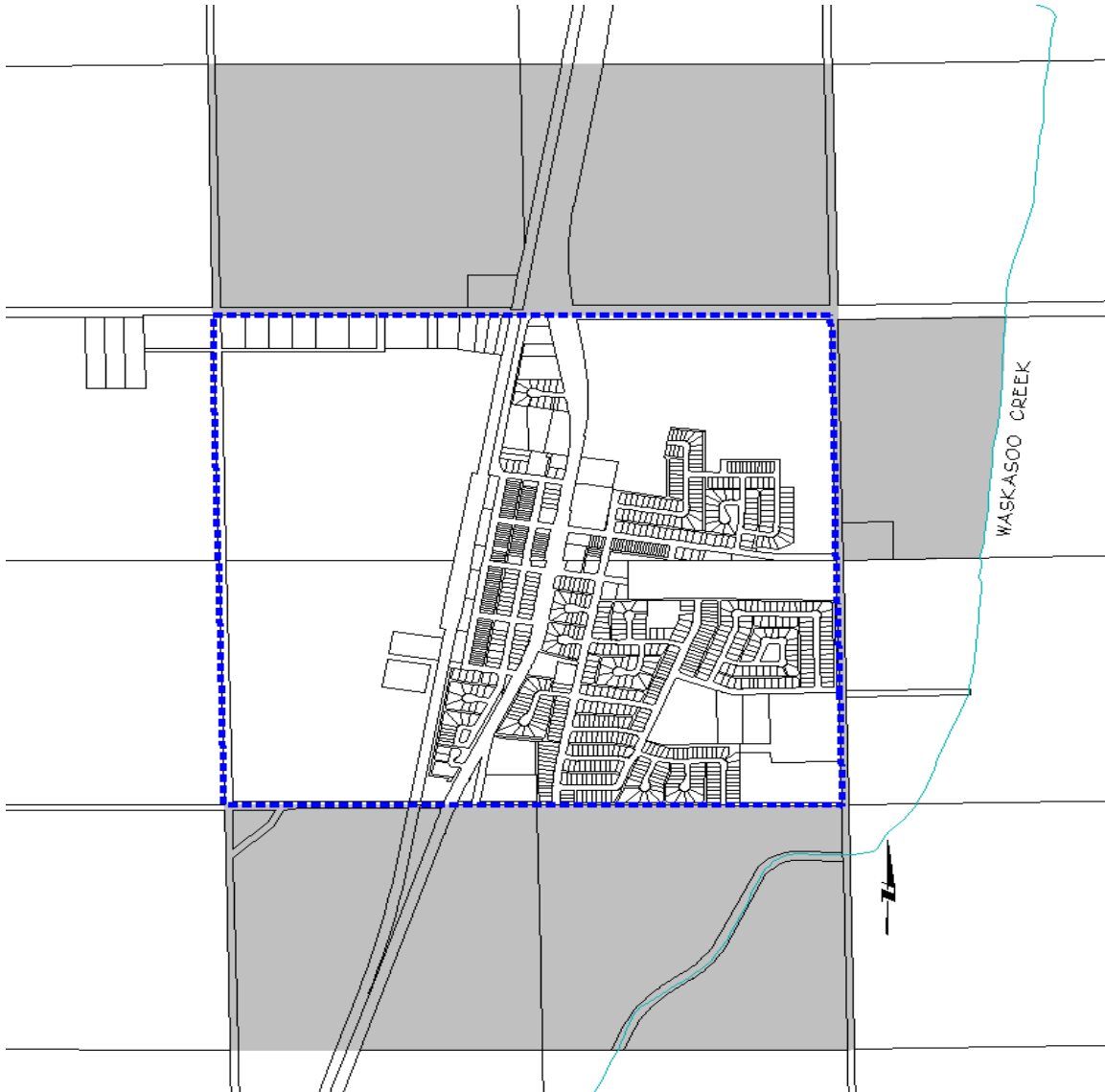
THE GOVERNMENT ROAD ALLOWANCE LYING WEST AND ADJACENT TO SAID QUARTER SECTION.

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APPENDIX B

**A SKETCH SHOWING THE GENERAL LOCATION OF THE
AREA ANNEXED TO THE TOWN OF PENHOLD**



LEGEND

 Annexation Areas

APPENDIX C

ORDER

1 In this Order, “annexed land” means the land described in Appendix A and shown on the sketch in Appendix B.

2 For taxation purposes in 2009 and subsequent years up to and including 2013, the annexed land and the assessable improvements to it

- (a) must be assessed by the Town of Penhold on the same basis as if they had remained in Red Deer County, and
- (b) must be taxed by the Town of Penhold 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 Red Deer County.

3(1) 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 the portion

- (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,
- (b) becomes a residual portion of 16 hectares or less after a new parcel referred to in clause (a) has been created,
- (c) is redesignated at the request of, or on behalf of, the landowner under the Town of Penhold’s Land Use Bylaw, or
- (d) is connected to the water or sanitary sewer services provided by the Town of Penhold.

(2) Notwithstanding subsection (1)(a), section 2 does not cease to apply in respect of the subdivision of an existing farmstead from a previously unsubdivided quarter section within the annexed lands.

(3) Notwithstanding subsection (1)(c), section 2 does not cease to apply in respect of a portion of the annexed land that is redesignated under the Town of Penhold’s Land Use Bylaw to the designation “Urban Reserve District (UR)”.

4 After section 2 ceases to apply to a portion of the annexed land in a taxation year, that portion of the annexed land and the assessable improvements to it must be assessed and taxed for the purposes of property taxes in the following year in the same manner as other property of the same assessment class in the Town of Penhold is assessed and taxed.

