Court of Appeal for Saskatchewan
Docket: CACV4153

Citation: *White City (Town) v Edenwold (Rural Municipality)*, 2024 SKCA 113
Date: 2024-12-09

Between:

The Town of White City

Appellant
(Applicant)

And

The Rural Municipality of Edenwold No. 158

Respondent
(Respondent)

Before:	Kalmakoff, McCreary and Drennan JJ.A.
Disposition:	Appeal dismissed
Written reasons by: In concurrence:	The Honourable Justice Meghan R. McCreary The Honourable Justice Jeffery D. Kalmakoff The Honourable Justice Jillyne M. Drennan
On appeal from: Appeal heard:	2023 SKMB 1 (Municipal Boundary Committee), Regina October 31, 2023
Counsel:	Kim Anderson, K.C. and Candice Grant for the Appellant Randy Sandbeck, K.C. and Logan Salm for the Respondent

McCreary J.A.

I. INTRODUCTION

[1] The Town of White City [Town] appeals from a decision of the Saskatchewan Municipal Board [SMB], Municipal Boundary Committee [Committee] in which the Committee dismissed its application to annex certain lands held by the Rural Municipality of Edenwold No. 158 [RM]: *White City (Town) v Edenwold (Rural Municipality)*, 2023 SKMB 1 [*Decision*].

[2] In its application for annexation [Application], the Town argued that it needed lands held by the RM to allow for its growth. The Committee rejected that argument, finding that the Town had not demonstrated, as a threshold requirement, that it required the lands it sought for the purposes of growth.

[3] The Town alleges that, in its *Decision*, the Committee erred in law by: failing to provide adequate reasons; ignoring, failing to consider and/or misapprehending the relevant evidence; failing to apply the proper principles and legal tests, including failing to consider the required factors under which a proposed annexation is to be valuated and determined pursuant to s. 18(4) of *The Municipal Board Act*, SS 1988-89, c M-23.2 [*Act*]; and, by basing its *Decision* on improper considerations.

[4] For the reasons that follow, I am not persuaded that the Committee erred in law in any of the ways alleged by the Town, and I would dismiss the appeal.

II. BACKGROUND

A. The development of the Town and of the RM

[5] Both the Town and the RM are Saskatchewan municipalities governed by *The Municipalities Act*, SS 2005, c M-36.1 [*Municipalities Act*]. Both municipalities are located to the east of the City of Regina, within the Regina census metropolitan area [CMA].

[6] The development that eventually became the Town began in the early 1950's with the creation of a 32-hectare residential subdivision carved out of the surrounding RM. Shortly thereafter, the community became an organized hamlet in 1959, then a village in 1967, and finally a town in 2000.

[7] In 1983, the land that would eventually become known as the Emerald Park subdivision was annexed into the Town (which, at that time, was still a village). However, when negotiations with the developer came to an impasse, the developer negotiated an agreement with the RM, and the land was reannexed to the RM in 1984.

[8] Significant development has taken place within the RM since the initial creation of the Emerald Park subdivision in 1983, with much of that development taking place along the borders of the Town.

[9] The Town has experienced considerable growth over its history, expanding from an initial population of 91 in 1961, to 3,821 in 2021. Similar growth has been experienced within the residential areas of the RM, including an increase of an estimated 1,553 residents in Emerald Park, alone, over the period of 1981–2016.

[10] It is anticipated that both the Town and directly adjacent residential areas of the RM, as the primary bedroom communities within the Regina CMA, will continue to experience growth over the coming years.

[11] Prior to the Town's Application, the Town and the RM had altered their mutual boundaries on several occasions, sometimes by consent and sometimes by order. The most recent alteration proceeded by agreement in 2015.

[12] The lands that were the subject of the Application included 1,671.72 acres of developed land and 2,358.73 acres of undeveloped land for a total of 4,030.45 acres [Subject Lands]. The Subject Lands included the fully developed subdivisions of Emerald Park, Great Plains Industrial Park, Prairie View Business Park, Escott Estates, Deneve, Meadow Ridge Estates, and Park Meadow Estates. It also included undeveloped land to the south, east and west of the Town's boundaries.

B. The Town's application to the Committee

[13] In its Application to the Committee, the Town included a statement of dispute in which it asked the Committee to determine five issues:

(a) What is the appropriate timeframe for determining the Town's future land requirements?

(b) Given the timeframe, how much land does the Town require?

(c) Which lands (developed and undeveloped) should be included in the annexation?

(d) How will the annexation be serviced?

(e) If the annexation is approved, is the RM entitled to any compensation?

[14] Updated materials were provided by both parties in advance of the hearing. The initial and the updated materials formed part of the written record before the Committee. Both parties also submitted extensive written argument prior to the commencement of the hearing. The evidence and arguments were included in the written record, which consists of thousands of pages.

[15] The hearing was held over five days in November 2022. No transcript of the oral evidence was maintained.

[16] The Town relied primarily on two written reports, the first a Growth Study prepared by ISL Engineering and Metroeconomics [ISL Report], and the second, a Financial Impact Analysis prepared by Corvus Business Advisors [Corvus Report]. In relation to these reports (and their corresponding rebuttals to the RM's evidence), the Town called three expert witnesses: (a) Tom McCormack of Metroeconomics, an expert in population and demographic projections; (b) Darren Young of ISL Engineering, an expert in land use and municipal planning matters; and (c) Greg Weiss of Corvus Business Advisors, an expert in municipal financial matters. In addition, the Town's planner, Mauricio Jimenez, provided testimony.

