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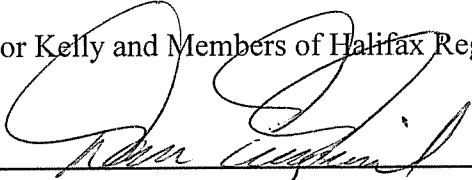


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada


Halifax Regional Council
August 1, 2006

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: July 20, 2006

SUBJECT: **Process for Review of Polling District Boundaries**

ORIGIN

1. Requirement in *Municipal Government Act* that Halifax Regional Municipality review the polling districts and boundaries for the 2008 election.
2. January 17, 2006 Regional Council approved the recommendation that a request be made that the MGA be amended so that no study was required this year.
3. March 13, 2006 letter from the Nova Scotia Utility and Review Board (UARB) suggesting a shorter process may be possible.
4. March 30, 2006 letter from the Minister of Service Nova Scotia and Municipal Relations stating that the Province will not act until discussions with the UARB are held.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Approve the principles and process for polling boundary review for the 2008 election as outlined in this report; and
2. Direct staff to obtain agreement from the UARB on the approved principles and process.

BACKGROUND

- Section 369 (1) of the *Municipal Government Act* (MGA) requires that HRM undertake a review of polling district boundaries in 1999, 2006, and every eighth year thereafter.
- HRM made application pursuant to this Section in 1999, and the decision of the Nova Scotia and Utility and Review Board (UARB) on the polling boundaries was applied to the 2000 municipal election.
- As a result of the 1999 UARB decision, HRM made a second application in 2003 and the Board's decision was used for the 2004 election.
- The findings of the mandatory 2006 review will be presented to the UARB in late 2006, with the UARB's decision determining the polling district boundaries for the 2008 election.
- In January of this year, HRM made a request to the Province that the MGA be amended to defer this year's polling district boundary review until 2010. Reviews would then occur every eighth year thereafter.
- On March 30, 2006, the Province suggested HRM discuss a simplified procedure with the UARB before it would consider any legislative amendments.

DISCUSSION

Frequency and Timing

The principle behind the legislation is to ensure polling district boundaries remain reasonable, given that population distribution will shift over time. This is done by reviewing boundaries every second election with updated population statistics. HRM has gone through this process for two consecutive elections and now faces the prospect of doing it for a third consecutive election. This frequency of review is excessive, especially since significant polling district changes were just made for the 2004 election. For example, most of the districts on the east side of Halifax Harbour were reconfigured and a new district was added to the Clayton Park West area.

Major changes to polling district boundaries should only take place every second election. Changing polling district boundaries each election makes the election process itself more complicated, expensive and confusing to the public. It is also unsettling for citizens to have their polling district boundaries changed every election. These reviews, which require public consultation, are also costly to undertake.

The National Census was conducted on May 16, 2006. The Census results are useful for carrying out the review; however, the detailed results will not be received until 2007, too late for the 2006 review.

Cherry Brook/Lake Loon

The UARB currently has an application before it from the residents of Cherry Brook/Lake Loon to amend the boundaries of their district. This application was submitted after the UARB reached its decision in February, 2004, and given its closeness in time to the election was adjourned by the UARB so that it could be heard in conjunction with HRM's application in 2006 (see Attachment C for Information Report of 23 April 2004).

PRINCIPLES FOR 2006 REVIEW

Staff recommends a simplified polling district review for 2006, based upon the following principles:

1. That the size of Council not be considered during the review;
2. That boundary adjustments only be considered if the target population variance of plus or minus 10 percent per district is exceeded without adequate justification;
3. That minor boundary adjustments be considered where the community of interest is better served;
4. That a comprehensive review of the number of polling districts and their boundaries be undertaken in 2010.

PROCESS FOR 2006 REVIEW

First Set of Public Meetings: The purpose of the first set of meetings, which will be held by staff, is to request suggestions for changes to boundaries. Background material, including the present boundaries, residential building permit activity, and selected 2001 census variables by district, would be available. In light of the application presently before the UARB regarding the Cherry Brook/Lake Loon district, a parallel public meeting would also be held in the Black Cultural Centre to seek preliminary comments on the polling boundaries for those districts.

