

BOARD ORDER NO. MGB 057/17

FILE: AN16/PENH/T-01

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

AND IN THE MATTER OF an application by the Town of Penhold, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from Red Deer County.

BEFORE:

Members:

H. Williams, Presiding Officer

L. Starling, Member

T. Robert, Member

Case Manager:

R. Duncan

SUMMARY

After examining the submissions from the Town of Penhold, Red Deer County, affected landowners, and other interested parties, the Municipal Government Board (MGB) makes the following recommendation for the reasons set out in the MGB report, shown as Schedule 3 of this Board Order.

Recommendation

That the annexation be approved in accordance with the following:

The Lieutenant Governor in Council orders that

- 1** In this Order, “annexation area” means the area described in Schedule 1 and shown on the sketch in Schedule 2.
- 2** Effective April 1, 2018, the land described in Schedule 1 and shown on the sketch in Schedule 2 is separated from Red Deer County and annexed to the Town of Penhold.
- 3** Any taxes owing to Red Deer County at the end of March 31, 2018 in respect of the annexed land and any assessable improvements to it are transferred to and

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become payable to the Town of Penhold together with any lawful penalties and costs levied in respect of those taxes, and the Town of Penhold upon collecting those taxes, penalties and costs must pay them to Red Deer County.

4(1) For the purpose of taxation in 2019 and subsequent years, the assessor for the Town of Penhold must assess the annexed land and the assessable improvements to it.

(2) For the purpose of taxation in 2018 and in each subsequent year up to and including 2032, the annexed land and assessable improvements to it

- (a) must be assessed by the Town of Penhold on the same basis as if they had remained in Red Deer County, and
- (b) must be taxed by the Town of Penhold in respect of each assessment class that applies to the annexed land and the assessable improvements to it using the tax rate established by Red Deer County for property of the same assessment class.

5(1) Where in any taxation year up to and including 2032 a portion of the annexed land

- (a) becomes a new parcel of land created as a result of subdivision or separation of the title by registered plan of subdivision or by instrument or any other method that occurs at the request of, or on behalf of, the landowner,
- (b) becomes a residual portion of 16 hectares or less after a new parcel referred to in clause (a) has been created, is redesignated, at the request of or on behalf of the landowner, under the Town of Penhold Land Use Bylaw to another designation, or
- (c) is redesignated, at the request of or on behalf of the landowner, under the Town of Penhold Land Use Bylaw to another designation, or
- (d) is connected to water or sanitary sewer services provided by the Town of Penhold,

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section 4(2) ceases to apply at the end of that taxation year in respect of that portion of the annexed land and the assessable improvements to it.

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

6 The Town of Penhold shall pay to Red Deer County

- (a) sixty-one thousand five hundred and thirty dollars (\$61 530) on or before July 31, 2018,
- (b) forty-nine thousand two hundred and twenty-four dollars (\$49 224) on or before July 31, 2019,
- (c) thirty-six thousand nine hundred and eighteen dollars (\$36 918) on or before July 31, 2020,
- (d) twenty-four thousand six hundred and twelve dollars (\$24 612) on or before July 31, 2021, and
- (e) twelve thousand three hundred and six dollars (\$12 306) on or before July 31, 2022.

DATED at the City of Edmonton, in the Province of Alberta, this 13th day of December, 2017.

MUNICIPAL GOVERNMENT BOARD

(SGD) H. Williams, Presiding Officer

Schedule 1

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

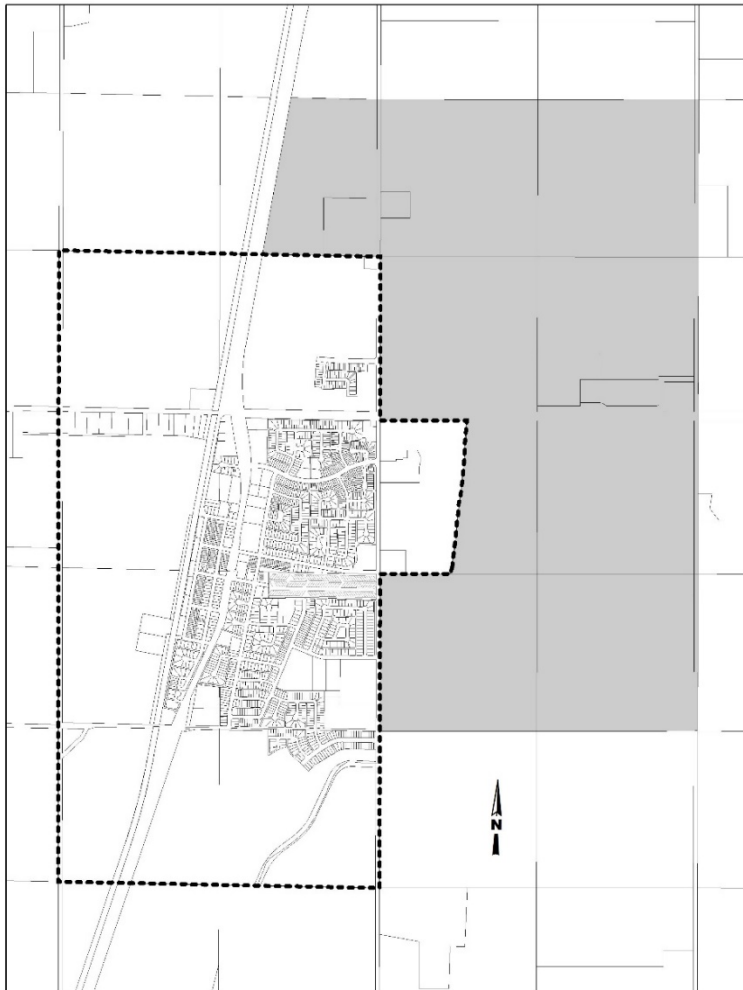
ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH (4) MERIDIAN LYING EAST OF THE EAST BOUNDARY OF PLAN 002 0554.