APPENDIX “D”

**MGB REPORT TO THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING
REGARDING THE TOWN OF PENHOLD PROPOSED ANNEXATION OF
TERRITORY FROM RED DEER COUNTY**

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Executive Summary:

In the annexation process, the MGB is only a hearing and recommending body. The MGB, after hearing from the parties, prepares findings and recommendations for consideration by the Minister and Lieutenant Governor in Council (LGC). The Minister and the LGC are not bound by the recommendations of the MGB.

The Town of Penhold is situated astride Highway 2A, approximately twelve miles south of the City of Red Deer. The only neighbouring municipality is the Red Deer County (County).

The Town originally gave Notice of Intention to annex in all four directions; a total of 12 quarters of land, but after extensive negotiation with the County now seeks to annex two quarters extending along the entire northern border and two quarters in the south similarly extending across the length of the present border. This is a total of four quarters of land. In addition, the Town seeks to annex an (approximately) 80-acre area to the northwest, extending its boundary in this quadrant west to the west bank of the Waskasoo Creek.

With the successful completion of negotiations, the County supports this proposed annexation.

The Town seeks to annex additional commercial and industrial land in order to increase the disproportionate five percent non-residential tax base and minimize the current dependency on residential property taxes. The Town believes it is well situated to capture a reasonable share of the expected growth taking place in central Alberta because of its access to transportation corridors, namely the CPR, Highway 2A and Secondary Highways 582 and 42. In concert with the above objective, the Town also seeks to bolster its employment base so as to achieve long-term stability.

While some potentially developable commercial/industrial lands remain within the Town's current boundary, experience over the last few years has shown that the small number of owners of these lands have shown little interest in development.

As part of the public hearing process in the initial proposed annexation, and subsequently in public hearings on the proposed agreement with the County on this annexation, the Town found public sentiment was substantially supportive.

Of those who had objections, one owner objected to the direction for annexation and the effects upon him of only a portion of his land being included in annexation. Another party, no longer an affected landowner, did not want annexation to proceed as he alleged outstanding obligations to him by the Town.

Discussion with affected landowners and the County resulted in an agreement that annexed farmlands would be protected for a five-year period after annexation from a change to their

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farmland assessment as it exists in the County, except where there is a change in use or zoning sought by the owner or a change in ownership (excepting as a result of inheritance).

The latter exemption from the farmland assessment and taxation protection is a matter of concern to the MGB. For reasons set out in more detail in its recommendation, the MGB believes the change in ownership clause should not be included. As has been the general practise in most annexations, the farmland assessment and taxation protection should only be dropped upon a change in zoning or use initiated by an owner.

Following the public hearing, the MGB reviewed all presentations and concluded it was in the greater public interest to recommend approval of the annexation as agreed by the municipalities excepting that provision in the farmland assessment protection clause as stated above.

The MGB gives the agreement between the municipalities a great deal of weight and in general accepts them, but does believe the clause related to a change in ownership affecting assessment and taxation falls outside the intent of the Act and deviates without substantial purpose from usual conditions attached to transitional assessment and taxation protection.

No other local authority raised any objections to this annexation and no representations, either for or against, were advanced by Alberta Transportation.

Part 1 Introduction

The Town of Penhold (Town) is situated astride Highway 2A, approximately twelve miles south of the City of Red Deer. The only neighbouring municipality is Red Deer County.

The Town is substantially residential east of Highway 2A, and substantially downtown commercial west of Highway 2A up to the Canadian Pacific Railway (CPR) lines that run through the Town. There is some residential and a limited amount of industrial development in this area as well. The area of the Town west of the CPR lines has a limited amount of industrial development. This area has two impediments to greater development. Firstly, Town services do not extend across the CPR lines, but more particularly, this is substantially lowland trending down to marshland along its eastern border.

The Town identified a need to plan for and attract residential, industrial and commercial development. On March 15, 2007, the Town submitted an application to the Municipal Government Board (MGB) to annex approximately 830 acres (320 hectares) of land from the County. The following explains the annexation process, summarizes the Town's annexation application, outlines the activities required prior to the submission of an annexation application, describes the hearing process, and details the submissions received by the MGB at the August 20, 2007 public hearing and provides the findings/recommendations of the MGB.

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1.1 The Annexation Process

Pursuant to Section 116 of the *Municipal Government Act* (Act), a municipality seeking annexation must first initiate the process by giving written notice of the proposal to the municipal authority from which the land would be annexed. In addition, written notice must be given to any local authority considered to be affected by the proposal and to the MGB. The notice must describe the land proposed for annexation, set out the reasons for annexation, and include a scheme for consulting with the public and meeting with the landowners.

Once that 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 negotiations, the initiating municipality must prepare a report describing the results of the negotiations. The report must include a list of the matters agreed on and those upon which there is no agreement between the municipalities. If there are matters upon which there is no agreement, the report must describe the attempts to use mediation, and if no mediation occurred, the reasons for this. The report must also include a description of the public consultation process and the views expressed during this process. The report must be signed by both municipalities, and if not, the municipality that does not sign must provide reasons for not signing.

The report is then submitted to the MGB and, if the initiating municipality indicates in the report that it wishes to proceed, the report becomes the Application for Annexation pursuant to Section 119.

1.2 The Role of the MGB, the Minister of Municipal Affairs and the Lieutenant Governor in Council

In the annexation process, the MGB is only a hearing and recommending body. Pursuant to Part 4, Division 6 of the Act, the MGB only has authority to hear from parties to an annexation and to make findings and recommendations to the Minister of Municipal Affairs (Minister) and to Cabinet (the Lieutenant Governor in Council).

Upon receipt of a complete annexation application, Section 120 of the Act requires that the MGB determine whether or not there is general agreement with the proposal.

If the MGB is satisfied that the affected municipalities and the 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 specified date, the MGB will make its recommendation to the Minister without holding a public hearing.

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Should the MGB determine that there is not general agreement with the proposal, Section 121 of the Act requires the MGB to notify the parties and to conduct a public hearing. The Act further directs the MGB to investigate, analyze and make findings of fact about the annexation, including the probable effect on local authorities and on the residents of the area.