[17] The RM relied primarily on two written reports: the first a discussion paper prepared by Associated Engineering [AE Report], and the second, a limited financial critique prepared by Virtus Group Chartered Accountants [Virtus Report]. The authors of these reports, Bill Delainey

of Associated Engineering, and Marc Hoffart of Virtus Group, were also called by the RM as experts. The RM's Manager, Planning and Development, Paige Boha, and the RM Reeve, Mitchell Huber, also provided evidence on behalf of the RM.

[18] The Committee rendered its *Decision* on January 12, 2023, dismissing the Application in its entirety. In doing so, the Committee found that the Town had not demonstrated a need for land for future residential growth or a need for annexation of developed lands.

III. STANDARD OF REVIEW

[19] Section 33.1 of the *Act* allows this Court to hear appeals from the SMB on a question of law or jurisdiction, with leave of the Court. As noted in *E.Z. Automotive Ltd. v Regina (City)*, 2021 SKCA 109 at para 32, [2022] 4 WWR 55, appeals brought pursuant to s. 33.1 attract a correctness standard of review.

[20] To warrant appellate intervention on a correctness standard, the error of law alleged must be extricable to the subject matter under review. The error "must go to the defining elements of the relevant legal test and not merely to how the tribunal assesses the evidence before applying the test" (*Canadian Natural Resources Limited v Elizabeth Métis Settlement*, 2020 ABCA 148 at para 32, 81 Admin LR (6th) 276).

IV. ISSUES

[21] Justice Tholl granted leave to the Town to appeal from the *Decision* on four grounds, raising the following four questions of law in this appeal:

(a) Did the Committee err by failing to provide adequate reasons?

(b) Did the Committee err by ignoring, failing to consider or misapprehending relevant evidence?

(c) Did the Committee err by failing to apply the proper principles and legal test and by failing to consider the required factors from s. 18(4) of the *Act*, under which a proposed annexation is to be evaluated and determined?

(d) Did the Committee err by basing its decision on irrelevant or improper considerations?

V. ANALYSIS

A. The Committee's reasons were adequate

[22] The Town argues that the Committee failed to provide sufficient reasons for its decision. Overall, it says that the Committee's analysis in the *Decision* was too brief, considering the thousands of pages of material filed with the Committee. More specifically, the Town contends that the Committee erred in law by failing to:

(a) provide analysis of its conclusion that "by definition, … developed land cannot provide land needed for growth. This would apply whether the land was designated commercial, industrial or residential" (*Decision* at para 73);

(b) provide any reasons to demonstrate that it considered a series of Committee decisions involving the City of Swift Current, in which that city had sought land for development that included some developed land;

(c) address other Canadian case law, and specifically *Re Brantford Annexation*, 1954 CarswellOnt 351 (WL) [*Brantford*], which contemplated that an annexation could be appropriate in relation to developed land;

(d) address the Town's examples in which unincorporated urban communities in Alberta were annexed by expanding municipalities;

(e) provide reasons explaining why, after refusing to grant annexation of the whole of the lands sought in the Application, it did not grant annexation of a portion of the lands rather than dismissing the Application in its entirety;

(f) explain its conclusion that the Town's current Official Community Plan [OCP] did not support the annexation it sought;

(g) explain how it concluded that the Town had not demonstrated a need to annex land to stop development next to its borders; and

(h) demonstrate how it had considered each of the factors set out in s. 18(4) of the *Act*.

[23] In my view, there is no merit to the Town's contention that the Committee erred in law by failing to provide sufficient reasons in respect of any of the Town's examples.

[24] First, it goes without saying that the length of the Committee's analysis is not a determining factor of whether its reasons are sufficient. A judgment is sufficient if, when read in its entire context, it shows why the decision maker decided as they did: *R v Vuradin*, 2013 SCC 38 at para 15, [2013] 2 SCR 639. Thus, reasons are evaluated based on their quality, not quantity. Appellate review must take a "functional approach" when considering the sufficiency of reasons, which requires examining the reasons along with the evidence and the submissions of counsel (*Vuradin* at para 10; and *R v Soltan*, 2019 ONCA 8 at para 3, 371 CCC (3d) 205).

[25] Reasons are, of course, the pathway for meaningful judicial review in administrative law. In this case, this Court is considering a statutory appeal of a decision from a first-instance administrative decision maker. While this signals that appellate standards of review are in play, because the *Decision* under review is administrative, the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 79, [2019] 4 SCR 653 [*Vavilov*] is also relevant and instructive. *Vavilov* put new emphasis on the importance of reasons in the administrative decision-making context, noting that reasons must shed light on the rationale for a decision (see para 81). In other words, when reasons are required, they must justify the decision (see para 86) and their purpose is to demonstrate "justification, transparency and intelligibility" (*Vavilov* at paras 81 and 86, quoting *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 1, [2011] 3 SCR 708).

[26] In the circumstances of an appeal from a first-instance decision, an appellate court's role is not to finely parse the decision maker's reasons: *R v G.F.*, 2021 SCC 20 at para 69, [2021] 1 SCR 801 [*G.F.*]. The caution not to parse reasons for error applies to administrative decisions as well.

[27] In applying the test for sufficiency of reasons, a reviewing court must consider factual and legal sufficiency. Factual sufficiency relates to what the decision maker decided and the reasons why. The bar for factual sufficiency is not high, particularly where the record is reviewable: *G.F.*

at para 71. Legal sufficiency requires that the "aggrieved party be able to meaningfully exercise their right of appeal" (*G.F.* at para 74, citing *R v Sheppard*, 2002 SCC 26 at paras 64–66, [2002] 1 SCR 869).

[28] Finally, it is important to note that decision makers are not required to address every argument and piece of evidence to provide sufficient reasons. As noted in *Vavilov*:

> [91] A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: [*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708], at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.

