



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Town of High Level Proposed Annexation, ABLPRT 636

Date: 2023-12-06

File No. AN22/HIGH/T-01

Decision No. LPRT2023/MG0636

Municipalities: Town of High Level/Mackenzie County

In the matter of a proceeding commenced under Part 3 of the *Municipal Government Act*, being Chapter M-26 RSA 2000, (*MGA*).

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

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

BEFORE: H. Kim, Presiding Officer
G. Selland, Member
A. Bandol, Member

R. Duncan, Case Manager

PRELIMINARY HEARING DECISION

[1] This decision letter confirms the verbal instructions issued by the Land and Property Rights Tribunal (Tribunal) during a preliminary public hearing held via WebEx on Tuesday, November 21, 2023. Background information, a summary of the oral submissions received during the preliminary hearing, and the Tribunal's decisions/reasons are provided below. Appendix A provides a list of the people that made oral submissions during the November 21, 2023 proceeding, while Appendix B is a list of the documents that have been submitted to the Tribunal.

BACKGROUND INFORMATION

[2] On June 30, 2023, the Town of High Level (Town) filed an application with the Tribunal to annex approximately 1,935 hectares (4,781 acres) of land from Mackenzie County (County). The proposed annexation will bring the High Level Airport and the Town's water source (Footner Lake) within the boundary of the Town.

[3] The application states that between October 2020 and June 2021 the Town and the County explored several annexation options. On June 27, 2022, the municipalities signed an agreement that would allow the Town to annex 1,870 hectares (4,621 acres) of land north of its existing boundary. In October 2022, the County supported the annexation of an additional 64.0 hectares (158 acres) along the Town's eastern boundary.

[4] The Town submitted that the annexation agreement between the two municipalities as well as the motions passed by County Council regarding the additional land on the east side of the Town demonstrate that the County supports the proposed annexation. Despite having made three requests for the County to endorse the annexation, the Town was unable to obtain signed consent from the County. It was explained that the County returned with different concerns after each review, so the Town opted to submit the annexation application without further intermunicipal discussions.

[5] In accordance with the *Municipal Government Act (MGA)* the Tribunal mailed notices on July 26, 2023 to inform all affected parties identified by the Town of the annexation application. Annexation notices were also published in *The Echo Pioneer*, a newspaper in the High Level area, the weeks of August 7, 14, 21 and 28, 2023. The notices stated that unless a written objection was filed with the Tribunal by September 1, 2023, the Tribunal would make its recommendation regarding the proposed annexation to the Minister of Municipal Affairs (Minister) without conducting a public hearing.

[6] The August 28, 2023 correspondence from the County stated that it would like to accommodate the process for the proposed annexation. However, the County identified several issues and outlined its objections/concerns relating to the annexation application. In brief, the County expressed concerns about the following matters:

- Timeframe
 - Neither the January 1, 2023 nor the January 1, 2024 effective dates are workable.
- The Intermunicipal Collaboration Framework (ICF)
 - The municipalities have not completed the review of the Intermunicipal Development Plan (IDP) contemplated by the ICF.
- The Annexation Agreement,
 - The area in the Annexation Agreement is not consistent with the proposed annexation area requested by the Town.
 - The Town has not prepared the studies and reports necessary to support an annexation request to the Tribunal.
- The IDP
 - the proposed annexation does not flow from either the IDP or its 2014 amendment.
 - The IDP is deficient or outdated.
- Annexation Principles
 - The proposed annexation does not meet the annexation principles listed in Order 123/06.

[7] In addition, the County stated that the Town has made no attempt to initiate mediation. However, the County is willing to participate in a mediation process.

[8] The September 12, 2023 letter from the Town states that it disagrees with the comments of the County. The Town will provide a detailed response to the issues brought forward by the County at the merit hearing in accordance with the deadlines imposed by the Tribunal.

