

**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 City of Red Deer, 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

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

Secretariat Advisor

D. Hawthorne

After careful examination of the submissions from the City of Red Deer (City), 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

That the annexation be approved in accordance with the following:

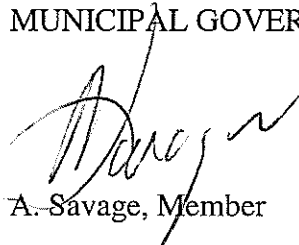
The Lieutenant Governor in Council orders that

- (a) effective July 1, 2004, the land described in Appendix A and shown on the sketch in Appendix B is separated from Red Deer County and annexed to the City of Red Deer,
- (b) any taxes owing to Red Deer County at the end of June 30, 2004 in respect of the annexed land are transferred to and become payable to the City of Red Deer together with any lawful penalties and costs levied in respect of the those taxes, and the City of Red Deer upon collecting those taxes, penalties and costs must pay them to Red Deer County, and

(c) the assessor for the City of Red Deer must assess, for the purpose of taxation in 2005 and subsequent years, 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 29<sup>th</sup> day of June 2004.

MUNICIPAL GOVERNMENT BOARD



A. Savage, Member

Attached and forming part of this Order are the following documents.

- APPENDIX A Detailed Description of the Lands Recommended for Separation from Red Deer County and Annexed to the City of Red Deer
- APPENDIX B A Sketch Showing the General Location of the Areas Recommended for Annexation to the City of Red Deer
- APPENDIX C Order
- APPENDIX D Municipal Government Board Report to the Minister of Municipal Affairs Respecting the City of Red Deer Proposed Annexation of Territory from Red Deer County

**APPENDIX A**

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

THE NORTH-SOUTH GOVERNMENT ROAD ALLOWANCE ADJOINING THE EAST BOUNDARY OF THE EAST HALF OF SECTION ELEVEN (11) AND THE EAST HALF OF SECTION FOURTEEN (14), IN TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH MERIDIAN

SECTION TWENTY-THREE (23), TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27) WEST OF THE FOURTH MERIDIAN, INCLUDING GOVERNMENT ROAD ALLOWANCES LYING TO THE EAST, WEST AND NORTH OF THE SAID SECTION

THE SOUTHWEST QUARTER OF SECTION TWENTY-SIX (26), TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27) WEST OF THE FOURTH MERIDIAN, INCLUDING THE NORTH-SOUTH GOVERNMENT ROAD ALLOWANCE LYING TO THE WEST OF THE SAID QUARTER SECTION

ALL THAT PORTION OF SECTION TWENTY-SEVEN (27), TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27) WEST OF THE FOURTH MERIDIAN LYING EAST OF THE RIGHT BANK OF THE RED DEER RIVER AND ALL GOVERNMENT ROAD ALLOWANCES LYING SOUTH AND WEST OF THE SAID SECTION

THE NORTH-SOUTH GOVERNMENT ROAD ALLOWANCE ADJOINING THE EAST BOUNDARY OF THE NORTHEAST QUARTER OF SECTION TWENTY-SEVEN (27), TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH MERIDIAN

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION THIRTY-THREE (33), TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH MERIDIAN LYING NORTH OF THE RIGHT BANK OF THE RED DEER RIVER

ALL THAT PORTION OF SECTION THIRTY-FOUR (34), TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH MERIDIAN LYING EAST AND SOUTH OF THE RIGHT BANK OF THE RED DEER RIVER AND ALL GOVERNMENT ROAD ALLOWANCES LYING WEST OF THE SAID SECTION

THE NORTH-SOUTH GOVERNMENT ROAD ALLOWANCE ADJOINING THE EAST BOUNDARY OF SECTION THIRTY-FOUR (34), TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH MERIDIAN AND ALL THOSE PORTIONS OF ROAD PLAN 842 0863 AND ROAD PLAN 3589K LYING SOUTH OF THE

EASTERLY PRODUCTION OF A LINE DRAWN PERPENDICULAR TO THE SOUTH LIMIT OF SUBDIVISION PLAN 2505TR

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION THREE (3), TOWNSHIP THIRTY-NINE (39), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH MERIDIAN LYING EAST OF THE RIGHT BANK OF THE RED DEER RIVER

ALL THAT PORTION OF SECTION TWO (2), TOWNSHIP THIRTY-NINE (39), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH MERIDIAN LYING EAST, SOUTH AND WEST OF THE RIGHT BANK OF THE RED DEER RIVER AND ALL GOVERNMENT ROAD ALLOWANCES ADJOINING THE SAID SECTION

LOT 1, BLOCK 1, PLAN 012 0303

ALL THAT PORTION OF ROAD AS SHOWN ON PLAN 842 0587 DESCRIBED AS FOLLOWS:

COMMENCING AT THE DEFLECTION POINT ON THE NORTHWEST BOUNDARY OF AREA "E", PLAN 842 0587, SHOWN ON SAID PLAN TO BE AT A DISTANCE OF 87.164 METRES SOUTHWEST FROM THE NORTHEAST CORNER OF AREA "E" THEREOF,

THENCE NORTHEASTERLY ALONG THE NORTHWEST BOUNDARY OF AREA "E" OF SAID PLAN TO THE INTERSECTION WITH THE EAST BOUNDARY OF THE SOUTHEAST QUARTER OF SECTION SEVEN (7), TOWNSHIP THIRTY-EIGHT (38), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH MERIDIAN,

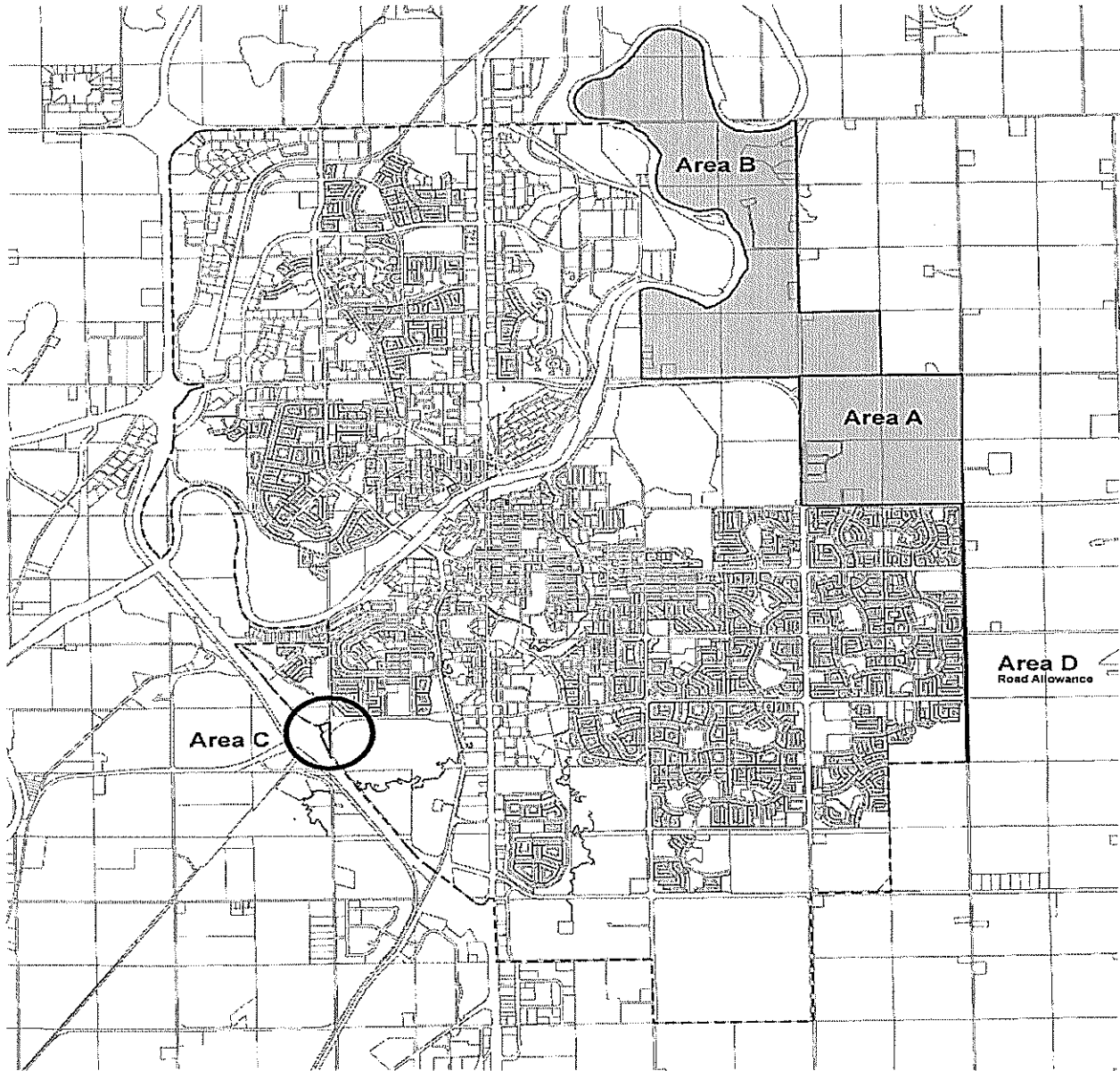
THENCE NORTHERLY ALONG THE EAST BOUNDARY OF SAID QUARTER SECTION TO THE INTERSECTION WITH THE NORTHWEST BOUNDARY OF PLAN 842 0587,

THENCE SOUTHWESTERLY ALONG THE NORTHWEST BOUNDARY OF SAID PLAN TO THE FIRST DEFLECTION POINT, SHOWN ON SAID PLAN TO BE AT A DISTANCE OF 123.912 METRES FROM THE INTERSECTION OF THE EAST BOUNDARY OF SAID QUARTER SECTION WITH THE NORTHWEST BOUNDARY OF SAID PLAN,

THENCE SOUTHEASTERLY TO THE POINT OF COMMENCEMENT.