[29] These principles guide my analysis of the sufficiency of reasons in the *Decision*.

[30] The Committee rejected the Application because it concluded that the Town had not demonstrated that the Subject Lands were *required for growth*. While the Town proffers several specific examples where it says the Committee's reasons were insufficient, it is my view that none of these examples demonstrate that the factual and legal pathway to understanding the Committee's conclusions was obscured. In other words, the Committee's reasons were sufficient to ascertain what it decided and why.

[31] I turn now to an analysis of the specific ways in which the Town says the Committee's reasons were deficient.

1. The meaning of "growth"

[32] The Town argues that the Committee offered no definition for "growth" in the annexation context, and therefore did not adequately explain its foundational position that growth could not be achieved through the annexation of developed land.

[33] In my view, by defining what could *not* constitute land needed for growth in the annexation context – i.e., developed land – the Committee clearly concluded that undeveloped land *could constitute* land needed for growth. The Committee then addressed what the Town advanced as its reasons for needing to grow. These were: (a) the need for financial growth; and, (b) the need to control development by the RM along the Town's borders. The Committee unequivocally rejected

that either of these needs supported a need for growth, and that, therefore, they could not justify the relief the Town sought.

[34] First, the Committee explained that the Town's financial need did not "resolve any perceived need for future land for growth" (*Decision* at para 74). It determined that the fundamental issue to be decided was whether the Town had met its burden of establishing a need for future land for it to be able to grow and it concluded that such growth could not be achieved through annexing developed lands. It rejected the Town's argument that it was a valid need to annex developed lands for financial growth, demonstrating its view that requesting annexation of the developed lands for financial gain (to increase the Town's tax base and correct past planning decisions) did not substantiate a need for future land for growth.

[35] As I noted, the Town also argued that the RM's growth at the edge of the Town's border infringed upon the Town's viability and that, therefore, the Subject Lands were needed to control the RM's growth for the Town's benefit. Again, the Committee was not persuaded by this argument. It characterized the Town's need to control the RM's growth on its borders as a need to "govern" the annexed area (see *Decision* at para 78). The Committee gave a reason for that characterization, noting that the evidence established that the use of the lands, and the services provided on them, would not change. The Committee described the evidence presented by the Town respecting the efficiencies that could be achieved by annexation as "scant", concluding that the Town's evidence on this point was "not sufficient to order an annexation of this magnitude" (at para 78).

[36] I note that the Committee's determination in this respect is consistent with its prior decision from 2006 involving the same parties. In *White City (Town) v Edenwold (Rural Municipality)* (10 March 2006) Regina, Application 1/2005 (Saskatchewan Municipal Board, Municipal Boundary Committee) at 19, the Committee observed that there would be little change to services or the use of the land, and that there was no plan to achieve improvement in the developed land that the Town sought to have annexed. Here, the Committee determined that the Town's current Application was no different: land use and services for the land sought to be annexed would not change and the evidence did not demonstrate a plan to improve the area. Thus, the Committee concluded that the

Town's evidence on this point did not support a boundary alteration. In my view, its reasons adequately explain that conclusion.

2. Reference to precedents

[37] The Town argues that the Committee's reasons were insufficient because it did not refer to previous boundary alteration decisions, specifically those concerning the City of Swift Current, that were cited by the Town in argument.

[38] I do not agree that it is an error, in this context, for the Committee to fail to reference, or fail to follow, prior precedents. As Leurer C.J.S. said in *Lorencz v Talukdar*, 2024 SKCA 105 at para 39: "it is not an error of law to fail to consider authorities", quoting *Kelly Panteluk Construction Ltd. v Lloyd's Underwriters*, 2024 SKCA 42 at para 48, 41 CCLI (6th) 238. The law is also clear that administrative decision makers are not bound by administrative decisions previously made, even by the same decision maker, as the Supreme Court noted in *Vavilov*:

> [129] Administrative decision makers are not bound by their previous decisions in the same sense that courts are bound by *stare decisis*. As this Court noted in [*Domtar Inc. v Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 SCR 756], "a lack of unanimity is the price to pay for the decision-making freedom and independence" given to administrative decision makers, and the mere fact that some conflict exists among an administrative body's decisions does not threaten the rule of law: p. 800. Nevertheless, administrative decision makers and reviewing courts alike must be concerned with the general consistency of administrative decisions. Those affected by administrative decisions are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker — expectations that do not evaporate simply because the parties are not before a judge.

[39] In short, there was no requirement at law for the Committee to expressly review or distinguish its past decisions or decisions from other decision makers if they did not find such decisions persuasive. It follows that the Committee was, similarly, not bound to refer to decisions made by municipal boundary tribunals in other jurisdictions, such as Alberta, or refer to examples of annexations in Alberta.

[40] Nevertheless, I note that the *Decision* is consistent with previous Committee decisions in which it stated that the success of a boundary alteration application requires the applicant to show that it has a shortage of developable land, based on growth patterns and future expectations of population growth. The Committee has previously taken the position that an application seeking to annex land must show a need for more land and how that need is considered in the municipality's

plans, as well as demonstrating the annexing municipality's capability to provide services to the residents and land within the proposed new land: see, for example, *Yorkton (City) v Orkney (Rural Municipality)* (7 August 2012) Regina, Application 1/2012 (Saskatchewan Municipal Board, Municipal Boundary Committee) at 13–14, paras 4–5.