ALL THAT PORTION OF SECTION SIX (6), TOWNSHIP THIRTY-SEVEN (37), RANGE TWENTY-SEVEN (27) WEST OF THE FOURTH (4) MERIDIAN INCLUDING THAT PORTION OF THE NORTH-SOUTH ROAD ALLOWANCE ADJACENT TO THE EAST SIDE OF SAID SECTION.

ALL THAT PORTION OF SECTION THIRTY-ONE (31), TOWNSHIP THIRTY-SIX (36), RANGE TWENTY-SEVEN (27), WEST OF THE FOURTH (4) MERIDIAN NOT WITHIN THE TOWN OF PENHOLD INCLUDING THAT PORTION OF THE NORTH-SOUTH ROAD ALLOWANCE ADJACENT TO THE EAST SIDE OF SAID SECTION.

Schedule 2

**A SKETCH SHOWING THE GENERAL LOCATION OF THE AREAS
SEPARATED FROM RED DEER COUNTY AND ANNEXED TO THE
TOWN OF PENHOLD**



Legend

- Existing Town of Penhold Boundary
- Annexation Area

Schedule 3

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

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Acronyms/Abbreviations

Annexation recommendations often include many acronyms and abbreviations. For ease of reference, the following table lists the acronyms and abbreviations used multiple times in this recommendation.

Acronym/Abbreviation	Full Description
<i>Act</i>	<i>Municipal Government Act</i>
ASP	Area Structure Plan
AT	Alberta Transportation
County	Red Deer County
Creek	Waskasoo Creek
IDP	Town of Penhold/Red Deer County Intermunicipal Development Plan
LGC	Lieutenant Governor in Council
LUB	Land Use Bylaw
MDP	Municipal Development Plan
MGB	Municipal Government Board
Minister	Minister of Municipal Affairs
Notice	Notice of Intent to Annex
Town	Town of Penhold

EXECUTIVE SUMMARY

[1] On July 12, 2017, the Municipal Government Board (MGB) received an application from the Town of Penhold (Town) to annex approximately 534 hectares (1,319 acres) of land from Red Deer County (County). The application states that the proposed annexation is intended to address the long-term future growth needs of the Town in a rational and orderly fashion. Although the two municipalities worked collaboratively and were able to reach an agreement, some affected landowners objected to the proposed annexation. In accordance with the *Municipal Government Act (Act)*, the MGB conducted a public hearing on September 7, 2017.

RECOMMENDATIONS

[2] After considering the oral and written submissions received from all parties during the proceedings, the MGB recommends the annexation area requested by the Town with an effective date of April 1, 2018. To address concerns from affected landowners, the MGB also recommends an extension of the assessment and taxation transition period from 10 years to 15 years.

MAJOR ISSUES AND CONSIDERATIONS

Annexation Process

[3] The MGB finds that the annexation agreement between the Town and County was developed in a collaborative manner and in good faith. The municipalities facilitated open communication with affected landowners, and provided public information sessions to encourage participation from landowners and the public.

Annexation Area

[4] The MGB concludes that the proposed annexation, encompassing lands to the east and north of the Town, is reasonable.

[5] The Town projects a significant population growth by 2049, requiring additional land for commercial, industrial and residential use. The proposed annexation area will encompass environmentally significant features, including Waskasoo Creek and Fleming Marsh. The undevelopable area resulting from these features is acknowledged and was considered to determine whether the approximate 534 hectares of the proposed annexation is reasonable.

[6] The proposed growth direction complies with the Intermunicipal Development Plan and Municipal Development Plan provisions.

Municipal Servicing

[7] The Town has demonstrated it can provide municipal services to the annexation area. The MGB is satisfied that extending municipal services to the annexation area is possible. Water services can be extended via the new water reservoir in the north part of Town that will be connected to grid water trunks and provide water to the north and east of the Creek. The location and topography of the annexation area allow for sufficient wastewater collection services to the annexation area through a combination of the existing wastewater collection system, the construction of new wastewater collection mains, gravity mains, and a single lift station.

[8] The MGB accepts that drainage is an obstacle, as the lands will be serviced through the Town's storm drainage system that connects to the Creek.

[9] The MGB finds no issues regarding the expansion of the transportation network. Economically viable opportunities to expand the Town's road network across the Creek and service the annexation area were identified. It is also clear that both municipalities are willing to work collaboratively to develop a cohesive transportation network.

Financial Considerations

[10] The MGB finds that both municipalities are in good or average financial standing with reasonable debt levels. Given that the annexation area will only increase the Town's assessment base by 2.383% and reduce the County's assessment base by 0.118%, the MGB is convinced the annexation will not create a financial shock for either municipality. The MGB accepts the annexation is not simply a "tax initiative", driven by finances rather than proper land use planning considerations.