[9] In light of the August 28, 2023 correspondence from the County and the September 12, 2023 letter from the Town, the Tribunal accepted that there was “no general agreement” with the proposed annexation. In accordance with the *MGA*, letters were sent to all parties notifying them of the preliminary hearing set for November 21, 2023. Preliminary hearing notices were also published in *The Echo Pioneer* the weeks of October 23, October 30, 2023, and November 6, 2023. The notices stated that the purpose of the preliminary hearing is to identify those persons wishing to make submissions about the proposed annexation at the merit hearing, determine the issues to be raised, establish a document exchange timeline, and set a date for the start of the merit hearing. The Tribunal may also issue directives respecting the type of information it expects to receive from the affected parties. Anyone wishing to attend the preliminary hearing, make an oral presentation during the proceeding, and/or provide a written submission was to notify the Tribunal office by 12:00 noon on November 10, 2023.

[10] The County’s November 10, 2023 correspondence stated that it is disappointed with the lack of meaningful response by the Town and will be asking the Tribunal to adjourn the proceedings to allow the parties to communicate and mediate. The County explained that the objections it identified in its August 28, 2023 correspondence can be broadly itemized into the following eight areas:

1. Huge Size and Awkward Shape
 - The annexation area will roughly double the size of the Town and the awkward panhandle shape of the northern portion strains the contiguous legislative requirement.
2. Annexation Agreement Amendment Required
 - The annexation agreement does not address the lower portion comprising of the wastewater lagoons.
3. Report and Technical Analysis
 - Pursuant to the annexation agreement, Town has not provided the necessary reports and studies.
4. IDP Outdated
 - The IDP was adopted in 2009 and has not been updated on a regular basis.
5. Lack of Reciprocity/Intermunicipal Collaboration
 - There is a complete lack of reciprocity and recognition that certain elements of the annexation would benefit from intermunicipal planning.
6. Consents from Landowners/Lessees
 - The annexation application does not contain consents from landowner or lessees.
7. Time Frames
 - The proposed January 1, 2023 and January 1, 2024 effective dates are unworkable.
8. Additional Issues (including Mediation)
 - The Town has not responded to the County’s request for mediation.

[11] On November 16, 2023, the Tribunal received correspondence from the Town in response to the County’s November 10, 2023 letter. The Town stated that on August 4, 2022 it gave notice to the County of its intent to annex approximately 1,870 hectares (4,621 acres) of land. Pursuant to section 117 of the *MGA*, the mediation conducted by the two municipalities resulted in the July 27, 2022 Annexation Agreement. On September 26, 2022, the County passed resolutions to approve the annexation area and

support the annexation of the land adjacent to the east side of the Town. Although the County passed a resolution on April 26, 2023 confirming that the Annexation Application accurately reflect the intermunicipal negotiations, the County rescinded the resolution on June 6, 2023.

[12] The Town requested the Tribunal set a second preliminary hearing the week of December 11, 2023 to determine if there is an Annexation Agreement between the two municipalities. If the Tribunal determined an Annexation Agreement is in place, the Town argued no merit hearing would be required. The Town estimated that the parties would only need a half day for the second preliminary hearing. It was also suggested the preliminary hearing could be conducted by videoconference (WebEx) and held the week of December 11, 2023 with the following document exchange timeline:

- Town to provide submissions by November 30, 2023; and
- County to provide submissions by December 7, 2023.

[13] If the Tribunal determines that a merit hearing is required, the Town suggested a three-day merit hearing could be held the week of March 18, 2024 with the following document exchange timeline:

- Town to provide submissions by February 1, 2024;
- County to provide submissions by February 22, 2024; and
- Town to provide reply submissions by March 7, 2024.

[14] The Town is unclear about the reasons the County is now requesting mediation. The Town is also unclear about the reasons for the County's other objections as the land in the annexation area is either Crown land or owned by the Town. The effective date of the annexation was agreed to by the two municipalities as part of their Annexation Agreement.

NOVEMBER 21, 2023 PRELIMINARY HEARING SUMMARY

[15] A summary of the oral submissions received from the Town and the County is provided below.