After hearing from the parties and affected persons, the MGB prepares a written report of its findings and recommendations for consideration by the Minister and the Lieutenant Governor in Council (LGC). The Minister and LGC have the authority to accept in whole or in part or to completely reject the findings and recommendations of the MGB.

Pursuant to Section 126 of the Act, upon a recommendation of the Minister, the LGC may annex land to a municipality without a report from the MGB.

1.3 Provincial Legislation (Act) and Policies

Section 123 of the Act requires the MGB, after considering the representations made to it, to prepare a written report of its findings and recommendations and to submit that report to the Minister.

In order to investigate, analyze, and make findings respecting the annexation, the MGB must test the evidence and information in order to determine if the annexation is logical and beneficial, and to determine the probable effect on local authorities and residents of the area.

Section 123 further requires the MGB to consider the principles, standards, and criteria established under Section 76 of the Act. However, there are no criteria for evaluating annexation proposals adopted pursuant to Section 76. Because of this, in seeking guidance, the MGB looks to the scheme of the Act, the planning part of the Act, the Provincial Land Use Policies, and the Principles established by the MGB's recommendations in the recent St. Albert and Calgary annexations, as accepted and adopted by the LGC. The MGB has also referred to its prior decisions in analyzing the proposal.

The Annexation Parts of the Act

Part 4, Division 6 of the Act deals with annexations. Within the division, there are key themes to which the MGB gives consideration in its deliberations on the Red Deer annexation proposal.

One major theme is the emphasis on consultation with affected authorities, municipalities and landowners. Especially significant is the consultation and participation encouraged and facilitated with the landowners.

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Another major theme is the emphasis on an agreement or mediated solution between the affected municipalities. However, the emphasis on agreement between the municipalities is not to the point of being the sole or determinative factor in a proposal.

The MGB concludes that the Act purposefully sets broad parameters to ensure that the best interests of the municipalities, local authorities, landowners and the general public will be fully explored.

The Planning Part of the Act

It is the MGB's opinion that land use matters involved in annexation must be viewed in light of Section 617 of the Act. Section 617 states that the purpose of the planning part of the Act is to provide a means whereby plans and related matters may be prepared and adopted to achieve the orderly, economical and beneficial development and use of land, patterns of human settlement, and to maintain and improve the quality of the physical environment of human settlements in Alberta without infringing on the rights of individuals except where necessary for the overall greater public interest.

The Alberta Land Use Policies

The Alberta Land Use Policies do not make reference to annexation of territory from one municipality to another; however the policies encourage intermunicipal planning and cooperation, which are exercises directly related to annexation issues.

Some of the key policies relative to the MGB review are contained in Sections 2, 3, and 4.

Section 2.0 directs that planning activities be carried out in a fair, open, considerate and equitable manner. The policy further states that municipalities are expected to allow meaningful participation in the planning process by residents, landowners, community groups, interest groups, municipal service providers and other stakeholders.

Section 3.0 fosters cooperation and coordination between neighbouring municipalities. In particular, adjoining municipalities are encouraged to cooperate in the planning of future land uses in the vicinity of their adjoining boundaries in a manner that does not inhibit or preclude appropriate long-term land use. Accordingly, the municipalities are encouraged to jointly prepare and adopt intermunicipal development plans.

Section 4.0 fosters the establishment of land use patterns that make efficient use of land, infrastructure and public services. Further, it fosters the development of public facilities that promote resource conservation, enhance economic development activities, minimize environmental impact, protect significant natural environments and contribute to the development of healthy, safe and viable communities.

Annexation Principles

In the absence of ministerial criteria authorized by Section 76 of the Act and in order to deal with the various issues raised by the affected parties, the landowners and the interest groups, the MGB has developed a series of annexation principles. The MGB has developed these principles from examination of the annexation provisions in the Act, the Provincial Land Use Policies and previous annexation orders and recommendations. These principles are based on significant annexation decisions prior to 1995 and a total of nearly 170 annexations processed since the introduction of the 1995 *Municipal Government Act*. These annexation principals are best summarized in Board Orders MGB 123/06 and MGB 079/07 respecting the annexation applications made by the Cities of St. Albert and Calgary and outlined below:

1. Annexations that provide for intermunicipal cooperation will be given considerable weight. Cooperative intermunicipal policies in an intermunicipal development plan will be given careful consideration, weight and support as long as they do not conflict with Provincial policies or interests.
2. Accommodation of growth by all municipalities (urban or rural) must be accomplished without encumbering the initiating municipality and the responding municipality's ability to achieve rational growth directions, cost effective utilization of resources, fiscal accountability and the attainment of the purposes of a municipality described in the Act.
3. An annexation or annexation conditions should not infringe on the local autonomy given to municipalities in the Act unless provisions of the Act have been breached or the public interest and individual rights have been unnecessarily impacted.
4. An annexation must be supported by growth projections, availability of lands within current boundaries, consideration of reasonable development densities, accommodation of a variety of land uses and reasonable growth options within both the initiating and the responding municipality.
5. An annexation must achieve a logical extension of growth patterns, transportation and infrastructure servicing for the affected municipalities.
6. Each annexation must illustrate a cost-effective, efficient and coordinated approach to the administration of services.
7. Annexations that demonstrate sensitivity and respect for key environmental and natural features will be regarded as meeting provincial land use policies.