[11] The municipalities agreed to a 10-year municipal assessment and taxation transition period in which the Town will maintain County municipal tax rates for lands within the annexation area. The MGB acknowledges that this was agreed to by both municipalities, but recommends an extension of the 10-year transitional period to a 15-year municipal assessment and taxation transition period. The extension to 15 years is warranted for several reasons. The annexation area is estimated to provide a land supply timeframe of 30 to 35 years. Considering similar annexation timeframes within the province, a 15-year transitional period is consistent with transitional provisions of other recent annexations. An increase in the transitional time will provide more certainty for affected landowners and will allow them additional time to collaborate with the Town regarding future development. The additional transition period will also allow a longer period of time for ongoing agricultural operations within the annexation area. Moreover, 15 years strikes a balance between a 35-year population growth and development horizon needed for planning purposes, and the time needed by the landowners to transition to their new municipality. In

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response to the affected landowner's citation of larger transitional assessment and taxation periods being imposed for other annexations, the MGB finds that the transitional periods of the other annexations had longer growth horizons than this annexation.

[12] This transitional period is conditional and will be terminated after the 15 years have lapsed, or if a portion of the annexed land:

- a. becomes a new parcel of land as a result of subdivision or separation of title by registered plan of subdivision or by instrument or any other method that occurs at the request of, or on behalf of, the landowner;
- b. becomes a residual portion of 16 hectares or less after a new parcel referred to in clause (a) has been created;
- c. is redesignated at the request of, or on behalf of, the landowner under the Town of Penhold's Land Use Bylaw; or
- d. is connected to the water or sanitary sewer services provided by the Town of Penhold.

[13] The assessment and taxation provisions will not terminate if the subdivision divides an existing farmstead from a previously unsubdivided quarter section; or a portion of the annexed land is redesignated under the Town of Penhold's Land Use Bylaw to the designation "Urban Reserve District".

[14] The MGB accepts the municipalities agreed to "subject to removal conditions". These will allow landowners to have one subdivision out of a quarter section without any changes to the assessment and taxation of their property. Additionally, any existing land uses and development will not be affected, as they can continue as non-conforming uses. The premature loss of the municipal assessment and taxation provisions would be triggered by the landowner's own action, or by the action undertaken by a person acting on behalf of the landowner.

Effective Date

[15] Both municipalities agreed to an effective date of January 1, 2018. However, being mindful of the processing time, the MGB finds it necessary to recommend an annexation effective date of April 1, 2018.

Municipal Considerations

[16] In response to concerns raised by affected landowners regarding their agricultural operations, the MGB finds that agricultural best practices will be maintained. The *Agricultural Operation Practices Act* includes regulations for spreading manure for all livestock operations in Alberta. This includes that manure spreading should be no less than 150 metres from the nearest

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house. Additional concerns raised included the discharge of firearms. It is the MGB's understanding that the Town does not have a firearm bylaw in place. According to the Town's statement, the discharge of firearms is regulated under the *Wildlife Act*, which prohibits the discharge of a firearm within 200 yards of a house.

CONCLUSION

[17] The MGB finds that the proposed annexation complies with the *Act* and addresses the 15 annexation principles established by the MGB in Board Order No. MGB 123/06. The MGB finds the conditions as recommended to be certain, unambiguous, enforceable, and time specific. The intent of the annexation and the amount of land agreed to by the municipalities is reasonable. The MGB finds that the affected landowners' concerns have been given proper consideration throughout the entire annexation process. Therefore, the MGB recommends the annexation as outlined in this report.

PART I INTRODUCTION

[18] The Town of Penhold (Town) is located approximately two kilometers west of the Queen Elizabeth Highway II and within ten kilometers of the City of Red Deer. It is advantageously located within the fast growing Highway II and Highway 2A corridor. Additionally, Highway 42 runs east to west through the upper portion of the Town.

[19] On July 12, 2017, the Municipal Government Board (MGB) received an application from the Town to annex approximately 534 hectares (1,319 acres) of land from Red Deer County (County). The application identified that the land is to accommodate future long-term growth to build a complete and sustainable community, provide land supply for residential and commercial uses, and to provide for the diversification of the Town's assessment base.

[20] Although the Town and the County negotiated an agreement, the application contained landowner objections to the proposed annexation. In accordance with section 120(3) of the *Act*, the MGB held a public hearing on September 7, 2017, to receive information, evidence and argument regarding the annexation proposal.

[21] The following report outlines the MGB's role, provides an overview of the Town's annexation proposal, summarizes the public hearing, and provides the MGB's recommendation to the Minister of Municipal Affairs (Minister) regarding this matter.

PART II ROLE OF THE MGB, THE MINISTER, AND THE LIEUTENANT GOVERNOR IN COUNCIL

[22] The MGB is an independent and impartial quasi-judicial board established under the *Act* to make decisions about land-use planning and assessment matters. The *Act* gives the MGB the authority to "deal with annexation". The *Act* also allows the MGB to "establish rules regulating its procedures". The MGB Annexation Procedure Rules have been adopted to provide information about annexation proceedings, facilitate a fair and open process, and increase the efficiency and timeliness of the hearing process.

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

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

[25] The report is then submitted to the MGB. If the initiating municipality requests the MGB to proceed, pursuant to section 119 of the *Act*, the report becomes the annexation application. If the MGB is satisfied that the affected municipalities and public are generally in agreement, the MGB notifies the parties of its findings and unless objections are filed by a specific date, the MGB makes its recommendation to the Minister without holding a public hearing. If an objection is filed, the MGB must conduct one or more public hearings. If the MGB is required to conduct a hearing, section 122(1) specifies the MGB must publish a notice of hearing at least once a week for two consecutive weeks in a newspaper or other publication circulating in the affected area, the second notice being not less than six days before the hearing.

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

PART III ANNEXATION APPLICATION

[27] Part III of this report provides an overview of the Town's annexation application.