Town

[16] The Town stated that it submitted its annexation application to the Tribunal on June 30, 2023. The area being requested includes two components: the land bridge that extends north from the Town to the High Level Airport and the two parcels of land lying east of the Town that contain the wastewater lagoons. The annexation of the High Level Airport was addressed by the municipalities as part of their Annexation Agreement. The mediation conducted by Deborah Howe of High Clouds Incorporated that resulted in the Annexation Agreement involved representatives from both municipalities as well as the lawyers for both parties. County Council resolutions approved the Town's purchase of the wastewater lagoon land adjacent to the east side of the Town and agreed to the annexation of these two parcels.

[17] Since no other parties have filed objections to the proposed annexation, the Town suggested the Tribunal conduct a second preliminary hearing to determine if there is an Annexation Agreement between the municipalities. If the Annexation Agreement is binding, there would be no need for a merit hearing.

[18] The Town stated that it would like the second preliminary hearing to be held before Christmas, with the focus being the Annexation Agreement and the annexation resolutions made by County Council. The Town expected the second preliminary hearing to take half a day. However, the Town suggested a third preliminary hearing may be necessary.

County

[19] The County agreed that a second preliminary hearing is needed to solidify the issues to be addressed at the merit hearing.

[20] The County agrees that the two municipalities have entered into an Annexation Agreement. However, the Annexation Agreement does not consider the sewage lagoon parcels on the east side of the Town. Moreover, the application submitted by the Town does not provide all the necessary reports required by the Annexation Agreement. Specifically, the Town's application does not include growth studies, environmental studies, or financial analysis required by the Annexation Agreement. Moreover, the application does not comply with the IDP, is at odds with the ICF, and does not align with the 15 Annexation Principles.

[21] The County's legal counsel stated that she was not available the week of December 11, 2023 and had a number of scheduling conflicts in January and February 2024. However, the County did agree that a second preliminary hearing is required to address the following questions:

- Pursuant to s. 4.5 of the Annexation agreement, what reports and studies should the Town table to justify the annexation?
- To be "aligned with and supported by" IDP (Principle #8) should the IDP be revised/amended prior to the annexation proceeding?
- Should the Town endeavor to obtain the requisite consents not only from landowners but lessees?
- Have the outstanding issues between the parties been mediated?

TRIBUNAL DECISION AND REASONS

[22] After considering the submissions of the parties, the Tribunal's decisions and reasons are provided below.

Decision

[23] A second preliminary hearing will be conducted via the WebEx videoconference platform commencing at 9:00 am on February 20, 2024. The purpose of this preliminary hearing is to allow the Tribunal to consider the following issues:

- Is there an annexation agreement?
- What reports are required?
- Does the IDP need to be amended in advance of an annexation?
- Is consent to the annexation needed from the lessees?
- Have all outstanding issues been mediated?

[24] The Town is to submit its documentation, legal argument, and "will say" statements regarding the five issues identified above to the Tribunal and the County by 4:00 pm on Friday, December 15, 2023. The Town is to submit its document in both electronic and hard copy format. The electronic documents submitted to the Tribunal must be emailed to lppt.appeals@gov.ab.ca, richard.duncan@gov.ab.ca, and eric.taylor@gov.ab.ca. A hard copy of the submission must be sent to the Tribunal and the County the following business day.

[25] The County is to submit its response documentation, legal argument, and “will say” statements regarding the five issues identified above to the Tribunal and the Town by 4:00 pm on Friday, January 19, 2024. The County is to submit its document in both electronic and hard copy format. The electronic documents submitted to the Tribunal must be emailed to lpvt.appeals@gov.ab.ca, richard.duncan@gov.ab.ca, and eric.taylor@gov.ab.ca. A hard copy of the submission must be sent to the Tribunal and the Town the following business day.

