

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 12, 2017

CASE NO(S): MM170041

PROCEEDING COMMENCED UNDER subsection 222(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended

Appellant:	Brent Dalglish
Subject:	By-law No. BL 2017-35 (Ward Boundary) to amend the current ward boundaries from 3 wards with 2 councillors for each plus a mayor to an at large system with 5 councillors, a deputy mayor and a mayor
Municipality:	Municipality of Hastings Highlands
OMB Case No.:	MM170041
OMB File No.:	MM170041
OMB Case Name:	Dalglish v. Hastings Highlands (Municipality)

Heard: November 7 and 8, 2017 in Maynooth, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Brent Dalglish

Self-represented

Municipality of Hastings Highlands

Jennifer Savini* and Samantha Foster*

**DECISION DELIVERED BY HUGH S. WILKINS AND THOMAS HODGINS AND
ORDER OF THE BOARD**

INTRODUCTION

[1] This proceeding is an appeal brought to the Ontario Municipal Board (the “Board”) by Brent Dalglish (the “Appellant”) under s. 222(4) of the *Municipal Act* (the “Act”), objecting to the passage by the Council of the Municipality of Hastings Highlands (the “Municipality”) of By-law No. 2017-035 (the “By-law”), which dissolves the Municipality’s electoral ward boundaries. Under s. 222(1) of the Act, the Municipality has the authority to enact a by-law to divide or subdivide the Municipality into wards or to dissolve the existing wards. Any person may appeal to the Board (s. 222(4) of the Act) objecting to a ward boundaries by-law. After hearing the appeal, the Board may make an order affirming, amending or repealing the by-law under s. 222(7) of the Act.

[2] The existing wards are Bangor, Wicklow and McClure Ward to the north, Herschel Ward to the west and Monteagle Ward to the east. The By-law under appeal dissolves the boundaries of these existing three wards so that effective for the 2018 municipal election (as long as the By-law comes into force by January 1, 2018 pursuant to s. 222(8) of the Act), councillors will be elected on an at-large basis in the Municipality.

[3] In support of the By-law, the Municipality called two witnesses. Pat Pilgrim is the Chief Administrative Officer/Clerk for the Municipality. She gave fact evidence. It also called Dr. Gary Davidson. He was qualified by the Board to give opinion evidence in the area of “land use planning and political science on ward boundary revisions”.

[4] The Appellant testified on his own behalf.

[5] At a Pre-hearing Conference held on October 5, 2017, the Board granted participant status to 19 persons on consent. At the main hearing, the Board further granted Participant status on consent to Harold Harris, Bruce Davis, Nancy Matheson,

Vivian Bloom, Ann Judson, Roy Mitchell, Peter Shoemaker, Tracy Hagar and Gregg Roberts. The Participants made oral and written submissions at the main hearing. One Participant made his presentation by telephone. The main hearing was held in Maynooth on November 7 and 8, 2017 and included an evening session on November 7.

The Appeal

[6] The Appellant's position is that a ward system should be retained. In his appeal letter, he stated that the existing ward system, consisting of three wards represented by two councillors each and a mayor, has served residents well and that an at-large system as set out in the By-law (under which voters would elect five councillors, a mayor and a deputy mayor from across the Municipality), would risk causing residents from some areas in the Municipality to be poorly represented. The Appellant argued that the existing Bangor, Wicklow and McClure Ward has the greatest number of voters and has had the highest percentage of voter turnout. His position is that voters from this ward could dominate and determine the composition of Council under an at-large system. In other words, they could control and determine the composition of Council, resulting in "council capture". He submitted that a well-organized voting bloc could control the selection of candidates and that residents in some of the existing ward areas could end up with no local individuals on Council. He also stated that a ward system provides greater public accessibility and councillor accountability.

[7] The Appellant further stated that the Municipality is very large geographically with residents located throughout. He submitted that travel times across the Municipality can be long, which would make it difficult and costly for councillors representing constituents in an at-large system to effectively conduct municipal business and to meet with residents at their properties or at the location of an issue. He submitted that the ward system simplifies voting by reducing the number of candidates to choose from and that an at-large system would not work effectively in Hastings Highlands.

[8] It is the Appellant's position that the Council's process in approving the By-law was poorly timed and deficient and did not adequately engage the public or solicit and respond to public inputs. He raised concerns that future municipal amalgamations may take place and stated that the Municipality's residents would be better represented under a ward system when negotiating a possible future amalgamation. He submitted that residents of the less populated Monteagle Ward have not had advantages over others under the existing ward system and that if any change is needed, then a reduction from two councillors to one representing Monteagle Ward would be appropriate.