## APPENDIX B

### A SKETCH SHOWING THE GENERAL LOCATION OF THE AREAS ANNEXED TO THE CITY OF RED DEER



AREAS ANNEXED TO THE CITY OF RED DEER

**APPENDIX C**

**ORDER**

1 In this Order,

- (a) “annexed farm land” means annexed land in respect of which the assessment class of farm land has been assigned under section 297(1) of the Municipal Government Act;
- (b) “annexed land” means the land described in Appendix A and shown on the sketch in Appendix B;
- (c) “annexed non-farm land” means annexed land in respect of which an assessment class other than farm land has been assigned under section 297(1) of the Municipal Government Act.

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(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 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.

5(1) In this section, “compensation amount” means the amount of municipal taxes payable to Red Deer County under Part 10 of the Municipal Government Act in respect of the annexed land for a taxation year.

(2) The City of Red Deer must pay to Red Deer County

- (a) 100% of the compensation amount on or before July 31, 2005,

- (b) 80% of the compensation amount on or before July 31, 2006,
- (c) 60% of the compensation amount on or before July 31, 2007,
- (d) 40% of the compensation amount on or before July 31, 2008, and
- (e) 20% of the compensation amount on or before July 31, 2009.

6(1) Any application for subdivision filed with Red Deer County before July 1, 2004 must be decided by Red Deer County.

(2) An appeal from a decision made by Red Deer County pursuant to subsection (1) must be made to the Red Deer County Subdivision and Development Appeal Board unless there is authority under section 678(2)(a) of the Municipal Government Act to make the appeal to the Municipal Government Board.



**APPENDIX D**

**MUNICIPAL GOVERNMENT BOARD REPORT TO THE MINISTER OF  
MUNICIPAL AFFAIRS RESPECTING THE CITY OF RED DEER  
PROPOSED ANNEXATION OF TERRITORY FROM RED DEER COUNTY**

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## **Executive Summary**

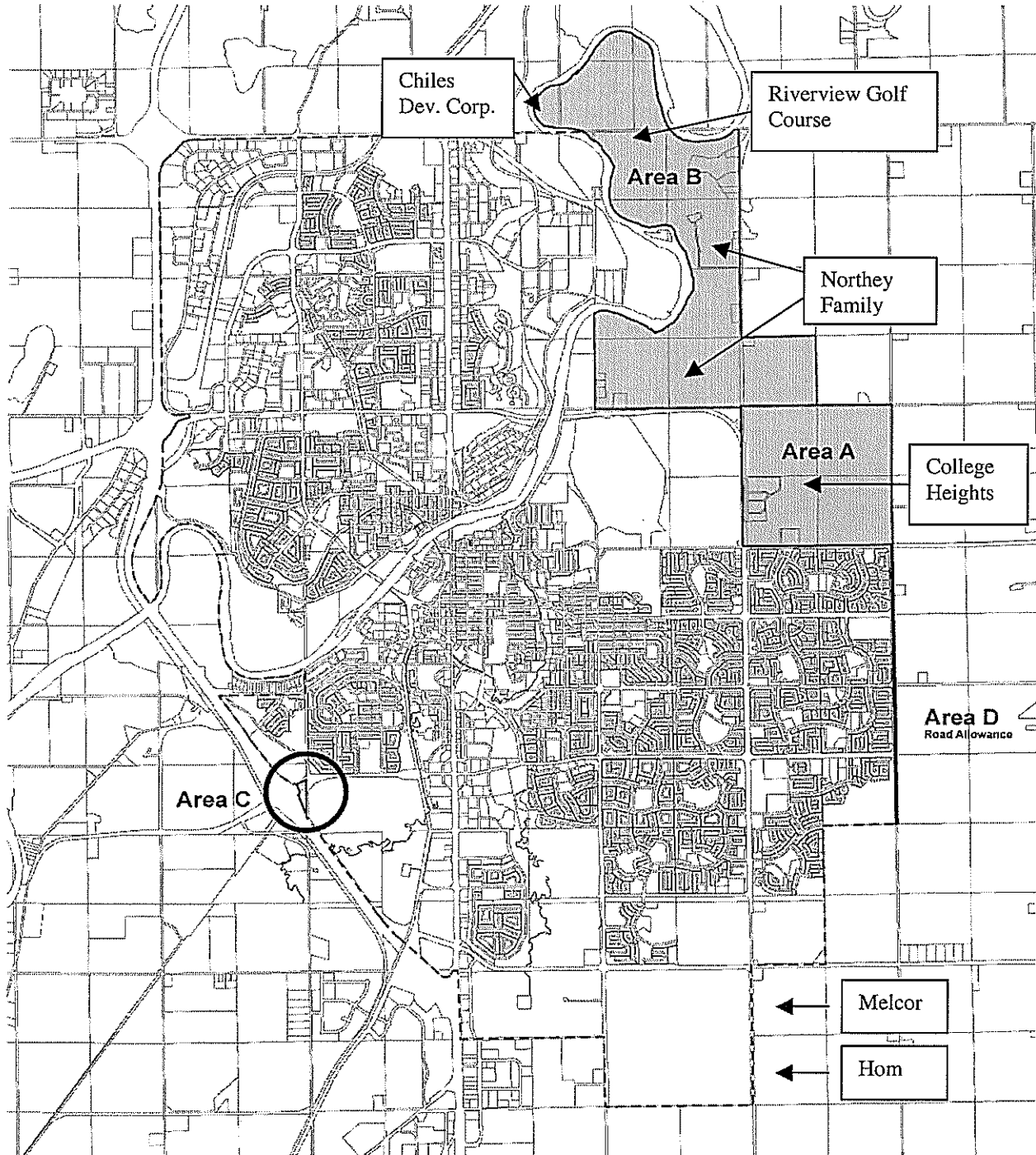
In the annexation process the MGB is only a hearing and recommending body. The MGB, after hearing from the parties, prepares findings and recommendations for consideration by the Minister and the Lieutenant Governor in Council (LGC). The Minister and the LGC are not bound by the recommendations of the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

## **General Background**

The City of Red Deer, with a population of 72,691, is a rapidly growing municipality situated in the central part of the province and in the middle of the growth corridor extending from Calgary in the south to Edmonton in the North. The City has experienced a mean annual growth of 3.43% over the last three years. Owing to the current population growth, locational advantage within the Edmonton-Calgary corridor and the City's strength as an employment centre, residential construction starts have been very strong since the year 2000. As a result of the continued growth and the need for new residential lands, the City is proposing to annex approximately 2,047 acres of land from the County.

The City provided notification to the MGB, County and local authorities of its intent to annex certain lands from the County. The City and the County then entered into negotiations respecting the annexation. While continuing negotiations, the City met with the owners of the lands considered for annexation, the other landowners not included in the annexation and conducted public hearings on the proposal. At the conclusion of the negotiations, the City filed the negotiation report with the MGB and it is this report that became the formal application for annexation. The formal application for annexation pursuant to section 119 of the Act is signed by both the City and the County and proposes the annexation of areas identified in the report as Area A, B, C, and D shown on the following map.

**Map 1 - Showing proposed annexation areas and identifying concerned landowners within and without the annexation application areas.**



### Areas Applied For

Area A is approximately 640 acres and is located east and north of the current city boundary. The existing uses within Area A include a small country residential subdivision and agricultural activities. This area is proposed for residential expansion. Area B is immediately northwest of Area A, consisting of approximately 1385 acres east of the Red Deer River and north east of the current city boundary. Existing uses within the area include agricultural activities, gravel extraction, minor country residential parcels, and a variety of recreation uses. This area is planned for recreation, open space and residential uses. Area C is approximately six acres located on the west boundary of the City adjacent to Highway 2 and 32nd street interchange. This parcel is a former remnant of the highway right-of-way and is now part of the Red Deer College holdings. Area D is a road right-of-way on the east side of the City and is being proposed for annexation to accommodate transportation upgrading on the east side of the City.

### Objections Received

Following the filing of the formal application for annexation, the MGB received objections from a number of landowners within the proposed annexation area. In addition two landowners, Melcor and HOM Farms Ltd., whose lands were not included in the annexation application, filed a request to be included in the proposal. As a result of the objections by certain landowners, the MGB found there was not general agreement to the annexation and scheduled a hearing to learn the details of the objections or any concerns parties may have regarding the annexation.

The MGB held a hearing on March 31, 2004, and after hearing the presentations concluded that the objections of the parties fell into two categories: concerns with the timing and impact annexation would have on current land uses until the land is required for development, and the need for land not intended for residential use. A third issue related to the desire of Melcor Developments Ltd. and HOM Farms Ltd. (Melcor/HOM) to have their lands included in the annexation.