[41] In the instant case, the Committee considered the Town's expressed need for more land in conjunction with its OCP, as the proposed annexing municipality, to capably provide services to the residents and the land within the proposed annexed parcel. The Committee expressed doubt as to whether the Town had the ability to manage significant commercial and industrial developments. In doing so, the Committee provided reasons for its conclusion that the Town's application to annex developed lands did not support a need for growth. These reasons are intelligible and provide justifications for the Committee's conclusion. It was therefore not an error for the Committee to make no reference to the specific case law or annexation examples cited by the Town.

3. Partial annexation

[42] Similarly, I am not persuaded that the Committee failed to provide sufficient reasons to explain why it chose not to allow a "partial annexation". The Committee indicated that the Town's need to bolster its tax base, as well as its desire to stop development at its borders, did not satisfy the requirements of "land needed for growth" (*Decision* at para 73; see also para 86). The Committee denied the Town's application because the Committee was not satisfied that the Town had met its threshold burden.

[43] It is not an error of law for an administrative decision maker, such as the Committee, to refuse to engage in further analysis – such as whether to grant a partial award in respect of undeveloped land – when it determines that the applicant has not met its threshold burden of proof. While s. 18(10) of the *Act* provides the Committee with the discretion to grant a partial annexation, a grant of discretion is exactly that – discretionary. Given that the Committee determined that the Town had not demonstrated *any* need for growth, it logically follows that the Committee would not grant the application in part. Thus, it was not necessary for the Committee to go further and provide reasons why its conclusion that the Town had not demonstrated a need for growth did not

support a partial annexation of land. In short, the Committee's reasons for not doing so were implicit in its analysis and were obvious.

4. Official Community Plan (OCP)

[44] The Town also argues that the Committee's reasons were deficient in respect of its conclusion that the Town's OCP did not support the Town's stated need to annex the land in question for growth. In my view, the Committee's reasons more than adequately explain why the Committee concluded that the Town's OCP did not support the Application.

[45] The OCP in effect at the time of the Application was approved in 2015. The record demonstrates that the OCP was filed with the Committee in its entirety. The OCP outlines the Town's plans for long-term growth. The future land use map within the OCP demonstrated the Town's intention to explore lands to the south and east for future study, and lands to the east for commercial and industrial development. The development of the Town Centre neighbourhood to the south, which would accommodate future commercial development, was also addressed in the OCP. The OCP further spoke to future industrial and commercial development where the two major highways intersect to the east of the Town. Finally, the OCP set out the importance of intermunicipal cooperation with the RM when addressing issues that might impact the local area, including growth.

[46] In explaining its conclusion that the OCP did not support the Town's Application, the Committee expressly referenced the evidence of the Town's planner, Mr. Jimenez, who was responsible for the development and implementation of the OCP. The Committee summarized Mr. Jimenez's evidence respecting the OCP at paragraphs 40 and 53 of the *Decision*, noting that the Community Planning Branch of the Ministry of Government Relations [CP], which oversees community land use, approved changes to accommodate the Town Centre plan in 2017.

[47] The Committee also referred to the RM's evidence respecting the Town's OCP, which included evidence of the lack of update following the completion of multiple growth studies. In reference to the AE Report written by Mr. Delainey, the Committee noted that the OCP was only minimally amended following the growth studies completed between 2018 and 2022, and that the annexation of developed commercial and industrial land was not supported by the OCP. The

Committee expressly stated that it found Mr. Delainey's oral evidence to be of significant value, thus implying that it accepted this evidence.

[48] Consequently, the Committee's references to relevant evidence, and particularly its acceptance of Mr. Delainey's evidence, demonstrate the how and why of its determination that the Town's OCP did not support the Application. The Committee's review of the evidence was sufficient to understand its conclusion on this point, and I see no error here.

5. Explanation of governance control

[49] The Town says that the Committee erred in law by failing to explain how it concluded that the Town had not demonstrated a need to annex land in order to stop development at its borders.

[50] The Committee addressed the Town's argument on this point in the *Decision*, as follows:

> [77] The Town advances a further reason for the annexation. That reason is to address the RM growth immediately situate to the Town boundaries. The Town says without the annexed property, it will ultimately be stymied in its further growth plans. *We note the current OCP of the Town does not support such an acquisition.* In the OCP, Town development has been designated to the south and east, not the west. We also note that every proposed development within the RM would require CP approval.
>
> (Emphasis added)

[51] In this single, succinct paragraph, the Committee gives its reasons for rejecting the Town's contention that it needs to annex land to control development at its borders: the Town's OCP does not support such an "acquisition". This is because, as the Committee found, the OCP does not contemplate development to the west of the Town and, in any event, development by the RM (including along the Town's borders) requires government approval, indicating that other checks and balances exist to address the Town's concerns.

[52] In my view, these reasons plainly and clearly explain why the Town's argument on this count was rejected. Again, there is no error here.

6. Section 18(4) considerations

[53] The Town argues that the Committee's reasons were deficient in respect of its approach to the factors set out at s. 18(4) of the *Act*, which dictates matters that the Committee must consider in determining an application to alter municipal boundaries, where such matters are relevant.

[54] As I will explain, the Committee did not fail to provide sufficient reasons in respect of its analysis of the factors under s. 18(4).

[55] The Committee's review of those factors can be readily discerned from the *Decision*. Section 18(4) lists 16 considerations, current and prospective, that the Committee *must* examine when they *may* affect the municipalities involved. While the provision is directive, it is also permissive because it implies, using the word "may", that the factors it outlines *might* be relevant. This illustrates that the Legislature understood that the enumerated factors may not be applicable in every case. Thus, s. 18(4) provides the Committee with discretion to consider the relevancy of the enumerated factors in any given situation, and it follows that the Committee is not required to analyze irrelevant factors.

