**Court of Appeal for Saskatchewan**
**Docket: CACV4153**

**Citation: *White City (Town) v Edenwold (Rural Municipality)*, 2023 SKCA 61**
**Date: 2023-05-23**

Between:

**The Town of White City**

*Applicant/Prospective Appellant (Applicant)*

And

**The Rural Municipality of Edenwold No. 158**

*Respondent/Prospective Respondent (Respondent)*

| | |
|---|---|
| Before: | Tholl J.A. (in Chambers) |
| Disposition: | Leave to appeal granted |
| On application from: | 2023 SKMB 1 (Municipal Boundary Committee), Regina |
| Application heard: | 26 April 2023 |
| Counsel: | Kim Anderson, K.C., and Candice Grant for White City<br>Randy Sandbeck, K.C., and Elaine Selensky for Edenwold |

**Tholl J.A.**

## I. INTRODUCTION

[1] The Town of White City [White City] seeks leave, pursuant to s. 33.1 of *The Municipal Board Act*, SS 1988-89, c M-23.2 [*MBA*], to appeal a decision of the Municipal Boundary Committee [Committee]. In its decision, the Committee dismissed White City's application that sought annexation of land through an alteration of its boundaries with the Rural Municipality of Edenwold No. 158 [RM]: *White City (Town) v Edenwold (Rural Municipality)*, 2023 SKMB 1 [*Committee Decision*]. White City has listed numerous grounds of appeal in its draft notice of appeal, which can be broadly summarized as engaging issues of sufficiency of reasons, an alleged failure to articulate the proper legal tests, and an assertion that crucial evidence was ignored. The RM opposes the leave application on substantive grounds, but it also submits that this Court does not have jurisdiction to grant leave under s. 33.1 of the *MBA*.

[2] For the reasons that follow, leave to appeal is granted on a combined and reformulated version of the grounds advanced by White City.

## II. BACKGROUND

[3] White City and the RM are bordering municipalities located to the east of the City of Regina. White City consists of mainly residential land. The RM contains a mixture of various types of land, including residential, commercial, and industrial. Each of the municipalities is experiencing a high rate of growth. The relationship between the parties has been contentious, and they were unable to agree to a change in their boundaries that was desired by White City. As a result, White City applied to the Committee, pursuant to s. 53(1)(a) and s. 60(2) of *The Municipalities Act*, SS 2005, c M-36.1, in accordance with s. 18 of the *MBA*, for an order approving an alteration of the boundaries.

[4] In its application to the Committee, White City sought to have the boundaries changed in a manner that would remove 2,358.73 acres of undeveloped land and 1,671.72 acres of developed land from the RM and incorporate it into White City. Of note, the developed land includes the areas known as the Emerald Park Subdivision, the Great Plains Industrial Subdivision, the Escott

Estates, the Prairie View Business Park, the Deneve Subdivision, the Meadow Ridge Estates, and the Park Meadow Estates. The proposed boundary change would significantly reduce the RM's property tax base.

## III. LEGISLATIVE FRAMEWORK

[5] The relevant portions of *The Municipalities Act* are as follows:

> **Restructured municipalities**
>
> **53**(1) The council of a municipality or the council of a municipality or the councils of one or more other municipalities may apply to the minister, in accordance with the procedures set out in Division 2, to restructure by:
>
> > (a) adding territory to or withdrawing territory from the existing area of the municipality and altering the boundaries of any other municipality affected by the alteration, as long as the boundaries of any other municipality affected by the alteration are coterminous with the boundaries of the applicant municipality;
> > … .
>
> (2) A municipality and any other municipality may enter into a voluntary restructuring agreement for the purposes of an application pursuant to subsection (1), whether or not their existing boundaries are coterminous.
>
> …
>
> **Referral or application to Saskatchewan Municipal Board**
>
> **60**(2) Notwithstanding section 53 and subsection 59(3) but subject to subsection (3), in the case of an application for an alteration of municipal boundaries as described in clause 53(1)(a), the council of the applicant municipality shall submit its application to the Saskatchewan Municipal Board pursuant to subsection 18(1) of *The Municipal Board Act* if it is unable to obtain a certified resolution in support of the application from the council of every other municipality affected by the application.
>
> (3) Before an application mentioned in subsection (2) is submitted to the Saskatchewan Municipal Board for review pursuant to subsection 18(1) of *The Municipal Board Act*, the Saskatchewan Municipal Board shall appoint a mediator to assist the municipalities in resolving the matter in dispute unless there has been an attempt at mediation within the previous year.
>
> …
>
> (7) If the Saskatchewan Municipal Board approves, in whole or in part, an application submitted to it pursuant to subsection (2) or that the minister has referred to the board for review pursuant to subsection 59(3), the minister shall make an order pursuant to subclause 61(2)(c)(i) that implements the Saskatchewan Municipal Board's decision.

