

Preliminary

The City of Mount Pearl (hereafter often simply referred to as “Mount Pearl”) has proposed a change to its municipal boundaries, seeking an extension to its municipal boundary east of Commonwealth Avenue and south of the current Mount Pearl municipal boundary up to the limits of the proposed East-West Arterial Road (also known as “Team Gushue Highway”), thus reducing by the same area the municipal boundary of the City of St. John’s (hereafter often simply referred to as either “St. John’s” or the “Capital City”).

The commencement of a statutory process is necessary to achieve that objective under the *City of Mount Pearl Act* (the “Act”), which legislation provides the requirement for undertaking a feasibility study prior to any action being taken to amend Mount Pearl’s municipal boundary. That Act sets forth in Sections 3, 5 and 6 the following statutory directives relevant to this undertaking:

City continued

3. (1) *The inhabitants within the area set out in Schedule A are continued as a corporation under the name: "the City of Mount Pearl".*

(2) *The Lieutenant-Governor in Council may by order on the recommendation of the minister and subject to a feasibility report prepared under section 5, establish and alter the boundaries of the city and amalgamate towns or communities with the city or annex areas to the city.*

Feasibility report

5. (1) *The minister shall order the preparation of a feasibility report in the prescribed form before the making of a recommendation for an order of the Lieutenant-Governor in Council under section 3 and shall appoint a person to prepare a report.*

(2) *The person preparing the feasibility report has the powers of a commissioner under the Public Inquiries Act.*

(3) *The person preparing the feasibility report shall hold public hearings in relation to the preparation of the report.*

Intent to order report

6. (1) *Before the ordering of a feasibility report by the minister under section 5, the minister shall publish a notice of his or her intent to do so in a newspaper having general circulation in the city, and by public notice posted in the area.*

(2) *Where a notice of intent is to be published by the minister under subsection (1) that directly affects a municipality, the minister shall give a prior notification of his or her intent to publish it to the council of that municipality.*

Notice of Intent to order such feasibility study was issued by the Honourable Jack Byrne, Minister of Municipal Affairs on January 19, 2007.

Your Commissioner was subsequently appointed to conduct this feasibility study by a letter of the same date from the Minister.

Notice of the hearings was published as required under the *Act* in the *Telegram* newspaper. In total, three hearings were conducted, two as advertised and one additional hearing which was conducted following a decision of your Commissioner:

1. The Council Chambers, Mount Pearl on Wednesday, March 7, 2007 at 7:30 pm at which time Mount Pearl presented its position.
2. The E.B. Foran Room at City Hall, St. John's, on Wednesday March 14, 2007 at 7:30 pm at which time St. John's presented its position.
3. At the request of Mount Pearl, one additional brief hearing was conducted at the Council Chambers, Mount Pearl on Thursday March 15, 2007 at 1:00 pm. in order to provide Mount Pearl an opportunity for rebuttal and closure.

Prior to that date, 36 persons/groups indicated in writing that they wished to make oral presentations at the hearing or, alternatively, that their written submissions should be considered by your Commissioner. Copies of all written submissions have been made available to the Planning Division

of the Provincial Department of Municipal Affairs; they are lengthy in total and thus are not appended to this Report.

As a part of its due diligence obligations, the Department of Municipal Affairs on my behalf gave notice of the two scheduled hearings to (1) the 8 communities in the northeast Avalon region and surrounding both St. John's and Mount Pearl, (2) the Department of Natural Resources (both Agrifoods and Forest Resources divisions), (3) the Department of Transportation and Works, as well as (4) the Newfoundland and Labrador Housing Corporation, which has significant landholdings in the area under scrutiny. None of these parties chose to make representations either in writing or by appearance on any of the three hearing dates.

The first Mount Pearl hearing was attended by approximately 60 persons. The St. John's hearing was attended by approximately 100 persons. The second Mount Pearl hearing attracted approximately 20 persons.

All those who had given prior written notice of their desire to make submissions were heard first at each hearing. Others who attended and indicated a desire to speak were also given the opportunity to be heard subsequently.

No transcript or recording of the proceedings was made. Your Commissioner was ably assisted at the hearings by Ms. Sheila Tulk who took notes of the comments made by the speakers. In the other tasks assigned to me, I am grateful for the assistance given by Mr. Baxter Rose and Ms. Elaine Mitchell, both of the Department of Municipal Affairs. All staff at both cities were very cooperative and helpful in answering my various inquiries.

The Terms of Reference

In accordance with the provisions of the Act, the Minister has determined that the following terms of reference would govern my appointment and the assignment to be undertaken:

Purpose:

To investigate the feasibility of extending the Mount Pearl municipal boundary east of Commonwealth Avenue and south of the current Mount Pearl municipal boundary to the limits of the proposed East-West Arterial Road and reducing the City of St. John's municipal boundary in that area.

Scope of Work:

To evaluate the impact of the proposed boundary change on Mount Pearl in terms of local governance and administration, community identity, access to municipal services, feasibility in terms of revenues and expenditures, and cost efficiency.

To evaluate the impact of the proposed boundary change on St. John's in terms of local governance and administration, community identity, access to municipal services, feasibility in terms of revenues and expenditures, and cost efficiency.

To consider the views of the public.

To assess the development potential of the proposed boundary change and its impact on:

- *the St. John's Urban Region Agriculture Development Area;*
- *surrounding uses including the St. John's Agriculture Research Centre;*
- *infrastructure including the proposed East-West Arterial Road, the existing road network, the Waterford Valley Trunk Sewer and the regional water system; and*
- *municipal services such as garbage collection, planning, and recreation.*

To ascertain whether there is a compelling rationale to support the proposed boundary change.

To evaluate whether the proposed boundary change is in the long term interests of the region as a whole.

To propose and evaluate alternative approaches and options to the proposed boundary change.

Deliverables:

To hold public hearings in Mount Pearl and St. John's.

To hold other public hearings as necessary.

To consult with government officials and professional/technical staff where necessary.

To prepare a Feasibility Report meeting legislative requirements established in the City of Mount Pearl Act.

To make recommendations to the Minister of Municipal Affairs with respect to the proposal by Mount Pearl to extend its municipal boundary east of Commonwealth Avenue and south of the current Mount Pearl municipal boundary to the limits of the proposed East-West Arterial Road right of way being an area currently within the boundary of the City of St. John's.

It is this limited and well-defined mandate which directs your Commissioner throughout this undertaking. I note in passing that, while the terms do not assign any order of ranking in respect to importance of each issue, I will draw certain conclusions as to the relative importance of each and also deal with the relevance of any issues raised by the parties but not contained within those terms.

The Existing Municipal Structure

The area of the feasibility study involves those lands located east of Commonwealth Avenue, south of the current Mount Pearl municipal boundary to the limits of the right-of-way for the proposed East-West Arterial Road, the ultimate extension to the current Team Gushue Highway which originates from the north at the Outer Ring Road.

The total area of land involved is approximately 132 hectares (or 326 acres) and currently exists within the St. John's municipal boundary. The land

has been within the municipal limits of St. John's since January 1, 1992. Prior to that time, the entire area was within the jurisdiction of the St. John's Metropolitan Area Board (sometimes hereafter "Metro Board"). The site has never in the past been part of the incorporated area of Mount Pearl.

This study area is primarily a combination of some undeveloped but residentially designated land together with some agricultural land, including the Atlantic Cool Climate Crop Research Centre (once known locally as the "Experimental Farm") on Brookfield Road and operated by the Federal Government. The Provincial Government has recently removed the former Sprung site from the boundaries of the St. John's Agriculture Development Area (the "ADA"), but a significant portion of the feasibility study area still remains within that ADA. The former Sprung Greenhouse site has recently been sold by the Newfoundland and Labrador Housing Corporation to a private developer who plans a residential subdivision with full municipal services.

Most of the feasibility study area is currently zoned as residential, rural or agricultural under the St. John's Development Regulations, although a significant protected wetland area is zoned as open space reserve.

The Hearings

In each case, I will provide only a very brief resumé of some of the points raised by the speakers. Without fully recanting each argument, it is impossible to do justice to the varied and interesting arguments and proposals. Reference to the full text of the individual briefs and submissions is important to achieve an overall understanding of each presenter's viewpoint and I have reviewed each document fully. I will, however, in this Report attempt to give a flavour of each presentation, but

only to the extent necessary to understand and give a basis for my conclusions.

The terms of reference mandated that I conduct at least two hearings, one to be held in each city. The first hearing was held at Mount Pearl and attracted primarily advocates of Mount Pearl's position on the suggested boundary change.

Mount Pearl's Presentation

As proponent of the boundary change, Mount Pearl City Council was first to present its case. Mayor Steve Kent spoke on behalf of Council. The following is the "Executive Summary" of Mount Pearl's case for the proposed change to that city's municipal boundary:

The proposed Team Gushue Highway, which will abut the southeastern portion of the former Pearl Estate Lands and Environs, will be under construction shortly. This will make a logical and identifiable municipal boundary. Currently, there is no identifiable municipal boundary in the area. Historically, for most of the Mount Pearl boundary, highways have been used for identifiable boundaries and this proposal would be a continuation of this approach.

In 1982, the Provincial Government established the use of the Team Gushue Highway as the municipal boundary at Topsail Road with the understanding that, in future, the Mount Pearl boundary would be altered and extended to the southeast to the limits of the Team Gushue Highway.