The Municipality's Ward Boundary Review Process

[9] The By-law was developed following a process that began in May 2016. At its Council meeting on May 4, 2016, Council received a delegation from a resident of the Municipality regarding the imbalance of eligible voters in each ward in the 2014 election with Bangor, Wicklow and McClure Ward having over twice the number of eligible voters of Monteagle Ward. Following this delegation, the Municipality initiated steps to consider the issue. It discussed the need for changes at its July 20, 2016 Council meeting, had municipal staff report on the options available to Council for addressing the issue (submitted to Council on November 2, 2016), held a Special Meeting of Council to discuss the issue and options for addressing it on November 23, 2016, and based on recommendations from staff, directed that inputs be solicited from the public by means of a publicly distributed questionnaire. On December 14, 2016, the Municipality received a petition, filed under s. 223 of the Act, requesting that the ward boundaries be altered. At its January 18 and February 22, 2017 meetings, Council received and discussed further reports from staff regarding the petition and the results of its efforts soliciting public inputs. It also provided further opportunities for the public to make submissions. In February 2017, Council retained Dr. Davidson and Beate Bowron as consultants to provide professional advice on the issue. On March 9, 2017,

it held a further Special Council Meeting with these consultants and provided further opportunities for public input.

[10] At the March 9, 2017 meeting, Dr. Davidson and Ms. Bowron presented four options for Council to consider:

- a. do nothing;
- b. reduce Monteagle Ward from being represented by two councillors to being represented by one;
- c. dissolve the ward boundaries and use an at-large system; or
- d. undertake a ward boundary review exercise with the purpose of setting new boundaries that achieve effective representation while continuing to use a ward system.

At that meeting, Council determined that Option 1 would not resolve the voter parity issue and that Option 4 could not be achieved for the 2018 election.

[11] On March 22, 2017, Council discussed and then passed a resolution to adopt an at-large system with a Council size of seven representatives, including a mayor, deputy mayor and five councillors, all elected at-large. On April 19, 2017, Council passed the By-law to that effect. Prior to the April 19 vote, the Municipality gave public notice of the upcoming vote in three local newspapers and also gave public notice of its outcome after that decision was made. In total, Council held 10 public meetings at which the issue was addressed.

The Applicable Law

[12] In *Re Provincial Electoral Boundaries (Sask.)*, [1991] 2 S.C.R 158 (“*Carter*”), the Supreme Court of Canada found that the purpose of the right to vote in s. 3 of the

Charter of Rights and Freedoms is to ensure effective representation. Regarding the conditions of effective representation, the Court stated at pages 183-4:

What are the conditions of effective representation? The first is relative parity of voting power. A system which dilutes one citizen's vote unduly as compared with another citizen's vote runs the risk of providing inadequate representation to the citizen whose vote is diluted. The legislative power of the citizen whose vote is diluted will be reduced, as may be access to and assistance from his or her representative. The result will be uneven and unfair representation. But parity of voting power, though of prime importance, is not the only factor to be taken into account in ensuring effective representation.

[13] The other factors enumerated by the Court that should be taken into account to ensure effective representation include geography, community history, and community interests. The Court found, at page 184, that these factors “may justify departure from absolute voter parity in the pursuit of more effective representation”. The Court’s findings on the conditions of effective representation in *Carter* have been applied consistently by the Board in ward boundary appeals.

[14] The Board must also consider whether it should interfere with a municipal council’s decision to divide, re-divide or dissolve its ward boundaries. In *Teno v. Lakeshore (Town)*, 2005 CarswellOnt 6386 (“*Teno*”), the Board found at para. 36, that there must be clear and compelling reasons to interfere in a municipal council’s decision on ward boundaries and that deference should be accorded to the decision of the council. The Board found that it should only interfere if it is demonstrated that council acted unfairly or unreasonably.

[15] Regarding issues related to the composition of a municipal council, in *Wagar v. London (City)*, 2006 CarswellOnt 1094, the Divisional Court found the Board’s jurisdiction is to adjudicate issues relating to ward boundaries and does not extend to addressing how many councillors should comprise a municipal council. It is within the discretion of a municipal council to address composition and to fix the number of councillors to be elected from each ward or for the municipality at-large.

EVIDENCE AND FINDINGS

Does the dissolution of the Municipality's Ward Boundaries achieve effective representation?