[56] Through its review of the various witnesses and documents, the Committee considered several factors within s. 18(4) that it found to be relevant to the instant application. These factors were included in the recommendations in the May 2022 Corvus Report, formally titled "Town of White City/RM of Edenwold Annexation Financial Impact Assessment", which the Committee referenced. The Corvus Report recommendations covered the areas of: disposition of land or improvements (s. 18(4)(g)); disposition of assets and liabilities (s. 18(4)(h)); municipal services (s. 18(4)(d)); municipal capital works (s. 18(4)(e)); local improvements in the area affected (s. 18(4)(m)); and, mill rates and assessments (s. 18(4)(f)). In the *Decision* at paragraph 78, the Committee also discussed the need for the proposed territory for the purposes of governance, which required it to take notice of municipal electoral boundaries (s. 18(4)(i)), local school divisions (s. (18(4)(k)) and bylaws (s. 18(4)(o)).

[57] While the Town argues that the Committee did not give adequate reasons why it first considered the Town's OCP before turning to a consideration of the factors enumerated in s. 18(4), a review of the section of the *Decision* entitled "Public Documents" gives a factual and legal basis for the Committee's decision to proceed in this manner (see paras 29–44). OCPs are governed by

The Planning and Development Act, 2007, SS 2007, c P-13.2 [*PDA*], including the requirement that an OCP must include statements on current and future land use (s. 32(2)(a)). The *PDA* also states that, where an OCP is implemented, it is legally binding on municipalities and all other persons, associations and organizations (s. 40(1)(a)).

[58] Additionally, the Committee referenced the Ministry of Government Relations, Community Planning Branch, *A Guide to Municipal Boundary Alterations (Annexation)*, version 4 (Regina: November 2015) [*Guide*]. While not binding, the *Guide* addresses concerns regarding planning consistency and speaks to how a municipality's OCP should be treated in a boundary alteration application. The *Guide* refers to the OCP as the key consideration in a boundary alteration because it sets out a municipality's plan for growth and growth is the core consideration in a boundary alteration (at 23). The *PDA* expressly provides that where an OCP exists, it is legally binding and should be the driving force for future development (s. 40(1)(a) and (b)).

[59] Thus, as a legislated and legally binding document regarding the growth of the Town, the Committee was required to consider the Town's OCP as part of its deliberations regarding the Application. The Committee's rationale for considering the OCP before turning to an analysis of the factors set out in s. 18(4) of the *Act* is adequately made out in its reasons, given the publications to which the Committee expressly refers. In my view, the Committee's reasons demonstrate that the purpose of its review of the OCP was to determine whether the Town's application aligned with the direction for growth expressed in its guiding document.

[60] Thus, I find no merit in the argument that the Committee failed to adequately explain its reliance on the OCP or its conclusion that the Town's OCP did not support the annexation sought.

7. Conclusion on sufficiency of reasons

[61] In conclusion on this point, the Committee's reasons illustrate its pathway to its factual and legal determinations, which ultimately supported its conclusion that the Town's application to annex the Subject Lands should be dismissed. While the Committee's reasons were succinct, they were sufficient to communicate how and why the Town's request to annex the lands was denied.

B. The Committee did not err by ignoring, failing to consider and/or misapprehending relevant evidence

[62] The Town argues that the Committee erred in law by ignoring, failing to consider, or misapprehending relevant evidence. It says that the Committee improperly narrowed its focus to the question of whether developed lands could be subject to annexation, and by so doing, neglected to consider evidence that demonstrated the Town needed the land in question for growth.

[63] An error related to facts raises an extricable question of law when it results from a legal error in the fact-finding exercise. An error of this sort will occur where a factual finding is: (a) based on no evidence; (b) made on the basis of irrelevant evidence or in disregard of relevant evidence; or, (c) based on an irrational inference of fact: see *P.S.S. Professional Salon Services Inc. v Saskatchewan (Human Rights Commission*), 2007 SKCA 149 at paras 60–68, [2008] 5 WWR 440, leave to appeal to SCC refused, 2008 CanLII 32715; *Murphy v Saskatchewan Government Insurance*, 2008 SKCA 57 at para 5, [2008] 7 WWR 401; and *Silzer v Saskatchewan Government Insurance*, 2021 SKCA 59 at para 88.

[64] In this case, the Committee's factual findings must also be reviewed in light of s. 20 of the *Act*, which provides the Committee with the authority to hear and determine any question of fact or law as to matters within its jurisdiction and allows that the Committee "is not bound by the technical rules of legal evidence" (s. 20(7)). While this provision does not preclude the Committee's findings of fact from giving rise to errors of law, it demonstrates the Legislature's intention to grant the Committee considerable flexibility in its admission, review, weighing, acceptance and/or denial of evidence. Thus, a technical error with respect to treatment of evidence by the Committee cannot, itself, be an error in principle.

[65] Specifically, the Town alleges that the Committee erred in its fact-finding process by ignoring or misapprehending evidence concerning: (a) the Town's current supply of developable land within its boundaries and the appropriate timeframe for determining future land requirements; (b) the contrasting expert evidence; and, (c) whether the Town's OCP supported its annexation request, including the future land use maps and the Boundary Alteration Agreement between the Town and the RM dated October 13, 2015 [2015 Agreement].

[66] As I will explain, it is my view that the Town has not shown that the Committee ignored, failed to consider, or misapprehended the evidence before it.

1. Available developable lands and timeframes

[67] The Town says that the Committee erred in stating that there was "no dispute" between the parties that there was "at least 12 years" of land available for residential development (*Decision* at para 79). It says that the Committee's statement on this point is entirely unsupported on the evidence.