The Provincial Government has used present and future roads as municipal boundaries for Mount Pearl. Precedents were established with the realigned municipal boundary at Topsail Road and the proposed Team Gushue Highway in 1982, and at the realigned municipal boundary at Kenmount Road and the Trans Canada Highway in 1999.

The water and sewer servicing and road connections for future urban development of the Area are from Commonwealth Avenue in Mount Pearl. The development would be more efficiently and effectively developed within the City of Mount Pearl municipal jurisdiction.

Given that these lands, when developed, will directly abut the urban area of

Mount Pearl, this area can be more effectively serviced and administered from Mount Pearl, which is immediately adjacent to this area. Should these lands not be within the Mount Pearl boundary and remain in St. John's, the newly created neighbourhood would be isolated and remote from urban St. John's, the closest point being 1.27 kilometres away.

In 2006, the Newfoundland and Labrador Housing Corporation (NLHC) property was removed from the St. John's Urban Region Agricultural Development Area and this property was placed on the market for urban residential purposes. A private developer now has an option on the land and wishes to proceed with the urban development of the property. This proposal would result in 460 single-detached dwelling lots when the subdivision is fully developed. There is additional land in private ownership between the NLHC property and the proposed Team Gushue Highway; however, the many property owners, and the current use and activities of these lands, present development challenges that will require some time to resolve prior to the area being capable of urban development. The remainder of the area is under the ownership of the federal government and Leonard Holdings. Both of these properties are zoned for agricultural purposes, form part of the St. John's Urban Region Agricultural Development Area, and cannot be developed for urban purposes.

The NLHC property was part of the Provincial Government's Mount Pearl New Town Land Acquisition Program.

The long-term planning for this area included the NLHC property as a part of the Mount Pearl New Town development concept. When this property was to be urbanized, it was always intended to be an integral part of Mount Pearl.

The vast majority of the public perceive this area to be in Mount Pearl.

The residents of the area have had a historical relationship or connection with Mount Pearl that continues to the present day.

According to a recent telephone survey, residents in the area prefer to be a part of the City of Mount Pearl.

The 1991 Government decision to disestablish the St. John's Metropolitan Area Board and expand the municipal jurisdiction to include agricultural lands was a departure from Government's previous approach of urban core municipalities whereby agricultural lands were outside the municipal jurisdiction of urbanizing municipalities. The 1991 decision placed the former Pearl Estate within the boundaries of St. John's, and this was the first instance of St. John's having any association with this area. Mount Pearl proposes that the lands within the former Pearl Estate Lands and Environs are most appropriately included within the municipality of Mount Pearl.

While not satisfied with the Southlands decision, the City of Mount Pearl views this decision as a precedent for boundary alterations that transfer an area from an existing municipal jurisdiction to another municipal jurisdiction.

The most significant portion of the former Pearl Estate remains outside the current municipal boundary of Mount Pearl. While most of the estate is within Mount Pearl, the remaining area has a historical significance to Mount Pearl as this is the area where the “mount” is located as well as the actual homestead site of Sir James Pearl. Next year, 2008, is the 20th anniversary of the incorporation of the City of Mount Pearl and the inclusion of this area will add significance to the anniversary celebrations. The significant historical value of the property may not be recognized or may be lost over time if the remaining portion of the Estate is not within the boundaries of the City of Mount Pearl.

In summary, the area of the former Pearl Estate Lands and Environs has always had historical links to Mount Pearl. The construction of the Team Gushue Highway along the southeastern fringe of the Pearl Estate creates a logical and clear municipal boundary between the two Cities.

On the basis of this submission, the City Council of Mount Pearl recommends the following:

- 1. That the Mount Pearl municipal boundary be altered to the southeast to the limits of the proposed Team Gushue Highway to include the remaining lands of the former Pearl Estate Lands and Environs and that the municipal jurisdiction for the Area be transferred from the City of St. John’s to the City of Mount Pearl.*
- 2. That adopted Municipal Plan and Development Regulations, legally in effect for this area, remain in effect until the City of Mount Pearl adopts a new Municipal Plan and Development Regulations for the expansion area.*
- 3. That the decision to alter the municipal boundary of the City of Mount Pearl be made at the earliest possible opportunity but no later than June 1, 2007, and take effect on June 30, 2007.*

Mayor Kent also responded to a number of specific questions raised by me in the first hearing.

Hon. Harvey Hodder, MHA for the District of Waterford Valley, supported Mount Pearl in its pursuit of the subject property and advocated in favour

of the proposed change in municipal boundaries. He closed his brief with the suggestion that this was the opportunity to correct the perceived wrong inflicted on Mount Pearl when in 1991 the Southlands neighbourhood was taken from that City. This was now a chance to “correct some of the wrongs of the past” in his view.

Mr. Donald Hutchens, a retired engineer and hobby historian, spoke of the historical connections between the land under consideration in the feasibility study and the area traditionally identified as “Mount Pearl” in old maps, deeds, wills and other historic documents. His presentation was interesting and factually compelling, tracing the site of the original Sir James Pearl Estate lands to the Brookfield Road/Old Placentia Road area, which of course includes the lands in question. His belief is that the Brookfield Road area is more properly identified as “Mount Pearl” in a historic sense than the newer residential community which was developed along Park Avenue in the mid 1950’s and which, when incorporated, ultimately bore the “Mount Pearl” name.

The Mount Pearl Chamber of Commerce, through spokesperson Ms. Karen Earle, argued that the proposed new development was more closely tied to Mount Pearl than to St. John’s, that it would be more cost effective for Mount Pearl to provide services, that competition for business between the two cities was healthy and that the more people who lived in Mount Pearl, the better it was for businesses operating in Mount Pearl. The Chamber’s brief was supported by a petition signed by 25 businesses which are operating in that city.

The Mount Pearl Sport Alliance was represented by Mr. Wayne Andrews who gave an overview of the Alliance makeup and the relationship between location of a competitor’s municipal residency and the right to participate in some municipal sporting activities. Apparently for some sports at least,

residency within Mount Pearl municipal boundaries is a prerequisite to participation in sport teams which bear that community's name. His group supports Mount Pearl's claim to a boundary move, which they say will enable residents of the new lands to participate in those sporting activities while carrying the "Mount Pearl" banner.

Dave Denine, MHA for the District of Mount Pearl, understandably supports Mount Pearl Council's application for control of the lands in question. He believes that it is logical to have a major arterial road define the natural boundary between the two cities and suggests that to allow these lands to be developed and yet remain within St. John's is to isolate another neighbourhood from the community of which it is a logical part, an apparent reference to the previous Southlands decision.

Two members of the public who had not given prior notice of their desire to be heard also spoke at this hearing. Mr. Gerald Coombs, obviously favouring Mount Pearl's application, asked me to focus on what was good for the children who would live in this neighbourhood and who would go to school and participate in sporting activities in Mount Pearl. Mr. James Bartlett who resides on Brookfield Road informed me that, while he pays taxes to St. John's, he feels more like a resident of Mount Pearl and believes his property should be a part of that city.

One week later, the second hearing was conducted, this time in St. John's. On this occasion, advocates both for and against St. John's position to retain jurisdiction were present and made representations.

St. John's Presentation

The position of St. John's Council was presented in the hearing by Mayor Andy Wells and is summarized in the "Summary and Conclusions" portion of that city's written brief, which is reproduced here:

"As a regional and provincial centre for government, business, industry, trade, education, transportation, culture, recreation and employment, St. John's must maintain a solid growth potential at a reasonable cost. As part of St. John's, the Feasibility Study Area will provide a readily available supply of additional land for residential development in the West End of St. John's with the future development of the former Sprung Greenhouse site.

The remaining agricultural lands within the Feasibility Study Area are best protected by being retained within the municipal boundaries of St. John's. St. John's has the experience of agricultural land use planning uses and a strong interest in retaining and protecting agricultural lands.

St. John's is a city of communities. As the former Sprung site develops, it will become an established neighbourhood with its own identity within the larger framework of other identifiable St. John's neighbourhoods, and as such will add to the strength and character of the City and the St. John's Urban Region.

Revenues from municipal taxation of the Sprung site will exceed the cost of providing service to this area. Thus this area is a financial asset. It is incumbent upon the Provincial Government to ensure that this asset and other assets in St. John's are retained in St. John's for the most beneficial and equitable use to the City and Urban Region as possible.

A major portion of the City of St. John's budget goes into the provision of regionally-oriented services used by other municipalities, and services, facilities and support for other amenities used by residents of the entire Urban Region. This is a more fitting application of the revenues from the Sprung site than the more localized interests served by Mount Pearl.

The majority of future residents of the Sprung site, like current residents of Mount Pearl, are highly likely to work in St. John's and make use of its services and amenities. Their municipal tax dollars should logically help to pay for the cost of that use.

St. John's has accepted responsibility for many areas with deficient or inadequate municipal infrastructure, which require huge capital expenditures to provide adequate servicing. There is still much work to be done in these areas. The Sprung site is viewed as a much needed form of compensation for,

or partial offsetting of these tremendous costs.

Mount Pearl will lose nothing by retaining the Feasibility Study Area within St. John's since the Feasibility Study Area has never been located within the municipal boundaries of Mount Pearl.