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8. Coordination and cost-effective use of resources will be demonstrated when annexations are aligned with, and supported by, intermunicipal development plans, municipal development plans, economic development plans, transportation and utility servicing plans and other related infrastructure plans.
9. Annexation proposals must fully consider the financial impact on the initiating and responding municipality.
10. Inter-agency consultation, coordination and cooperation is demonstrated when annexation proposals fully consider the impacts on other institutions providing services to the area.
11. Annexation proposals that develop reasonable solutions to impacts on property owners and citizens with certainty and specific time horizons will be given careful consideration and weight.
12. Annexation proposals must be based on effective public consultation both prior to and during any annexation hearing or proceedings.
13. Revenue sharing may be warranted when the annexation proposal involves existing or future special properties that generate substantial and unique costs to the impacted municipality(s).
14. Annexation proposals must not simply be a tax initiative. Each annexation proposal must have consideration of the full scope of costs and revenues related to the affected municipalities. The financial status of the initiating or the responding municipality(s) cannot be affected to such an extent that one or the other is unable to reasonably achieve the purposes of a municipality as outlined in Section 3 of the Act. The financial impact should be reasonable and be able to be mitigated through reasonable conditions of annexation.
15. Conditions of annexation must be certain, unambiguous, enforceable and time specific.

Part II Description of Municipalities Annexation Process

2.1 The Annexation Notification

The Town formally initiated the annexation pursuant to the requirements of Section 116 of the Act by providing the MGB with a written Notice of Intent to annex territory from the County on May 23, 2006. The Notice of Intent stated that the reasons for the proposed annexation related to the implementation of key directions of the Town's Municipal Development Plan and practical planning considerations in positioning the Town to be able to plan for and attract residential, commercial and industrial development. Moreover, the Town anticipated being selected as the

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new Alberta Police and Peace Officer College being proposed by the Province of Alberta and land for this large scale development had been included as part of the proposed annexation. The notice outlined a proposed landowner and public consultation process. Copies of the notice were sent to Red Deer County and local authorities affected by a possible annexation.

2.2 The Landowner/Public Consultation

The Town conducted a two landowner meetings and one public meeting to solicit input from the affected landowners, the general public and other stakeholders identified by the Town. Two written responses were received from the public and were included as part of the annexation application as a result of the public meeting. The one response supported the annexation and commended the Town for providing alternative locations for industrial development away from Fleming Marsh, a bird sanctuary. The second response was in favor of the annexation, but with reservations. The written response stated that the Town's plan to increase the industrial/commercial to residential assessment ratio would result in a decrease in residential assessment around the industrial area and questioned if there would be a net increase in assessment values. The second written response indicated that recreational facilities were available in the surrounding communities and questioned the need for a recreational facility in Penhold. Moreover, the response questioned the Town's ability to handle growth on this scale, encouraged the Town to consider the human element, and implied the Town may decide in the future to ignore the precepts of its Municipal Development Plan.

Concerns expressed by the affected landowners during the landowner and public meetings focused primarily on future land uses, future servicing, drainage and possible tax implications. Assessment and taxation conditions were included in the annexation application to address these concerns. Although there was general support for the proposed annexation, two affected landowners were not in favour of the annexation. As a result of the landowner consultation, the Town and County agreed to exclude one parcel of land from the proposed annexation area. The two municipalities attempted to mitigate the concerns of the other landowner by covering subdivision expenses and amending policies to allow a subdivision to occur without requiring environmental reserve dedication.

2.3 Submissions from Alberta Transportation

Alberta Transportation was notified of the proposed annexation and provided comments to the Town about highway access locations and pedestrian crossing locations, reaffirming the Town's obligations related to them, but entered no objection to the annexation. Alberta Transportation did not submit either an oral or written submission to the public hearing.

2.4 The Negotiation and Mediation Process

In accordance with Section 117 of the Act, representatives from the Town and County conducted a series of meetings in an attempt to negotiate an annexation agreement. The two municipalities were able to reach an agreement with regards to the annexation. The application states that there were no outstanding issues and there were no matters upon which the Town and County could not come to agreement.

The Annexation Agreement

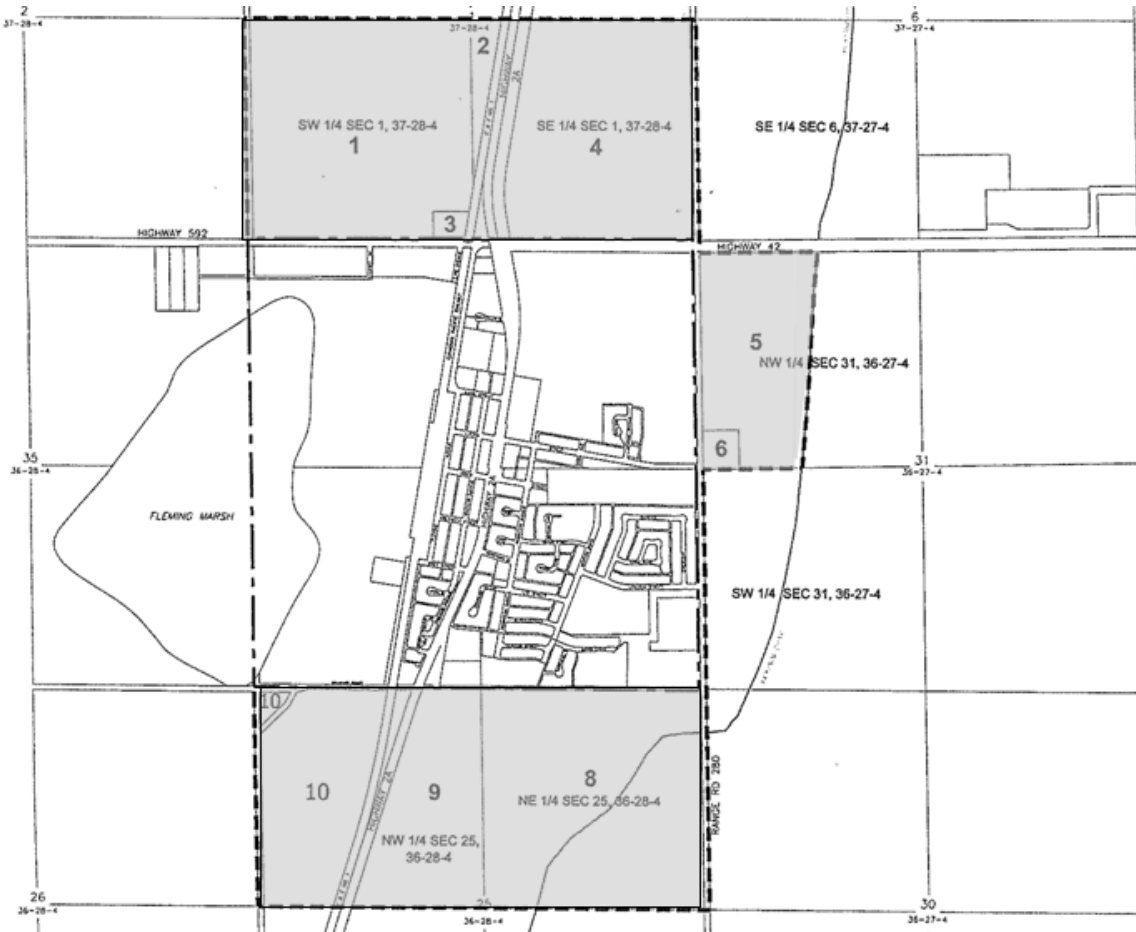
The proposed annexation areas listed in the agreement are less than those initially proposed by the Town in its Notice of Intent to Annex received by the MGB on May 23, 2006. A large portion of this decrease reflects the decision on the Alberta Police and Peace Officer College that the Town had unsuccessfully wished to incorporate within its boundary. The following is a summary of the annexation agreement terms:

