

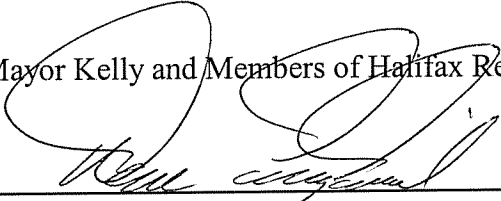
9.1.1



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Halifax Regional Council
January 17, 2006

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 
Dan English, Chief Administrative Officer


Wayne Anstey, Acting Deputy Chief Administrative Officer

DATE: January 4, 2006

SUBJECT: **Review of the Number of Polling Districts and Boundaries**

ORIGIN

Requirement in *Municipal Government Act* that Halifax Regional Municipality review the polling districts and boundaries for the 2008 election.

RECOMMENDATION

It is recommended that:

1. His Worship the Mayor write to the Minister of Service Nova Scotia and Municipal Relations requesting that the Section 369 (1) of the *Municipal Government Act* be amended to require that HRM undertake a study of the number and boundaries of polling districts in 2010 and every eighth year thereafter.
2. Furthermore that copies of the letter be sent to all Members of the Legislative Assembly with constituencies within the Halifax Regional Municipality.

BACKGROUND

Section 369 (1) of the *Municipal Government Act* requires that HRM undertake a review of the polling district boundaries in 1999 and in the year 2006 for the 2008 election. HRM made application pursuant to this Section in 1999 which applied to the 2000 municipal election and as a result of the decision of the Board at that time, also carried out a study and made application again in 2003 with a decision being handed down in the spring of 2004 for the municipal election that Fall. Under the present legislation an application based on the findings of this review should be presented to the Nova Scotia Utility and Review Board (UARB) in 2006.

DISCUSSION

The principle behind the legislation is that polling district boundaries will be reviewed and altered if necessary for every second municipal election. HRM has now gone through this process two elections in a row and now faces the prospect of doing it again for a third consecutive election. The decision of the UARB of February 13, 2004 reconfigured most of the districts on the east side of the Halifax Harbour. A new district was added to the Clayton Park West area of Halifax. 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." The Board accepted the principle that districts with higher than average permits for residential buildings should have greater variances within the target range. For example the Board accepted the argument that proposed District L (later called Clayton Park West) could be below the acceptable variance due to the future growth indicated by the building permits.

In staff's opinion, major changes to 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 the citizens to have their polling district boundaries changed every election. These reviews, complete with the public processes, and applications are costly to undertake. In addition, there is the expense of preparing for an election based on the new boundaries.

Furthermore, 2006 is not the best time for HRM to carry out a detailed study as May 16 is Census Day. The detailed results of the National Census will not be available until the summer of 2007. These results would be useful in carrying out the study. However these will be received too late to form part of the 2006 review.

Most of the staff dealing with the district boundary review are members of the Planning and Development business unit. During 2006, they will be subjected to increased work demands because of the anticipated adoption of the Regional Plan. Therefore 2006 is not the best year from a resources perspective to carry out this district boundary study. The Municipal Clerk's office is also currently working at capacity. Based on past experience, the Clerk's office will require an additional half position to support the review process.

Currently under the legislation, all municipalities in Nova Scotia are required to make their applications respecting district boundary reviews to the UARB in the same year. The application from HRM would generally be the largest and most complicated of these reviews. It appears to staff that it could be useful to the Board in terms of managing its workload that HRM's application be handled in a different cycle than that applicable to the other municipalities.

While a change in the legislation would change the timing of the application, it would not mean that HRM would carry out its review and make its application any less frequently than any other municipality.

There is currently before the Board an application from the residents of Cherry Brook/Lake Loon to amend the boundaries of their district which was adjourned for hearing to 2006. Even if this request for a legislative change were to be approved, this application could proceed to be heard, even though, from a practical point of view, it is probably unlikely that their issues could be resolved through a minor amendment to the district boundaries (see Attachment A for Information Report of 23 April 2004).

BUDGET IMPLICATIONS

If the recommendation is accepted and the Province amends the *Municipal Government Act* there will be no budget implications for the upcoming fiscal year 2006-07. However, if a review is required in 2006-07 an estimated \$50,000 will be required and included in the Municipal Clerk's budget submission. These costs would not be expended if the recommendation is accepted. However, monies would have to be budgeted in 2010-11.

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 request for amendments to the *Municipal Government Act*. This is the staff recommendation.
2. Refuse to request the amendments to the *Municipal Government Act*. This is not recommended for the reasons outlined in the staff report. If this option is chosen staff will prepare a report recommending an approach to undertaking the required review of the polling district boundaries.

ATTACHMENTS

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

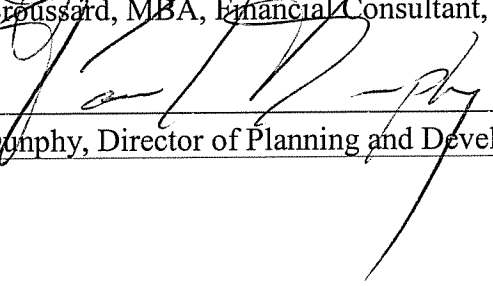
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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

Financial Review:


Joan Broussard, MBA, Financial Consultant, 490-6267

Report Approved by:


Paul Dunphy, Director of Planning and Development Services

Attachment A



P.O. Box 1749
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