Mount Pearl already has a slightly lower tax rate than St. John's without the Feasibility Study Area being included in its municipal boundary.

The Provincial Government determined both in 1992 in its Municipal Consolidation Program and in 1998 through the Southlands Feasibility Study, that the present municipal boundaries of Mount Pearl are appropriate and that Mount Pearl did not require additional lands for expansion. These boundaries are still appropriate and there is no justification to enlarge Mount Pearl's boundaries.

Any decision to remove developable lands from St. John's, the provincial capital and economic engine of the Province and to reallocate them to a smaller peripheral community is both short-sighted with regards to the long term best interests of the St. John's Urban Region and likely unprecedented within the history of municipal boundary alterations in Canada .

Inter-municipal competition for local resources and revenues must cease. Such competitive energies must be focused into one regional effort and directed extra-provincially towards other Atlantic Canadian regional competitors in the economic development market. The financial assets of the Feasibility Study Area are an important strengthening factor in these competitive abilities, and they should remain in St. John's to benefit the entire St. John's Urban Region and the Province.

The best future overall course of action for the St. John's Urban Region is to have one strong and unified urban core based on natural drainage areas which would ultimately incorporate Mount Pearl and portions of the urbanized areas of Paradise into St. John's.

The City of St. John's recognizes that the Provincial Government does not wish this current Feasibility Study into the proposed expansion of the municipal boundaries of Mount Pearl to mushroom into another debate on amalgamation in the St. John's Urban Region. St. John's does however, strongly urge the Provincial Government not to make any boundary changes at the present time to allow the expansion of Mount Pearl which would make it difficult for the Province to establish a strong urban core through an enlargement of the boundaries of St. John's at an appropriate future date.

The rise of another boundary dispute initiated by the City of Mount Pearl has only served to exacerbate inter-municipal conflicts and competitions in the St.

John's Urban Region. As a region, we must move forward and not continually engage in boundary conflicts. Community gains can only be made if we move forward as a strong and unified region.

It is for the reasons outlined in this brief that the City of St. John's strongly recommends that the boundary of the City of Mount Pearl not be expanded to include lands east of Commonwealth Avenue and south of the Mount Pearl municipal boundary to the limits of the Team Gushue Highway (East-West Arterial) right-of-way. It is also recommended that the boundaries of St. John's be extended marginally westwards to include the western limit of Commonwealth Avenue as far north as the entrance to the Sprung Greenhouse site. This minor change will not affect any residential properties and will better define the municipal jurisdiction of this property for its future planning, development servicing and access."

St. John's did, however, present two alternative boundary redefinitions which it proposed. It claimed the ability to do so under the reference in the terms of reference to my obligation to evaluate "alternative approaches".

ALTERNATIVE BOUNDARY PROPOSALS

The terms of reference for the Feasibility Study indicate that the study can propose and evaluate alternative approaches and options to the proposed boundary change. The City of St. John's wishes to offer two alternative boundary changes which we believe are logical and beneficial for the Urban Region as a whole.

The City of Mount Pearl proposes that their boundary be expanded to run alongside Team Gushue Highway in the vicinity of Brookfield Road. However, other than the nearby intersection with Commonwealth Avenue, the Brookfield Road area is not oriented toward Mount Pearl. It is presently a rural area with houses on large, unserviced lots. There are no road connections between Brookfield Road and the City of Mount Pearl except at Commonwealth Avenue.

Tyrrwit's Brook (in Mount Pearl) flows parallel to Park Avenue. There are no road connections (or stubs for future road connections) running south off Park Avenue crossing Tyrrwit's Brook to intersect with Brookfield Road. Tyrrwit's Brook acts as a natural boundary between St. John's and Mount Pearl in this area.

Boundary Proposal A

The City of Mount Pearl has proposed the Team Gushue Highway as a new municipal boundary in the Brookfield Road area. However, this ignores the presence of Tyrrwit's Brook, which has acted in a sense as a natural boundary for many years.

A better approach would be to use the Trans-Canada Highway/Outer Ring Road in the vicinity of Topsail Road as the municipal boundary. Under this approach, all of the City of Mount Pearl and a portion of the serviced area of the Town of Paradise would become part of the City of St. John's. This follows the natural drainage area of the Waterford River, which is also the drainage area for the trunk sanitary sewage system.

This is our preferred boundary proposal. However, knowing that amalgamation is not part of the present Feasibility Study, the City of St. John's offers a second boundary proposal.

Boundary Proposal B

As an alternative to amalgamation, the City of St. John's proposes a minor boundary change to provide a more logical connection to the former Sprung Greenhouse lands for access and servicing. We propose that the boundary of St. John's at the end of Brookfield Road be extended west, across the intersection with Commonwealth Avenue, then run north along the western limits of Commonwealth Avenue as far as the entrance to the former Sprung Greenhouse site. This boundary change would enable the Sprung site to be accessed from lands entirely within St. John's.

The City of Mount Pearl has indicated that municipal servicing and access to the Sprung site would need to come from Mount Pearl via Commonwealth Avenue. Our brief addressed the (water and sewage) servicing issue above; this alternative boundary proposal addresses the issue of road access.

This alternative boundary would affect only a small geographic area, approximately 8 hectares (20 acres), as opposed to the much larger boundary alteration to 132 hectares (326 acres) put forth by Mount Pearl. This second St. John's boundary proposal does not affect any residential properties since none of the houses along this section of Commonwealth Avenue have access to that road. In addition, for the small number of business properties affected (five (5) property owners plus the former Sprung site), several of them already

overlap the municipal boundary, being partially in Mount Pearl and partially in St. John's.

City of St. John's crews are readily able to expand their snowclearing routes and garbage collection routes to service the properties along this section of Commonwealth Avenue and to cover the future residential neighbourhood on the Sprung site.

Mayor Wells also responded to a number of questions from me at this hearing.

Some although not all of the other speakers at the St. John's hearing also supported St. John's Council in its resistance to the proposed change in municipal boundaries.

Leary's Brook Holdings Limited, the developer who intends to commence construction of the residential subdivision on the former Sprung site, supported the proposition that the lands remain within St. John's municipal boundaries. Their spokesperson, Mr. Keith Escott, explained that the developer would prefer to see the development take place under the regime and structure created by St. John's and that, if the municipal jurisdiction were to change at this time, after its proposal to develop the former Sprung lands had been completed, it would be unfair to the developer. Leary's Brook Holdings limited apparently prefers to deal with St. John's, even though it has worked successfully with both municipalities in the past.

The St. John's Board of Trade brief was represented by its president, Ms. Cathy Bennett, who was concerned about the adverse impact that the loss of tax base would have on St. John's, that Mount Pearl's development of the lands would be at St. John's expense, and that an unwarranted precedent for erosion of St. John's boundaries would be created. Her group believes

that leaving the status quo with the land in St. John's was in the best interests of the region as a whole.

Bob Ridgley, MHA for the District of St. John's North, purported to speak on behalf of other unnamed St. John's area MHA's who cannot speak publicly because of their government and/or cabinet affiliations. His argument stated that the St. John's urban region required a strong St. John's municipality as its core, and that while the current feasibility study was about a small piece of land, the issues raised had longer term implications for the region. In his view, Mount Pearl should not be entitled to grow at the expense of St. John's. He suggested that the "opportunity cost" to St. John's in losing this site was a major factor that I should consider.

On the other hand, a group of residents of the Southlands neighbourhood, represented by Ms. Paula Schumph, spoke at this hearing against the feasibility study lands remaining within St. John's jurisdiction based on their own experience as "remote" residents of St. John's who feel that they are poorly served by the Capital City. As I understand the import of their submission, it was not to seek a change in the status of that Southlands subdivision, which is clearly acknowledged as beyond my scope, but rather to caution me that I not encourage the creation of another remote community, separated from the core of St. John's to which it must turn for services.

A third hearing, although not required by the terms of reference, was agreed to by me to allow Mount Pearl the opportunity as proponent to address issues raised at the St. John's hearing and to bring closure to the public forum portion of this investigative process. This hearing was also conducted in Mount Pearl City Council Chambers. This meeting was

attended by far fewer residents and the issues raised there are not really new but are dealt with in my review of the parties' overall positions in the "Considerations" section of this Report. Only Mayor Kent of Mount Pearl spoke at this hearing and his comments were limited to responding to some of St. John's Council representations.

No member of the public requested the opportunity to speak at this additional Mount Pearl hearing.

I concluded that, following these three meetings, there were no persons from the public who had not been given a reasonable opportunity to make comments publicly to me, so no additional hearings were scheduled.

Other Written Submissions

A number of individuals made written representations which I have also considered in the context of this assignment. Reference to the actual briefs is again necessary as my brief synopsis of them here necessarily diminishes the important messages intended to be conveyed by these persons and/or organizations.

Mount Pearl Auto King, a proprietorship owned by Mr. Craig English, appeared to support Mount Pearl's request for a boundary change, although the choice of wording in his submission made it appear that he mistakenly believed that St. John's was, by this feasibility hearing process, attempting to remove the lands from the current jurisdiction of Mount Pearl.

Ms. Marie E. White, a former Deputy Mayor and councillor for St. John's, argued the need and vision for a strong and unified St. John's going into

the future and suggested that Mount Pearl's attempt to annex the lands should be rejected as inconsistent with that important vision.