[6] The following are relevant portions of the *MBA*:

> **Interpretation**
>
> **2**(1) In this Act:
>
> > (a) **"board"** means the Saskatchewan Municipal Board established pursuant to section 3 … .

**Committees**

**12**(1) The board shall appoint:

…

(b.01) three or more members of the board to sit as a committee of the board for the purposes of section 18 … .

(6) A decision or action of a committee in relation to any power or duty exercised or performed by the committee is the decision or action of the board.

…

**Municipal boundaries, changes**

**18**(1) Subject to subsections (1.1) to (1.3), the board shall review any application for an alteration of municipal boundaries submitted by a municipal council pursuant to subclause 43.1(2)(a)(ii) of *The Cities Act*, subsection 60(2) of *The Municipalities Act* or subsection 81(2) of *The Northern Municipalities Act, 2010*.

…

(4) In its review of an application submitted or referred to it, the board shall consider the following current or prospective matters as they may affect any of the municipalities involved:

(a) land use planning;

(b) tax sharing;

(c) local boards and commissions;

(d) municipal services;

(e) municipal capital works;

(f) mill rates and assessments;

(g) disposition of land or improvements that is owned by or leased to a municipality, local board or commission;

(h) disposition of assets and liabilities;

(i) municipal electoral boundaries;

(j) grants or other assistance from the government of Saskatchewan or Canada;

(k) local school divisions;

(l) transportation, communication and utilities and rates for those things;

(m) local improvements in the area affected;

(n) hospital, library and other inter municipal bodies;

(o) bylaws; and

(p) any other matters that the minister or the board considers relevant.

…

(6) The board may, in its discretion, hold a public hearing with respect to a proposed alteration of municipal boundaries or amalgamation of municipalities.

…

(10) On completion of its review in the case of an application submitted pursuant to subsection (1), the board may:

(a) approve the application, subject to any terms and conditions that the board considers appropriate;

(b) approve parts of the application and reject other parts, subject to any terms and conditions that the board considers appropriate; or

(c) reject the application.

…

**Other appeal**

**33.1** Any person affected by an order, decision or determination of the board may appeal to the Court of Appeal against the order, decision or determination on a question of law or on a question concerning the jurisdiction of the board:

(a) within:

(i) 30 days after the date on which the order, decision or determination is made; or

(ii) any further time, not exceeding 30 days, that a judge of the Court of Appeal may allow on an application made within 30 days after the date on which the order, decision or determination is made; and

(b) with leave of a judge of the Court of Appeal.

**Procedure**

**33.2**(2) An order granting leave to appeal:

(a) for the purposes of any appeal pursuant to section 33.1 is deemed to be a notice of appeal;

(b) must state the grounds of the appeal; and

(c) must be served on the respondent or his or her solicitor within 15 days from the date of the order giving leave to appeal.

…

**Finality**

**40**(1) Except where otherwise specifically provided:

(a) every decision or order of the board is final; and

(b) no order, decision or proceeding of the board shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari or any other process or proceeding in any court.

## IV. THE COMMITTEE'S DECISION

[7] As required under s. 60 of *The Municipalities Act*, the parties engaged in mediation before the matter was set down. Five mediation sessions were held from June to October of 2022, but a resolution was not reached and a hearing was required.

[8] The Committee held hearings over the course of five days, commencing on November 23, 2022. The hearing process included the opportunity for members of the public to provide input, with many such submissions being received in writing and orally. The Committee reserved its decision and rendered the *Committee Decision* on January 12, 2023, in which it dismissed White City's application.

[9] The *Committee Decision* commenced with an overview of the legislative framework, a discussion of procedural issues, a comprehensive description of the background of the matter, an account of the public participation, and a listing and examination of publicly available materials that were considered. In the course of doing so, the Committee set out the issues which were articulated by White City in its statement of dispute (at para 5):

1. What is the appropriate time frame for determining the Town's future land requirements?
2. Given the time frame, how much land does the Town require?
3. Which lands (developed and undeveloped) should be included in the annexation?
4. How will the annexation be serviced?
5. If the annexation is approved, is the RM entitled to any compensation?