[68] With respect, I disagree. The record demonstrates there was some evidence to support a finding that the Town had 12 years' worth of developable residential land within its boundaries. For example, the ISL Report outlines that the Town had 10 years until the available residential land was depleted. However, in addition, Mr. Young testified on behalf of ISL Engineering. While there is no transcript of his evidence, the Committee provided a summary of his testimony, stating that he "accepted that the present undeveloped residential land within the Town represents at least 10 to 12 years' development" (*Decision* at para 52). Without a transcript, it is very difficult, if not impossible, to hold that the Committee's summary of the oral evidence is in error. Thus, from the record, there is some evidence upon which the Committee could make this finding.

[69] Further, I am not persuaded that the Committee misapprehended the Town's evidence respecting the appropriate timeframe for determining future land requirements. In summarizing the relevant points of Mr. Young's evidence, the Committee referenced the ISL Report's recommendation of a 25-year time horizon. However, the Committee's reasons show that it considered the need for undeveloped land separately from that for developed land. In determining the planning horizon for undeveloped residential land, the Committee accepted evidence that the Town had at least 10 years' worth of land for residential development. It was not necessary for the Committee to determine the planning horizon for developed land, because it concluded that the Town had not demonstrated a need for developed land.

[70] The Committee also did not ignore or misapprehend the Town's evidence respecting land available within the Town's boundaries for commercial and industrial development. On the contrary, when it summarized Mr. Jimenez's evidence, it stated that the Town had at least three years' worth of land available for commercial development. The Committee also clearly

understood that the Town's current taxable assessment was almost completely residential, and the viability of the Town depended on a diversified tax base (see *Decision* at para 74).

[71] Because the Town sought specific developed lands as part of the Application, including Great Plains Industrial Park, the Committee was required to address whether the Town had shown a need to annex developed lands. It found that no such need was demonstrated. As I have previously discussed, the Committee did not accept that financial need and need for governance of the annexed lands constituted proper "need(s)" requiring lands for growth.

[72] Both the ISL Report and the Corvus Report disclosed that the financial viability of the Town was at issue. Both reports drew the conclusion that the Town needed the revenue of the developed commercial and industrial lands to remain viable in the future. The Committee acknowledged these reports but, again, it concluded that the Town's financial need for a diversified tax base was not a factor that supported its request for annexation. This is a finding of mixed fact and law, which is not reviewable in this appeal. It is not a misapprehension of the evidence.

[73] The Committee also rejected the evidence and argument offered by the Town to support a need to change governance. The Committee stated:

> [75] The Delainey Report states [AE Report at 7]:
>
> > An argument can be made that the Town's lack of opportunity is a direct result of deficient long-range planning within the community and not due to a strategic advantage provided to the RM by its corporate boundaries.
>
> [76] We agree with that analysis. The Town complains that the RM strategy effectively boxed in the Town and lessened the opportunity for future development.

[74] The Committee noted that if the Town's concern was being encircled by the RM, then the CP must approve any RM development. It is implicit in this comment that the Committee recognized that there may be alternative ways for the Town to address its concerns respecting development on its border, other than its annexation request, and that this detracted from the Town's argument for annexation. In my view, the Committee's comments in this regard demonstrate that it understood the evidence and arguments surrounding the issue of governance control, not that it misapprehended that evidence.

[75] In conclusion, the Committee did not err in law by ignoring, failing to consider or misapprehending the evidence. The Committee expressly stated that it considered all the evidence, even if it did not expressly reference it all (see *Decision* at para 45), and it demonstrated, through its summaries of the evidence, what aspects of the evidence it considered important. It gave reasons as to why it accepted or rejected the evidence that was relevant to its determinations. I therefore see no error in the Committee's approach to the evidence relating to land available within the Town's boundaries for commercial and industrial development.

2. Expert evidence

[76] The Town contends that the Committee also erred in its approach and treatment of the expert evidence.

[77] I begin my analysis of this point by noting that assessing the weight of expert evidence is a factual issue, not a question of law: "[i]t is not open to a reviewing court to carry out its own assessment of the probative value of an expert's testimony or opinions simply because it disagrees with the Tribunal's assessment" (*Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at para 105, [2015] 2 SCR 3). Thus, for the Town to successfully appeal on a ground related to the Committee's treatment of expert evidence, it must demonstrate that the Committee failed to consider, or misapprehended, expert evidence that was central to its ultimate decision to dismiss the Town's application. It is not available for the Town to argue that the Committee improperly weighed the expert evidence as this is not an error of law.

[78] In my view, the Committee did not err in law in its treatment of the expert evidence. The *Decision* demonstrates that the Committee did consider all the expert reports. For example, the Committee stated as follows with respect to its review of the evidentiary record:

> [45] The three Hearing books before the Committee contain 3,557 pages, which includes expert reports, submissions of the parties, case law and written submissions by interested parties. The Committee reviewed all of the information contained in the Hearing books. The Committee heard four full days of evidence and a half day of argument. What follows is a summary of the salient points of evidence led by the parties. If a point is not mentioned in our decision that does not mean we have not heard, considered, and understood it. Lastly, we point out the Committee is not bound by the rules of evidence.

[79] In addition, the reasons offered by the Committee indicate what expert evidence it accepted, and what was rejected. With respect to the planning evidence of Mr. Young and Mr. Delainey, the Committee certainly implied that it preferred the evidence of Mr. Delainey. At the end of its summary of Mr. Delainey's evidence, the Committee expressly noted that he was "an impressive witness and provided valuable information to the Committee" (*Decision* at para 64).