### Recommendation

After reviewing all the written and oral submissions, the MGB recommends that the annexation be approved as applied for and the Melcor/HOM lands not be included in the annexation.

### Reasons

The annexation as proposed, is justified by the requirement for additional residential lands owing to the rapid growth being experienced by the City. Clearly a need for the land exists. The expansion of residential growth in an easterly and north easterly direction is a logical extension of the existing growth patterns and is supported by the various local planning documents being the Municipal Development Plan (MDP) and Inter-Municipal Development Plan (IDP) and

various servicing studies. The integrity of the Red Deer River and the various tributaries are enhanced by the policies in the MDP and the existing open space system within the City will be enhanced by the addition of like lands and compatible uses in the newly annexed areas. The minor adjustment of the boundaries on the west side of the City is a logical clarification of the boundaries and the inclusion of the road right-of-way on the east side provides for the effective planning and implementation of necessary transportation networks to accommodate traffic generated from existing growth within the current City boundaries. This annexation represents a logical and well-reasoned approach to managing growth.

The MDP and IDP set specific policy directions for annexation which this annexation application fully meets. The annexation meets the strategic direction to develop a phased approach to the overall long-term annexation of lands to the City of Red Deer and to the management of fringe urban land uses. The MDP and IDP develop a phased approach to annexation, rather than a comprehensive annexation in all directions. The proposed northeast growth corridor in the current annexation application is the priority phase for annexation followed at a later date with other growth directions.

The fiscal and corporate impacts to the County of Red Deer are fully considered and the joint co-operation between the two municipalities is evident and fully implemented. Revenue sharing in the new areas is fully developed and agreed, reducing any fiscal impact. Logical sequencing of servicing from rural to urban standards has been developed. The efforts of the City and County are to be applauded; these municipalities have clearly met the initiative of inter-municipal co-operation highlighted in the Act and the Provincial Land Use Policies.

#### Objections

The MGB is of the opinion that generally, depending on the type of concerns expressed by the landowners, the objections can be addressed by maintaining the current level of taxation for a fixed period of time or until the land is developed, or by reasonable adjustment to City bylaws for the purpose of enabling current uses to be maintained until the land is needed for development. These matters are local concerns that should be resolved locally. The City indicated full commitment to these principles and the MGB could not find any of the objections to be substantive enough to result in not recommending the annexation go forward.

#### Melcor/HOM Lands

As for the request by Melcor to have land added to the annexation, the MGB determined from the written and oral submissions that these lands were clearly not lands included in the annexation application submitted pursuant to section 119 of the Act. The MGB was also satisfied that Melcor was given considerable opportunities to convince the initiating municipality that these lands should be included in this phase of annexation; however, due to various servicing constraints the City was not prepared to add these lands into the current annexation. Further

servicing studies and further growth demands may result in these lands being included in a longer-term annexation at a later time.

Although Melcor argued that the Red Deer annexation and the Melcor/HOM lands were similar to the Airdrie annexation, the MGB determined that there were significant differences in the Airdrie annexation. Firstly, in the Airdrie case the annexation application submitted by the initiating municipality included the lands but the annexation agreement between the two municipalities did not. Further, in the Airdrie annexation there were concerns about the lack of consultation and the MGB did not receive logical reasons as to why certain lands were but left in the annexation application but excluded from the agreement. These are not the fact scenarios in the Red Deer annexation.

Based on the legal arguments provided by the parties the MGB also recognizes that only under unique circumstances like the Airdrie annexation, would the MGB consider recommending the addition of lands not included in the inter-municipal agreement but included in the annexation application by the initiating municipality. The MGB understands that the deliberate legislative initiative to eliminate the right of a landowner to make application for lands to be annexed was to give greater accountability and responsibility to local governments to sort out early in the process those lands to be considered for annexation. In this case the Melcor/HOM lands were not part of the annexation application, and as a result the MGB is limited in its ability to recommend additional lands. The MGB did give Melcor/HOM as affected persons a right to be heard and gave careful consideration to their submissions, however, these submissions must be considered within the context of what lands were requested by the initiating municipality pursuant to section 119 of the Act and the purposive and deliberate change in annexation legislation.

## **Part I Introduction**

The City is situated on Highway 2 approximately half way between the two major Cities of Calgary to the south and Edmonton to the north. The area between Calgary and Edmonton is known as the Highway 2 Edmonton-Calgary Corridor. This Corridor, along with the central part of Alberta, is seen by Statistics Canada as being among the highest growth areas in the nation over the next decade. Residential housing starts have been exceedingly strong since the year 2000 and according to Canada Mortgage and Housing Corporation (CMHC) Housing Outlook forecast, this will continue this year.

Based on the current number of housing starts and the need for future residential lands, the City proposed annexation of approximately 2,047 acres of land. Pursuant to section 116 of the Act, the City filed with the appropriate authorities on January 22, 2003 giving notification of its intent to annex the land. As a result of negotiations with the County, landowner consultation and public hearings, the City filed the formal application on December 9, 2003, in accordance with section 119(2) of the Act, which encompassed all the lands identified in the notification of the intent to

annex. The areas of land proposed for annexation pursuant to section 119 in the annexation application and the notification of intent pursuant to section 116 were the same in this case.

The area proposed for annexation is divided into four distinct areas, of which only two, Area A and B, are the subject of concern by the by a few of the landowners.

#### Area A

Area A lies directly east of the City and is comprised of a full section of land (640 acres). This area contains a country residential subdivision known as College Park and the balance is currently in agricultural production. This area is commonly referred to as the College Park section of the annexation.

#### Area B

Area B is located north-east of the current city boundaries and contains approximately 1,385 acres. Area B is bound on the west by the City boundary and on the south by annexation Area A, on the west and north by the right bank of the Red Deer River. The right bank of the Red Deer River is also the present City boundary. This area includes the lands encompassed by a big bend in the River that could be described as a large "oxbow". Existing land uses in this area include the River Bend Golf Course, trail access, recreational areas, gravel extraction, residential uses and agricultural operations.

#### Area C

Area C is located on the west side of the City at the intersection of Highway 2 and 32 Street, containing 6.25 acres. This area was originally required by the province for expansion or access to Highway 2, however it is no longer required for these purposes and is now consolidated with the Red Deer College property to the east.

#### Area D

This area, containing approximately 16 acres, is two miles of north south government road allowance adjoining the east boundary of the City. This section of road is in need of upgrading to City standards to allow access to adjacent development in the City.

#### Melcor/HOM Lands

For the purpose of this report to the Minister, the Melcor Lands have been identified as the Melcor/HOM lands, but do not form part of the annexation application submitted by the City of Red Deer. These lands are located southeast of the current City boundaries and involve

approximately 320 acres of land. These lands do not have the support of the City of Red Deer or the County of Red Deer to be annexed at this time.

## **Part II Role of the MGB, the Minister and the Lieutenant Governor in Council**

A municipality seeking annexation must first initiate, pursuant to section 116, the process by giving written notice of the proposal to the municipal authority from which the land is to be annexed, and to the MGB and any local authority considered to be affected by the proposal. The notice must describe the land proposed for annexation, set out the reasons for annexation and include proposals for consulting with the public and meeting with the landowners. Once 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 the negotiations, the initiating municipality must prepare a report describing the results of the negotiations. The report must include a list of agreed matters, as well as a list of matters in which there is no agreement. If no agreement, the report must state what mediation attempts were undertaken or if no mediation, give reasons why there were none. The report must also include a description of the public consultation process and the views expressed during this process. The report is then signed by both municipalities and if not, the municipality that did not sign must provide their reasons for not signing.

The report is then submitted to the MGB and it becomes the application for annexation pursuant to section 119. If the MGB is satisfied that the affected municipalities and public are generally in agreement, the MGB notifies the parties of their findings and unless there are objections to the annexation filed with the MGB by a specific date, the MGB will make their recommendation to the Minister without holding a public hearing.

If the MGB finds that there is no general agreement, the MGB must notify the parties of their finding and conduct one or more public hearings. The MGB only has authority to hear from parties to an annexation, make findings and recommendations to the Minister and the LGC. The Minister and the LGC have the authority to accept in whole or in part or completely reject the findings and recommendations of this report.

## **Part III Annexation Application**

On January 22, 2003 the City filed notification of their intent to annex certain lands from the County. The notification included Residential Land Absorption Rates, Projections and a Growth Map, Servicing Study, Communication Plan, Position Statement on future development, servicing and taxation. The notification included the results of a landowner open house and public meeting on the annexation. In addition, the City provided requests by certain landowners



to have their land included in the proposal; however the City did state that these lands were not included in the notification.

The City filed a Negotiation Report (Report) with the MGB on December 9, 2003. The Report had been endorsed by the City on September 22, 2003 and by the County on November 25, 2003. The Report became the official application for annexation and contained an overview of the land proposed for annexation, servicing, reasons for annexation, summary of the negotiations with the County, the public consultation process and the special conditions regarding the effective date of annexation, assessment and taxation, and provision of services to the subject lands.

## **Part IV Negotiation Report**

### **City Statutory Plans**

The Report identified two statutory plans containing policies related to the annexation of residential lands. The first is the Municipal Development Plan (MDP) which states that the City will continue to recognize and support future growth based on sound planning principles. The Report then states that because this annexation is based on the City's 2000 Growth Study involving substantial research and including public participation, it is seen as meeting this policy. The MDP identifies the area in the northeast as future expansion areas for residential development outside the current City boundaries. This coincides with the proposals in this annexation.

