

BOARD ORDER: MGB 011/06

FILE: AN04/REDD/C-01

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF a request by the City of Red Deer for clarification of annexation Order in Council 432/2004.

BEFORE:

Members:

W. Morgan, Presiding Officer
R. Telford, Member
A. Savage, Member

Secretariat:

D. Hawthorne

This is the report of the Municipal Government Board (MGB) to the Minister of Municipal Affairs respecting the City of Red Deer's request that the Minister of Municipal Affairs assist in resolving a matter regarding the issuance of supplementary property assessments for territory annexed from Red Deer County by annexation Order in Council (OC) 432/2004 issued on September 24, 2004.

The Order in Council included conditions that stated property would be assessed as if the property remained in the County and taxed at the lowest rate of the two municipalities until a specified expiry date. The City has a bylaw authorizing the issuance of supplementary assessment notices, however the County does not.

The Minister of Municipal Affairs, upon receipt of a request by the City of Red Deer on November 3, 2005 to clarify whether OC 432/2004 permitted the application of a supplementary assessment, instructed the MGB to prepare a report on the matter (see Appendix A).

BACKGROUND

On September 22, 2004, OC 432/2004 was issued approving the annexation of 2,400 acres of territory into the City of Red Deer. Approximately 85 landowners are located in the annexed territory.

BOARD ORDER: MGB 011/06

FILE: AN04/REDD/C-01

Prior to the MGB's review of the annexation, the City and County negotiated and agreed to the location of the boundary and to the conditions that would apply to the approval. In March 2004, the MGB conducted a public hearing respecting the annexation because some of the affected landowners objected to annexation for planning reasons. Melcor Development Corporation also objected to the annexation application because it did not include their land. There were no objections or concerns respecting the assessment and taxation provisions described in the agreement between the City and the County.

In the annexation agreement reached between the municipalities and made available to the landowners prior to the MGB hearing, the City and County agreed to protect landowners affected by annexation from facing a fluctuation in taxation. The City requested that all annexed properties have the benefit of being taxed at the lower of two municipal and library tax rates for a period of 10 years or until developed for new urban development. The City specifically stated that such a condition would prevent any property owner from facing a sudden fluctuation in taxes. The City also stated that only when rezoning (redesignation) and/or subdivision occurs for urban development, will the property be subject to the normal City tax rate and subject to the normal City taxation methods.

At the MGB annexation hearing, neither municipality addressed the issue of supplementary assessments or taxation methods. The agreement between the two municipalities did not address the application of supplementary assessment and tax (as shown in the letter in Appendix A). Further, no landowner came forward to complain or comment about the assessment or taxation methods agreed to between the municipalities.

The City of Red Deer has a supplementary assessment bylaw passed pursuant to sections 313 and 369 of the Act. The County of Red Deer did not have a supplementary assessment and tax bylaw at the time of annexation or at the current time (see Appendix B).

THE CITY'S REQUEST

In its letter of November 3, 2005 to the Minister of Municipal Affairs, the City requests the Minister clarify the terms of the OC. The City states, among other things, that:

... it (the City) wants to do the right thing – to issue supplementary assessments if they are required, or to abstain from doing so if this is prohibited. The rights of a number of taxpayers are affected by the City's actions in this regard, whether supplementary assessments are issued or not. As there are 10 years of transitional tax protection, the issue of supplementary assessments will be problematic for many years into the future.

ISSUE

Does OC 432/2004 permit the City of Red Deer to impose a supplementary assessment on lands within the recently annexed territory?

LEGISLATION

Municipal Government Act

The MGB examined the following relevant sections of the Act relevant to the passing of a supplementary and tax bylaw.

313(1) If a municipality wishes to require the preparation of supplementary assessments for improvements, the council must pass a supplementary assessment bylaw authorizing the assessments to be prepared for the purpose of imposing a tax under Part 10 in the same year.

369(1) If in any year a council passes a bylaw authorizing supplementary assessments to be prepared in respect of property, the council must, in the same year, pass a bylaw authorizing it to impose a supplementary tax in respect of that property.

Section 135 of the Act deals with the effect of annexation orders and provides authority for the Lieutenant Governor in Council to order conditions attached to annexation Order in Councils.

135(4) The Lieutenant Governor in Council may

- (b) make any provision necessary to protect any rights that any person has in relation to the area of land.*

The Lieutenant Governor in Council also has the authority to amend an annexation order.