Second set of public Meetings: The purpose of the second set of meetings, to be held by staff about two months after the first, is to present the possible recommended boundary changes for discussion. A parallel meeting would also be held in the Black Cultural Centre to present proposed boundary changes for those districts.

Staff Report to Regional Council: A staff report would be submitted to Council outlining scenarios for changes to the Polling District Boundaries based on population trends, public and councillor input as well as any other minor corrections. Council would then decide what District Boundaries should form the basis of its application to the UARB.

PROCESS FOR 2010 REVIEW

A comprehensive review of polling districts would be undertaken in 2010. In contrast to the proposed 2006 process, this review would be more comprehensive looking at both the number of polling districts and major boundary changes where appropriate. This review may also include an advisory committee, consultants and more public meetings throughout the Municipality.

BUDGET IMPLICATIONS

There are no budget implications.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Approve the abbreviated polling district boundary review principles and process outlined in this report for 2006. This is the staff recommendation.
2. Approve another public process for review with the UARB.

ATTACHMENTS

Attachment A: Letter of March 13, 2006 from the UARB


Attachment B: Letter of March 30, 2006 from the Minister of Service Nova Scotia and Municipal Relations

Attachment C: Information Report of April 23, 2004 "Petition From Residents of Cherry Brook/Lake Loon Respecting District Boundaries."

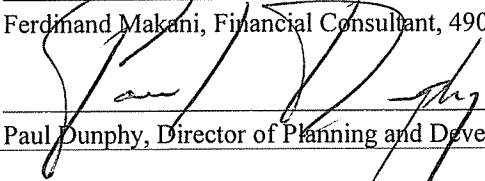
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Angus E. Schaffenburg, Senior Planner, Development and Planning 869-4747

Financial Review:


Ferdinand Makani, Financial Consultant, 490-6902

Report Approved by:


Paul Dunphy, Director of Planning and Development Services

Attachment A



MUNICIPAL CLERK'S OFFICE

Distributed to:

Mayor, Councillors, CAO,
Solicitor, DCAO (2)

March 17/06

Nova Scotia Utility and Review Board

Mailing address

PO Box 1692, Unit "M"
Halifax, Nova Scotia
B3J 3S3
uarb.board@gov.ns.ca
Web www.nsuarb.ca

DATE

Office
3rd Floor
1601 Lower Water Street
Halifax, Nova Scotia B3J 3P6
902 424-4448 t
902 424-3919 f
ANGUS Schaffenburg
PAUL DUNPHY

MEETING Regional
DATE JAN 17.06
ITEM NO. 9.1.1

March 13, 2006

Transmitted via Fax: 490-4232

Wayne Anstey, Q.C.
Director, Legal Services
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A5

Dear Mr. Anstey:

Application to the Board re s. 369 of the Municipal Government Act

HALIFAX REGIONAL
MUNICIPALITY
MAR 14 2006
AG
MUNICIPAL CLERK

Section 369 of the Municipal Government Act requires the council of every municipality to apply to the Nova Scotia Utility and Review Board in 2006 to "confirm or to alter the number and boundaries of polling districts and the number of councillors."

At this time, the Board must also deal with the application filed in 2004 by the Boundary Action Reversal Committee. The Board's Decision dated June 21, 2004, adjourned the hearing of the Committee's application for a boundary change until the reviews scheduled to occur in 2006 pursuant to the Municipal Government Act.

However, given the extensive process followed by the Municipality in 2003 and 2004, the Board would be willing to discuss a simplified process with the Municipality.

Yours very truly,

per Jackie Pearce
Elaine Wagner
Appeals Officer/Clerk

cc: The Honourable Richard Hurlburt
Minister of Service Nova Scotia and Municipal Relations

✓ cc: Ms. Jan Gibson, Clerk
Halifax Regional Municipality

HALIFAX REGIONAL MUNICIPALITY

MAR 31 2006



NOVA SCOTIA

Service Nova Scotia and Municipal Relations
Office of the Minister

PO Box 216, Halifax, Nova Scotia, Canada B3J 2M4 • Telephone 902 424-5550 Fax 902 424-0581 • www.gov.ns.ca

MUNICIPAL CLERK

MEETING

Regional Council

DATE

January 17, 2006

ITEM NO.