The Committee noted that a fundamental issue that it must address was a determination of whether White City had demonstrated a need for the lands for the purpose of growth.

[10] Next, the documentary evidence was described by the Committee and the testimony from each party's witnesses was summarized. After doing so, the Committee set out its analysis and ultimate conclusion, which consisted of the following:

**ANALYSIS:**

> [73] The Committee is faced with what has been described by the parties as an unprecedented application. We agree with that characterization. Annexation is generally employed where there is a demonstrated need for land suitable for growth. In the present application, we have a request for annexation concerning both developed and undeveloped land. It is our view, by definition, that developed land cannot provide land needed for growth. This would apply whether the land was designated, commercial, industrial or residential.
>
> [74] All of the reports provided by the Town [White City] suggest the current mix of 99% residential and 1% commercial mix is not viable for a community. None of the reports or evidence led address the issue that the Town made the decisions to limit commercial and industrial uses that leads it to its current residential commercial mix. Put another way, it would seem that one of the drivers behind the application is an attempt by the Town to undo decisions made years earlier, which in the current light of day seem to present significant financial challenges to the community. The acquisition, through annexation, of developed industrial and commercial property would go far to balancing the commercial residential mix. It is our view that this acquisition may demonstrate a financial need but does not resolve any perceived need for future land for growth.

[75] The Delainey Report states:

> 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.

[77] The Town advances a further reason for the annexation. That reason is to address the RM growth immediately situated 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 [Official Community Plan] of the Town does not support such an acquisition. In the [Official Community Plan], 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 [Community Planning Branch (CP), Ministry of Government Relations] approval.

[78] We have particular concern with respect to annexation of developed land. As noted, such land cannot provide an opportunity for future growth. From our perspective, the only result of annexation of developed land, aside from the financial considerations mentioned earlier, is a change in governance. The use of the lands will not change nor will the level of services required by residents and businesses change. There may be efficiencies of scale but the evidence on this point was scant and certainly not sufficient to order an annexation of this magnitude.

[79] There is no dispute between the parties that, at worst, there is currently sufficient land for residential development of at least 12 years and there may be as much as 20 years worth of land available within the Town boundaries. As we understand the current development landscape, the Town is issuing some 10 to 20 residential building permits per year. In our view, this land currently provides sufficient land for anticipated growth by the Town until 2034–2035.

[80] In its written submission to us, the RM said it is prepared to enter into discussions concerning consensual annexation of lands to the east. When this issue was raised by the Committee, the Town's legal counsel advised this was a matter of privilege (precisely what type of privilege remains unclear) and would address this issue as necessary. The Town did not suggest the statement by the RM concerning consensual annexation was incorrect. No further objection or argument was advanced. In our view, we are entitled to take into account the position advanced by the RM concerning consensual annexation under subsection 18(4)(p) of the *MBA*. We see the potential for further consensual annexation as clearly relevant to the issue before us, particularly in light of CP's view that all remedies available through legislation ought to be exhausted prior to ordering annexation of service developed land.

[81] We are troubled by the Town seeking to annex land that it expressly said it would not pursue under the 2015 consensual annexation agreement. 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. Mitchell Huber expressed the Town's position with respect to the RM obligations. He did not say it was not bound by the agreement. Rather, his position was they are prepared to work with the Town on what are admittedly long-term projects. In our view, in seeking to annex land it had expressly said it would not pursue, the Town undermined any perceived justification to order the annexation of the requested lands.

[82] We add that the RM demonstrated the ability to attract and manage significant commercial, industrial and residential developments. The Town has not demonstrated experience in commercial or industrial developments.

[83] We understand and appreciate that this issue has presented a challenge both to RM and Town residents for a lengthy period of time. The passion of the public participants and the concern with the divisive nature of this application was clear.

**DECISION:**

[84] The Town has not demonstrated a need for land for future residential growth in support of this application. The Town has an adequate supply of undeveloped residential land to last at a minimum for 10 to 12 years, which we see as sufficient for the reasons already expressed.

[85] The Town has not demonstrated a need for annexation of developed residential, commercial or industrial lands for growth. For the most part, the developed lands being sought by the Town are fully developed and, as such, those lands cannot provide further opportunity for growth.

[86] Based on the evidence presented at the hearing, we have concluded that annexation of the developed lands is sought only for financial reasons rather than to enable future growth of the Town. The Town has not demonstrated a need to annex land to stop the development next to its borders. As we have ordered no lands to be annexed, we need not deal with the various positions concerning adequate compensation.