137(1) An order of formation, change of status, amalgamation, annexation or dissolution may, in respect of any municipal authority affected by the order, contain provisions dealing with the following:

- (a) assessment and taxation;*
- (b) property;*
- (c) employees;*
- (d) any matter required to properly effect or deal with the formation, change of status, amalgamation, annexation or dissolution, whether transitional or otherwise;*
- (e) the application, addition, change or substitution of this or another enactment to give effect to the order.*

(2) The provisions referred to in subsection (1) may deal with rights, obligations, liabilities, assets and any other thing that the Lieutenant Governor in Council considers is appropriate to be dealt with in the order and may operate despite a collective agreement.

(3) The Lieutenant Governor in Council may amend or repeal a provision referred to in subsection (1) that is contained in an order of formation, change of status, amalgamation, annexation or dissolution without having to comply with the requirements of passing the original order.

Order in Council 432/2004

The MGB examined in detail the following relevant sections of the OC to determine whether a supplement assessment and tax is permitted.

2. Section 2(1) in Appendix C of the OC addresses the assessment and taxation protocol for the non-farmland annexation territory and section 2(2) of the OC addresses the assessment and taxation protocol for the farmland annexation territory as follows.

2(1) For taxation purposes in 2005 and in subsequent years until December 31, 2014, the annexed non-farm land and the assessable improvements to it,

(a) must be assessed by the City of Red Deer on the same basis as if they had remained in Red Deer County, and

(b) must be taxed by the City of Red Deer in respect of each assessment class that applies to the non-farm annexed land and the assessable improvements to it using

(i) the municipal and library tax rates established by Red Deer County, or

(ii) the municipal and library tax rates established by the City of Red Deer, whichever is lower.

(2) For taxation purposes in 2005 and in subsequent years until December 31, 2029, the annexed farm land and the assessable improvements to it

(a) must be assessed by the City of Red Deer on the same basis as if they had remained in Red Deer County, and

(b) must be taxed by the City of Red Deer using

(i) the municipal and library tax rates established by Red Deer County, or

(ii) the municipal and library tax rates established by the City of Red Deer, whichever is lower.

3. Section 3(1) of the OC qualifies section 2(1) by lifting the restriction on assessment and taxation for the annexed non-farm land when certain actions occur within a certain timeframe. Section 3(2) of the OC qualifies section 2(2) by lifting the restriction on assessment and taxation for the annexed farm land when certain events occur within a certain timeframe, all as follows.

BOARD ORDER: MGB 011/06

FILE: AN04/REDD/C-01

- 3(1) *Where in any taxation year up to December 31, 2014 a portion of the annexed non-farm 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, or*
 - (b) is redesignated at the request of or on behalf of the landowner under the City of Red Deer Land Use Bylaw to a designation other than agricultural, section 2(1) ceases to apply at the end of that taxation year in respect of that portion of the annexed non-farm land and the assessable improvements to it.*
- (2) *Where in any taxation year up to December 31, 2029 a portion of the annexed farm 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, or*
 - (b) becomes a residual portion of 16 hectares or less after a new parcel referred to in clause (a) has been created, or*
 - (c) is redesignated at the request of or on behalf of the landowner under the City of Red Deer Land Use Bylaw to another designation other than agricultural, section 2(2) ceases to apply at the end of that taxation year in respect of that portion of the annexed farm land and the assessable improvements to it.*
4. Section 4 of the OC directs the City to assess and tax the annexed land in the same manner as other property in the same assessment class in the City once the restrictions are lifted, as follows.
- 4 *After section 2(1) or (2), as the case may be, 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 that year in the same manner as other property of the same assessment class in the City of Red Deer is assessed and taxed.*

FINDINGS

- 1 In the annexation agreement, the City and County decided that the annexed land will be subject to the normal City tax rate and taxation methods, only when redesignation or subdivision for urban development trigger the change from County tax rates and methods, unless the time expires first.