1. All of the lands illustrated in Figure 1 are to be annexed to the Town.
2. The date requested as the effective date of annexation will be January 1, 2007, assuming the decision made by Cabinet regarding annexation occurs within the 2007 calendar year.
3. The Town agrees that the County will be entitled to the full amount of municipal property taxes (excluding school tax) from the annexation area in the year annexation takes effect (assuming 2007 year) based on County assessment and mill rates. The County will be responsible for issuing tax notices and collecting municipal and education taxes within the annexation area for the year annexation takes effect and is authorized to act on the Town's behalf for these purposes.
4. The Town will use the County assessment and tax rate for a period of five years from the effective date of the annexation. Transition to the Town tax rate for such properties will only take place prior to the five-year time limit:
 - a. If the title of such parcel is transferred to another owner for reasons other than inheritance.
 - b. If there is further subdivision or development to such annexed property.
 - c. If the annexed property is connected to Town water and/or sewer.
5. The County and Town agree to consider the preparation of an Intermunicipal Development Plan at a mutually convenient time during the council term set to commence November 2007.
6. Any subdivision or development permit application filed with County prior to a Cabinet decision on the annexation application will be decided by the County. An appeal from a decision by the County will be made to the County Subdivision and Appeal Board unless there is authority to make the appeal to the MGB.

Proposed Annexation Area

Figure 1 shows the lands proposed annexation agreed to by the Town and County.

Figure 1: Proposed Annexation Area Map



Source: Town of Penhold/Red Deer County Annexation Negotiation Report, February 2007

This agreement between the Town and County was contained in the annexation application and was presented at the public hearing held August 20, 2007. At the hearing, the Chief Elected Officers of both municipalities confirmed their councils' support for the agreement and for the annexation application.

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Part III Town's Annexation Application

The Town of Penhold/Red Deer County Annexation Negotiation Report Annexation Application was received by the MGB on March 15, 2007. The application also contained a copy of the Town's Municipal Development Plan, a copy of the Growth Potential and Servicing Concept for Proposed Annexation Areas Report, copies of the resolutions passed by the Town and the County councils approving the annexation, and a letter requested the MGB to proceed with the annexation.

Part IV Processing the Application

4.1 Determination of Need for a Hearing

After reviewing the annexation application, the MGB could not determine if there were any objections to the annexation. In accordance with Section 120(1) of the Act, the MGB advertised for objections in the **Innisfail Independent** and **Red Deer Advocate**, the two local newspapers circulating in the Penhold area, the week of June 4, 2007. Letters were also sent to the affected landowners in the proposed annexation area. As a result of this, the MGB received an objection to the annexation from an affected landowner.

Although there was an agreement in principle between the Town and the County, Section 120(1)(3) of the Act requires the MGB to conduct a hearing if an objection to the annexation is filed. The MGB set August 20, 2007 as the date for the public hearing.

4.2 Hearing Notification and Registration

In accordance with 122(1), the MGB published a notice of hearing in the **Innisfail Independent** and **Red Deer Advocate** newspapers the weeks of July 30, 2007 and August 6, 2007. In order to prepare for the public hearing, the MGB asked any person or group who wished to attend the hearing or make an oral submission at the hearing to register directly with the MGB on or before August 13, 2007. In addition, any person or group wishing to make a written submission to the MGB was requested to send the submission to the MGB by August 10, 2007.

On July 20, 2007, by direct mail, the MGB notified the 13 affected landowners and known interested parties of the existence of the Annexation Application, the hearing dates and the hearing process.

As a result of the notifications, seven persons registered an interest in attending the scheduled public hearing. In addition, three written submissions were also received.

Part V Public Hearing

The following is a summary of the submissions provided to the MGB at the hearing.

5.1 The Town's Interests

There are seven main reasons for the Town's proposed annexation. These reasons relate to implementation of key directions of the Town's Municipal Development Plan and practical planning considerations that position the Town to be able to plan for and attract residential, commercial and industrial development.