Walter and Gudrun Williams from Brookfield Road purport to speak on behalf of a larger number of residents of the Brookfield Road/Old Placentia Road neighbourhood. They object to paying municipal taxes to St. John's from whom they claim to receive no services and they seek affiliation with Mount Pearl, thus supporting that city's application for inclusion of their neighbourhood into its municipal boundaries.

A group of seven Brookfield Road residents/families have also signed a one-page petition supporting the proposition that their lands be a part of Mount Pearl, "the city that is part of our normal, everyday lives."

John Gibbons from Dartmouth NS, a former resident of St. John's, supports Mount Pearl's claim to the lands on the basis of historical and traditional reference of these lands to that community.

Considerations

I am mandated to consider the feasibility of Mount Pearl's application in the light of those issues contained within the terms of reference. Accordingly, I shall deal with the topics in order of their appearance in that constating document:

1. To evaluate the impact of the proposed boundary change on Mount Pearl in terms of local governance and administration, community identity, access to municipal services, feasibility in terms of revenues and expenditures, and cost efficiency.

Here the focus is on the various impacts on Mount Pearl by having or not having the sought after area included within its municipal boundaries.

I am satisfied that Mount Pearl has all of the governance structure and administration expertise necessary to appropriately direct and control development of this site. Mount Pearl is a sophisticated city with all of the staff and equipment necessary to provide a competent level of service to developers, residents and all others affected by development or other usage of this site. The area is, after all, simply a very large subdivision together with some rural lands and a body of agricultural land. St. John's has suggested that Mount Pearl has not the expertise necessary to deal with agricultural lands. I disagree. By way of example, Stephen Jewczyk, City Planner with Mount Pearl, was intimately involved as a planner for the St. John's Metropolitan Area Board when this subject land fell within that Board's jurisdiction and prior to his employment with Mount Pearl. Without question, this argument of a lack of skilled human resources would not inhibit Mount Pearl's ability to manage the feasibility lands.

In terms of community identity, I am satisfied that residents occupying homes and businesses operating in this subject area would likely have a close affinity to others living and working in the existing Mount Pearl community. It is difficult to conceive of this area being developed without those having homes constructed there feeling that they are more closely a part of Mount Pearl. One of the major recreational facilities belonging to Mount Pearl immediately abuts the northern boundary of the former Sprung lands. The common boundary here is currently the south side of those recreational facilities. And Mount Pearl has been able to generate a strong community feeling within its own population. It suggests quite understandably that residents of the new area would have a natural community of interest with the existing residents of their city because of the area's close proximity to the already developed neighbourhoods on the north and west sides of the old Sprung site.

I see no community identity issues regarding the agricultural lands.

Access to municipal services is without doubt an easy subject for Mount Pearl's Council to tout as an advantage that it has over St. John's. But the advantage to Mount Pearl is only locational in nature. Its current pipe system for delivering water is close to the area to be developed. But both cities utilize the same ultimate regional systems for both water access and sewage disposal. Both cities access the same regional bus and fire services, and both use the same garbage disposal site at Robin Hood Bay. Mount Pearl has sufficient municipal infrastructure to support development and provide local municipal amenities. But to say that there is a distinct advantage to Mount Pearl developing this site based on these considerations would be an overstatement.

Financial feasibility is also not a deterrent for Mount Pearl. By all accounts, the cost of servicing the subject land is significantly less than the amount to be derived from taxation once the residential portion of the site is developed. By Mount Pearl's estimation, the area in question equates to approximately 8.7% of the current municipal area of Mount Pearl. Accordingly, it posits the change as a "minor boundary alteration" to both it and to St. John's where arguably the impact should be even less, given St. John's overall significantly larger size. It is without doubt that acquiring jurisdiction over this land in this feasibility process is a financially feasible process for Mount Pearl and would not cause stress to its economic or other financial infrastructure (assuming it could be acquired without cost being associated with that acquisition, an issue that I will raise later in this Report).

The subject of cost efficiency is more difficult to ascertain. As stated, that new area represents only 8.7% of the current municipal area of Mount Pearl, but since only approximately 50% of the new area is available for development, the net advantage financially comes from development on about only 4.4% of its total municipal area. Because of the close proximity

of this land to existing development, it is hard to imagine a more cost efficient way in which the land could be serviced and supervised. According to the estimates of cost vs. revenue as calculated by both cities, the site represents a positive cash flow by any estimation for whichever city controls it. The advantage to Mount Pearl here may be small, but it is definable.

Other issues raised by Mount Pearl

One issue not directed to me for consideration by the terms of reference, but heavily relied upon by Mount Pearl Council in its presentation and supported by the interesting and informative presentation provided by Mr. Don Hutchens, is the historical connection and affiliation of this site to the name “Mount Pearl”. According to Mount Pearl Council, much of the area was once the landholding of Sir James Pearl, the person after whom Mount Pearl as a city is named.

As I understand Mr. Hutchen’s brief, however, the area under consideration now is the land which is more closely connected historically to the traditional community of “Mount Pearl” (ie, the Brookfield Road and Pearltown Road areas), not the residential development of the mid-1950’s in the originally named “Mount Pearl Park – Glendale” neighbourhood, the area which ultimately became what is generally known today as the “City of Mount Pearl”. The unfortunate consequence of Mr. Hutchen’s brief is that the current city has less connection to the name “Mount Pearl” than the feasibility lands. How that conclusion supports that city’s argument is a bit of a mystery to me.

This argument may be an interesting and emotive historical perspective, but it is not a factor which is compelling to me for the purposes of determining municipal feasibility under my terms of reference. The current incorporated municipality of Mount Pearl has long associated its name with Sir James Pearl, without any corresponding interest or involvement until

two short years ago in “the Mount” lands which were once his landholdings. I am not inclined to place significant emphasis on this argument, even though the feasibility lands admittedly have historic ties to the name “Mount Pearl”.

The logical and identifiable boundary argument is somewhat more probative, although it too has inherent problems. Mount Pearl asserts that the new Team Gushue Highway creates a natural boundary which should define the difference between St. John’s land and Mount Pearl land. Other examples of highway or road definitions for Mount Pearl are raised for comparison, for example, Kenmount Road and Pitts Memorial Drive, each of which defines some of the western and southern boundaries of that city.

While natural and man-made features can define municipal areas and they often do, there is certainly no rule which states that result must be the case. Municipal boundaries often exceed or fall short of major roads and highways. After all, Mount Pearl claims that the Southlands neighbourhood should belong to it, yet that area lies to the south of Pitts Memorial Drive, another highway boundary which currently defines its municipal limits. Unfortunately for Mount Pearl, there is a certain self-serving nature to this argument; ie, Pitts Memorial Drive should not define Mount Pearl boundaries for the purposes of its claim to Southlands, yet Team Gushue Highway should define that same city for the purpose of supporting its claim to the feasibility lands. The logic here escapes me.

If one were to agree that some definition of boundaries must exist, then highways are as good a limit as many other physical characteristics, but they cannot always support or defeat otherwise legitimate considerations and they do not universally form the basis of civic boundaries.

Finally, the fact that the change is viewed by Mount Pearl Council as minor adjustment of boundaries in terms of land size is raised as another argument for granting the request. It is, after all only a tiny portion of the total land mass that defines St. John's. Perhaps it is minor in relation to the size of both communities, but it is clear from the extent to which both parties have addressed this process, that the result is considered anything other than minor in effect. There is a net positive cash flow for the city which controls these lands, and that fact must not be lost in the weighing of all other factors. In other words, the fact that the land area is small cannot be a determinative factor for me.

2. *To evaluate the impact of the proposed boundary change on St. John's in terms of local governance and administration, community identity, access to municipal services, feasibility in terms of revenues and expenditures, and cost efficiency.*

Under this mandate, I must then consider similar impacts on St. John's, using the same criteria as just analyzed for Mount Pearl.

Once again, there would appear to be no question of St. John's being able to adequately provide governance and administration for the claimed feasibility area. As the largest city in this Province with a population in excess of 100,000 residents, the ability of St. John's to provide municipal support to this relatively small area cannot realistically be challenged. If anything, St. John's would have the governance advantage over Mount Pearl, but it is only a matter of degree. St. John's has many areas of residential development which are far from the downtown core where City Hall exists. Most of those areas do not raise the service complaints voiced by Southlands' residents. Southlands is a bit of an anomaly which is clearly embarrassing to St. John's Council and I have no doubt that, arising

from this process, more contact and service attention for that neighbourhood will be the result.

The issue of community identity will be a bigger challenge for St. John's if the Southlands experience is any indication for the future. While perhaps not as remote from other developed lands within that city as the Southlands neighbourhood, the division created for the former Sprung site by the soon to-be-built Team Gushue Highway may generate a degree of separation. It must be acknowledged at the same time that the existing Crosstown Arterial Road could, but does not, have a similar isolating effect where it cuts through otherwise adjacent neighbourhoods as it winds through a western portion of St. John's. Too much can be made of the notion of separation created by highway dissection, but it is a factor for consideration. Creating a St. John's community identity on the feasibility lands would seem to be more of a challenge for the Capital City than for Mount Pearl.

