

Halifax Regional Council  
April 27<sup>th</sup>, 2004

**TO:** Mayor Kelly and Members of Halifax Regional Council

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

**DATE** 23 April 2004

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

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**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.

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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.

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

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