First, there is a need for additional residential lands and opportunities to accommodate anticipated growth over the next 30 years. The Town has seen steady growth for the period 2001 – 2006 at a 25% rate. However, the Town notes that perhaps due to its proximity to a rapidly growing Red Deer, housing starts were double that average in 2006 and almost three times that level in 2007. Based upon a density of 11 units per hectare they believe at least 58.9 to 62.7 hectares of residential land will be needed by 2031. The Town wishes to increase its population while making available a wide range of choice for future homeowners, including options as to locations on which to build a home and having more than one developer available. To achieve this, it is necessary to have enough land owned by different parties. Currently a limiting factor is the relatively small number of holders of developable land. Annexation will assist in broadening that base both from residential and non-residential land. The proposed annexation is intended to broaden the available choices over the long term and will make it possible to start two new residential areas; one north of Highway 42 and one south of the Town's current boundaries.

Second, the annexation reflects a logical expansion of the residential areas of the Town and takes advantage of natural features to enable future planning and design of residential areas. The Town's Municipal Development Plan identifies new residential expansion at urban densities to the north across Highway 42, and a southerly extension of the existing residential subdivision activity in the Town's southeast corner. The expansion to the north takes advantage of the access and proximity to the existing sanitary sewer line and future open space along Waskasoo Creek.

Third, the annexation is intended to provide suitably located sites for commercial and industrial development. The Town has a very limited commercial/industrial assessment base comprising only 5% of the total. The Town's Municipal Development Plan recognizes that having commercial and industrial development within the Town is an important way to diversify the local tax base. This diversification provides the opportunity to manage the tax load on residential properties with the contribution made by non-residential properties. Further, the balancing of residential and non-residential assessment helps make the Town a more affordable place to live and assists the municipality in balancing the cost of desired municipal services with a reasonable tax burden on residential properties. In this regard, having commercial and industrial assessment

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within the Town boundaries is fundamental to the long-term economic sustainability of the community.

It is the Town's belief that, given the burgeoning Alberta economy evident in the nearby regional centre of Red Deer, there will be demand for such lands. The trend to larger parcel developments and the significant new commercial potential along the Highway 2A corridor will give the Town the prospect of adding to its non-residential assessment base.

Fourth, the Town wishes to provide increased opportunities for local employment. The Municipal Development Plan recognizes the social, environmental and economic benefits of having commercial and industrial land uses available in the Town.

Fifth, the Town's supply of industrial and commercial lands, particularly lands able to accommodate highway commercial uses, is less than what is needed to accommodate the anticipated growth over the next 20 to 30 years. Based on a ration of 8.1 hectares of industrial land developed for every 1,000 population, there should be 14.0 hectares of developed industrial land in the Town. The existing amount of developed industrial land is well below this figure. It is anticipated that an additional 15.4 hectares of industrial land will be required by 2031. Further, as the ownership of the available commercial and industrial lands is concentrated between a couple of individuals, there are few options for developers interested in establishing a commercial or industrial enterprise in the Town.

Sixth, the annexation will position the Town to be able to confidently invest in the planning for future expansion areas. Having plans in place to accommodate urban growth in advance of actual proposals makes it more likely that industry, commerce and future residents will choose to locate in the Town. Investing in the planning for these areas and utility systems to support urban growth in these areas represents a significant financial commitment by the Town and annexation ensures that the Town will receive a return on this investment.

Seventh, the annexation of the NW 31-36-27-4 is intended to provide a possible location for a future multi-plex centre housing recreational and community services facilities for the Town. The location makes it central to the existing and long-term residential areas of the Town and allows for the opportunity to eventually link to a trail along Waskasoo Creek and outdoor private and/or public recreational amenities within the floodplain. Within the existing Town boundaries, there is no other site that offers the same potential to host a key recreational facility.

The Town notes it has existing water capacity for a population of 5,000. Further, the existing sewer capacity will accommodate a population of 7,500. As such, the expansion of Town services into the proposed annexation areas presents little practical difficulty and provides a financial return by utilization of this formerly overbuilt infrastructure.

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The Town confirms it is currently debt-free and therefore has the financial capacity to provide remaining servicing as needed for these areas.

The proposed annexation is a key step in implementing the Town's overall plans to become a viable, safe, family-oriented and healthy community that embodies the sustainable development goals and objectives of the Provincial Land Use Policies.

5.2 The County's Interests

The County informed the MGB that it supports this application for annexation as evidenced by its execution of the annexation agreement.

The County indicates that it generally prefers annexation contemplating a 30-year time span so that local planning and development can proceed confidently. The County believes the agreement meets this objective and protects the interests of the affected County residents.

Throughout the annexation process, the County focused on balancing the collective interests of itself, the Town, and the public with the ultimate goal of reaching a final agreement that considered the collective interests, met the requirements of Division 6 of the Act, addressed future growth needs of both jurisdictions and provided the foundation for future intermunicipal planning.

The County requests that the MGB respect and uphold the application for annexation for those lands listed therein as the County believes it meets the needs of the County for long term certainty within its boundaries as well as the Town's needs for planned growth.

5.3 Landowner Submissions

Submissions of Cornelis den Boer

Mr. den Boer is the owner of lands legally described as NW 31-36-27-W4. Mr. den Boer indicates the original Notice of Annexation indicated all of this quarter section of land, as well as another he owns to the north, would be annexed. He would prefer that to be the case and believes it would be preferable as land to the west is at a higher elevation, and therefore more developable than land to the east where the elevation is very low.

In addition, the current annexation proposal annexes only (approximately) the eastern half of NW 31-36-27-W4 with the Waskasoo Creek being the border. He is concerned that having land held on a single title within two jurisdictions may cause him problems, particularly as it relates to taxes or subdivision.

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Further, Mr. den Boer has concerns over Waskasoo Creek. He believes that there has been a lack of action by the County in keeping the creek clear of obstructions, which has resulted in unnecessary flooding in the past, and he is concerned that splitting the jurisdictional responsibilities may well make proper drainage even more unlikely.

Mr. den Boer also feels that the five-year protection for agricultural lands annexed by the Town is not long enough and prefers that this protection would continue as long as the agricultural use remains the same.