[28] The Town applied to annex approximately 534 hectares of land from the County. The proposed annexation area contains approximately 520 hectares of titled land and 14 hectares of road right-of-way. Through an increase in land supply, the Town seeks to balance and diversify non-residential and residential tax assessment. The annexation is intended to provide long-term future growth opportunity for a 30 to 35-year horizon. The Town wants to ensure that residential opportunities are balanced with the ability to access commercial business and employment

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opportunities locally, for which it requires a suitable and sufficient land area for future development. The Town is anticipating significant residential growth over the next 30 years, and desires to provide a variety of housing options. Currently, the land supply for residential use is estimated to last another 10 to 12 years.

[29] The annexation complies with the overall direction of the Town of Penhold / Red Deer County Intermunicipal Development Plan (IDP) and the Town of Penhold Municipal Development Plan (MDP). The annexation reflects an intermunicipal understanding in line with the IDP's long term growth direction.

[30] The IDP provides direction for future growth and identifies areas meant for short-term and long-term annexation by the Town. Map 2 of the IDP outlines the Town's growth area and future growth area, which stretch along both sides of Waskasoo Creek (Creek), starting north of the Town boundaries and following the Creek south of it. The proposed annexation lands lie within the IDP's designated Town growth area, which are expected to encompass residential, commercial and industrial land uses. More detailed land use plans and bylaws for the growth areas are directed to the MDP.

[31] The current MDP was prepared in 2010, prior to the approval of the IDP. Thus the current MDP does not provide specific land use direction beyond the Town boundaries. It is the Town's intention to amend the MDP once the annexation is in effect, to reflect the general land use patterns the Town envisions.

[32] The IDP identifies two key environmental features abutting the Town: the Creek, mainly located east of the Town's boundary, and Fleming Marsh, which abuts the Town's west boundary. Policies have been established for the preservation and management of development in the proximity to these features. The IDP states that the features shall be evaluated and identified for preservation purposes, that environmental reserves shall be dedicated along bodies of water, and that environmental reserves, 30 meters in width, be dedicated along the two features' top of bank lying outside the Town's boundaries as of June 2017.

[33] Although the area along the Creek provides limited development opportunities, it offers a unique opportunity to design the Town around this large central open space. The lands west of the Creek and north of Highway 42 are intended for future residential and commercial use, reflecting adjacent land use patterns within the Town's current boundaries. These uses are also intended for the lands east of the Creek and south of Highway 42, representing a new future residential neighbourhood with commercial growth. The area east of the Creek and north of Highway 42 was identified for future industrial uses. This location provides good truck access along the Highway II and Highway 2A corridor. The Town stated that it would be amending its Land Use Bylaw (LUB) to ensure compatibility of land uses of the annexed lands.

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[34] The MDP supports the diversification of the Town's economic base and the Region through development and expansion of economic activities. The MDP states that the Town shall annex a sufficient amount of land to ensure an adequate supply of developable land is available prior to the current supply being exhausted. The Town encourages appropriate economic development to achieve a 40:60 ratio of non-residential to residential assessment.

[35] The Town's annual growth rate for the past 50 years averages 3.95%, with the May 2016 Federal Census resulting in a population count of 3,277. Due to a decrease in the Town's average household size from 2.62 persons in 1999 to 2.28 persons in 2014, the Town has experienced an increase in average density for residential units. Tracking an increase in population, the average dwelling units built per year went from 27.6 units to 72.6 units. Using the annual growth rate of 3.95%, the Town's projected population will exceed 10,000 between 2044 and 2049. The annexation is intended to accommodate such a population increase. The average growth rate over the past 10 years was 4.97%. To project and determine land requirements, the Town used an average of 2.3 people per dwelling and an average density of 12.5 units per hectare. The amount of commercial land identified for the proposed annexation area is similar to the Town's current ratio of commercial lands developed in relation to population.

[36] The selection of growth direction to the east and north of the Town's present boundaries results from several factors. Area to the east allows for contiguous boundaries and logical units of land for the planning and development of residential neighbourhoods and employment areas. It allows for future commercial sites at a location where they could be successful with an increase in population. Future industrial development and employment lands will be located north of Highway 42 and east of the Creek to cater to industries requiring railway and highway access, incorporating the Creek flood plain as opportunity for a future storm water management system. Furthermore, growth to the east of the Town boundaries rather than to the west, is considered more favourable due to geotechnical conditions.

[37] The Town's engineering consultant assessed the ability to extend the municipal infrastructure to the annexation area. The existing water distribution system can be extended to service the new area. A future opportunity also exists to extend water mains to serve the County growth area farther east. Through construction and extension of wastewater collection mains and gravity mains, the Town will be able to service the annexation area with a wastewater collection system that connects to the regional lift station. The annexation area can be serviced with a municipal storm drainage system that connects to the Creek through storm mains and water management facilities. The Creek is the approved receiving water course for the Town's storm drainage outlets. Due to the amount of developable land available, the annexation area can be serviced by the extension of a major road network. Although Creek crossings will be required, the lands immediately north and east of current Town boundaries are viable for new development and can be economically and cost effectively serviced with municipal infrastructure.

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[38] As part of the Town's public consultation, it held two open houses, provided letters, held one-on-one meetings, and had follow-up calls, and provided other services to ensure that affected landowners and mineral land holders were sufficiently informed about the proposed annexation. Referral letters and open house invitations were also sent to agencies and stakeholders, such as local school authorities and Alberta Transportation (AT).

[39] The Town received no objections from affected authorities. However, AT provided comments regarding the need for Area Structure Plans, intersection improvements, future transportation planning documents, and pedestrian routes once development occurs and density increases.