Access to municipal services is only a minor logistical issue for St. John's. While admittedly the neighbourhood is physically remote from St. John's City Hall, there are many neighbourhoods in the Capital City which can also claim notoriety for that feature (eg., Airport Heights). In a modern city with mobile residents and an integrated transit system, distance alone from core services is a minor but inevitable inconvenience. Regional water and sewer infrastructure exists in close enough proximity that no fundamental obstacles seem apparent from St. John's perspective. But certain challenges will exist if vehicular access to the Sprung lands is maintained off Commonwealth Avenue, a factor which seemingly has caused St. John's to seek its own modification to the common boundary in that area. Residents of this new neighbourhood will have to pass briefly through Mount Pearl's streets to gain access to the downtown and other parts of the Capital City. Should passing through municipal boundaries cause stress to

these drivers? I think not. Many of them will not even think about that aspect of their drive.

Financial feasibility is another subject for which each party professes to have an advantage. In fact, St. John's being the larger city probably has an advantage over Mount Pearl in this arena, but that advantage is not considered significant. Each city estimates that the cost of annual servicing for the developable areas of this site will not exceed the annual revenue to be generated by the tax base. Given the relative size of St. John's, there can be no doubt that it would be financially able to govern the site and that, from a fiscal viewpoint, there are no challenges which that city cannot meet in dealing with this site.

Cost efficiency can perhaps be considered as somewhat less of a feature for St. John's as compared to Mount Pearl, but again, only in a relative way. In other words, it is possibly more cost efficient for Mount Pearl to have administrative responsibility, but St. John's also has the capacity to administer this site in an efficient way. St. John's already administers many neighbourhoods which are equally or more distant from its core and certainly more challenging in terms of providing solid infrastructure than the feasibility lands.

Other issues raised by St. John's

In a manner similar to that taken by Mount Pearl, St. John's adopted and advanced other arguments in favour of its keeping control of the subject lands. Neither city confined its arguments to those within the terms of reference.

Opportunity cost was a major thrust from St. John's Council. It argues that to lose an area holding prime residential land ripe for development is unfair, given that it has also had to service less attractive lands which were

developed rather poorly while under control of other municipal entities. This has resulted in heavy costs to St. John's in its efforts to improve infrastructure in those neighbourhoods. It cites the Goulds as an example of a location where major investment far in excess of revenue streams was necessary to upgrade municipal services to a reasonable and acceptable standard because of insufficient or poor development controls in the past. To lose the benefit of a positive cash flow from the former Sprung site is unfair and unreasonable, it contends, especially in light of its responsibility for those more difficult areas.

St. John's also argues that Mount Pearl is being opportunistic in its pursuit of these lands. St. John's questions the good faith of Mount Pearl's assertions that it has always felt that this land should be within its boundaries because Mount Pearl did not seek such inclusion at earlier dates when it might have become available, such as when the Metro Board was eliminated in 1992. The Capital City suggests that for this reason the boundary change should not be granted. This argument does not sway me. Mount Pearl is entitled to take advantage of a windfall, provided the adjustment is warranted under the designated criteria in the terms of reference.

While not strongly advanced as a concern by St. John's, although hinted at in its reference to inter-municipal competition, I am aware that other towns in the Avalon region which also border on St. John's boundaries are already attempting to seek annexation of other Capital City lands into their communities. In other words, the argument is that this application might lead to an opening of the floodgates for challenges to St. John's boundaries from towns which adjoin it on the north and south. Officials in the Department of Municipal Affairs confirmed that other towns have already shown such an interest. No details were provided, but I take the information as being accurate and troubling to at least the Capital City and

its administrators. The precedential nature of the decision in this case is advanced as a negative or adverse aspect that I should also consider.

3. *To consider the views of the public.*

Not surprisingly, the views of the public must also be brought into consideration. It is they who, after all, may benefit or detriment from any decision made to locate this land within one community or allow it to remain within the other. As one resident of Southlands properly pointed out to me, the interests of the municipal administrators and governors should be of less importance than the views and interests of those persons who reside on the lands.

In this case, there are only relatively few residents who currently live on the lands in question, but it is clear to me that the majority of them favour Mount Pearl's administration over that of St. John's.

In terms of turnout at the hearings and demonstrations of interest by area residents generally, again the advantage goes to Mount Pearl. This is perhaps understandable (a) because within the smaller tight-knit community of Mount Pearl it is easier to identify oneself with municipal issues than in the larger, sprawling and more diverse community of St. John's, and (b) because Mount Pearl has been able, to the credit of its councillors, administrators and supporters, to create a genuine feeling of "community" throughout its residential and commercial neighbourhoods. Citizens and businesses of Mount Pearl proudly proclaim themselves as belonging to Mount Pearl, and are quick to correct those who colloquially refer to them as being a part of the "greater St. John's area".

While there were a large number of persons present at each of the two main hearings and while all attendees were invited to speak if they wished, there was very little active participation from attendees, other than to applaud points made by speakers with whom they agreed.

It is difficult to ascertain any overall consensus from the public involvement because, while attendance was high at the meetings, very few of those present took the opportunity to speak. At the Mount Pearl hearings, for the most part those who supported Mount Pearl apparently allowed the Mayor of that city to speak for them, with the exception of the limited written and oral presentations received; and although there were some present at the St. John's hearing who supported that city's Council, with very few exceptions, they seemed to take the same position. The views of business and other interest groups understandably lined up with the community with which they were associated.

Perhaps I am able to conclude that there was no great public outcry one way or the other, while acknowledging that, at the hearings, there was clearly more overall support shown for Mount Pearl's effort to gain control over the feasibility lands. But it is also safe to conclude that allegiance generally followed municipal boundaries, except for the unique situation created in the Southland neighbourhood where anti-St. John's feeling was obviously high.

4. *To assess the development potential of the proposed boundary change and its impact on:*

- *the St. John's Urban Region Agriculture Development Area;*
- *surrounding uses including the St. John's Agriculture Research Centre;*
- *infrastructure including the proposed East-West Arterial Road, the existing road network, the Waterford Valley Trunk Sewer and the regional water system; and*

- *municipal services such as garbage collection, planning, and recreation.*

This portion of the mandate challenges me to consider whether a move of municipal jurisdiction might affect the greater interests of the region as a whole.

The regional ADA which covers some of the lands in question is imposed upon each city equally by the Province. Those lands are protected by provincial regulation which applies fully to both municipalities. Both cities have acknowledged that they believe that the agricultural area must be protected and maintained as a provincial asset, and both have declared that they have the expertise to do so. I see no advantage or disadvantage to the ADA by having municipal governance change or stay the same. This is a neutral item in the analysis.

The federally-operated Agricultural Research Centre is another entity which both parties agree should not be subject to erosion. It is an important facility, although it will be under some pressure in the future as urban development proceeds on all sides, no matter which municipality controls the development of the residential lands. This Centre was once remote from residential development, but it is now virtually surrounded. Once again, the possible change in administration is not the threat to its continued existence, rather it is the fact of residential development proceeding which may be the threat. But it is not open to me to thwart an already completed approval process. I therefore see no advantage or disadvantage to this facility in either city having municipal governance. From the lack of input coming from that federal entity, I must conclude that the owners and operators are not concerned by this feasibility process and the possible changes it could bring.

Municipal infrastructure will also be affected, but again only by the existence of development itself, not by a change in administrator. The Team Gushue Highway is by all accounts a 'fait accompli'. It will proceed once financial arrangements are made with the municipalities. There appears to be a brewing dispute over a municipal funding contribution from Mount Pearl, but it is outside my jurisdiction to comment on that dispute other than to say that I take no issue with any municipality's right to ensure that it gets good value for any of its money spent on a regional highway initiative.

It is a fact that each city is already sharing use of the Waterford Trunk Sewer system, the regional water supply, fire protection service, public transit and the regional garbage dumping site. This would make those characteristics neutral issues as well with respect to this feasibility study. The impact of development on the system will be the same no matter which city directs the course of that development.

While separate planning and engineering centers exist within each city and they are apparently not identical in terms of operation or objective, there can be no suggestion that Mount Pearl is less capable than St. John's, or vice versa, in providing those professional services to this site in a competent manner. The core concept on how to develop residential lands is similar, although each city may have a slightly different vision of the ultimate product. St. John's makes much of the fact that Mount Pearl proposes a somewhat smaller flood plain protection area, but that concern cannot be determinative of jurisdiction. I would expect the Province to ensure that important waterways are properly protected from development under any governing municipality.

Garbage collection is a service where no real differences exist. Thus, changing municipal administration will have no great impact on the

existence or consequences of varying levels of service in the two communities and I draw no conclusions from such small variations.

Recreation is a problem for both cities, but only at some levels. While each stated that they would allow citizens of the other city to participate fully in recreational facilities owned by the other, regardless of where the participant holds a residence, there was some evidence that provincial rules may currently inhibit full cross-boundary participation at certain higher levels and for some sports. It was put to me as an argument in support of changing the boundary that persons living in the new subdivision might not be able to participate in some Mount Pearl sports if that land remained within St. John's. That result would be regrettable, and should be investigated and rationalized by those in authority. Perhaps there are compelling reasons for that requirement, but they are certainly lost on me. That rule seems to promote division and artificial distinction, not full active participation by all those living close to a facility, which would be a better test than relying on artificial differences such as municipal boundaries.