The Town's Response

The Town responds that the decision of whether or not to annex further east was a significant part of the discussions leading to the agreement with the County. At the conclusion of these discussions, the Town believed that its needs and objectives from annexation could be well met with the proposed agreed new boundaries. The Town believes all of the proposed annexation areas are developable in time and should help address the commercial/residential assessment ratio.

The inclusion of the eastern half of Mr. den Boer's parcel was deemed essential to the annexation as it constitutes the single best new site for the major recreation facility the Town is planning, which, of necessity, should be in the Town's bounds. Moreover, the Town has identified that the proposed recreation facility is near lands impacted by the Waskasoo Creek flood plain. This will provide an opportunity for the Town to eventually link a trail along the creek and possibly create outdoor recreational amenities, such as a golf course or soccer pitches, within the flood plain.

The Town also notes that splitting a single property between two jurisdictions for tax purposes is not new and is a matter easily handled both fairly and equitably by the respective assessors. The Town also sees no problem in a future subdivision of Mr. den Boer's lands. The Town believes the joint intention of the Town and County to create and implement an Intermunicipal Development Agreement will be beneficial to this owner. The Town further commits that should subdivision of Mr. den Boer's land be necessary to effect annexation, that the Town is prepared to commit to pay the costs relative to the same.

The negotiated tax protection for annexed agricultural land of five years is reasonable and typical for such annexations. In the interests of fairness to other Town taxpayers, at some specific time the Town must be able to treat all similar lands the same.

Lastly, concerns over split responsibility over management of Waskasoo Creek are unfounded. The annexation will proceed up to the established edge of environmental reserve paralleling the eastern bank of Waskasoo Creek. The responsibility for management of Waskasoo Creek will not be affected by this annexation.

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The County's Response

The County supports the Town's response to the issues raised and, to some degree, challenges Mr. den Boer's characterization of management of Waskasoo Creek. The County confirms it remains willing to discuss these concerns as with any other County ratepayer and is working to correct any problems in spring drainage.

Submissions of Mr. Sihota and Mr. Romaneski

Mr. Sihota supports the annexation and holds an interest in SW 1-37-28-W4, being the balance of the quarter to the northwest corner of the existing Town boundary. This parcel, which is included in the proposed annexation area, is separated from the Town now only by Secondary Highway 592 and is substantially bound to the east by Highway 2A. Further, the CNR parallels Highway 2A. Mr. Sihota's interest at this time is by agreement for sale.

Mr. Romaneski, of Romaneski Urban Planning and Management, believes this land is prime for development as industrial/commercial land and, while this party has no clients or tenants that would take this land to development yet, Mr. Romaneski believes annexation would add to that prospect.

Mr. Romaneski responded to concerns over some low areas in this land making development financially prohibitive. He provided contoured maps for the lands in question showing only a small portion of this land (17 acres) as low and that there are broad developable areas along both adjoining highways.

The Town and County made no comment on the presentation by these parties.

Submission of Mr. Ross Simituk

Mr. Simituk is the former owner of NW 25-36-25-W4. He sold this property to Laebon Development Ltd. of Red Deer.

Mr. Simituk recounts the family history of ownership for this property and conflicts with the Town over the intervening road allowance. He asks that the annexation not proceed until the Town and Laebon Developments Ltd. are called to account for their dealings with him.

Response of the Town

The Town notes Mr. Simituk is no longer owner of those lands and the current owner, Laebon Developments Ltd., supports the annexation. Any concerns of Mr. Simituk are irrelevant to the question of annexation and belong to another venue. The County made no response.

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Submission of Laebon Developments Ltd. and Sabre Properties Ltd.

This company, owner of NE 25-30-25-W4, provided a submission by letter only and states it is in support of the proposed annexation.

Neither the Town nor County provided a response.

Part VI Summary

6.1 Summary of Annexation Proposal

After considering the submissions of the Town, the County, all the affected landowners, persons and authorities, the MGB is satisfied the annexation of lands as proposed by the Town, and identified by Appendix B in the Town's annexation application, should be recommended for approval.

However, the MGB does believe one variation in the terms of the agreement made by the Town and County: that is that annexed farm lands within the Town should lose that status in the event of a change of ownership for any reason excepting inheritance. The MGB believes this change in assessment status, based on ownership rather than a change in use, may result in inequities. The MGB further believes that the usual condition for change in status -- that condition being a change in use -- will better meet the needs of all parties and minimize any negative impacts from annexation.

The MGB believes that beyond this single clause, the annexation agreement reached by the Town and County exemplifies intermunicipal cooperation and addressed concerns of affected landowners and parties at the MGB hearing. As a result, this agreement was accorded considerable consideration and weight by the MGB.

The outcome of this agreement and of a successful Annexation Application should assist the Town in realizing its present and anticipated growth and development needs over the 30-year forecast period.

6.2 General Finding

1. The Town and County demonstrate cooperation and coordination in accordance with Section 3.0 of the Provincial Land Use Policies (PLUP) and in accordance with the MGB's first Principle of Annexation.
2. The February 2007 agreement between the Town and the County provides a basis on which the growth interests of the Town and County are met in accordance with

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Section 3.0 of the PLUP and in accordance with the MGB's second Principle of Annexation.

3. The Town and County consulted with affected landowners and the general public in accordance with Section 2 of the PLUP and with the MGB's twelfth Principle of Annexation.
4. The Town and County propose to initiate an Intermunicipal Development Plan, which will assist municipalities to achieve rational growth directions.

6.3 Recommendation

The MGB recommends to the Minister that the lands proposed for annexation as listed in Appendix A to this report be added to the Town of Penhold.

The MGB also recommends that the conditions reflected in the Annexation Agreement be incorporated as proposed, save only that the change in assessment status of annexed farmlands be varied to be conditional on a change in use, not ownership, in accordance with conditions normally associated with annexation orders.