[40] During the public consultation process, the major concerns identified by affected landowners were tax increases and changes to current land uses. In response, the Town's proposed annexation conditions would provide a transition period of up to 10 years, within which the County's tax rate will be maintained, unless the annexed land:

- a. becomes a new parcel as a result of subdivision or separation of title (at the request or on behalf of the landowner)
- b. becomes a residual portion of 16 hectares or less after a new parcel is created
- c. is redesignated (at the request or on behalf of the landowner)
- d. is connected to the Town's water or sanitary services

[41] Respecting financial positions, the annexation application states that the Town is in line with other Alberta towns regarding its reserve and debt levels, which indicates reliance on a predominantly residential assessment base. The County is in a relatively strong, positive financial position. Its reserve and debt levels are more favourable than the provincial average for similar municipalities.

[42] The annexation will have a comparatively small financial impact on the County, and a more significant positive impact on the Town. The municipalities agreed to a municipal tax compensation package of approximately \$184,589.88 to be paid to the County over a 5-year period (2018 to 2022) following the annexation. The most significant immediate additional annual operating cost for the Town is the maintenance of new gravel roads. It represents an estimated increase of 0.18% of the Town's expenditures. Additional operating costs will occur 5 years after the effective date of the annexation, as the Town will become responsible for half of the annual operating expenses for a gravel road along Range Road 275. However, the expiration of the 5-year compensation package will provide the Town with all municipal tax revenues from the annexation area to offset this cost. The annexation will not have an adverse effect on the Town's overall financial capacity, nor will it infringe on the Town or County's ability to manage land use and govern within their boundaries.

PART IV PUBLIC HEARING – September 7, 2017

[43] Part IV provides an overview of the hearing process as well as a summary of the submissions received by the MGB at the public hearing.

Hearing Process Overview

[44] As a result of affected landowners' objections, and in accordance with section 120(3) of the *Act*, the MGB held a public hearing on September 7, 2017. A notice of the hearing was published in the two local newspapers, the **Innisfail Province** and the **Red Deer Express**, during the weeks of August 21, 2017, August 28, 2017, and September 5, 2017. The MGB also mailed hearing notifications to all affected parties identified by the Town and the MGB. In response to the public hearing, the MGB received written responses from Mr. and Ms. Newton, Mr. den Boer, Mr. Simituk, and Mr. and Mrs. Kaun.

Public Hearing Summary

[45] During the public hearing, the MGB was provided with oral and written submissions from the Town, the County, and the affected landowners. Summaries of the submissions are provided below.

Summary of the Town of Penhold's Position

Planning

[46] At the public hearing, the Town provided a more detailed overview of its annexation application, by expanding on some of the subject matters addressed in its application, and provided information regarding the annexation agreement reached with the County. The Town emphasized that the annexation will assist the Town in becoming a sustainable community with a local commercial sector and employment opportunities, provide land needed for residential and commercial growth for the next 30 years, and diversify the Town's assessment base.

[47] The Town contends that the annexation is reasonable due to its proximity to the provincial highway network, the existing wetland patterns, the slope of land draining into the Creek, and the influence of the Canadian Pacific Railway. A railway line is located almost perpendicular to Highway 2A, crossing through the Town diagonally.

[48] The Town's current land supply consists of 130.5 hectares for industrial use, 3.0 hectares for commercial use, and 87.0 hectares for residential use. This results in an estimated land supply for a population of approximately 5,400.

Statutory Plan Compliance

[49] The Town emphasized that the IDP was adopted by the municipalities in 2017, and reflects their aspiration for managed growth. The IDP provides a framework for a 50-year horizon of joint planning, including current and future annexation applications. The proposed annexation area is identified as Town growth area. Although the Town's MDP was created prior to the adoption of the IDP, it also supports the annexation application.

[50] The annexation application aims to ensure future development meets the community vision of creating a safe, family-friendly environment by:

- providing sufficient services;
- ensuring land availability for different land uses;
- providing sufficient green spaces; and
- ensuring the Town remains a financially stable and secure community.

Environmental Consideration

[51] The IDP contains policies relating to the preservation of the Creek and Fleming Marsh, which are both identified as environmentally sensitive features. The IDP requires:

- An environmental impact assessment to be conducted for any non-agricultural or more intense development around these environmentally significant areas;
- Municipal reserves and/or environmental reserves shall be dedicated subject to legislation and statutory plans;
- The preparation of an Area Structure Plan (ASP) to evaluate and identify environmentally significant areas for preservation;
- Municipal and environmental reserve buffers of 30 meters be dedicated through subdivision along the features' top of bank lying outside Town boundaries.

Economic Development / Intermunicipal Cooperation

[52] Both municipalities met in good faith and undertook eight months of negotiation. They agreed to work together to diversify the economy of the Penhold area, through an annexation with an effective date of January 1, 2018, including assessment and taxation transition provisions, and compensation. As a result, the Town will pay compensation to the County through a five year declining balance of \$184,589.88 in total over 5 years, and a 50/50 cost sharing agreement for long term maintenance and capital improvements to a two-mile stretch of Range Road 275. The compensation to be paid to the County is a flow through amount and will not impact the residents of the Town.

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Public / Landowner Consultation

[53] The Town held two open houses as part of their consultation activities, these were held on November 23, 2016 and March 15, 2017. Additionally, the Town conducted one-on-one meetings with affected landowners to discuss issues of concern. Of the 14 parcels of land being annexed, two landowners representing four parcels are opposed to the annexation, two landowners representing two parcels did not provide a verbal response, and six landowners representing eight parcels are not opposed to the annexation. In general, the issues identified by affected landowners include tax increases, operation of a current feedlot, pest control, control of land, spreading manure, Range Road 275 maintenance and operation, and business opportunities.