The MDP identifies the lands in the northeast as meeting the short-term residential needs of the City with areas of land in the southeast meeting longer-term needs and subject to further feasibility studies.

The other plan is the Inter-municipal Development Plan (IDP) co-authored and jointly adopted by the City and the County in 1999. The plan established the broad land use planning policies for short and long-term growth areas. Short term is seen as five years and the subject lands falls within the areas identified as short-term annexation areas. The IDP recognizes a strategic incremental approach to annexation rather than a one time comprehensive annexation.

The IDP identifies the criteria to be considered in reviewing annexation proposals. The criteria includes future growth rates, availability and cost of servicing, adequacy of transportation systems, land ownership patterns, local support, consistency with local plans, fair agricultural taxation and logical extensions of the City boundary.

### **Servicing Overview**

The Report provides that the lands proposed for annexation can be fully serviced with water, sanitary sewer, storm water, sewer and transportation services. Many of the areas are directly

serviceable, while others will require some infrastructure installations and major servicing upgrades before services are available. The Report states no new development will be permitted until services are available.

### **Reasons for Annexation**

The Report states that during the period of 1999-2000, the City produced a Growth Study that projected future residential, industrial and commercial needs. At the time it appeared that the City had sufficient residential land for future development; however the exceptional growth experienced since that time indicated that additional residential is needed to maintain a 20 to 30 year supply as set out in the IDP. Updated growth forecasts suggest that the City has less than an 11 year supply.

The Report identified that the reduced land inventory can be connected to the fact that the City is growing more rapidly than expected. The Growth Study projected a population of 71,621 for 2003, however the actual population in 2003 was 72,691. The Report stated that in the period of 2000-2003, the City experienced a 10.29% population increase compared to the 8.55% projected by the Growth Study. This faster growth rate has led to faster than anticipated residential land absorption. The Report also addressed the various methods, such as higher densities, that may be incorporated to reduce land consumption; however the declining number of persons per household does have the effect of increasing land consumption.

In addition to meeting the future residential land requirements of the City, the Report addresses the annexation of the River Bend Golf Course and Recreation Area. This area is located in the oxbow formed by the Red Deer River and lies northeast of the City boundary. The Report states that this area also includes the MacKenzie Trails that form part of the City's Waskasoo Park system. The area is owned by the City and annexation will assist with administering of the Waskasoo Park system and with coordinating the management of City facilities.

### **City and County Negotiation Results**

The Report states the City followed the process for negotiation set out in the IDP which included sharing of growth and development information. A meeting of both Councils resulted in the Inter-municipal Affairs Committee assuming responsibility of negotiating the details of the annexation. The four main areas of discussion were tax sharing, public works services, and annexation of Riverview Park and landowner requests for additional lands to be added to the proposal.

#### **Tax Sharing**

There are to be no changes to the current tax sharing arrangement set out in the IDP.

### Public Works Services

The IDP sets out an agreement that the County will continue to provide normal public works services for a two year period following annexation. To avoid confusion as to the types of services, the County provided a list of services they would provide and the City agreed.

### Riverview Park

The County requested that this country residential subdivision be annexed to the City. The only access to the subdivision is via the City, the City provides some services at present and the scheduled development of adjacent areas will mean that this subdivision is largely surrounded by urban development. The City requested time to prepare a geo-technical study of the area, resulting in both the City and the County agreeing not to include this subdivision in this application.

### Inclusion of Additional Land

The Report stated that neither the City nor the County supported the inclusion of additional lands. In some cases servicing the additional lands are complex and extremely difficult to incorporate for urban development. Both the City and the County are satisfied with the amount of land as proposed and are of the opinion that that the proposal as presented meets the intent of the IDP.

This included the consideration of the addition of the east half of 2-38-27-4, the Melcor/HOM lands. The Melcor/HOM lands and other additional lands involved complex, extremely difficult servicing issues, which when viewed in the whole of this phase of annexation and the demands related to this annexation time frame resulted in these lands being left out of this annexation phase.

### **Public Consultation Process**

#### Communication Plan

In anticipation of the annexation, the City developed a communication plan to guide public participation and consultation with the landowners. The plan identified stakeholders, techniques, spokespersons, timing, and tools to be used in communicating with the public and landowners. In addition, the City developed position statements on three of the key areas of concern: servicing, taxation and future development.

## Public Meetings and Land Owner Consultation

The landowners were first informed of the intent to annex by letter at the same time the City filed notification of its intent to annex the subject areas. Background information and an explanation as to why annexation was being considered were included with the letter. The letter explained that public input was desired early in the process and gave notice that Council would be discussing the proposal at a meeting on October 22, 2002 with an invitation to attend.

The City held a public meeting on November 5, 2002 to review the draft annexation proposal, discuss the preliminary annexation concept, and to receive input from the public. On November 26, 2002, the City met with the residents of College Park Home Owner's Association to discuss concerns specific to the College Park country residential subdivision. In December a package summarizing the public meeting, and providing answers to questions raised by the public was provided to the landowners. Included was an update on the process and an invitation to the January 13, 2003 City Council meeting at which annexation was to be discussed. It was at this meeting that the City decided to proceed with the annexation and instructions were given to file the notice of intent to annex.

During the period of negotiation, the City kept the landowners and public informed of the progress through the use of the City's web site, a day long information display at the Red Deer Centre Shopping Mall and one meeting with the interested public. When negotiations were completed, a landowner/public meeting was held on July 8, 2003. Notice was provided to the local authorities and the landowners. Following the meeting, a site tour of both the College Park areas and the properties owned by the Northey family occurred.

On August 7, 2003 the landowners were notified of the City's intent to proceed with the annexation proposal and requested that they indicate support for, or opposition, to the annexation of their property. On August 29, 2003 the City, by registered letter, requested all landowners who had not replied, to do so by September 9, 2003, as it was the City's intent to file the formal application soon thereafter. As of September 11, 2003, of the 62 landowners contacted, 29 had responded with 20 in favour of annexation, seven objecting and two undecided.

The Report stated the following reasons for the seven objections.

1. Objected but hopeful the preservation of College Park area will remain a priority.
2. Property tied up in an estate, annexation not beneficial at this time.
3. Do not want higher taxes, more traffic, more population and more noise associated with City living.

4. Would require written guarantees that their business could continue to operate and that they could continue to keep horses.
5. Long range plans for one property include development as a golf course on both sides of the River that includes a bridge over the river, gravel extraction, and replacement of topsoil. Do not want land in two jurisdictions.
6. Objected to plans for a four-lane highway across farmland.
7. Want neighborhood to remain as is.

The Report provided the following responses to the written objections:

1. In regard to the concern expressed regarding the placement of the transportation network, these are matters to be dealt with through an Area Redevelopment Plan or Area Structure Plan.
2. With regard to the proposed bridge, gravel extraction and golf course proposal, the City is not aware of any approval issued at that time, however if any new land uses are proposed following annexation, they would be subject to City approval and licensing processes.
3. The City is requesting that all annexed non-farm properties be taxed at the lower of the two municipal tax rates for a period of 10 years. Farm properties would continue to be assessed as if they had remained in the County for a period of 25 years. The 25-year period would also include the lower tax rate.
4. Annexation would not affect either the keeping of livestock or farming operations. The City referenced a number of farm operations with animals current operating in the City.
5. Landowners were notified in writing that existing legally approved businesses would be able to continue operations after annexation.
6. In response to the loss of farmland, the City submitted that annexation is only undertaken when necessary for future growth. The City also submitted that they are committed to working to ensure the efficient development of land.

### **Special Annexation Requirements**

1. Request annexation be effective January 1, 2004.
2. Revenue sharing based on the following formula:
  - a. 100% of municipal taxes in the first year of annexation

- b. 80% in the second year
  - c. 60% in the third year
  - d. 40% in the fourth year, and
  - e. 20% in the fifth year.
3. All annexed properties are taxed at the lower of the two municipal and library tax rates for a period of 10 years or until a change in land use.
  4. All annexed farm properties be assessed as if they had remained in the County for a period of 25 years. In addition, farm property would receive the benefit of whichever tax rate is lower for this 25-year period. In both cases, the condition would be subject to a change in land use.
  5. All normal public works services for the annexed areas shall continue to be provided by the County for a period of 2 years following annexation.

#### **Part V Public Hearing**

Having found that there is not general agreement respecting the annexation and having received written objectives to the annexation, the MGB held a public hearing on March 31, 2004. The MGB issued formal notice of the hearing under the date of March 2, 2004 to all known interested parties and provided notice to the general public through a notice published in the local newspaper.

The MGB opened the hearing and received a general overview of the annexation process and the proposed annexation. This overview included a review of the planning documents, Growth Study, current land supply, project population growth, and transportation network. Relying on the negotiated annexation agreement the County did not make a formal presentation.

The MGB then proceeded to hear from landowners within the proposed annexation area and one landowner from outside the area wishing to be included in the proposal.

#### **Part VI Landowner Issues**

The MGB received submission from a number of landowners, including Melcor and HOM Farms Ltd., seeking to have their lands added to the proposal. The MGB will deal with each individually, providing an overview of the location of their property, current land use and summary of their presentation. Where relevant, the MGB will include the questions and responses of the other parties when discussing each of the landowner's submissions.