[26] The Town is to submit its rebuttal documentation, legal argument, and “will say” statements regarding the five issues identified above to the Tribunal and the County by 4:00 pm on Friday, February 2, 2024. The Town is to submit its document in both electronic and hard copy format. The electronic documents submitted to the Tribunal must be emailed to lpvt.appeals@gov.ab.ca, richard.duncan@gov.ab.ca, and eric.taylor@gov.ab.ca. A hard copy of the submission must be sent to the Tribunal and the Town the following business day.

Reasons

[27] The August 28, 2023 correspondence from the County identifies that it objects to annexation being proposed by the Town. In cases where there may be disagreement between the municipalities about a proposed annexation, it has been the practice of the Tribunal to conduct a preliminary hearing. The hearing notices typically stated that the purpose of the preliminary hearing is to:

- identify those persons wishing to make submissions about the proposed annexation at the merit hearing,
- determine the issues to be raised,
- establish a document exchange timeline, and
- set a date for the start of the merit hearing.

[28] The Tribunal accepts the five issues identified in the decision above had not been specifically identified by the parties prior to the November 21, 2023 preliminary hearing and could not be argued during that hearing. The second preliminary hearing will allow the Tribunal to consider the five issues that the parties believe the Tribunal needs to address before the scheduling of the merit hearing.

[29] The Tribunal appreciates that the Town would like to conduct these annexation proceedings in an expeditious manner and requested the preliminary hearing be conducted the week of December 11, 2023. However, the availability of the County’s legal counsel and Tribunal scheduling issues would not accommodate conducting a preliminary hearing the week of December 11, 2023. The Town stated the preliminary hearing should take half a day to complete. Although the County identified additional issues for the preliminary hearing, it did not provide any information regarding the time it would need during the preliminary hearing or object to the period suggested by the County. To ensure all five issues can be heard in a contiguous manner and accommodate the schedule of the Town, the County and the Tribunal, a one-day preliminary hearing has been scheduled for Tuesday, February 20, 2024, commencing at 9:00am.

[30] As to the mode of hearing - whether virtual or in-person - the Tribunal’s usual practice is now to proceed virtually. The Town stated that it preferred the second preliminary hearing be conducted virtually. Since the County did not state a preference, the February 20, 2024 preliminary hearing will be conducted via the WebEx videoconferencing platform.

[31] Since there were no objections to the document exchange timeline established during the November 21, 2023 preliminary hearing, the Tribunal finds the dates specified are sufficient for the municipalities to produce their documents. Documents submitted to the Tribunal are to be filed electronically by email to richard.duncan@gov.ab.ca, eric.taylor@gov.ab.ca, and lpvt.appeals@gov.ab.ca.

Anyone sending an electronic submission to the Tribunal must ensure their submissions are also emailed to the other parties. Hard copies of the submissions are to be sent one business day after the electronic documents have been emailed.

[32] The Board Members assigned to this preliminary hearing are not seized with this matter.

Dated at the City of Edmonton in the Province of Alberta this 6th day of December 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL

A handwritten signature in blue ink, appearing to read 'H. Kim', is written over a horizontal line. The signature is fluid and cursive.

H. Kim, Presiding Officer

APPENDIX A

PARTIES WHO MADE ORAL SUBMISSIONS AT THE PRELIMINARY PUBLIC HEARING

NAME	CAPACITY
G. Stewart-Palmer	Shores Jardine LLP, Legal Counsel for the Town of High Level
J. Grundberg	Brownlee LLP, Legal Counsel for Mackenzie County

APPENDIX B

DOCUMENTS RECEIVED PRIOR TO THE HEARING

NO.	ITEM
1-Town	June 30, 2023, correspondence from the Town of High Level (annexation application cover letter).
2-Town	June 30, 2023, correspondence from the Town of High Level (Town of High Level: Annexation Application June 2023).
3-County	August 28, 2023, correspondence from Mackenzie County.
4-Town	September 12, 2023, correspondence from the Town of High Level.
5-County	November 10, 2023, correspondence from Mackenzie County.
6-County	November 21, 2023 correspondence from Mackenzie County.