[16] There was agreement between the Parties that presently there is not voter parity across the Municipality's existing three wards. In the 2014 municipal election, the population of Bangor, Wicklow and McClure Ward was more than double that of Monteagle; but each ward was represented by the same number of councillors. Dr. Davidson testified that this imbalance is likely to increase in future elections as the population and number of voters in Bangor, Wicklow and McClure Ward are projected to increase, while those of Monteagle are not.

[17] The Appellant argued that the voter parity concerns that have been expressed to Council are theoretical in nature and that there is no evidence of Monteagle residents (with that ward's lower population and equal number of councillors) benefitting from the existing system by having their needs prioritized at Council. Noting that he was involved in the negotiations for the amalgamation of the former Townships of Bangor, Wicklow and McClure, Herschel, and Monteagle into Hastings Highlands, he stated that Monteagle residents only agreed to amalgamate, if they were guaranteed to have two councillors on Council. He argued that it is inappropriate for Council to now alter that set up.

[18] The Appellant argued that of the options before Council, an at-large system is the least desirable as it does not ensure effective representation. He said the Municipality consists of various local communities and there is a risk that some communities will not have local members elected to Council under an at-large system. As a result, their voices may not be heard at Council. In terms of the factors to be considered under *Carter*, he stated that the lake associations within the Municipality (consisting primarily of people who reside close to the Municipality's many lakes) constitute a community of

interest; but he did not elaborate on how they would be better protected under a ward system than an at-large system. He also stated that there are other communities of interest based on where residents receive services, such as banking, post office and shopping. He noted that the existing ward boundaries have been in place as Township boundaries for over 100 years and have historical significance.

[19] Many Participants opposed the By-law. Some argued that the ward system has worked for the past 17 years and it should not be changed. Others raised concerns that an at-large system could give an advantage to seasonal residents and result in council capture. Several Participants stated that due to the significant geographic size of the Municipality, an at-large system may result in people in outlying and remote areas and in the lesser populated Monteagle Ward being poorly represented. Some Participants argued that an at-large system may result in councillors all being from one local area and that there is no guarantee that an at-large system will provide effective representation or access to councillors. Others stressed the importance of local representation and the need for local councillors who understand and represent local concerns. Some Participants stressed that a condition of amalgamation was that residents of Monteagle Ward would be represented by two councillors and that this condition must be maintained. Others warned that the consequences of changing to an at-large system are simply unknown and are too risky to try.

[20] The Municipality's preferred approach, as expressed in the By-law, is to dissolve the existing ward boundaries and have residents vote for councillors at-large.

Dr. Davidson stated that the existing ward boundaries were drafted years ago without apparent consideration of geographic or natural boundaries and are outdated. He said the Municipality took a responsible approach by seeking both expert and public opinion on how to address the issue. Regarding the four options that he and Ms. Bowron presented to Council, Dr. Davidson stated that maintaining the *status quo* does not achieve effective representation. He said reducing the number of councillors representing Monteagle Ward would improve voter parity for the 2018 election, but

would likely need to be revised for future elections as the number of voters within each of the wards continues to change. He said the third option of dissolving the existing ward boundaries and using an at-large system would achieve effective representation and would continue to function in this manner into the future regardless of growth or decline. He said the fourth option of undertaking a ward boundary review would achieve effective representation for several years, but would be time consuming, expensive and not possible for completion for the 2018 election.

[21] Dr. Davidson stated that given the large geographic size of the Municipality, council capture under an at-large system would be unlikely. He said candidates tend to run for their own local geographic area within an at-large system. He opined that under the existing ward system, Monteagle Ward will not likely move into parity, but the larger wards will continue to grow and the voter parity imbalance will worsen with time. He said an at-large system will resolve the voter parity issue forever regardless of the different rates of growth in the Municipality and that it can be implemented for the 2018 election.

[22] Dr. Davidson opined that the use of an at-large system in the Municipality would meet the *Carter* criteria. Regarding the factors to consider, he said no identified communities of interest would be impacted by the use of an at-large system in the Municipality. He said there is a seasonal resident community of interest in the Municipality, but it is not geographically coherent and would not be adversely impacted by the implementation of an at-large system. Regarding the use of natural or man-made boundaries, he said that to re-align existing ward boundaries based on these lines would require significant study and re-surveying which would be time-consuming and expensive. Regarding community history issues, he noted that the existing ward boundaries have been in place for many years, but he did not believe that this was a reason to justify departing from efforts to achieve voter parity. He said the capacity of councillors to adequately represent constituents should also be considered. He said

this can be an issue in highly populated electoral districts, but that given the population size of the Municipality, it is not an issue here.