## **Northey Family**

The Northey family owns approximately 223 acres within Area B of the proposed annexation. Their property includes both treed riverbank and escarpment areas and agricultural lands. The objection to annexation is based on a desire to remain in the County until it is absolutely necessary to be included in the City. In questioning the timing of the annexation of their property, the Northey family raised the following points.

1. The City's statement that approximately 68 acres of their property could be developed for urban residential housing translates into little more than a half year supply. Exclusion of their property would have little impact on the City's residential land needs.
2. In regard to Northlands Drive proposed for part of their lands, they referenced the City's statement that it would not be needed until the City population reaches 85,000. Depending on the rate of growth, this could take between 8 to 12 years. Leaving the family lands out of the City for five more years would in no way affect planning of the future transportation needs of the City.
3. With respect to the environmentally sensitive river valley and escarpment, the family agrees that at sometime in the future, they will have to be dedicated for preservation. However, the family has kept a large portion of these lands in their natural state and questions how the City would preserve this area when the proposal calls for the Northlands Drive being constructed through the river valley and escarpment. At this point in time, the family is of the opinion that the lands are better held in private ownership. Further, while they understand that ownership will not change with annexation, zoning and land use under a new area structure plan could change or hinder the present usage of these lands.
4. The family is also of the opinion that the annexation as proposed does not adhere to the IDP in that the policies of this plan suggest that it is preferred that annexation involve smaller areas and be undertaken more frequently. The family considers the subject annexation to be a very large annexation.

The Northey family then asked the MGB to consider the following impacts annexation would have on the day-to-day family operations.

1. The family owns the mineral rights and annexation may limit their ability to continue to drill for oil or gas on their property. The family requested that an annexation order contain a provision that the drilling of oil or gas wells would have to conform to the Alberta Energy and Utilities Board (AEUB) regulations. This would have the affect of making the City an intervener in well applications and the approval of the City would not be required.
2. Continue gravel extraction as long as valid permits are in place.

3. Continue to be subject to the Alberta Agricultural Operations Practice Act which would prevent City bylaws from hindering the day-to-day farming operations.
4. An application for subdivision of a country residential parcel has been approved by the County and the family wants the City to accept final endorsement and approval by the County for registration and issuance of the new title.
5. The existing McKenzie Trails do cause trespassing problems and the family would like the City to publish a notice in the newspaper advising the public that other than the trails, the land is privately owned and the public should respect these lands.

The Northey family concluded by stating that the above concerns are important to the family and if addressed would alleviate some of the problems and concerns with annexation. If the MGB addressed the above in their order, the family would be willing to accept annexation of their lands.

In response to the submission of the Northey family, Parkland Community Planning Services on behalf of the City, provided an overview of the development constraints that exist for the Northey lands that include the flood fringe of the Red Deer River and a ravine. However, the total amount of developable land will be determined by the approval of the neighborhood area structure plan. The City provided a summary of the anticipated acreage available for development and the potential uses. The potential impact of excluding the Northey property include the inability to service certain lands, not meeting the 20 to 30 year land supply, uncertainty in planning Northlands Drive, excluding the areas identified for short term growth and hindering the goal of enhancing and enlarging the Waskasoo Park system.

As for the specific condition requested by the Northey family the City provided the following responses:

1. If annexation is approved, approval of gas wells would continue with the AEUB.
2. With regard to the Alberta Agricultural Operations Practice Act, the City would not expect and would not have the authority to override a Provincial Statute.
3. The City would endorse the registration of the plan of subdivision provided that the conditions imposed by the County had been met.
4. The City has begun to note the information respecting the impact of the trail system on the Northey property for use in press releases and any communication materials related to the annexation.



The City concluded by stating the City has been working with the Northey family in the past and is prepared to continue to work with the Northey family in the future.

### **Chiles Development Corporation**

Chiles Development Corporation (Chiles) owns approximately 22 acres located in Area B in the bend of the Red Deer River. The land is located to the northeast of the City and bound on the north, west and south by the River and on the east by the River Bend Recreation Area. Chiles also owns lands on the west side of the River which are partly developed. There are 22 acres subject to gravel extraction and it is the owner's intent to continue with the gravel extraction until depleted and then convert the area into a golf course. The plan is to develop the golf course on both sides of the River and connect the two parts of the golf course by a bridge over the River.

Chiles objects to annexation stating that they did not want their proposed golf course in two jurisdictions. However, if the annexation is approved, Chiles requested that the following conditions be included.

1. City will not restrict the removal of gravel.
2. City will not object to a bridge over the Red Deer River.
3. City will not object to the construction of a golf course on the subject lands.

The City responded by stating that construction of the bridge would require the federal, and provincial, as well as local approval. In addition, if annexation did not take place, the County approval would be required for both the bridge and the golf course.

### **Balmoral Golf Course**

The Balmoral Golf Course, although not located in the annexation area, objects to the annexation based on the potential of unfair competition in the event the River Bend Golf Course is annexed to the City. The unfair competition is based on the fact that the River Bend Golf Course is owned by the City and as such, if annexed would not be subject to taxation. In addition, as a municipally owned golf course, expansion could be undertaken with relative ease.

The City responded by stating that the River Bend Golf Course is run by a Society and a possible expansion of the course is being investigated separately from the annexation proposal. The expansion, if undertaken, is not dependent on the annexation to the City.

**Melcor**

The Melcor/HOM Farms Ltd. lands are located outside of the proposed annexation area. The area consists of two-quarter sections located to the south east of the existing City boundaries. The quarter sections are bound on the north and northwest by existing residential development. Melcor had been in negotiations with the City respecting the inclusion of their lands in the proposal, but as stated in the negotiation report, it was decided not to include these lands in the notification initiating the annexation process because of the servicing constraints. In support of their request to be included, Melcor referenced the MGB recommendation in the Airdrie annexation, in which lands were added to the annexation.

The request of Melcor is based on the following.

1. Sound community planning supports the annexation of the subject property.
2. The subject property is bound on the north and northwest by existing residential development within the City.
3. In light of the City policy calling for a 20 to 30 year inventory of residential land, the annexation as proposed would provide only a 21-year supply. However, much of the 21-year land supply is not available for development because of ownership issues or infrastructure limitations.
4. While the County has not taken a position on the Melcor request, it appears the County would not object.
5. The City has agreed to a design modification of a storm water trunk line installed in 2003 that would provide the capacity to service the property. Water and shallow utility capacity exist. Sanitary sewer capacity is the only remaining servicing issue.
6. The property is included in the East Hill Major Area Structure Plan and is included in the service basin land inventory for the purpose of calculating off site levies.
7. A significant amount of public and private infrastructure exists in close proximity to the property.
8. The City encouraged Melcor to make this application to the MGB.

The City responded by stating that they received the Melcor request in November 2002 and in December 2002 informed Melcor that they did not support the addition of the lands because there is insufficient sanitary sewer capacity to service the north quarter section of the property.

The City did give Melcor the opportunity to provide any new information on servicing during the public participation process, but did not include the property in the notice of intent.

Melcor provided additional engineering information in the spring of 2003, however, upon review the proposed servicing concepts and suggested solutions could not be supported by the City. The Inter-municipal Affairs Committee reviewed the request of Melcor and for reasons of servicing and land absorption rates, did not support the addition of these lands.

At the present time the City is undertaking an update of the 2000 Growth Study and Melcor's lands will be considered as part of this update, subject to resolving the sanitary sewage capacity issue. However, at this time the City cannot support the addition of the Melcor property.

### **HOM Farms Ltd**

HOM Farms Ltd. is the owner of the land referred to by Melcor and supports the annexation of this property into the City.

### **College Park Homeowners Association**

The Homeowners Association did not object to annexation, but did want to understand the impact annexation would have on their subdivision. They want to maintain the integrity of the subdivision and be assured that the level of services currently provided by the County would continue when annexed to the City.

## **Part VII Framework for the Recommendation**

### **Municipal Development Plan**

The City has adopted a Municipal Development Plan (MDP) that includes policies directed at maintaining a 20 to 30 year supply of residential land. In association, this plan includes the necessary policies for the expansion of the municipal infrastructure needed to meet the future growth needs of the City.

The MGB has examined the proposed annexation in light of this local planning document and has determined that the proposed annexation complies with the policy directions in the MDP. More specifically the proposed annexation is a strategically phased annexation taking into consideration the availability of existing servicing capacities and effectively, efficiently and economically utilizing these services as a logical extension. The land use proposals are a logical extension of the current and proposed uses in the MDP.

## **Inter-municipal Development Plan**

The City and County have entered into an Inter-municipal Development Plan (IDP) to address the issues surrounding the City's fringe and to address the criteria for the annexation of land to the City. This criteria is specific to the needs of the City and establishes a rationale that both municipalities can use in assessing the need for annexation.

The MGB finds that the proposed annexation is supported by the policies in the IDP. There is clear evidence of joint municipal co-operation, there has been a logical development of the phasing of services from rural to urban servicing, a logical and gradual sharing of revenue from the annexed lands, the growth directions in the IDP are reflected in the proposed annexation, the proposed annexation meets the policy direction of a phased application rather than a comprehensive annexation, and the timing and growth needs of development is well considered.