## V. PROPOSED GROUNDS OF APPEAL

[11] The proposed grounds of appeal are set forth by White City in its draft notice of appeal:

4(d) This appeal is taken upon the following errors of law and/or jurisdiction:

(i) The Committee erred in law by failing to provide adequate reasons to reasonably support all of the conclusions reached by the Committee;

(ii) The Committee erred in law by failing to articulate, and apply to the facts, the proper legal test by which a proposed annexation is to be evaluated and determined;

(iii) The Committee erred in law by ruling that the factual evidence presented by the Appellant was insufficient to constitute a basis for annexation of the subject lands;

(iv) The Committee erred in law by concluding that the Appellant possessed enough land for at least 12 years, and as much as 20 years, of residential growth. Such conclusion was reached either in an absence of evidence, or in the face of controverted evidence (on which the Committee did not provide any analysis or explanation as to why it preferred certain evidence over other evidence);

(v) The Committee erred in law by failing to consider or determine whether the Appellant had sufficient land available to it to meet its future commercial and industrial land needs;

(vi) The Committee erred in law by failing to first determine (with supporting reasons) the appropriate time frame to utilize in determining the Appellant's future land requirements. The Committee then proceeded to make a conclusion, with no analysis or reasons, that the Appellant already possessed enough land for its future land requirements;

(vii) The Committee erred in law by failing to consider evidence presented by the Appellant, and/or, by failing to identify the legal effect of certain facts, relating to the Appellant's future needs for land. Such evidence includes the below (without limitation):

> (A) Financial, demographic, and planning evidence that the proposed annexation (of developed commercial and industrial land) to the Appellant, was crucial to the future viability of the Appellant;
>
> (B) Evidence that the Appellant in fact required the annexation of developed commercial and industrial lands, for the purpose of future growth, and not for solely financial reasons;
>
> (C) Evidence that the Appellant is increasingly physically surrounded by the developments of the Respondent Rural Municipality, which, absent an annexation, will limit the Appellant's future sustainable growth;
>
> (D) Evidence that the Appellant would be financially viable following a grant of the Appellant's application, should the Committee order a boundary alternation; and
>
> (E) Evidence that the Respondent would be viable, and likely better off financially, should the committee order a boundary alteration.

(viii) The Committee erred in law by basing its decision, in part, on irrelevant considerations, such as (without limitation):

> (A) The Committee concluded that the Respondent possesses a greater ability than the Appellant to attract and manage significant commercial developments, where such was not a relevant consideration;
>
> (B) The Committee referred to and made conclusions and criticisms relating to the Appellant's previous long range planning decisions, where such is not a relevant consideration;
>
> (C) The Committee referenced the Respondent's evidence that the Respondent was prepared to enter into discussions with the Appellant concerning consensual annexation of lands to the east of the Appellant Town. Such was not a relevant factor before the Committee, and was moreover privileged by virtue of settlement privilege. Moreover, the legal test as to whether the Appellant demonstrated sufficient need for more land, should not rely on speculation on what may, or may not, be agreed in future outside the land which the Appellant had already identified as being most appropriate for annexation purposes;
>
> (D) The Committee further failed, when considering the Respondent's evidence on the possibility of consensual annexation to the south and east of the Appellant's boundaries, to consider evidence before it respecting the non-suitability of such land;

(E) The Committee further failed, when considering the Respondent's evidence on the possibility of consensual annexation to the south and east of the Appellant's boundaries, to consider evidence before it respecting the Respondent's own developments in these areas and the Respondent's failure or refusal to provide any complementary resolution to the Appellant for annexation of lands to the south or east.

(F) The Committee failed to consider the uncontroverted evidence before it that the consensual path to annexation had been fully exhausted.

(ix) The Committee erred in law in that it correctly identified its obligations to consider the matters referenced in s. 18(4) of *The Municipal Board Act*, but then failed to address or consider all but two of those considerations, being subsections 18(4)(a) and (p);

(x) The Committee erred in law by failing to have due regard to and to consider relevant principles set forth in the *Guide to Municipal Boundary Alterations (Annexation)*, Version 4, November 2015, when determining whether or not the annexation was justified by future land needs;

(xi) The Committee erred in law by failing to have due regard to and to consider relevant principles set forth in the Principles for Financial Settlements between Municipalities for Boundary Alterations when determining whether or not the annexation was justified by future land needs;

(xii) The Committee erred in law when considering an earlier agreement between the Appellant and Respondent in relation to a boundary alteration in 2015, treating that agreement as a binding promise by the Appellant that it would not in the future pursue any growth in lands located to the west of the Appellant Town. The Committee erred in basing its decision, in any part, on such conclusion;