MAR 30 2006 9.1.1

Mayor Peter Kelly
Halifax Regional Municipality
PO Box 1749
1841 Argyle Street
Halifax, NS B3J 3A5

Dear Mayor Kelly:

I am writing in response to your letter to Minister Barnett dated January 23, 2006, concerning proposed amendments to the *Municipal Government Act* regarding polling districts in Halifax Regional Municipality.

I have been copied on a letter from the Utility and Review Board to Mr. Wayne Anstey, Q.C. on this issue.

It is my understanding from this, that the Board is willing to discuss a simplified process for boundary revisions with HRM. I would appreciate hearing the results of this discussion before dealing with HRM's request to amend the *Municipal Government Act*.

Yours sincerely,

Richard Hurlburt

xc Clerk - Council ^{UB} Items
17700
TR# 17406

RECEIVED
MAR 31 2006
Mayor's Office

MUNICIPAL CLERK'S OFFICE

Distributed to: John Brien

Mayor, Councillors, CAO,
Solicitor, Wayne Anstey,
Gen. Kaiseu

March 31 2006

DATE

Attachment B

Attachment C



P.O. Box 1147
Halifax, Nova Scotia
B3J 3A5 Canada

Halifax Regional Council
April 27th, 2004

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Wayne Anstey
Wayne Anstey, Q.C., Municipal Solicitor

DATE 23 April 2004

SUBJECT Petition From Residents of Cherry Brook/Lake Loon
Respecting District Boundaries

INFORMATION REPORT

ORIGIN

At the meeting of Halifax Regional Council held on April 20, 2004, Councillor Cooper tabled a petition from residents of the Cherry Brook/Lake Loon area as follows:

We, the undersigned, hereby petition the Halifax Regional Municipality and the Nova Scotia Utility Review Board to amend the order of the proposed boundary of District Number D to include Cherry Brook, Lake Loon along #7 Highway to Little Salmon River north to Lake Major up to the middle of Lake Major to where it joins District D.

BACKGROUND

Presently, the area in question is a part of District 4, Cole Harbour North-Cherry Brook. The decision of the Nova Scotia Utility and Review Board dated February 13, 2004, reconfigured most of the districts on the east side of Halifax Harbour. Most of the Forest Hills and Colby Village areas were combined into one district referred to in the decision as District D- Colby/Forest Hills (in the final description submitted to the Board, the district is District 4 - Cole Harbour). The area that is the subject of the petition was included by the Board in District C - Preston/Porters Lake (in the final descriptions submitted to the Board, this district is District 3 - Preston - Lawrencetown - Chezzetcook).

DISCUSSION

In its deliberations, the UARB strove to create, if possible, a collection of districts having a voter population variance of no more than +/- 10% from the average. For the most part, this objective was achieved by the Board. The Preston/Porters Lake district has a variance of + 10.7% and the

Colby/Forest Hills district a variance of +14.1% (the highest positive variance). It is estimated that approximately 700 voters reside in the Cherry Brook/Lake Loon area. If these voters were added to the Colby/Forest Hills district, this would increase the voter variance to + 20%, double the maximum target variance adopted by the Board. Furthermore the Colby/Forest Hills area continues to be a growth area. As a result, the ultimate removal of the Cherry Brook/Lake Loon area from this district is eventually inevitable.

In its decision, the Board noted that because of growth, some communities that had historical connections could not remain together. At page 35 of its decision it stated:

“The Board notes that HRM is a dynamic and growing community. The population in some areas of HRM is growing rapidly. A consequence is that some communities in HRM which had been associated in one district in the past simply cannot remain together, if any reasonable voter parity is to be maintained. For example, residents of current District 4 noted that since the creation of the Area Service Commission in 1954, the residents of Cherry Brook, Lake Loon and Humber Park had an association with areas to the south comprising District D (Colby/Forest Hills). In Mr. Schaffenburg’s 23 District Proposal, these communities were included in District C to the east (Preston/Porters Lake). While the Board understands and accepts these important historic associations, population growth in the area over time means the Board is unable to include all of these areas in one district while still maintaining a reasonable elector variance. A similar situation exists with respect to Sackville/Beaver Bank.”