[80] The Committee also demonstrated that it had regard for the financial evidence before it. Mr. Weiss gave oral evidence and prepared the materials presented on behalf of Corvus Business Advisors, and the Committee did not afford much weight to this evidence. The Committee noted that Mr. Weiss renounced a portion of the 2018 Corvus Report he had authored. It said that it could not understand the position Mr. Weiss was taking, indicating that it rejected this evidence (see *Decision* at para 49). The Committee was clearly skeptical of Mr. Weiss' evidence respecting whether the need for the lands requested was financial and, it follows that it did not accept much, if any, of that evidence. In contrast, the Committee did accept the Virtus Report and indicated which parts of Mr. Hoffart's evidence it accepted (Mr. Hoffart prepared a response to the Corvus Report on behalf of Virtus Group). The Committee expressly referred to Mr. Hoffart's comments on Mr. Weiss' conclusion that to be financially viable, the developed lands must be transferred with the undeveloped lands (see *Decision* at paras 56–57). The Committee also accepted Mr. Hoffart's conclusion that without the transfer of developed lands, the residents of the Town's residential areas would face a large mill rate increase, as the Town's tax base consisted of 99% residential taxation.

[81] In sum, the Committee demonstrated its thorough review and understanding of the expert evidence. The Town has not identified a specific example of an error in principle in the Committee's approach to the expert evidence that goes to the heart of the result. It follows that this ground of appeal must fail.

3. OCP and related considerations

[82] Finally, the Town argues that the Committee ignored or failed to consider its evidence respecting: the suitability of the lands to the east; the 2015 Agreement between the parties; and, the Town's OCP.

[83] Again, it is my view that the Committee did not ignore, fail to consider or misapprehend this evidence.

[84] The Committee expressly stated that it deemed the existence of land to the east of the Town's boundaries for annexation, and the RM's willingness to explore consensual annexation of this land, as being a relevant consideration in its deliberations. The Committee reviewed the future land use map in the Town's OCP, which supported expansion to the east, thus demonstrating that it did consider the Town's evidence on this point. However, the Committee also raised evidence from the RM's Reeve, Mr. Huber, which indicated that the RM was prepared to discuss consensual annexation of lands to the east.

[85] The Town argues that it led evidence that the land to the east was unsuitable and that the Committee ignored it. The Town says that this evidence showed conclusively that eastward expansion was not viable. However, while the ISL Report does reference the unsuitability of the land to the east for development, the evidence on that point is limited to the conclusion that natural barriers, limited highway access and previous development made the land unsuitable. In my view, the Committee's silence on this point does not demonstrate that it ignored this evidence. On the contrary, it just as likely demonstrates that the Committee did not find this evidence to be compelling. Ultimately, the Committee noted that the Town's OCP contemplated development of lands to the east and it accepted the RM's evidence that it was willing to consider the Town appropriating land to the east. The fact that the Town's OCP contemplated development of lands to the east was clearly persuasive for the Committee. Thus, I am not convinced that the Committee failed to recognize evidence demonstrating that eastward expansion was not viable.

[86] Regardless, the availability and suitability of lands to the east was clearly not the determining factor in the Committee's conclusion to dismiss the Application. That conclusion was based on the Committee's finding that the Town had not established that it needed the Subject

Lands for the purpose of growth, because it did not accept that the Town's financial need, or need for governance change, constituted a need to annex undeveloped and/or developed land for growth.

[87] Turning to the 2015 Agreement, again, the Town has not established that the Committee erred in its treatment of the evidence regarding that agreement.

[88] The 2015 Agreement was before the Committee in its entirety and it expressed the parties' intentions that the land annexed in 2015 was to provide the Town with a long-term supply of land for development, commercial and residential. It also included an agreement that the Town would not pursue annexation of specific lands to the west (which it did pursue in the Application). In its *Decision*, the Committee expressed concern that the Town had breached the 2015 Agreement by bringing the Application. The Town argues that, in coming to this conclusion, the Committee failed to consider the Town's evidence respecting other aspects of the 2015 Agreement, which suggest that the agreement was not in force, or should not be enforced. However, it is clear that the Committee understood and rejected the Town's argument on this point. The Committee stated: "The Town seems to advance the position that as, in its view, the RM has not complied with its obligations under the agreement, they are not bound by the agreement" (*Decision* at para 81). These comments illustrate that the Committee understood the Town's argument, and any evidence it proffered in support, on this point. The Committee's rejection of the Town's argument does not demonstrate that it ignored or misapprehend the underpinnings on which it was based.

[89] Thus, this ground of appeal must also fail.

C. The Committee did not err by failing to consider the required factors under which a proposed annexation is to be evaluated

[90] The Town returns to s. 18(4) of the *Act* to argue that the Committee erred in law by failing to consider and properly apply the factors articulated in this provision. Again, it is my view that this argument does not have merit.

[91] First, the Committee addressed the issue of land needed for growth, an established principle of boundary alteration decisions. In determining the need for growth, the Committee used the Town's OCP as the benchmark for whether the annexation request was supported by the Town's own policy document. The Committee determined, with assistance from the *Guide*, that where an

OCP existed, the Committee did not need to turn to the factors set out in s. 18(4) because the OCP provided a comprehensive growth management strategy of the municipality. I see no error here.

[92] Second, and in any event, the Committee did consider the factors in s. 18(4) that were relevant to the Application. The Committee's rejection of the Town's "financial need" and "governance change" arguments resulted in some of the factors becoming irrelevant. For example, once a change of governance (control of growth on the Town's borders) was excluded as satisfying a need for the requested land for growth, governance-related factors such as electoral boundaries, intermunicipal bodies and bylaws, became irrelevant. Similarly, once the Committee rejected the Town's financial need or viability as a reason to justify the annexation of developed lands, it was unnecessary for the Committee to place weight on the factors of mill rates, servicing and tax sharing. Because the Committee determined that the Town had not met the threshold test of "need for growth", it was also unnecessary for it to consider appropriate compensation (as the Committee noted at paragraph 86 of the *Decision*). In sum, once the Committee concluded that the Town had failed to prove a need for the Subject Lands, the Committee was not required to undertake an analysis of how annexation would impact the municipalities pursuant to the factors set out under s. 18(4).