[54] In response to landowner concerns, the Town stated that there is a 10-year transitional period in which the Town will maintain the County tax rate, submitting that no immediate changes to municipal assessment and taxation will occur. The municipalities have reached an agreement for Range Road 275, which will ensure long term continued use by the agricultural community in the movement of large farm equipment, and will ensure that the maintenance standards of the road are upheld.

[55] Regarding landowner concerns for existing uses and the loss in control over current operations, the Town stated that all approved or allowed uses and development prior to the annexation will be allowed to continue. The lands will be subject to planning controls of the day, once the landowner determines if and when the land is to be developed.

[56] In response to manure and pest control practice concerns, the Town expects that agricultural best practices will continue to be used. Under the *Agricultural Operation Practices Act*, there is a requirement that manure must be applied at least 150 meters from any residence or other building that is not owned by the person spreading manure. The Town stated that it has no bylaw in place to restrict the discharge of firearms and that farmers are allowed to control pests on their property under the *Agricultural Pests Act* and Regulation.

[57] To address timing concerns regarding development, the Town stated that lands have to be planned well in advance to be able to accommodate growth during favourable economic times. Some lands will be developed sooner than others, but the annexation will provide landowners future urban development potential for most of the annexed land.

[58] The Town also addressed concerns raised by local and government authorities. AT expressed concerns about the need for a traffic impact analysis, but has reached an understanding with the Town. The Town is responsible for all required changes, including facilities for pedestrians. It was stated that Highway 42 should not be annexed. In response to AT's comments, the Town stated that it is not practical to leave the Highway 42 right of way in County jurisdiction.

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However, AT and the Town have come to the understanding that the Town will update the Town's Transportation Master Plan to include the annexation area upon the annexation approval.

[59] Chinook's Edge School Division raised concerns regarding students having to cross the highway to reach the school. The Town responded that pedestrian facilities will be needed for the developing area. This will be addressed at the planning stage.

[60] The Town acknowledged that EQUUS Rural Electrification Association LTD. (EQUUS) - an electrical distribution service provider - objects to the annexation because it will lose five members that are within the annexation area. EQUUS takes no position on the merits of the proposed annexation as a municipal matter, but is concerned with the application by FortisAlberta Inc. to the Alberta Utilities Commission for orders concerning municipal franchises with municipalities. Therefore, the annexation has an adverse effect on EQUUS. The Town submitted that EQUUS should not object to the annexation and should not hinder the Town's ability to achieve its vision for the community.

Summary of Red Deer County's Position

[61] Based on findings of the Town's growth study conducted in early 2016, the Town expressed its desire to annex land from the County. Both municipalities engaged in discussions and worked collaboratively to develop an IDP to accommodate future growth needs.

[62] The County submitted that the Notice of Intent to annex land from the County contains the agreed upon land descriptions. The notice was brought to County Council on November 1, 2016 whereby Council approved the proposed annexation in principle. After receipt of the Town's Annexation Negotiation Report in June 2017, Council passed a resolution to approve the report. At that time, the County advised the MGB that it agrees with the annexation as described in the report.

Summary of Landowners' Submissions

Mr. and Ms. Newton

[63] Mr. and Ms. Newton provided a written summary of their position to the MGB. Additionally, Ms. Newton provided an oral presentation at the public hearing. The Newtons had previous experience with annexation as a portion of their land was annexed by the Town in 2007. At that time, there was a 5-year taxation agreement at which their property was assessed at County rates. Shortly after the annexation, the Town instituted a minimum tax that increased over time. Even though the County assessment and taxation rates applied, the Newtons incurred an increase in the total amount of taxes paid. In going ahead with this annexation, the Newtons request that

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there will be no minimum tax charged on farmland by the Town, and that the land taxes are to be based on the value of the land and the mill rate only.

[64] The Newton's are not opposed to growth and have no objections to the annexations. However, they are concerned about the financial impact the annexation will have on their farming operation. They identified the 10-year tax arrangement as inadequate considering that the Town's time estimate for growth will reach its goal in 27 years. The taxation arrangement will adversely affect profitability of their farming operation as the financial impact will add up over the years. The Newtons request that there be no change to their taxes. They brought forward examples of other municipalities that have taxation arrangements for 50, 30, 25, and 15 years, and suggest that the Town should do similar.

Mr. den Boer

[65] Mr. den Boer provided an email submission outlining his position. He questions the need for the annexation as there is still undeveloped land west of the railway line. Mr. den Boer is interested in maintaining agricultural tax levels for as long as the agricultural land is farmed. Mr. den Boer is also concerned about changing bylaws and practices, such as prohibiting the use of firearms that will impact his livestock operation, and reduced speed limits. He also finds the Town's cost for additional road maintenance prior to receiving additional revenue through further commercial development concerning.

Mr. Simituk

[66] Mr. Simituk provided a list of objections at the hearing. He identified the annexation as a cash grab by the Town accompanied by a questionable development timeframe. He objects to an increase in the Town's property taxes resulting from the increased cost of new roads and additional staff.

[67] Mr. Simituk questions whether the annexation is necessary and suggests that if there is a market for further residential, commercial, and industrial development, the developers should make their proposal to the Town, and offer to pay the costs for their developments. Penhold taxpayers should not be responsible for the cost of such development. Mr. Simituk stated that the Town and County have previously illustrated a lack of judgement in the consideration of taxpayers in prior capital projects.

Mr. and Ms. Kaun

[68] Mr. and Ms. Kaun submitted a written statement to the MGB, stating that they agree with the overall scope and direction of the annexation area. It avoids potential issues such as the existing

rail line and large area of wetlands west of the Town. Additionally, there could be significant cost savings regarding future development of the highway overpass, if roads, water, sewage, and other services are provided to these areas.