(xiii) The Committee erred in law by not considering evidence before it that the land specifically referenced in the boundary alteration agreement in 2015 had been excluded at the wishes of its landowner, who had since changed its position and sought for the specific land to be annexed by the Applicant;

(xiv) The Committee erred in law by failing to make any factual findings as to whether the proposed annexation would actually result in an annual financial gain to the Respondent Rural Municipality, and whether this factor thus supported the proposed annexation;

(xv) The Committee erred in law by concluding that an annexation request should be limited to land that is imminently needed for development. The Committee further erred by failing to offer reasons for this conclusion, by failing to articulate how it defined the phrase "imminent;" and by failing to apply its definition to the facts before it; and

(xvi) The Committee erred in law by concluding that a municipality's future land needs could not encompass already developed land, on the basis that such land was not capable of future growth, but merely a change in governance. Such conclusion was made in the face of previously contested annexations in which the Committee had ordered the annexation of developed land into the applicant municipality.

[12] Observing that some of the subgrounds constitute free-standing grounds of appeal on their own, I note that White City has sought leave on over twenty grounds of appeal. When queried at the application hearing, White City held fast to the position that it wanted leave to be granted on all its proposed grounds but conceded that it would probably address them in its factum, as it had done in its brief of law, in a combined manner. In its brief of law, White City submitted that the three most important errors of law can be concisely stated:

(a) lack of reasons;

(b) failure to articulate proper legal tests; and

(c) failure to address certain evidence.

[13] Of course, the provisions of the *MBA* do not permit me to grant leave to appeal in a general manner, with the appellant then finalizing and combining its grounds as the appeal progresses. Section 33.2(2) of the *MBA* requires a judge who grants leave to "state the grounds of appeal", with the associated order deemed to be the notice of appeal.

## VI. ISSUES

[14] The following issues arise in this application:

(a) Does this Court have jurisdiction to grant leave to appeal under s. 33.1 of the *MBA*?

(b) Should leave be granted and, if so, on what questions of law?

## VII. ANALYSIS

### A. Jurisdiction to grant leave

#### 1. Positions of the parties

[15] The RM submits that this Court does not have jurisdiction under s. 33. 1 of the *MBA* to grant leave to appeal to White City. It asserts that the privative clause found in s. 40 of the *MBA* prevents appeals to this Court from decisions of the Committee, leaving only judicial review as an option for White City. The RM argues that s. 40, combined with the fact that the Committee hears

matters as a first instance decision-maker – as opposed to being an appellate body like some other matters heard by other committees of the Saskatchewan Municipal Board [Board] – makes s. 33.1 inapplicable. It contends that the legislation would have to contain a clear expression to the contrary to prevent s. 40 from precluding an appeal in this matter. In support of these propositions, it asserts that a boundary alteration is a quasi-political question and points to the unique makeup, role, and procedures of the Committee.

[16] White City asserts that when ss. 12, 33.1, and 40 of the *MBA* are examined together, it has a right to apply for leave to appeal. It contends the appeal rights found in s. 33.1 are an exception expressly contemplated by the opening words of s. 40(1).

### 2. Hearing process under the legislation

[17] The *MBA* provides the Board with appellate and regulatory or supervisory powers. It serves as an appellate body for property assessments (s. 16), planning and development matters (s. 17), fire prevention orders (s. 18.1), and weed control decisions (s. 18.3). It has regulatory or supervisory powers (or both) in relation to municipal boundaries (s. 18), financial supervision (s. 19), and debt applications (s. 23). For a fuller discussion of these two roles, see *E.Z. Automotive Ltd. v Regina*, 2021 SKCA 109 at paras 84–85, [2022] 4 WWR 55.

[18] This Court routinely hears and determines applications under s. 33.1 of the *MBA* seeking leave to appeal from a committee of the Board related to the property assessment regime. However, the underlying process is very different between those cases and a decision by the Committee. In the former, an assessment decision is made by a municipality, through its appointed assessor. An aggrieved taxpayer has the right to appeal that assessment to a board of revision. If either the taxpayer or a municipality disagrees with the decision of the board of revision, they have a right of appeal to the assessment appeals committee of the Board. The assessment appeals committee fulfills a traditional appellate role. Its decision may, with leave under s. 33.1, be appealed to this Court. This process is described in detail in *Affinity Holdings Ltd. v Shaunavon (Town)*, 2022 SKCA 83 at paras 21–25 and 48–59, 474 DLR (4th) 71.