5. To ascertain whether there is a compelling rationale to support the proposed boundary change.

Neither of the contesting parties appears to have placed great significance on this portion of my mandate, perhaps because there appears to be no single compelling argument to support the move of this land from St. John's to Mount Pearl's jurisdiction. As the facts have disclosed, neither municipality is unable to provide the necessary support services to the feasibility lands and there are no significant fiscal concerns. Neither community would be financially strapped or impaired if the subject area stayed or moved from one city to the other.

Mount Pearl did not argue that it needed the land to grow because it was running out of developable land. It claims that its continued existence as a city is secure with or without the subject lands. It suggested that the current boundary in that area did not make any sense, that the historic ties were strong, that the Southlands precedent should be avoided and that the suggested change “makes more sense overall”. Those were the examples of compelling reasons submitted by the Mayor of that city in his presentation.

St. John’s Council did not express a view on the compelling rationale issue at all, perhaps because maintenance of the status quo would leave that city with continuing governance of the lands in question. St. John’s correctly assumed that it was under no burden to show compelling reasons for keeping the status quo. I take it that St. John’s was of the view that the compelling rationale, if such existed, should be shown by Mount Pearl’s Council in its submissions.

If the ultimate test to sustain Mount Pearl’s application for these lands is the existence of a single compelling rationale or even a multiple of factors creating a compelling case, the facts supporting that conclusion were not made apparent to me at any time during this hearing process. There are admittedly a number of arguments that lend support to Mount Pearl’s application, but they are not compelling to me when considering my terms of reference.

6. *To evaluate whether the proposed boundary change is in the long term interests of the region as a whole.*

Here I am to consider whether the proposed changes might have a positive or negative impact on this region of the Avalon Peninsula in the long term. In considering this option, I take it that I am to consider whether a change

in municipal control might advantage or disadvantage the greater region in the longer term.

During the hearing process, the whole issue of municipal amalgamation was raised by St. John's Council which asserts that such a step would be advantageous and perhaps even necessary for the advancement of this region as a business center for the Province while it competes with other business centers in the Atlantic region of Canada, such as Halifax which city, interestingly, has gone through a municipal amalgamation process in recent years. While I do have views on the whole concept of municipal amalgamation which I will explore later, it is suffice to say for the moment that I do not see a change in municipal boundaries of the scope being considered here as having any particular long term effect, adverse or otherwise, on the region as a whole, leaving out for the moment the issue of precedent which I will raise later in this Report. Both cities have the ability to develop residential neighbourhoods in a planned and thoughtful way. If amalgamation were to be considered for these two communities down the road, it seems to me of little import which municipal administration at this time organizes the layout of a subdivision, collects municipal garbage or collects taxes, by way of some examples.

My thoughts might be different if each city had a different vision or objective for the lands in question. If one municipality wanted commercial development on the site while the other preferred to allow it to lie undeveloped, there might be adverse implications which I could consider. But it is clear that they do not have such differences, as each city plans to develop the residential land while preserving or protecting the agricultural land, especially in the ADA. In light of the amount of shared facilities such as water and sewer distribution, garbage collection, fire protection and public transit which exist today, I see no impact, positive or negative, in

either the status quo or a shift in jurisdiction from St. John's to Mount Pearl.

There are some who might argue that allowing Mount Pearl to develop these lands might significantly weaken St. John's financially or prolong the time in which Mount Pearl will inevitably run out of developable land within its boundaries and thus cease to thrive.

To the first issue, I conclude that the site is not large enough so that its loss would have significant long term negative financial implications for a city the size of St. John's. Losing the land without receiving adequate financial compensation would have some short to medium term adverse implications for the Capital City's revenues, but they would not be dealt a significant financial blow. St. John's gross revenue last year totalled more than \$152,000,000. The net revenue expectations for this site as estimated by St. John's are only in the vicinity of \$600,000 annually, a mere fraction of its total budget.

Mount Pearl's longevity would also not appear to be put in jeopardy if this feasibility site were not granted to it. According to their Council's position, they have other lands yet to be developed and so their application for this land was not based on a "need to grow" argument. To the contrary, the Mayor's position was that Mount Pearl was viable as it existed and would continue to be so into the future, whatever the outcome of this current process. No argument has been put to me which suggests that the continuation of any municipality is subject to the requirement that it must constantly grow. Geographical features alone often inhibit municipal growth.

But there is another troubling issue which lies here. There is a difficult precedent which might be established by encouraging other municipalities

which adjoin St. John's to seek their own boundary adjustments, the cumulative effect of which could have a devastating effect on the Capital City. And there is also the contrary argument – should St. John's be permitted to encroach on the boundaries of those communities, thereby achieving amalgamation through annexation? There is here a threat that I see to the long term interests of the region as a whole: permitting a common municipal boundary to be subject to redefinition without the existence of compelling circumstances to justify that action. The requirements of (a) needing a compelling rationale to justify change and (b) ensuring the protection the long term interests of the region as a whole seem to link to one another as challenging issues in this particular fact situation.

7. To propose and evaluate alternative approaches and options to the proposed boundary change.

Mount Pearl has advanced only one solution to the question, that is, to change the municipal boundary that it shares with St. John's in this area from its current location at the back of properties on Brookfield Road southward to the East-West Arterial Road reservation, thereby granting Mount Pearl jurisdiction over the site under consideration. Its Council offers no other alternatives which might be acceptable to it. And it soundly rejects the suggestion that municipal amalgamation is appropriately considered in the context of its application here.

St. John's on the other hand has advanced a number of alternative solutions.

In the first instance, it simply recommends that Mount Pearl's application be rejected. It submits initially that no municipal boundary changes in the Brookfield Road area should be contemplated until the provincial

Government has completed a review of the overall boundaries of the ADA, which review has been recently announced.

As one alternative solution, however, it proposes a so-called “minor boundary change” to provide what it says would be a more logical connection to the former Sprung Greenhouse lands to provide better access and servicing by St. John’s to the new development. It suggests that the boundary of St. John’s at the end of Brookfield Road be extended in a westerly direction across the intersection with Commonwealth Avenue, then run northerly along the western side of Commonwealth Avenue to the entrance of the former Sprung site, thus enabling that new residential site to be accessed from lands entirely within St. John’s jurisdiction. As it stands right now, St. John’s residents and servicing vehicles would have to leave that city’s boundaries, proceed through Mount Pearl along Commonwealth Avenue, to then regain access to St. John’s upon entering the residential development planned for the former Sprung property.

St. John’s also suggests another alternative to the above proposal, which alternative in reality constitutes almost total amalgamation. A better approach, it says, would be to use the Trans-Canada Highway/Outer Ring Road in the vicinity of Topsail Road as the joint municipal boundary. Under this approach, all of Mount Pearl and a portion of the serviced area of the Town of Paradise would become part of St. John’s. This proposal it says would follow the natural drainage area of the Waterford River which is also the drainage area for the domestic sewage system. It proposes this alternative even though it acknowledges that my jurisdiction to deal with this suggestion is not contained in the terms of reference.

As I have said from the outset and confirmed at the two major hearings, I do not believe my mandate in considering alternatives to Mount Pearl’s proposal extends to the degree that I can or should consider recommending

wholesale adjustments to the existing boundaries, amounting to amalgamation. In addition, without the Town of Paradise having been given notice that consideration was to be given to including some of that community's jurisdiction within the scope of this Mount Pearl instigated review, I am not prepared to even discuss recommending an alternative which puts some of another municipality's property in jeopardy of being transferred.

For those who advocate a meaningful discussion surrounding the subject of municipal amalgamation, and it may very well be a topic which invites discussion from time to time, I assume that the directive in the terms of reference to my ability to "evaluate alternative approaches" gives them reason to hope that I might interpret my mandate far beyond that which would have been anticipated by the enabling provisions of the *City of Mount Pearl Act*. I clearly do not consider it within my power to recommend for or against amalgamation at this time. That would be a significant undertaking of major impact which should only follow an appropriately-mandated assignment from the Provincial government. I do not believe I have that broad a mandate under this assignment, nor do I seek it. In addition, I have been told that it is a current policy of the Provincial government not to undertake amalgamation unless requested by each of the municipalities involved. There is clearly no such agreement in this instance.

But some comment on this issue may be relevant in the context of this current debate. It has been raised by St. John's in its response to Mount Pearl's application to remove the subject property from St. John's municipal jurisdiction. This reaction may simply be a proactive policy akin to the principle that "the best defence is a good offense" and St. John's true intentions in this case may appear that way to some observers.

I believe that individuals decide to form into communities for many reasons or purposes, including ensuring access to common support services as well as seeking the comfort and assurance that working together for a common objective brings to human existence. That statement is not a conclusion of human geography or sociology, it is simply an empirical observation based on common sense. These two cities here already share many municipal supports and facilities. Garbage collection is disposed of at the same site, albeit by separate trucking or removal regimes. Water comes from the same source and is carried to residents of each city by the same trunk piping system. Sewerage is deposited at the same disposal and treatment facility, now thankfully and finally under construction in St. John's harbour. One bus service, operated by an entity significantly funded by St. John's, provides transportation within each city and between both cities. Fire protection is provided by the same regional firefighting service with stations located in both cities. Two hospitals situated in one city (St. John's) serve residents of both, and so on. These closely-linked cities operate in many ways as two "neighbourhoods" that actually exist in reality, if not by frank and candid admission of their administrators.