## **2000 Growth Study**

In accordance with the criteria of the Inter-municipal Development Plan, the City undertook a growth study to assess the future growth of the City. This growth study and the rapid growth over the past three years that formed the basis for the determination of the need to annex additional lands to meet the future residential land needs of the City.

The MGB finds that although the Growth Study examined lands in addition to the lands in this annexation proposal, this annexation represents a strategic approach to accommodating urban development within the context of joint municipal co-operation, a logical extension of services, the establishment of a phased approach to annexation, consideration of the environmental characteristics of the lands, and the short term and longer term needs of the communities. Lands designated as future growth areas outside of this annexation were assigned to a future phase of annexation within a longer term timeframe.

## **Negotiation Report**

The City has entered into negotiation with the County respecting the annexation and the results of the negotiations are based on the criteria established in the Inter-municipal Development Plan. In conjunction with the negotiations, the City has entered into a comprehensive plan to ensure that both the landowners and public are fully aware of the negotiation process. This comprehensive plan includes the provision for input by both the public and landowners. In most instances, the negotiation report has attempted to address the concerns of the landowners included in the original notification of the intent to annex.

The MGB finds that with respect to the concerns raised by various landowners, the City has responded in a constructive fashion to address each concern. The City, in every case, has responded to each individual issue raised by each landowner to explain that the landowner would

not lose any rights currently held in the County, or they responded with specific annexation conditions to mitigate the landowner concerns. This included measures related to taxation and land use approvals.

## **Legislation**

### *The Municipal Government Act – The Annexation Part*

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. In the City's case, the MGB determined there was not general agreement with the proposal owing to objections raised and concerns raised by affected landowners.

When there is not general agreement with the proposal, section 121 of the Act requires the MGB to conduct a public hearing and 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 an area.

Section 123 of the Act requires the MGB to prepare a written report of its findings and recommendations and send the report to the Minister of Municipal Affairs. The Act directs that the report be prepared after considering the representations made to it.

Section 123 also requires the MGB to consider the principles, standards and criteria on annexation established under section 76 of the Act. There are no applicable principles, standards and criteria adopted pursuant to the Act, therefore, the MGB looks to the scheme of the Act, the Provincial Land Use Policies and past MGB decisions.

Section 124 of the Act requires that the MGB's report to the Minister sets out a recommendation as to whether the land should be annexed, and if it is recommending annexation, a description of the land to be annexed and whether there should be revenue sharing and any terms, conditions and other things the MGB considers necessary or desirable to implement the annexation. Section 124 also states that if the MGB does not recommend land be annexed that the report be provided to all local authorities who may be affected by the annexation recommendation.

As previously mentioned, there are no detailed criteria for evaluating annexation proposals, however, a few broad themes are consistently expressed in Division 6 of the Act to which the MGB must give consideration in their deliberations on the Red Deer annexation proposals. These key themes include a significant emphasis on consultation with affected authorities, municipalities and landowners. Significant in this theme is the consultation and participation encouraged with landowners. Another major theme is the significant emphasis on an agreement or mediated solution between the affected municipalities; however, the emphasis on agreement between 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.

In order to investigate, analyze and make findings about 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 the residents of the area. Because there are no principles, standards or criteria to test the proposal, the MGB has turned to the Planning Part of the Act and the Provincial Land Use Policies for guidance.

In this specific proposal the MGB finds that the two municipalities have achieved the required emphasis of inter-municipal co-operation envisaged in the Act. This is evident to the MGB by the various discussion processes used by the two municipalities and the supportive mechanisms in the IDP which have been implemented to ensure that the interests of both municipalities are fully addressed.

As well, the MGB is satisfied that the public and landowners have been given adequate opportunities to provide their input and that the City has responded constructively to the various concerns raised by each landowner by way of explanation or by way of mitigated measures to address their concerns related to land use and taxation.

#### The Planning Part of the Act

In the MGB's opinion, 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, use of land and patterns of human settlement, and to maintain and improve the quality of the physical environment with which patterns of human settlement are situated in Alberta, without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest. The Planning Part of the Act encourages the use of various levels of plans to support the orderly future development.

The MGB finds that this annexation is supported by the various levels of plans anticipated in the Planning Act. The proposed annexation is rationalized in the MDP and the IDP and supported by various servicing plans. Sequencing and phasing of annexation is well documented and this proposed annexation meets those policy directions.

## The Alberta Land Use Policies

These policies do not make reference to annexation of territory from one municipality to another, however the policies encourage inter-municipal planning and cooperation, which are exercises directly related to annexation issues.

Some of the key policies relative to the MGB's review are:

- Section 2.0 of the Land Use Policies directs that planning activities are to be carried out in a fair, open, considerate and equitable manner. The policy goes on to say 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 of the Land Use Policies 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 inter-municipal development plans.
- Section 4.0 of the Policies fosters the establishment of land use patterns which make efficient use of land, infrastructure, public services and public facilities which 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.
- Within section 4 of the Land Use Policies, policy number 3 encourages municipalities to establish land use patterns that contribute to wide range or economic development opportunities, thereby enhancing local employment possibilities and promoting a healthy and stable economy.

Overall, the MGB finds that this proposed annexation meets the policy directives contained in the Provincial Land Use Policies. The planning processes used to support this annexation have provided for meaningful and open communication and the emphasis on inter-municipal co-operation is clear and evident in this annexation. The IDP provides strategic direction and support for this annexation proposal. The proposed annexation also provides for the logical extension of land uses and services with the efficient and effective use of existing services within a framework of accommodating development.

## **Part VIII Analysis of Proposed Annexation Areas**

### **Area A**

This area is approximately 640 acres in size and includes the College Park country residential subdivision. The area is a logical extension of the existing and future land use patterns and can be serviced with municipal services and adjoins existing residential development. The IDP recognizes this area as a strategic part of this phase of the overall annexation strategy and meets the needs of the time horizon visualized in the annexation. There are no environmental features which cause any concern as to this area becoming urbanized. The residents of College Park support annexation providing there is the continued maintenance of existing service levels. The owner of the majority of the land supports annexation and this land appears ripe for development.

### **Area B**

This area comprises approximately 1,385 acres. The area contains small holdings, gravel extraction, agricultural operations, environmentally sensitive areas (river bank, escarpment, and ravine), golf course and recreation area. The golf course and recreation area is tied to the City's Waskasoo Park system by City developed trails. Planning for this area includes residential development and a major roadway to tie the transportation network the balance of the City. The inclusion of the golf course and recreation area is to ease the administration of the City's park system and will contribute significantly to the open space system in the City. The MGB is satisfied that the various environmental features in the area can be protected through the policies in the local planning documents. Again this area is supported for annexation by the policy directives in the MDP, IDP and it receives support from County. Although parts of this area consist of river and coulee banks, this area is integral to the annexation strategy in making available additional residential lands as well as providing an integrated open space system for the City. The MGB was satisfied that concerns raised by landowners over the continuation of existing mineral extraction and farming practices are minimal since these activities would be allowed to continue pursuant to any provincial approvals. The City also agreed to honor and facilitate a recently approved country residential subdivision in the area and to increase public notice with respect to trespass on private property owing to activity on adjacent public trails in the area. The concern raised with respect to competition between golf courses is not, in the view of the MGB, an annexation issue. However, the City did assure landowners interested in the expansion of golf courses that due consideration would be given to any expansion subject to the appropriate permits, etc. As well, the need for any river crossings would be examined in the light of any provincial or federal approvals.



### **Area C – Hwy 2 Lands**

This area is approximately 6.25 acres in size and had been consolidated with the Red Deer College lands when Alberta Transportation determined it was no longer required for a widening of Highway 2 or for interchange use. Annexation would make the boundary of the City coterminous with Highway 2, and put all the College lands under a single jurisdiction. There are no landowner objections and the County supports the annexation of these lands.

### **Area D – Government Road Allowance**

Area D is two miles of government road allowance required to improve access to an existing development within the City. The development of this road allowance to urban service standards will facilitate the traffic needs generated by the development at urban densities and is supported by the County. The development and administration of this road allowance within an urban environment is reasonable and logical. There were no landowner objections.

### **Melcor/HOM**

The Melcor lands consist of approximately 320 acres of land, southeast of the existing City boundaries. Melcor/HOM Farms Ltd. raised objections to the annexation on the grounds that these lands were not included in the annexation. The City raised a jurisdictional question as to whether the MGB had the authority to consider the addition of these lands. As a result the MGB asked each party to provide supplementary briefs on this question and these are summarized and analyzed below.

Melcor/HOM Farms documented that they had requested the City to include these lands in the annexation prior to the finalization of the annexation application and provided documentation of requests and correspondence.

### **MGB AUTHORITY**

#### **Melcor/HOM Position**

Firstly, Melcor/HOM objects to what they perceive is a last minute introduction of an objection to the inclusion of these lands, and to the challenge of the MGB's authority to recommend that additional lands be included. Although recognizing that only a municipality may initiate an application Melcor/HOM are of the position that the MGB is not limited in the findings and recommendations it can make to the Minister nor is the MGB bound to the agreement reached by the two municipalities. Melcor/HOM argue that the provisions in the Act are not limiting but rather require the MGB to take a broader view of the annexation giving full consideration to the impact on land owners and the purposes of the Planning Part of the Act, and the annexation parts of the Act. An inter-municipal agreement should not impinge upon good planning practice as

was evident in the Airdrie annexation decision which, in the opinion of Melcor/HOM, cannot be distinguished from the subject proposal. Melcor/HOM stress that in their opinion the MGB has broad powers and responsibilities when considering an annexation proposal and the MGB should not accept the narrow view put forward by the City and the County. Melcor/HOM are affected persons which must be given full consideration and the MGB must examine the broader public interest.