[69] Mr. and Mrs. Kaun's only concern is taxation. They state that a 10-year tax agreement is insufficient. The long-term negative financial impact of a change in taxation after 10 years is significant on their farming operation. The increase would significantly reduce the farming profitability and make their land very uncompetitive with neighbouring land that is not being annexed. They could not bear the cost that would be incurred by paying these higher tax rates. The Kauns suggest an extension of the 10-year timeframe to 50 years, considering that the Town is looking to annex a land supply meeting their 30-35 year growth projections.

Mr. Hollman

[70] Mr. Hollman is supportive of forward thinking growth and development opportunities. However, he stated that the tax freeze for a 10-year period is too short, as development is predicted for a 40-year growth cycle. Although the 10-year tax freeze may be sufficient for some parcels, it is insufficient for others that will not be developed within the next 30 to 40 years. Mr. Hollman grows crops for a living and cannot afford an increase in taxes. He stated that the Town should treat landowners fairly and undertake a similar approach as Leduc, which is a 90 to a 40-year tax break.

PART V MGB RECOMMENDATION

[71] After reviewing the written and oral submissions of the municipalities, affected landowners, and other local and government authorities, the MGB finds that the annexation requested by the Town is reasonable. Therefore, the MGB recommends that the annexation application be approved with an effective date of April 1, 2018. The MGB also recommends the approval of a 15-year transitional timeframe instead of the proposed 10-year timeframe within which municipal assessment and taxation of the annexed lands will be maintained as if the lands were still located within the County. The municipal assessment and taxation transition period of 15 years is to be terminated if:

- a) becomes a new parcel of land created as a result of subdivision or separation of the title by registered plan of subdivision or by instrument or any other method that occurs at the request of, or on behalf of, the landowner,
- b) becomes a residual portion of sixteen (16) hectares or less after a new parcel referred to in clause (a) has been created,

- c) is redesignated at the request of, or on behalf of the landowner under the Town of Penhold Land Use Bylaw to another designation, or
- d) is connected to the water or sanitary sewer services provided by the Town of Penhold

The termination period ceases to exist to apply at the end of that taxation year in respect of that portion of the annexed land and the assessable improvements to it.

PART VI REASONS

[72] In making its recommendation, the MGB considered the consultation and negotiation process undertaken by the Town, as well as the annexation area, municipal servicing, financial considerations, and municipal considerations.

Consultation Process

Negotiation

[73] The *Act* requires the initiating municipality to meet in good faith with the municipality from which the land is to be annexed. Upon the Town's expression of interest to annex land from the County, the municipalities were able to work collaboratively to develop an IDP to accommodate future growth needs. The MGB accepts that the IDP, which identifies growth areas for both the Town and the County, was developed in good faith and in the best interest of the residents of both municipalities. The willingness and ability to develop a joint IDP, and negotiate an annexation agreement illustrates good intermunicipal cooperation and mutual respect.

Consultation

[74] The MGB finds that the public consultation process was open and fair. Activities including public open houses, one-on-one sessions, emails, and phone calls provided by the Town created a wide range of opportunities for affected landowners and the general public to raise their concerns and provide input.

Annexation Area

[75] The MGB accepts the proposed annexation area to be reasonable, for reasons outlined below.

[76] Although the growth rates used to develop the population projections appear high, the Town has grown at a rate of 3.95% over the past 50 years. Development density within the Town

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is increasing, illustrating efficient use of land while reducing the amount of infrastructure needed to service new development.

[77] The Town expects a significant population growth by 2049, requiring the addition of land for commercial, industrial and residential use. The MGB acknowledges that there are development constraints due to the environmentally significant features, including the Creek and Fleming Marsh, which abut the Town's current boundaries. These features require protection through setback requirements. The MGB finds that the IDP provides valuable policies to guide the protection of these features through the designation of reserves and limitations on development. Encompassing a portion of the Creek within the annexation area will reduce the amount of developable land within the Town, but provide for additional open space. Therefore, the MGB finds that the amount of land to be annexed needs to consider the amount of land that is undevelopable due to environmental features. Additionally, the railroad passing through the southwest part of the Town will also constrain development. The MGB acknowledges that the Town has an existing land supply for further development, but finds this land supply insufficient considering the Town's projected growth rate.

[78] The proposed growth direction complies with the IDP and MDP provisions. Map 2 of the IDP illustrates the Town growth area, within which the annexation area is contained. The IDP requires the Town to seek annexation of sufficient land in advance of current supplies being exhausted. The MGB recognizes that the Town has conducted a growth study and identified the amount of land needed to accommodate this growth. The Town has successfully reached an agreement with the County regarding municipal assessment and taxation matters, financial matters, and planning matters.

Municipal Servicing

[79] The Town has demonstrated appropriate planning to service the annexation area, the MGB is satisfied that extending municipal services to the annexation area is possible. Water services can be extended via the new water reservoir in the north part of Town that will be connected to grid water trunks and provide water to the north and east of the Creek. The location and topography of the annexation area allow for sufficient wastewater collection services to the annexation area through a combination of the existing wastewater collection system, the construction of new wastewater collection mains, gravity mains, and single lift stations.

[80] The MGB accepts that drainage was not identified as an obstacle, as the lands will be serviced through the Town's storm drainage system that connects to the Creek. With the majority of the annexation lands being located along the Creek, there will be options to expand the current drainage system.