While the same can be said about the sharing of those facilities by many other communities operating separately on the Avalon Peninsula, in this particular case there is one other additional factor which must be considered. It is a fact that the significantly larger city here, St. John's, almost completely surrounds the smaller one, Mount Pearl. It is not just that they share one or two common borders. They are far more geographically integrated than that. An aerial view of the two cities reveals clearly the extent to which St. John's dominates and surrounds Mount Pearl. In fact, Mount Pearl is now "landlocked" by two other municipalities, St. John's and Paradise. It cannot grow except at a cost to one or both of its neighbouring municipalities. Why this was caused to happen and the merit

of it having been done years ago is no longer the question. The consequences of that decision are now far more important and challenging.

Advocates of separate status argue that Mount Pearl has a strong sense of community and that competition between the two cities is healthy. But when you examine that community feeling, one gets the impression that it is often borne out of a false sense of superiority, not out of real diversity. Many negative statements about St. John's fuel that feeling within Mount Pearl. Residents there will often be heard to claim that "our snowclearing is better than in St. John's" or "our taxes are lower than theirs." And it is not that residents of St. John's take the higher ground in this debate either. Some will say that Mount Pearl couldn't exist as a city except for the fact that St. John's provides many of their needed support services. And as the Mayor of St. John's was quick to point out, somewhat pointlessly, at the St. John's hearing, all residents currently share the same restaurant services, the majority of which are within St. John's boundaries. These are small, trivial bragging points which regrettably are allowed to divide us.

And as a last comment on this trivial pursuit of superiority, I make this final observation on petty bickering. St. John's Council's effort to assert supremacy over the feasibility lands by staging its mock "Iwo Jima" flag-raising ceremony in a photograph taken atop the "Mount" for a local newspaper was, at best, a futile attempt at humour, apparently designed to be at the expense of residents of Mount Pearl with which city it seemingly wishes to amalgamate. Such theatrics must stop if the stated objective of amalgamation is ever to find success. If St. John's Council truly wants municipal amalgamation, it must stop acting as if what it really wants is political domination.

An irrefutable fact is that the residents of each of these cities are better off because of the existence of the other. Mount Pearl residents benefit by

their close proximity to services and features of the larger St. John's, and at the same time the Capital City itself benefits from the many dollars spent in St. John's by residents of Mount Pearl who shop, dine and work there on a daily basis. If we as human beings initially congregate into communities because of the supports that we are able to offer one another, why is it that we so often end up fragmenting ourselves in to areas of isolation and protectionism?

It is also a fact that many municipal services in this region are already combined. So whether you call it amalgamation, consolidation, integration or just simply co-operation, some form of municipal "coming together" is the logical conclusion from the current facts. The existence of two councils and two municipal office infrastructures (with individual departments of engineering and planning, tax collection and recreation, to name just a few) is perhaps not demonstrably justifiable in a closely defined area with such a small population base. The issue for these cities may ultimately become one of economics as it has recently for so many communities off the Avalon Peninsula where their continued existence seems to have encouraged and supported steps toward municipal amalgamation.

St. John's Council touts a report from EDM Limited, an organization represented by Mr. John Heseltine from the Halifax area, as strong support for its pro-amalgamation contingent. Mount Pearl's mayor suggests that this planner is simply a "hired gun" who supports the position which St. John's wants him to advance. Your Commissioner has worked with Mr. Heseltine and does not share that narrow view of his professional integrity. But that being said, Mount Pearl has its own experts, this time The Atlantic Institute for Market Studies (AIMS), a non-profit organization reputed by that city to be more "independent" than EDM. Mount Pearl says that its expert has evidence that proves amalgamation has not worked in the Atlantic region. While I have no personal experience with this group's

work, I am prepared to admit that the “jury may still be out” on whether municipal amalgamation has been a blessing or a curse in some of the areas in which it has already been implemented.

As I said at the hearings, my role here is not to recommend approval or rejection municipal amalgamation. That process should be undertaken only with professionals who have far more depth of knowledge and expertise in municipal planning and structure than I can bring to the table. But that being said, there are many steps short of total political amalgamation which can and should be pursued by these two municipalities to integrate their services, supports, strengths and weaknesses for the betterment of all of residents of both cities. It makes no sense, for example, in areas so physically close to have competing and sometimes different rules that guide planning and development. They should be either the same or virtually identical. Recreational structures should be planned and built so that they are geographically spread fairly and evenly over the entire region, not clustered according to each municipality’s separate wishes. And finally, taking shots at each other’s weaknesses is not the way to foster a larger community of interest. Some residents of each municipality have engaged in this practice for years to serve their own city’s own protectionist ends.

If St. John’s wants Mount Pearl to integrate with it, it is sending the wrong message when it mocks that city’s arguments in support of this boundary dispute. And if some form of amalgamation may be in our future, Mount Pearl residents should stop bragging about how their city provides a better service to its residents than St. John’s provides to its citizens. Our real differences are minimal and hardly worthy of mention.

Decision

In considering my appointment and the task which I have agreed to undertake, I must be cognizant of the status quo, how it developed and what the limits of my authority are. This is not, after all, a competition between two municipalities to determine which one is better entitled or able to govern an otherwise non-regulated piece of property.

As has been stated, the status quo involves the land in question being under the governance of St. John's as the result of a decision of the provincial government many years ago. Prior to that time, this land was within the St. John's Metro Board jurisdiction. It has never been under the direction of Mount Pearl, despite its apparent historical connection to the Sir James Pearl name.

It must be remembered here that I have not been asked to reflect on my own personal opinion as to which municipality should have governance of the site. My layman's opinion on such an important matter is no more valuable than that of any thoughtful member of the public. In my capacity as commissioner, I am a creation of statute and I must consider issues determined by my terms of reference from the Minister.

The word "feasibility" is perhaps bit of a misnomer in understanding my role in this assignment. Feasibility is generally understood as meaning the capability of something being done while utilizing the resources at hand and the circumstances as they exist. Another meaning of feasibility includes something capable of being accomplished with a reasonable amount of effort, cost, and without undue hardship. Under those tests, it would clearly be "feasible", in the literal sense, for Mount Pearl to govern these lands. But my terms of reference dictate that I must consider certain defined issues, not the dictionary concept of feasibility. In order for an issue

or argument to be relevant or have any impact on me in this process, I must find a way to fit that consideration into one or more of the following topics which I must now consider and assess in order to determine which is more or less important and which should weigh more heavily on my final recommendation.

Weighing the criteria in the terms of reference

To take an analogy from the field of law with which I am reasonably familiar, what is implicit here by the terms of reference is some measure of evidence weighing that goes beyond simply finding the “balance of probabilities”. The test as I interpret it is at the same time something less than finding arguments which support the applicant city “beyond a reasonable doubt”. I conclude that my task here is to find strong and convincing arguments on the major issues which rest in favour of Mount Pearl’s application before I make a recommendation in favour of the sought boundary adjustment. As I have already stated, making boundary changes at a cost to another municipality is something that should not be undertaken lightly.

As I present them here for consideration in the decision-making process, I will slightly paraphrase and group, where appropriate, the defined criteria from the terms of reference:

Evaluating the impact on each of Mount Pearl and St. John’s in terms of governance, identity, access to services, fiscal feasibility and cost efficiency.

I have concluded that both Mount Pearl and St. John’s each have all of the necessary governance and administrative structures in place to appropriately direct and control development of the feasibility lands without putting undue strain on existing systems or municipal responsibilities to

other lands within its control. I have no hesitation in reaching that conclusion.

As to community identity, I conclude that Mount Pearl would have an advantage in terms of it being the body with which those residing in the area would find the closest affinity. That being said, although St. John's seems to have dropped the ball badly with respect to the neighbourhood known as "Southlands", there are many other so-called remote neighbourhood within St. John's city limits which are treated and act like integral and important parts of that larger city.

Measuring the shortest distance from a municipal depot to the entrance of the feasibility site is a very superficial way of demonstrating real advantage. St. John's, being the larger city of the two by far, would lose in any such competition if that were the true test of viability. Under that argument, many subdivisions in St. John's could be sought for annexation by neighbouring towns which might also be able to claim close physical proximity, if that were to determine who should govern. The Town of Torbay may be closer in kilometers to the Clovelly Trails neighbourhood than the St. John's municipal depot, but that is not the test to be applied in cases such as this.

Municipal services such as engineering, planning, water and sewer connection, snowclearing and the like can be provided readily by Mount Pearl because of the physical proximity of the feasibility lands to other lands already serviced by that municipality, as for example, on the other side of Commonwealth Avenue. St. John's will be able to provide similar services, albeit at a somewhat greater cost in my estimation. But because the residential lands can be serviced by either city at an annual cost that is significantly lower than the likely annual tax revenues, fiscal feasibility for each city is assured. No significant advantage is shown here.

Cost efficiency is not an issue which either city addressed in a significant way, but based on the foregoing fiscal analysis, I conclude that Mount Pearl can somewhat more efficiently govern this area.

Thus, when looking at the foregoing criteria, Mount Pearl would have a slight, but not significant advantage over St. John's on an overall basis. I find nothing compelling in that analysis, and so I do not weigh these factors heavily in the final outcome.

Considering the views of the public.