### **City of Red Deer Position**

The City emphasizes that at no time did the City agree to have the Melcor/HOM lands included in the annexation application. In summary the City takes the position that the Act does not permit an individual landowner to make application for annexation and that the MGB's authority to recommend is limited to the annexation requested in the application. This is supported by the purposive legislative change by the legislature to eliminate an annexation application from an individual landowner. The authority of the MGB to consider lands is limited to the application filed by the initiating municipality. This specific legislative direction cannot be nullified by taking a general approach to consider the right to appear by affected persons. Giving rights to affected persons to add additional lands not applied for by the initiating municipality would result in the intent of the legislation being nullified. Melcor/HOM are seeking to do indirectly what they cannot do directly. The City does not deny that the landowners are affected persons and have the right to be heard, however, their ability to require that additional lands be added is limited and the addition of lands must first satisfy the initiating municipality. In this specific case, the City is not prepared to have these lands included in this annexation proposal.

The City differentiates the facts in the Airdrie annexation decision since the lands in question in the Airdrie case were in fact part of the application for annexation as submitted by the initiating municipality. In this annexation proposal the Melcor/HOM lands are not part of the application submitted by the City.

As well, there is no difference in the lands included within the annexation application and the lands included within the negotiated report between the City and County. In the Airdrie case there was a difference in the lands included. The City urges the MGB to be very cautious in the consideration of any lands not submitted in the annexation application as being contrary to the intent of the amendments to the Act and would nullify the statutory limits placed on the right to initiate an annexation. The various studies in the Airdrie annexation supported the inclusions of the lands in questions whereas in this proposed annexation this is not the case.

### **County of Red Deer Position**

The County agrees with the City that the Act does not give the MGB authority to grant authority to a landowner to make an annexation application and the MGB has no authority to consider the inclusion of lands not included in an annexation application. While the County agrees that the

MGB can make recommendations which deviate from an inter-municipal agreement, it cannot grant the right to a landowner to initiate an annexation application. The County referred to the Airdrie decision in that it can be distinguished from the subject annexation proposal on the grounds that the Melcor/HOM Lands are not part of the application by the initiating municipality in the Red Deer case.

The County stresses that the legislation does not permit a private landowner to make annexation applications and that the MGB in the Airdrie decision recognized this principle, however, the facts of Airdrie led to the conclusion that the initiating municipality's application did include the lands. The County highlighted the changes to the previous Act eliminating the right of the landowner to make an annexation application. The County reviewed the historical records contained in Hansard to identify why the deletion of a right of a landowner to make an annexation application was legislated. The County emphasized that there was a deliberate intent by the legislators to take away a landowner's ability to make an annexation application and this change was carried forward to the new Act. As a result, an annexation can include only that for which the initiating municipality applied and in this case it does not include the Melcor/HOM lands.

### **Part of Annexation Application or Not**

#### **Melcor/HOM Position**

The Melcor/HOM position is that although they acknowledge that only a municipal authority may initiate an annexation application, the MGB makes its findings and recommendations based on the reports and representations made to it. On this basis Melcor/HOM presented evidence that it had been in early communication with the City and that it had made representations to the City to have the lands included in the annexation. It also identified the various studies that were undertaken to justify the inclusion of the lands.

#### **City Position**

The City, throughout its legal brief, strongly emphasized that the Melcor/HOM lands were not part of this annexation proposal. The November 27, 2003 annexation application references only areas A, B, C and D and does not include the Melcor/HOM lands.

#### **County Position**

The County concurs with the position of the City that the Melcor/HOM lands are not part of the annexation application and have never been included in the City's proposed area for annexation in this application.

## **Planning and Servicing Merit**

### **Melcor/HOM's Position**

Melcor/HOM submits it makes abundant sense to include the lands within the annexation proposal as:

- the area is a logical extension of existing residential uses;
- the growth rates of the City are so rapid that the proposed annexation will have a short fall in accommodating this growth;
- modifications to the storm water trunk line, to which Melcor contributed financial, have been completed;
- the lands are included in the East Hill Area Structure Plan;
- the area is included in the calculation of off-site levies, the lands are in close proximity to major public infrastructure (e.g. schools, recreation centre, commercial developments, collector roads, public transit routes, police and emergency services); and
- they are supported by various engineering feasibility studies.

In addition, Melcor provided a chronology of events to have these lands included in the annexation application as well as the inclusion of these lands in the Red Deer Growth Study which projected the area as a future development area. However, Melcor in a letter to the MGB on January 15<sup>th</sup> acknowledges that sanitary sewer capacity is still unresolved.

### **City's Position**

The City indicated that the proposed annexation without the Melcor/HOM lands best met the policies and directives contained in the MDP, specifically to balance the geographic distribution of growth in the City. The annexation seeks to direct residential growth more in a northeasterly pattern while present city residential growth has been concentrated in the southeast and northwest. Growth studies provide for options for longer-term growth which would include the Melcor/HOM lands but not in this phase of annexation. As well, the IDP recognizes the phasing of annexation into shorter time horizons and longer-term horizons, of which the proposed annexation areas are in the shorter time horizons and the Melcor/HOM lands are in the longer-term time horizons.

The City pointed out that early in the annexation deliberation process the City indicated to Melcor that it did not support the addition of the Melcor/HOM lands because efficient servicing of the land would be in excess of 25 years. As well, there is insufficient sanitary sewer capacity for the development of these lands. The notice of intent to annex lands did not contain the disputed lands, however, the City gave Melcor opportunity to conduct servicing studies to find solutions to the major servicing problems associated with the area. In spring, 2003 Melcor did provide additional servicing studies; however, these studies were not supported by the

engineering department of the City of Red Deer. In May 2003, the City again reviewed the request by Melcor and concluded that servicing and land adsorption rates did not support the inclusion of the lands. As well, it is the position of the City that the Growth Studies does not support the annexation of these lands at this time. The City indicated that it is continuing to update its growth studies and the Melcor lands will be further investigated pending the resolution of the sanitary sewer capacity issue. While the lands may be considered in future annexation proposals it is not within the current annexation proposal due to the lack of sanitary sewer capacity to the area.

The City also pointed out in its submission that other landowners had requested to be included in the annexation application and that the City did not include these lands for a variety of reasons. Therefore the Melcor/HOM lands were not singled out.

### **County's Position**

The County limited its position to the legal perspective that the Melcor/HOM lands were not part of the annexation application. However, the County did point out that the County was satisfied that the current application meets the land needs of the City, is a logical extension of growth and servicing, and considers fully the interests of the County. Therefore the County supported the annexation as applied for without the Melcor/HOM lands.

### **Part IX Findings, Recommendations and Reasons**

The MGB, after reviewing all the written and oral submissions determines the following findings related to the Red Deer annexation proposal.

#### **Findings**

1. The proposed annexation application is limited to the consideration of Areas A, B, C and D.
2. The City is a rapidly growing community with expected rapid future growth. The population projections and projected land needs appear reasonable.
3. The proposed annexation of areas A, B, C, and D, is consistent with and supported by the policy directions in the City of Red Deer Municipal Development Plan and the City and County of Red Deer Inter-Municipal Development Plan. The proposed annexation is consistent with the phasing of annexation as proposed in these local planning documents.
4. The proposed annexation exemplifies the principle of inter-municipal co-operation as envisaged by the Act and the Provincial Land Use Policies.

5. The annexation agreement between the two municipalities fully considers the impacts on property owners. Impacts on landowners have been fully explained and where required appropriate conditions to the annexation resolve the landowner concerns related to assessment and taxation
6. The inclusion of Areas A, B, C, and D within the City of Red Deer represents a logical extension of existing and future land uses, sets the basis for efficient use of land and efficient and economical use of existing and proposed servicing, while providing for anticipated residential growth needs within the environmental constraints exhibited by each of the areas.
7. The inclusion of Area A provides for logical extensions of residential land uses and existing services with minimal amount of constraints.
8. The inclusion of Area B integrates the various environmental features of the site, the existing open space, various existing and proposed recreation uses and residential capacity for growth within the urban fabric and within a framework of efficient, effective and economical expansion of services. The annexation of Area B balances the geographical growth options desired in the Municipal Development Plan.
9. The inclusion of Area C incorporates a left over piece of highway right-of-way consolidated into Red Deer College creating a clear boundary on the east side of Highway 2.
10. The inclusion of Area D rationalizes the roadway system serving the large population on the east side of the City.
11. The MGB is limited to the considerations of lands contained within the annexation application filed by the City of Red Deer.
12. The Melcor/HOM lands were not part of the annexation application filed by the City with the MGB.

### **MGB Recommendation**

The MGB recommends that the annexation of Areas A, B, C, and D be approved as requested and with the conditions described. The Melcor/HOM lands are not to be included in the annexation.