6.4 Reasons

The importance of cooperation between municipalities in reaching an effective agreement of the proposed annexation

A key and fundamental value enunciated in the Act, the PLUP and the MGB's annexation principles is the demonstration of intermunicipal cooperation. Cooperative intermunicipal policies are given careful consideration, weight and support. The annexation agreement between the Town and the County is an example of the type of cooperation envisioned by these documents. The municipalities have negotiated in good faith and have identified the lands that will provide for the logical extension of existing growth patterns for the Town in a cost effective manner. Moreover, the annexation agreement and statements made by the municipalities at the hearing regarding the preparation of an intermunicipal development plan demonstrates a desire by the municipalities to cooperate and coordinate land use in the area. The MGB gives considerable weight to this type of intermunicipal cooperation. Therefore, Appendix A, which lists the legal descriptions of the lands recommended by the MGB contains all the lands requested by the Town in its annexation application.

The MGB does not recommend the exclusion of the portion of NW 31-36-27-W4 lying west of the west bank of Waskasoo Creek from the annexation. The MGB acknowledges that the use of Waskasoo Creek as the municipal boundary may be somewhat inconvenient for the landowner and the municipalities; however, the MGB notes that there are numerous examples where a

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single parcel of land has been divided between two jurisdictions. The municipal assessors in these types of situations are able to assess the lands in a fair and equitable manner. The MGB does not consider that dividing the parcel of land between two jurisdictions will unnecessarily impact the rights of the landowner. The MGB heard that the Town considers this parcel of land essential to the annexation as it constitutes the single best new site for the major recreation facility. Moreover, the Town has attempted to address the concerns of the affected landowner by agreeing to cover the expenses related to subdivision of the land.

The MGB does not recommend that additional lands be included in this annexation. The MGB has consistently ruled that the Act no longer permits an individual landowner to make an application for annexation. This was a deliberate amendment to the Act by the legislators to ensure that the initiating municipality was in agreement with the lands being proposed for annexation prior to the submission of an application. In this specific annexation, the application submitted to the MGB by the Town makes it very clear that the lands east of the west bank of Waskasoo Creek and the lands owned by Mr. den Boer to the north were not to be included in the annexation. Moreover, the MGB heard that the County did not support annexation of the lands to the east of the west bank of Waskasoo Creek.

The MGB was not convinced that the assessment and taxation condition period agreed to by the Town and County should be extended. These special conditions allow affected landowners time to adjust to the taxes rates of the new municipality. The five year transition period proposed in the annexation application is within the general guidelines suggested by the MGB and should not create inequities between new and existing landowners in the same assessment classification.

The Town's desire to shift heavy industrial development away from Fleming Marsh clearly shows a concern for environmentally sensitive areas. Moreover, the intent of the Town to explore opportunities to create outdoor recreational opportunities in the Waskasoo Creek flood plain demonstrates sensitivity for key natural features. The creation of the intermunicipal development plan will allow both municipalities and the public the opportunity to coordinate the land use around these environmentally sensitive areas. The concerns expressed regarding the flooding of Waskasoo Creek are beyond the scope of an annexation.

The annexation does not infringe on the local autonomy given to municipalities under the Act and is supported by growth projections. This annexation should also strengthen the commercial/industrial assessment base for the Town. The MGB heard that the Town is currently debt-free and therefore has the financial capacity to provide remaining servicing as needed for these areas. The concerns expressed regarding the Town's need for a recreational facility are a local matter and are beyond the scope of an annexation.

The Town and the County clearly asserted that the annexation agreement fully meets the interests of both municipalities. Both municipalities have clearly demonstrated cooperation and the MGB can find no reason to recommend different conditions of agreement, except for one particular;

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that is the tax status of annexed farmland being lost in the event of its sale excepting only through inheritance.

The parties appeared to be seeking to limit the potential tax protection of annexed farmland to owners presently involved.

The agreement was amended to ensure farmland assessment status was not lost as a result of any change in ownership arising by way of inheritance. In considering this clause, the MGB noted that a number of events, not exhaustively listed here, could occur that could change ownership on titles but not the uses of the farmlands. These events might include a farmer being advised to incorporate his farm operations, an owner marrying and adding a spouse to title or a farmer wishing to sell or roll over these lands to younger members of the family. As well, the consequences of divorce might affect ownership. All of these have nothing to do with land use but only to the personal circumstances of the owner.

The MGB believes that the potential inequities between landowners who hold title by inheritance, as opposed to any of the other courses mentioned, is grounds to amend this clause to vary annexed farm status based on a change in use as opposed to a change in ownership. Indeed, it is the change in use that will have impact on the municipality.

The Importance of Consulting with the General Public Respecting the Proposed Annexation

In hearing from affected landowners and the public about the proposed annexation territory, the MGB found general agreement with the annexation and concerns raised were adequately addressed by the Town.

The Town and County held a number of public consultation meetings over the course of the annexation process. The first public consultation was a meeting held on January 26, 2006. The purpose of this meeting was to discuss the intention of the Town to annex with the affected landowners. With the completion of negotiations between the Town and County, a second meeting to solicit landowner and public input was held on January 11, 2007. As a result of this input, the Town and County agreed to modify the annexation agreement and the application.

To the MGB this demonstrates the Town and County have made important efforts to inform affected landowners, stakeholders and the public of this proposal. Of the few concerns raised at the MGB hearing, or submitted in writing to it, the MGB found no concerns to persuade it that this proposed annexation was not in the greater public interest. Moreover, the public consultation process required by the Act to amend a Municipal Development Plan or create an Area Structure Plan will allow the public the opportunity to voice concerns regarding future land use in the annexation area.

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The MGB does not have jurisdiction to address the land ownership or the intervening road allowance concerns voiced by the one individual at the hearing.

In summary, the MGB believes this annexation meets the intent and purpose of the Act, the PLUP and the applicable principles of the MGB.