[19] In a boundary dispute, if a proposed alteration is not agreed to by the affected municipalities, the dissatisfied party makes an application directly to the Committee and seeks an order approving the desired change. The Committee then holds a first-instance hearing, where it

makes findings of fact, determines the applicable law, applies that law, and makes a decision. If a boundary change is approved by the Committee, that recommendation is forwarded to the Minister of Government Relations, who is required to make an order implementing the decision. As can be seen from this description, an appeal from the Committee would be an appeal from a first instance decision-maker, not from a second-level appeal, as is the case for property assessment appeals.

### 3. Right to apply for leave to appeal

[20] Despite the absence of an appellate role for the Committee under the *MBA*, it is my view that a right to apply for leave to appeal from a decision of the Committee arises under s. 33.1 of the *MBA*. I reach this conclusion for the following reasons.

[21] The determination of whether a decision of the Committee can be appealed under s. 33.1 of the *MBA* involves an exercise of statutory interpretation. The modern approach to statutory interpretation is set out in s. 2-10 of *The Legislation Act*, SS 2019, c L-10.2, and is comprehensively described by Barrington-Foote and Kalmakoff JJ.A. in *Regina Bypass Design Builders v Supreme Steel LP*, 2021 SKCA 82 at paras 23–28. A recent pronouncement by the Supreme Court on this type of exercise, in *R v McColman*, 2023 SCC 8, 478 DLR (4th) 577, noted that "a court must keep its focus on the text, context, and purpose of the provision at issue" (at para 31).

[22] Section 40 of the *MBA* is a standard privative clause, commonly found in the legislation governing administrative decision-makers such as the Board. However, privative clauses often contain qualifying or restrictive language, so one must look at its text closely. The opening words of s. 40(1) – "Except where otherwise specifically provided" – expressly make its applicability subject to any other specific provision that creates an exception.

[23] The interaction of s. 33.1 and s. 40, albeit in the context of an assessment appeals committee matter, in *Gary L. Redhead Holdings Ltd. v Swift Current (Rural Municipality)*, 2017 SKCA 47, 415 DLR (4th) 218 [*Redhead*], has already been commented on by this Court:

> [80] Section 40 uses classic privative clause language that signals the Legislature's intention that a tribunal's decisions are subject to a review for reasonableness only: for example, see *Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, [2016] 1 SCR 29.

> [81] However, the introductory words of s. 40(1) indicate that, "where otherwise specifically provided", the Saskatchewan Municipal Board's decisions are not final matters and they may be questioned and reviewed. With the enactment of s. 33 and s. 33.1, the Legislature has "otherwise specifically provided" that questions of law and jurisdiction, pertaining to municipal taxation assessment, are subject to review. They may be appealed to this Court by way of a stated case or with leave of this Court. Such decisions are not subject to a privative clause and the standard of review need not be reasonableness.

[24] Additionally, in *SBLP Town N Country Mall Inc. v Moose Jaw (City)*, 2022 SKCA 10, 465 DLR (4th) 675 [*Town N Country*], Richards C.J.S., while not considering the specific issue in question here, observed that s. 33.1 applies to all the committees of the Board:

> [8] It is worth noting, as an aside, that s. 33.1 deals not just with appeals from the [Assessment Appeals] Committee. It also applies to appeals from the Fire Prevention Appeals Committee, the Municipal Boundary Committee, the Road Maintenance Agreement Committee, the Weed Control Appeals Committee, and the Planning Appeals Committee. Accordingly, what is said in this decision is also relevant to appeals from all those committees as well. That point made, with the exception of the rare appeal from the Planning Appeals Committee, the reality is that the Court sees essentially nothing but assessment appeals under s. 33.1.

[25] The fact that an appeal from the Committee is an appeal from a first-instance decision-maker, as opposed to a true appellate body such as the assessment appeals committee, does not change the effect of the introductory phrase of s. 40(1). The wording in s. 33.1 and s. 40 does not describe any such restriction or use any language that would limit the right of appeal under s. 33.1 to only appeals from an appellate committee as opposed to a committee with regulatory functions. This rationale applies equally to the RM's arguments regarding the nature, powers, and procedures of the Committee. There is nothing in the *MBA* that indicates that a decision of the Committee should be treated differently from the other committees with respect to s. 33.1.