In assessing the views of the public, one must remember that each city has its natural and logical supporters. The boards of trade, chambers of commerce, and other local interest groups can be expected to give support to their related municipal bodies. Thus, the St. John's Board of Trade backs St. John's position, and the Mount Pearl Chamber of Commerce support Mount Pearl's bid to secure the lands. There are few conclusions I can take from that fact which will assist me in my task.

As to overall interest shown by persons attending the various meetings, it would seem that Mount Pearl has enjoyed an advantage during the brief hearing process. This is perhaps understandable since it is the smaller city and one would expect that it would be able to engender more visible support because of the stronger community feeling held by many of its residents. I do not conclude that the absence of larger numbers of persons supporting St. John's demonstrates that it does not enjoy the support of many of its residents and taxpayers in this process. The test for this feasibility analysis is not simply "getting the vote out".

As to the views of the actual residents currently living or working on the feasibility lands, they would without doubt favour a change in municipal governance. But there are only a relatively small in number of those current residents and it must be remembered that they have never been a part of the incorporated area of Mount Pearl in the past, even though they have lived close to its boundaries for many years. No matter where such boundaries exist, some will live on one side of the line and some will live on the other. Neighbours within speaking distance of one another will often live in two different communities if those communities share a common boundary. The result may be odd, but it is almost inevitable in those circumstances. Regrettably, not all of the personal wishes of individual residents can become the guideposts to municipal structure and definition when the overall good is an important objective.

There is no groundswell of public support clearly in favour of one party which cries out for attention or emphasis in this case.

Assessing the impact on the St. John's Region Agricultural Area, the St. John's Agricultural Research Centre and its surrounding uses, the proposed East-West Arterial Road and other road networks, the Waterford Valley Trunk Sewer and regional water supply system, and other infrastructure and other municipal services.

I am troubled that once again there appears to be no clear "winner" or stronger civic entity in this analysis. Since each city is viable and strong and each possesses the personnel and support services to ensure no threat to these regional assets or services, there is no major advantage offered by either city. This is not a situation where one municipality would propose to take steps which would threaten the existence or strength of these important assets. If that were the case, the compelling rationale sought elsewhere in this Report might be found to exist.

There is no measurable impact that I can find on the regional agricultural area, the research centre, the road networks or other municipal infrastructure from either city having jurisdiction over the feasibility lands.

Ascertaining whether a compelling rationale exist to support change.

The need to find a compelling rationale suggests to me that that, before taking the major step of recommending the adjustment of a common boundary between these two communities, I must find a compelling reason to do so. Changing boundaries is a significant event for any municipality, especially the one losing jurisdiction if that area is considered a valuable asset. Such a step should only be triggered by a similarly significant cause. I believe this is why this criterion is included in my terms of reference.

Having reviewed all the available information submitted to me, I am unable to determine any one reason or any group of compelling rationale to justify a change here. If a 60/40 solution in favour of Mount Pearl was to be the test, Mount Pearl might obtain its objective because it does demonstrate some obvious but perhaps superficial advantages in some of the issues under consideration. But with respect, I do not see that as the appropriate weighing of the issues. In my view, I am challenged by the terms of reference to find a more compelling case for a change before it can be recommended. I do not find that such rationale exists here.

Evaluating a change in terms of the long term interests of the region

Can the proposed change have any real impact on the region whichever way it is resolved? And is there a negative precedential value here which must be considered under this criterion?

This current application comes from Mount Pearl and seeks to remove from St. John's a valuable area which that city has within its boundaries. Arguably, however, the application could have come in the other way, i.e., from St. John's seeking lands to be extracted from Mount Pearl, or perhaps from one of the other municipalities in the northeast Avalon region seeking to remove lands from either or both of St. John's and Mount Pearl. The possibilities are endless if the "raiding" of one community by another is to be allowed or encouraged. Why should municipal assets, infrastructure and administration become a part of a jurisdictional competition? What would be Mount Pearl's view of this approach if St. John's, by a similar feasibility process under its own legislation, sought to obtain from Mount Pearl those lands on the northeast side of Topsail Road and west of Blackmarsh Road? The dividing roadway (although not a highway) argument could be advanced by St. John's and those lands certainly have little historical connection to the name "Mount Pearl" or to the traditional community bearing that name. What would the outcome of that application be?

This issue troubles me greatly. I accept the proposition that a strong and viable St. John's as the capital city of our Province is important to the overall economic strength of the Avalon region. I do not accept the suggestion that moving this relatively small amount of feasibility land in and of itself would make less viable our Province's effort to become the Atlantic centre for excellence for the offshore oil industry. That argument is exaggerated. But allowing St. John's, the economic centre of this region, to be eroded by other municipal entities that share borders with it is not a progressive activity to encourage in the long term. For me, this difficulty supports the conclusion that I cannot recommend a change in the current municipal boundaries between these two cities.

When the St. John's Metropolitan Area Board was disbanded in 1992 much of the lands within that body's administration were handed over to St.

John's. Some lands were real assets, some were more challenging and some were downright costly to administer and serve. But St. John's took them all into its responsibility, and in an overall sense, seems to have done well in administering them on a go-forward basis. St. John's is a large and diverse city with many narrow and older streets, aging infrastructure and significant challenges which are not faced by the more modern and condensed Mount Pearl. It needs the modern sites to compensate for the costs associated with the older ones.

One observation needs to be made here in passing, and this is not an argument initiated or spoken to by either city. If I had found compelling rationale to support a recommendation for change in favour of Mount Pearl, and assuming the precedential value were not so troubling, I would have still suggested that some form of significant compensation be paid to St. John's for the loss of an important municipal area. In any boundary adjustment process between municipalities, it is my view that one should never be the "winner" at the expense of the other. How that compensation would be calculated and paid may have been a challenge, but it is clear to me that to have taken land from St. John's, which land is valuable in terms of revenue, and to have given it to Mount Pearl without compensation would have generated an unfair result by any rational standard. Compensation, however, would not have cured the potential long term and adverse precedential impacts on the region, but it would have added a measure of equity to the process. This concept of compensation might be a worthwhile idea to explore at a later date if other boundary changing circumstances occur in the future.

Proposing alternative approaches and options to the change.

Here I am entitled to consider whether other possibilities exist which should be considered in the course of the application placed by Mount

Pearl. St. John's has suggested that, if I cannot consider some form of amalgamation, then I should at least consider a rationalization of the common boundary on or near Commonwealth Avenue.

With respect to amalgamation, I have made it clear that the authority to make such a recommendation is above my mandate. That being said, I encourage more service sharing, cooperation, integration and rationalization of common services needed in both communities, while at the same time I plead for less bickering, bragging and mockery of the other from each municipality. Efficiencies for all residents can be the result of sharing costs, resources and facilities.

When all is said and done, these two communities on the east coast of the island of Newfoundland are small in comparison to the much larger cities that exist as amalgamated units elsewhere in Canada, as for example the Greater Toronto Area (GTA). And I am not satisfied that some form of amalgamation or integration cannot exist here, despite the fact that total amalgamation may not have worked elsewhere. In Nova Scotia, some say that the Halifax Regional Municipality (HRM) has been a success and some say it has not. I cannot take any conclusion from the studies done to date, since that amalgamated community has only existed since 1996, a relatively short period in any municipality's existence. In the long run, however, the kind of competition that has been seen between these two cities in this province to this date is, in my view, unhealthy.

In the strongest possible words, I encourage both cities to work together to continue the integration of services for the citizens living within their municipal limits. While many municipal centers outside the Avalon region willingly seek amalgamation for reasons of financial survival, residents of this area have been blessed with economic health, fiscal ability and a surplus of land assets which allow easy development. That may not be the

situation in the future. There must be economies of scale which can be taken advantage of to the betterment of all residents. The administrative entities which collect the garbage, provide the water and sewer systems, remove the snow from streets and provide spaces for recreation should never be allowed to become the wedges that ultimately divide the residents of these two fortunate cities.

The second alternative which St. John's advances is an adjustment to the shared boundary near Commonwealth Avenue to allow it a "within-city" access to the new residential subdivision on the former Sprung site, currently designed for street access off that Mount Pearl roadway. In light of the outcome of this Report, to recommend this proposal appears overly punitive and insensitive. St. John's was apparently content to approve this residential development based on the boundary status quo. If it now decides that it wants access entirely from within its own boundaries, it will have to consider other possible routes into that site. I cannot recommend for approval that proposal from St. John's.

Because many of the stated criteria as assessed by me are not strongly in favour of Mount Pearl, I must decide what is most important and accept responsibility for my recommendation. I conclude that (a) the absence of a compelling reason in that city's favour and (b) the inhibiting precedent factor created by any change in St. John's boundaries far outweigh the various indicia that suggest the other conclusion that Mount Pearl can better govern the lands in question. Accordingly, my recommendation follows.

Recommendation

Based on all of the foregoing, I conclude that I am unable to recommend any change in municipal governance over the feasibility lands, either as

advocated by the City of Mount Pearl or as advanced by the City of St. John's.

I make this recommendation having considered and weighed all of the criteria set forth in the terms of reference under which I operate on this assignment.

This conclusion is not a determination that Mount Pearl does not have the physical or fiscal ability to assume jurisdiction. In short, having considered the terms of reference, the evidence and arguments do not lead me to the conclusion that the boundary change sought by Mount Pearl would be the correct result in all of the current circumstances.

Respectfully submitted the 11th day of May 2007.

John F. Roil, QC
Commissioner