## **Reasons**

### General

The minimal amount of land currently available for development within the current boundaries combined with the rapid growth experienced by the City, justify the reasons for annexation as stated in the City's annexation application. In addition, the economic and population projections result in a demonstrated need for additional lands to be brought within the jurisdiction of the City.

The lands included within the recommendation are logical extensions of established land use patterns and maximize the utilization of the existing capacity of major infrastructure as well as provide for the extension of the transportation system to meet the projected growth. The inclusion of Area A provides for a logical extension of the urban fabric within the effective, efficient and economical use of existing and future infrastructure. The engineering reports support rationalization of the lands to be included.

The inclusion of Area B, the River Bend Recreation Area with the golf course and trail system, will complete the City's Waskasoo Park System to the benefit of the general public, as well as provide for additional residential capacity. The MGB is satisfied that the specific environmental features in this area will be incorporated into an open space system and will integrate well with existing and proposed recreation uses. Policies in the City of Red Deer MDP specifically address these related open space issues.

Area C provides for an effective and efficient clarification of the western boundaries of the City along Highway 2, whereas, the inclusion of the road allowance in Area D provides for the development of an efficient, effective and economical roadway system to handle the traffic generated by existing developments and future developments on the east side of the City.

The annexation is supported by local planning documents, specifically the Municipal Development Plan and the Inter-municipal Development Plan. This annexation achieves the objective of the MDP to improve the geographical distribution of growth for the City of Red Deer, successfully implements various inter-municipal initiatives, enhances the various environmental features along the Red Deer River, and achieves the growth objective of residential expansion in the north-east area.

The thrust for inter-municipal co-operation envisioned by the Act and the Provincial Land Use Policies is well demonstrated in this annexation proposal. The annexation conforms to the initiatives and directives in the Red Deer Inter-Municipal Development Plan.

The IDP establishes the preference to smaller staged annexations rather than a large complex comprehensive annexation and the MGB is satisfied this objective is achieved. The MGB is

satisfied that the revenue sharing principles outlined in the IDP have been implemented, the transition of servicing will be achieved, compensation arrangements have been implemented, growth rates support the urban expansion, servicing has been effectively considered and expensive existing infrastructure is well utilized, with proper planning for an efficient transportation network. As well, local support has been achieved and where there were concerns, explanations of the process for the continuation of existing uses has been effectively explained. Appropriate and fair assessment and taxation conditions have been appropriately implemented. The conditions requested regarding assessment and taxation show that the City intends to try to maintain the current land uses until such time as the land is needed for high density residential use.

The revenue sharing formula and the decision to have the County continue to provide services to the annexation area for two years indicates a desire by both parties to ease the transition from one jurisdiction to another. These negotiated conditions ensure that the financial impact on the County is minimized and the transition of services from a rural standard to an urban standard occurs in an orderly fashion. The MGB finds the conditions requested by the City and County in the negotiation report respecting revenue sharing and assessment and taxation to be reasonable.

While the MGB did receive objections to the annexation, during the course of the public hearing, the objections became something of a desire by most objectors to obtain certain conditions or assurances that their current land uses, lifestyles and enjoyment of their property would remain unaffected until the land is actually need for other uses. The MGB believes approval of this annexation with the associated conditions best serves the whole community while providing some relief to the individual landowners most affected.

#### Melcor/HOM Lands

#### Lands Not Part of the Annexation Application

The principle issue in dispute is the request by Melcor for the inclusion of their property in the annexation application. First, the property was considered by the City for inclusion in the initial notification of the intent to annex lands, but was rejected because of the difficulties of servicing the property. Over a number of month the City gave Melcor an opportunity to develop various engineering solutions to solve the servicing issues, however, the City was not satisfied with these solutions. In fact evidence before the MGB provided by Melcor itself indicates that there are still outstanding servicing issues related to sanitary sewer capacity. As a result it was never included and as such, was never a part of the formal annexation application filed pursuant to Section 119 of the Act.

The MGB further rejects the argument of Melcor that just because the lands were included in the growth study the same lands are considered to be included in the annexation application. The



City clarified the purpose of the growth study and indicated that the growth study identified the limitations for the subject disputed lands being included within this phase of annexation.

In legal argument the City of Red Deer further clarified that these lands were not lands included in the annexation application filed with the MGB pursuant to section 119 of the Act even though there may be reference to these lands in the growth study. The growth study is simply part of the documentation supporting the annexation report to the MGB. Throughout the annexation hearing the County of Red Deer supported this position

#### Full Consultation

Therefore, it is the opinion of the MGB that the annexation of these lands are not before the MGB. Second, with the City having given full opportunity for Melcor to make presentations and having given full consideration to the inclusion of these lands as well as providing Melcor with strong reasons to not include the property, the MGB is not prepared to recommend that the annexation agreement reached through negotiation be disturbed, or that the additional financial burden of financing major infrastructure be considered without the agreement of the recipient municipality. Third, the extent to which the City performed its duty to keep both the landowners and the public aware of the annexation process, including the negotiation, precludes a finding that the annexation was decided in isolation of the affected parties.

#### Airdrie Recommendation Differentiated

Melcor argued that the recent recommendation of the MGB to include lands not in annexation agreement in Airdrie sets the precedent for consideration of the subject lands in the case of the Red Deer annexation. The City and County argued that the Airdrie case has a substantially different factual background and the MGB agrees. In the Airdrie case, the annexation application made by the City of Airdrie included Melcor lands which were not included in the annexation agreement between the two municipalities, Airdrie and Rocky View. The MGB concluded in that case that the initiating municipality did include the lands in their annexation application and therefore the lands were fully within the ability of the MGB to recommend to the Minister and Cabinet. Since the lands included in the annexation application and the lands included within the inter-municipal agreement differed the MGB, in the Airdrie case, was forced to look at the various supporting reports and growth studies to determine the logic behind what lands should or should not be included. Other contributing factors to the Airdrie case were the inability of the municipalities to explain the logic for the area being left out and the less than open manner in which communications were carried out with landowners. This is not the case in the Red Deer annexation proposal as the City has made it abundantly clear that the subject Melcor/HOM lands are not included in the application filed with the MGB and the reasons why they are not included.

MGB Authority Limited

Despite the fact the subject Melcor/HOM lands were not included in the annexation application Melcor attempted to convince the MGB that the MGB has wide authority to recommend that lands not considered by the initiating municipality could be considered in the greater public interest. The City and County argued against this position. The MGB accepts the argument of the County and City on this point. As stated in the Airdrie case, the Act prior to 1995 permitted an individual landowner to apply for annexation and through an amendment to that Act and the new Act this ability was eliminated. Section 119 of Act currently limits an annexation to be initiated only by a municipality. The MGB accepts the argument of the City and County that this was a deliberate and intended legislative initiative to ensure that determination of the annexation boundaries would be through the local municipality; and all the financial, planning and community impacts would be vetted at the local level before any consideration was given at the provincial level.

The MGB accepts that it must give meaning to this deliberate legislative action that parties who wish land to be annexed must first convince the local municipality that the lands should be included in the municipality's application for annexation. The local municipality must at first instance be satisfied that the lands are needed, are a logical extension of land use patterns and existing servicing, that any financial, environmental, corporate impacts are fully considered and that the responding municipality is reasonably satisfied with the change in boundaries and with the various impacts. The change in boundaries can have significant impacts and the legislation as amended envisages a thorough review will happen first at the local level before an annexation is submitted for provincial approval. This further enhances the theme of local autonomy developed throughout the various sections of the new 1995 *Municipal Government Act*.

Although the MGB accepts that when objections are filed it can investigate, analyze and make findings of fact, consider the greater public good and must hold a hearing to allow affected persons to provide input into the annexation, all of this is done within the context of evaluation of the lands included in the annexation application filed under Section 119 by the initiating municipality. If various land areas are not included in the annexation application then there is nothing to evaluate, analyze or make findings about or to determine what is in the greater public good. The MGB's report, completed pursuant to Section 123 of the Act, is in regards to the public hearing about lands included within the annexation application filed by the initiating municipality under section 119, and is not in regards to other lands. The MGB concludes that this approach best meets the deliberate intent of the legislation to eliminate the ability of a landowner to make an application for annexation. In addition, there is no specific authority in the Act, which states that there is an appeal to the MGB from a municipality not including lands within an annexation application.

This argument of which lands are included in an annexation application and the authority of the MGB, must not be confused with the authority of the MGB to recommend and the authority of

the Minister and Cabinet to decide regarding an annexation agreement. It is clear to the MGB and the parties to the annexation proceedings, that neither the MGB, the Minister nor Cabinet are bound to an annexation agreement. However, the starting point for the MGB requires examination and determination of the lands included in the application by the initiating municipality pursuant to section 119 of the Act.

### **Conclusions**

The MGB would state that given the effort of the City and County to establish a process which enables a logical evaluation of annexation during the negotiation process, the MGB is of the opinion that it is only in unique circumstance that an annexation agreement reflecting local needs and concerns should be adjusted. Further, by including the criteria in the IDP, the criteria are public information which ensures that all concerned know the expectations with regard to annexation.

The MGB would commend the City and County for undertaking their duties in such a reasonable and open fashion. Such action can only foster a true sense of partnership, not only between municipalities, but also with all parties and landowners. Such a partnership can only benefit all concerned. In such a case, the MGB cannot justify recommending adjusting an agreement that recognizes the needs of the community as a whole.