[26] Section 33.1 permits an appeal from any "order, decision or determination of the Board". Pursuant to s. 12(1)(b.01) and s. 12(6) of the *MBA*, a decision by the Committee is a decision or determination of the Board. As such, looking at the plain and ordinary meaning of the provisions in question, noting the purpose of s. 33.1, which is to permit access to this Court in appropriate cases, and taking guidance from *Redhead* and *Town N Country*, I find that the exception in the opening words of s. 40(1) applies to the *Committee Decision*.

[27] I conclude that this Court has jurisdiction under s. 33.1 of the *MBA* to hear this leave application. Of course, the RM is free to raise this jurisdictional issue when the appeal is heard (because the panel hearing the appeal is not bound by my decision).

## B. Test for granting leave

[28] The test for granting leave under s. 33.1 of the *MBA*, in the context of appeals from the assessment appeals committee, was recently described by Richards C.J.S. in *Town N Country*:

> [42] … I would restate the *North Ridge* [2015 SKCA 13] approach as follows:
>
> First, is the proposed question of sufficient merit to warrant the attention of the Court of Appeal?
>
> • Will the proposed question give rise to an appeal that is prima facie frivolous or vexatious? If so, leave should be denied.
>
> • Will the proposed question give rise to an appeal that is prima facie destined to fail having regard to the applicable standard of review and other relevant considerations? If so, leave should be denied.
>
> • Will the answer to the proposed question have a material impact on the bottom line of the Committee's decision? If not, leave should be denied.
>
> • In the normal course, leave should be granted only if there is a meaningful doubt as to the correctness of the Committee's decision in relation to the proposed question.
>
> • All other things being equal, the stronger the apparent merits of the applicant's position on the proposed question, the more appropriate it will be to grant leave.
>
> Second, is the proposed question of sufficient importance to warrant determination by the Court of Appeal?
>
> • Does the answer to the proposed question have significant consequences for the proposed appellant or the proposed respondent?
>
> • Does the proposed question transcend the particular in its implications?
>
> • Does the proposed question raise a point of significance to the law of property assessment, to the larger assessment regime or to the administration of justice more generally?
>
> • Does the proposed question raise a new or uncertain or unsettled point of law or jurisdiction?
>
> [43] All of this said, the process of deciding whether to grant or refuse an application for leave to appeal pursuant to s. 33.1 of the [*Municipal Board*] *Act* cannot be reduced to a rigid formula or equation. (See *Rothmans* [2002 SKCA 119] at para 6.) The deliberations of a Chambers judge who entertains an application for leave will involve, at their heart, a pragmatic weighing of both the merit and the importance of the proposed appeal in a manner that reflects the Court's role in the appellate scheme established by the *Act* and related statutes, all in an effort to determine whether the proposed appeal is something that warrants determination by the Court. At the end of the day, an applicant for leave must establish that, on balance, the relevant considerations "weigh decisively" in favour of leave being granted. (See *Rothmans* at para 6.)

> [44] With that approach confirmed, it may also be helpful to summarize something of what the decisions of this Court and the practical experience of the last several years have established more generally about the proper approach to applications for leave to appeal pursuant to s. 33.1 of the *Act*. Six points bear emphasis:
>
> > (a) Leave may be sought only on a question of law or jurisdiction. Such questions should be framed by counsel as clearly and precisely as the circumstances of the case permit. It is not enough to allege error. The specific source of the error, expressed as a question of law or jurisdiction, must be identified. Leave will be refused in relation to a proposed question if it is unduly broad, imprecise or generalized. (See *Gordstone Enterprises* [2003 SKCA 36] at paras 7–8; *Wal-mart* [2015 SKCA 125] at paras 21–22; and *101071855 Saskatchewan* [2019 SKCA 105] at paras 45–52.)
> >
> > (b) The responsibility of identifying a question of law or jurisdiction rests with the party seeking leave to appeal. (See *Gordstone Enterprises* at paras 7–8 and *101071855 Saskatchewan* at para 49.) It is not the responsibility of the Chambers judge hearing the application. That noted, it might sometimes be appropriate for a Chambers judge to revise or refashion a proposed question to ensure it is framed in a way that allows for its effective consideration by the Court.
> >
> > (c) A question must be directly rooted in the record of the proposed appeal such that there is a sufficient factual and evidentiary background to allow the Court to deal with the question in context and to apply it to the dispute in issue. Appeals from the Committee are not vehicles for resolving theoretical questions of law or questions of law that are only thinly or artificially tied to the case at hand. (See *Harvard Property Management Inc. v Saskatoon (City)*, 2016 SKCA 48 at para 10 [*Harvard*].)
> >
> > (d) Appeals to this Court are from decisions of the Committee, not from decisions of boards of revision. A question should normally arise from the face of the Committee decision or from what occurred in the hearing before the Committee. An application for leave is less likely to meet with success if reaching the proposed question of law or jurisdiction turns on a deep or complicated search into the evidentiary underpinnings of a Committee decision. (See *Harvard* at para 26.)
> >
> > (e) Leave to appeal will be granted only exceptionally in relation to a question that is brought forward for the first time in this Court if that question could have been raised before the Committee. Property owners and taxing authorities must put their best foot forward in the proceedings before boards of revision and the Committee.
> >
> > (f) Proposed questions should normally be considered individually. Leave may be granted on only one or some of the proposed questions advanced by an applicant. A Chambers judge need not accept the applicant's proposed questions as a package deal. (See *City Centre* [2016 SKCA 69] at paras 2 and 19.)