[93] In any event, and as I previously noted, the Committee did refer to evidence that addressed many of the factors at s. 18(4). The Committee referenced the Corvus Report recommendations, which demonstrates a consideration of financial-related factors (see *Decision* at para 48). Further, its consideration of the Town's "governance need" argument indicates that it considered many of the other factors under s. 18(4) of the *Act*. Additionally, the Committee had the discretion to consider any other matters it deemed relevant under s. 18(4)(p), a discretion it exercised in considering the RM's willingness to engage in discussions to annex land to the east.

[94] Finally, the Town asserts that the Committee was also required to consider the appropriate planning window and that its failure to do so amounts to an error in law. With respect, I do not agree. Put simply, the Committee was not required to do this. The factors articulated under s. 18(4) do not enumerate that an "appropriate planning window" is a required consideration. I note, however, that the Committee did accept expert evidence that there was approximately 10–12 years' worth of undeveloped residential land within the Town's boundaries, much of which

was consensually annexed in 2015 and had yet to be developed. The Committee found this to be enough developable land such that a present need for more was not satisfied.

[95] In conclusion on this point, the Committee did not err in its approach to the s. 18(4) factors and the planning horizon. The Committee rejected the Town's arguments that the requested land was needed for financial and governance reasons and found that the Town had not established a need for land for the purpose of growth. Once this initial threshold question was answered, the Committee was not required to engage in a detailed analysis of the s. 18(4) factors. The Committee also was not obligated to consider the planning horizon, but the Committee's reasons demonstrate that it accepted that 10–12 years' worth of developable residential land was sufficient for the Town to meet its needs. For the developed land, the Committee determined that no time-planning horizon discussion was necessary as the Town had not established a need for developed land.

[96] It follows that this ground of appeal must be dismissed.

D. The *Decision* is not based on irrelevant or improper considerations

[97] Finally, the Town says that the Committee erred in law by basing its conclusions on irrelevant or improper considerations, which include: (a) the RM's willingness to discuss lands to the east for annexation; (b) the experience of both municipalities in managing commercial and industrial development; and, (c) the Town's previous planning decisions.

[98] In my view, the difficulty with this argument is that s. 18(4)(p) of the *Act* grants the Committee broad discretion to consider "any other matters" that it considers relevant and that are consistent with the purposes and objects of the *Act*.

[99] I am not persuaded that it was improper for the Committee to consider the RM's willingness to discuss lands to the east for annexation. The RM led evidence that there were other possible alternatives to the Town's request, including lands to the east, which made the annexation request in the Application unnecessary. The RM also argued that this possibility aligned with the Town's OCP, which identified lands to the east for future development. The Committee determined that this argument had some merit and that there was potential for "further consensual annexation … particularly in light of CP's [community planning branch] view that all remedies

available through legislation ought to be exhausted prior to ordering annexation of service developed land" (*Decision* at para 80). Given the wide discretion granted to the Committee under s. 18(4)(p), I cannot say that the Committee exercised that discretion improperly when it determined that the RM's evidence on this point was relevant to the issues under deliberation. It was well within the Committee's purview to consider this evidence and argument as relevant.

[100] Similarly, it was not improper for the Committee to consider the management experience of both municipalities. The Town sought fully developed commercial and industrial land for the purposes of balancing its tax assessment split and for governance reasons. The Town would not be developing the land but instead would be managing the established residents and businesses, and the evidence indicated that the Town had not actively pursued commercial or industrial development for the last 60 years. Thus, the Committee concluded that while the RM had demonstrated the ability to attract and manage commercial, industrial and residential developments, the Town had not "demonstrated experience in commercial or industrial developments" (*Decision* at para 82). Again, given the ample discretion granted to the Committee pursuant to s. 18(4)(p) of the *Act*, the Committee did not err in considering this evidence because the evidence was broadly relevant to a general consideration of whether the annexation of developed industrial and commercial land was appropriate. It is clear from the *Decision* that the Committee's reflection on this evidence was just one facet of what it considered to reach its ultimate conclusion.

[101] Likewise, it was not improper for the Committee to explore the reasons behind the relief the Town sought. The Town argued that the Subject Lands were needed to make the Town financially viable and that the RM's development on the Town's borders was the reason for the poor assessment split that the Town currently experienced. By advancing that argument, the Town brought its planning history into issue and, thus, the RM was entitled to lead evidence to rebut that assertion, and the Committee was entitled to consider and accept that evidence. There is no merit to the argument that this was an irrelevant consideration in the circumstances of the evidence that was led at the hearing.

[102] In sum, s. 18(4)(p) of the *Act* provides the Committee with considerable discretion to identify and consider *any* other factors it deems relevant, although implicitly these factors must be consistent with the purposes and objects of the *Act*. The additional factors considered by the Committee were sufficiently tied to the Application to render them relevant, and the Committee did not err in considering same as part of its determination that the Town's application for annexation should be dismissed.

VI. CONCLUSION

[103] In the result, the appeal is dismissed, with costs to the RM on Column 4, including the costs of the leave application.

"McCreary J.A."

McCreary J.A.

I concur.

"Kalmakoff J.A."

Kalmakoff J.A.

I concur.

"Drennan J.A."

Drennan J.A.