[81] The MGB finds no issues regarding the expansion of the transportation network. Economically viable opportunities to expand the Town's road network across the Creek and service the annexation area were identified. It is also clear that both municipalities are willing to work collaboratively to develop a cohesive transportation network.

[82] The MGB acknowledges EQUUS's concerns regarding the Town's franchise agreement for the provision of electricity with FortisAlberta. However, such matters are best considered by the Alberta Utilities Commission, and cannot be properly addressed by the MGB in its annexation recommendation.

Financial Considerations

Assessment and Taxation

[83] The Town and the County agreed to a 10-year municipal assessment and taxation transition period in which the Town will maintain County municipal tax rates for lands within the annexation area. The MGB acknowledges that this was agreed to by both municipalities, but recommends an extension of the 10-year transitional period to a 15-year municipal assessment and taxation transition period. The MGB finds that the extension to 15 years is warranted for several reasons. The annexation area is estimated to provide a land supply timeframe of 30 to 35 years. Considering similar annexation timeframes within the province, a 15-year transitional period is in compliance with other transitional provisions of recent annexations. An increase in the transitional time will provide more certainty for affected landowners and will allow them additional time to collaborate with the Town regarding future development. The additional transition period will also allow a longer period of time for ongoing agricultural operation within the annexation area. Although 15 years is not as long as requested by the affected landowners, it strikes a balance between a 35-year population growth and development horizon needed for planning purposes, and the time needed by the landowners to transition to their new municipality.

[84] In response to the affected landowner's citation of larger transitional assessment and taxation periods being imposed for other annexations, the MGB clarifies that the mentioned annexations were designed to provide a 50 to 60-year growth horizon for the initiating municipality. Thus, correspondingly longer transitional periods were imposed to allow landowners to transition to their new municipality.

[85] Regarding the landowner's concerns about a minimum tax being imposed on previously annexed land by the Town, the MGB understands the Town was unaware of the minimum tax being applied to the previous annexation area. It accepts the Town's commitment to ensure this error does not occur with the current annexation.

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[86] In consideration of the above, the MGB recommends a municipal assessment and taxation transition period of 15 years. This transitional period is conditional and will be terminated after the 15 years have lapsed, or if a portion of the annexed land:

- a. becomes a new parcel of land as a result of subdivision or separation of title by registered plan of subdivision or by instrument or any other method that occurs at the request of, or on behalf of, the landowner;
- b. becomes a residual portion of sixteen (16) hectares or less after a new parcel referred to in clause (a) has been created;
- c. is redesignated at the request of, or on behalf of, the landowner under the Town of Penhold's Land Use Bylaw; or
- d. is connected to the water or sanitary sewer services provided by the Town of Penhold.

[87] The assessment and taxation provisions will not terminate if the subdivision divides an existing farmstead from a previously unsubdivided quarter section; or a portion of the annexed land is redesignated under the Town of Penhold's Land Use Bylaw to the designation "Urban Reserve District (UR)".

[88] The MGB accepts the municipalities' agreed to "subject to removal conditions". These will allow landowners to have one subdivision out of a quarter section without any changes to the assessment and taxation of their property. Additionally, any existing land uses and development will not be affected, as they can continue as non-conforming uses. The premature loss of the municipal assessment and taxation provisions would be triggered by the landowner's own action, or by the action undertaken by a person acting on behalf of the landowner.

Monetary Impact

[89] The MGB accepts the compensation methodology agreed to by the municipalities. There will be a decreasing amount of compensation paid by the Town to the County, over a period of 5 years. This method is in keeping with other annexation compensation methodologies. Furthermore, the MGB understands that the two municipalities have a separate agreement regarding the long-term maintenance and capital improvements for a two-mile stretch of Range Road 275 that will serve the growth areas of both municipalities. The MGB commends the municipalities for reaching an agreement that is beneficial to both. Since the *Act* provides municipalities the authority to enter into this type of agreement, it is not included as part of the MGB's recommended Order in Council.

[90] The MGB has reviewed the financial information of the Town and finds that the annexation as proposed will not present any hardship to either municipality. Both municipalities are in good or average financial standing compared to other municipalities, and the debt levels are reasonable. Given that the annexation area will only increase the Town's assessment base by 2.383% and

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reduce the County's assessment base by 0.118%, the MGB is convinced the annexation will not create a financial shock for either municipality, nor does it appear as a "tax grab" initiative driven by finances rather than proper land use planning considerations. As such, the MGB finds that the annexation does not demonstrate a tax incentive for the Town.

Effective Date

[91] Both municipalities agreed to an effective date of January 1, 2018. However, being mindful of the processing time, the MGB finds it necessary to recommend an annexation effective date of April 1, 2018.

Municipal Considerations

[92] In response to concerns raised by affected landowners regarding their agricultural operations, the MGB finds that agricultural best practices will be maintained. The *Agricultural Operation Practices Act* includes regulations for spreading manure for all livestock operations in Alberta. This includes that manure spreading should be no less than 150 metres from the nearest house. Additional concerns raised included the discharge of firearms. It is the MGB's understanding that the Town does not have a firearm bylaw in place. According to the Town's statement, the discharge of firearms is regulated under the Wildlife Act, which prohibits the discharge of a firearm within 200 yards of houses.

CONCLUSION

[93] The MGB finds that the proposed annexation complies with the *Act* and addresses appropriate annexation principles. The MGB finds the conditions as recommended to be certain, unambiguous, enforceable, and time specific. The intent of the annexation and the amount of land agreed to by the municipalities is reasonable. The MGB submits that the affected landowners' concerns have been given proper consideration throughout the entire annexation process. Therefore, the MGB recommends the annexation as outlined in this report.