BOARD ORDER: MGB 011/06

FILE: AN04/REDD/C-01

2. Landowners affected by annexation received no information or explanation from the City of Red Deer at the time of annexation about the application and consequences of supplementary assessment and tax when the lands would be included within the City of Red Deer.
3. Section 135(4) of the Act provides the authority for the Lieutenant Governor in Council to make any provision necessary to protect any rights that any person has in relation to the annexed land.
4. OC 432/2004 and the agreements leading up to it limited the change in assessment and taxation to two events; subdivision of land and a land use bylaw redesignation.
5. OC 432/2004 does not permit the issuance of supplementary assessments for the annexed territory.

CONCLUSION

1. The meaning of Condition 2 in Appendix C of OC 432/2004 is that the City must use the assessment methods used by the County and the tax rate and taxation methods used by the municipality with the lowest rate for the annexed lands in the OC. This does not include the use of supplementary assessments pursuant to the City's supplementary assessment and tax bylaw for the annexed lands since the County did not have a supplementary assessment and tax bylaw at the time of the annexation or at this time.
2. The Lieutenant Governor in Council may pursuant to section 137(3) of the Act amend an annexation order. If the City wishes to pursue an amendment to the OC it should make a request to the Minister. Due to the fact that a change to implement a supplement assessment bylaw would have an impact on the owners of land and these owners of land did not have an opportunity during the annexation proceedings to address this issue, the MGB would recommend that a request for amendment be subject to the requirements for the passing of the original order. Such an application must then include written evidence that the City has contacted, in writing, each landowner within the annexation area explaining in plain English the use of supplementary assessments, the City's supplementary assessment and tax bylaw, and the financial consequences of being subject to the supplementary assessment and tax bylaw.

REASONS

BOARD ORDER: MGB 011/06

FILE: AN04/REDD/C-01

The MGB interprets the subject condition to mean that the annexed land is not subject to the issuance of supplementary assessments and tax. If it were, then the annexed land would not be assessed and taxed on the same basis as though the lands were still in the County. The MGB did not hear any evidence in this regard from the City at the annexation hearing, nor did the City point out that the issuance of supplementary assessments and tax might be a matter to further investigate with respect to annexation conditions. Indeed, the annexation agreement between the City and County clearly states that only when redesignation or subdivision of a portion of the annexed territory occurs, will that property be subject to the City's taxation methods. The use of a supplementary assessment is a method for taxation. A supplementary assessment is initiated largely by physical change to an improvement. The annexation process leading to the annexation request and the annexation hearing did not address an event of this nature changing the assessment and tax method of lands in the annexation area. The events were limited to subdivision or land use bylaw redesignation.

The MGB is also of the opinion that the plain understanding of the Minister, Cabinet and the Lieutenant Governor in Council would be that the landowners in the annexation area would not experience any change in property assessment and tax methods for the amount of time specified in the OC, unless redesignation and/or subdivision of the land occurred within that time frame. Because the County does not have a supplementary assessment and tax bylaw, the implementation of a supplementary assessment and tax for the annexed territory would not conform with the County's assessment and resulting taxation method.

The MGB is of the view that it would be unfair to the landowners in the annexation area to now receive a supplementary assessment and tax notice when those landowners did not have the opportunity to address this issue leading up to annexation and the MGB hearing on annexation. While the City complains that no other party brought up this issue at the public hearing, the MGB feels that the City should have raised the issue at the time, considering the importance the City is now placing on its supplementary assessment and tax bylaw. There is also no evidence that the City discussed this issue with the County during negotiations on the annexation agreement. In protecting its citizens through the annexation process, the MGB firmly believes the County negotiated and agreed in good faith, that its former landowners will not experience anything different in their assessment and taxation, unless the taxation rates of the City are lower than the County rates.

The annexed landowners have an expectation of fairness when it comes to assessment and taxation once annexation is complete. It is the MGB's opinion that the only way fairness can be achieved in considering supplementary assessments and tax, is through an open and public process dealing directly with the issue. If the City is satisfied with the clarification and does not wish to pursue an amendment, the matter is then closed and the landowners can expect to continue to be assessed as if they had remained in the County and in accordance with Appendix

BOARD ORDER: MGB 011/06

FILE: AN04/REDD/C-01

C of OC 432/2004. If the City wishes to pursue an amendment to the OC then they must fully consult with the impacted landowners, make application for a change to the OC and have the matter addressed in a full public hearing.

Dated at the City of Edmonton, in the Province of Alberta, this 21st day of February 2006.

MUNICIPAL GOVERNMENT BOARD

(SGD.) W. Morgan, Presiding Officer