Residents of the Cherry Brook/Humber Park area have already approached the UARB and requested that the Board reconsider and amend its decision for this area. The Solicitor for the Board in a letter dated March 29, 2004 to Ms. Alma Johnston, Chair, Boundary Action Reversal Committee, Cherry Brook Lake Loon Community stated in part:

“The Board is a quasi-judicial body, the decisions of which are subject to appeal to the Nova Scotia Court of Appeal. In my opinion, it is not appropriate for such tribunals to attempt to respond to questions about their decisions; the reasons for their decisions should appear in the decisions themselves, and, if a tribunal is mistaken, it is subject to correction by the Court of Appeal....

The final decision of the Board has been rendered, that Decision may only be changed by the Nova Scotia Court of Appeal as a result of an appeal of the Decision or by the Board as a result of a new application under **Section 368 of the Municipal Government Act.**”

Accordingly, the Board does not have the jurisdiction to unilaterally amend its decision handed down on February 13, 2004 and of course, HRM has no such authority either.

As pointed out by the solicitor for the Board, there are three possible ways that the Board’s decision can be altered, first, the voters of the Cherry Brook/Loon Lake area could appeal the decision to the Nova Scotia Court of Appeal, second, HRM makes could make a new application to the UARB to

amend the district boundaries, or 50 electors from the municipality could make such an application. An appeal to the Nova Scotia Court of Appeal only lies in respect of a question as to its jurisdiction or upon any question of law. The UARB has exclusive jurisdiction in respect of all matters for which jurisdiction is conferred on it and on the determination of facts in respect of those matters. Clearly, the setting of polling district boundaries is a matter which is specifically given to the UARB. There is no question that this is a matter within the jurisdiction of the Board. Therefore the only issue that could reasonably be appealed to the Court of Appeal would be whether the Board, in coming to its decision, made an error in law.

Section 368(4) of the Municipal Government Act states that, in coming to its conclusions, the Board should consider the number of voters, the relative parity of voting power, population density, community of interest and geographic size. All these matters were considered by the Board. Furthermore, the Supreme Court of Canada has stated that in determining polling districts, while all the other factors should be considered, in the end, the relative parity of voting power is of prime importance. In this case, the Board clearly stated that it was relative voting power which led it to its decision and in fact, what the Cherry Brook/Lake Loon community wants the Board to do is to include it in the Colby/Forest Hills community based on historical consideration despite the voter parity considerations. In my opinion, it is highly unlikely that the Court of Appeal would find that the Board made an error of law in this regard since their decision was based on all the accepted jurisprudence in this area of the law.

Under Section 368(4) of the Municipal Government Act, a municipality can make an application at any time to divide or re-divide a municipality into polling districts. Therefore, HRM could make another application to the Board.

However, given that the Board only rendered its latest decision in February and given that fact that the Board was fully aware of the issues being raised by the Cherry Brook/Lake Loon community when it rendered its decision, in my opinion, there is no reasonable expectation that the Board will come to a different conclusion under a new application.

In addition there were several other communities throughout HRM who were not completely satisfied with the Board decision for similar reasons. Although these communities have not been as vocal as the Cherry Brook/Lake Loon community, presumably councillors would want to include these other districts in the application.

Council must be aware that moving the boundary of a district while attempting to maintain voter parity is not simply an exercise involving one or two districts, but rather would likely have a domino effect for all of the districts on the eastern side of Halifax Harbour, if not the whole municipality.

The election staff are currently in the middle of the mandated procedures leading up to the October 2004 municipal elections. Legislation processes now underway require known electoral boundaries. As early as March 31, 2004, staff were required to divide the polling districts into polling sub-districts each containing a certain number of voters. This work has already been done and final revisions are now underway. If the polling districts were to be changed now, it would require election staff to redo the work that had already been undertaken and in fact since these dates are legislatively

mandated, the Board might well refuse to change the districts for this election in any event. If any change they made was effective for the 2008 elections, the order might well be moot, since HRM is required by the legislation to begin reviewing the polling district boundaries again in 2006 for the 2008 election.

While the residents of Cherry Brook/ Lake Loon could make application to the Board themselves, the same considerations would apply to their application, and in my opinion, the Board would be unlikely to respond favourably to their request and put the 2004 election process in jeopardy.

Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by: Wayne Anstey, Q.C., Municipal Solicitor 490-4229.

Report approved by: *Wayne Anstey*,
Wayne Anstey, Director of Administrative Services 490-4229