[29] I see no reason why the same test should not apply to the matter at hand, modified as necessary to account for the fact that a board of revision was not involved in the process. Neither party has suggested otherwise.

[30] When leave is granted for a proposed ground of appeal by this Court, the analysis is usually brief and general in nature because that issue is progressing and will be heard and determined by a panel. A fuller analysis is often provided for any proposed ground for which leave is refused: see S*askatoon (City) v Victory Majors Investment Corporation*, 2019 SKCA 51 at para 38, and *Saskatoon (City) v North Ridge Development Corporation.*, 2015 SKCA 13 at para 51, 451 Sask R 265. However, given the sheer number of proposed grounds of appeal in this matter, even those grounds which are collapsed into others will only be addressed with brevity. I take solace in this approach by noting that White City itself, in its brief of law, combined the proposed grounds into broad categories and did not address each individual one separately or in a manner distinct from the general categories. I further note that many courts in Canada, including the Supreme Court of Canada, give no reasons when leave to appeal is granted or denied.

## C. Examination of the proposed grounds of appeal

[31] The first threshold for White City to cross for each proposed ground of appeal is to establish that it is a question of law. In my view, some of the proposed grounds of appeal, particularly 4(d)(iii), 4(d)(iv), 4(d)(vi), 4(d)(vii), 4(d)(viii), and 4(d)(xii) stray into questions of fact, as opposed to law. However, an assertion that relevant evidence was ignored or misapprehended is a question of law: *Hadwen v Husky Oil Operations Limited*, 2008 SKCA 42 at paras 38–43, 94 LCR 197, and *Consumers Co-operative Refineries Limited v Regina (City)*, 2020 SKCA 111 at para 60. Additionally, these grounds also feed into the overall assertion that the Committee failed to apply the correct principles or test, failed to consider the appropriate factors, and considered irrelevant factors. As such, I would not screen any of these grounds out at the question of law stage, but I will take this into account when crafting the grounds of appeal on which leave is granted.

[32] In my view, the proposed grounds of appeal should be collapsed into the following questions of law:

(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 *MBA*, 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?

[33] This reformulation captures the questions of law raised by the twenty plus proposed grounds of appeal but weeds out any direct challenges to findings of fact.

[34] I find that these grounds satisfy the merit stage of the test. None of them are prima facie frivolous or vexatious. They are not destined to fail. An answer to these questions, if decided in favour of White City, would have a material impact on the bottom line of the Committee's decision. While I would not describe the apparent merits of these grounds as strong, neither can I describe them as lacking sufficient merit.

[35] Turning to importance to the parties, I note that this was a final decision that had considerable consequences. I agree with White City's characterization of the boundary dispute as being of fundamental significance to the parties and their constituents. Regarding general importance, neither party referred me to any cases where any issues related to a decision by the Committee have been adjudicated by this Court. The parties and the Committee are unanimous in describing this matter as unprecedented. The questions contained in the reformulated grounds raise new and unsettled points of law in relation to decisions of the Committee and transcend the particular in their implication. This proposed appeal, as reformulated, readily satisfies the requirement of importance.

[36] Leave to appeal should be granted on the restated grounds of appeal.

## VIII. CONCLUSION

[37] Leave to appeal is granted on the following grounds:

(a) the Committee erred by failing to provide adequate reasons;

(b) the Committee erred by ignoring, failing to consider, or misapprehending relevant evidence;

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

(d) the Committee erred by basing its decision on irrelevant or improper considerations.

[38] Costs of this leave application are reserved to the panel that hears the appeal.

"Tholl J.A."

Tholl J.A.