[23] The Municipality submitted that there is no evidence before the Board that an at-large system will adversely affect citizens' rights. It submitted that the only expert evidence before the Board is that the By-law improves effective representation and that the Appellant's onus to demonstrate otherwise has not been met. It submitted that there is no evidence before the Board of impacts to communities of interest or any evidence demonstrating that the other *Carter* factors should be applied to override the pursuit of voter parity.

[24] Participants in support of the By-law stressed the importance of ensuring that each vote has equal value. Several Participants submitted that councillors in an at-large system would represent all residents and would provide a long-term solution to the voter parity issue. Many stated that an at-large system would provide voters with more councillors to represent them and assist them on municipal issues, give them more candidate choices and empowerment, and ensure that the best candidates from throughout the Municipality are elected.

[25] The Board finds that Appellant and Participants in opposition to the By-law expressed concerns that were speculative and which could be described as the apprehension of a problem or problems with the quality and effectiveness of the representation that would result from an at-large system. The Board did not hear compelling evidence, examples or proof of such problems. Dr. Davidson, who has experience in this field, indicated that he is not aware of any research that links the availability of councillors to wards and that council capture is not likely.

[26] The Board finds that achieving effective representation is the primary goal of a ward boundary by-law. In the present case, the dissolution of the ward structure, reflected in the By-law achieves that goal. Of the options presented to Council and the

Board, the dissolution of the existing ward structure is the only option that achieves voter parity for the 2018 election and ensures the continuation of such parity over the long-term. The Board finds that issues concerning communities of interest, physical and natural boundaries, community history, and capacity to represent were addressed by Dr. Davidson who demonstrated that none of these factors justified the Board to depart from focusing on the achievement of voter parity in order to ensure effective representation.

Should the Board interfere with Council's decision to dissolve its ward boundaries?

[27] The Board has the authority under s. 222(7) to amend or repeal a ward boundary by-law, but it should exercise this power only in the clearest of cases. The Board has consistently found that there must be clear and compelling reasons for making an amendment or to repeal such a by-law.

[28] Much of the Appellant's focus was on whether the decision-making process undertaken by Council was fair. He submitted that Council's decision-making process was poorly timed and the issues and opportunities for public input were inadequately communicated to residents, making the process unfair to those opposing an at-large system. He stated that Council also ignored public feedback, which he asserts demonstrated a public preference for the continuation of the ward system. He submitted that most residents are opposed to an at-large system and that Council did the bare minimum to engage them. Only two Special Meetings of Council were held on the issue. He said the poor timing of the process during the winter months while seasonal residents were away prevented them from being aware of the process or engaging in it. He said that due to the significance of the matters at issue, from a moral point of view, Council should have "gone above and beyond what is necessary" under the Act to ensure adequate public input. He said steps could have been taken to make sure that everyone knew what was happening, such as by inserting a notice regarding the process in with property tax bills. He said less than 0.5 percent of electors attended

the Council meetings on the issue, noting that there was much more public engagement during the amalgamation process in 2000. He referred to a recent petition that he assisted in having signed (Exhibit 19) in which petitioners favoured retaining the ward system, inferring that if they had known of the process, most residents would have participated and opposed the at-large proposal.

[29] The Appellant submitted that the tools that Council used to solicit public input were flawed and unfair. He said Council's public questionnaire setting out the various options before Council misled respondents to believe that maintaining the *status quo* was a valid option. The Appellant also argued that further and more creative options to address the voter parity issue should have been explored by Council to determine the best way forward. In his closing submissions, he suggested alternative options, including a hybrid option combining ward representation with an at-large system or a weighted voting system, but he did not provide full details or evidence on these options.

[30] Many Participants agreed with the Appellant that the timing of Council's decision-making process over the winter months excluded seasonal residents from participating or made it more difficult for them to participate. Several Participants submitted that there should have been more opportunities to provide inputs during the summer months when more seasonal residents are there. Many stated that there was inadequate public awareness of the issue, too few opportunities to provide public inputs, and, in the end, Council did not follow the preferences expressed by the public.

[31] The Municipality argued that Council adequately consulted with the public, it retained an expert, it discussed the options, and it passed the By-law. It stated that there are no statutory requirements for public consultation or notice before a ward boundary by-law is passed by a municipal council, but that the Council did both of these things. The Municipality submitted that the Board's role is to determine whether Council's decision was appropriate on a standard of reasonableness and that the

Appellant has not established a basis for the Board to interfere with Council's decision. It submitted that the ward boundaries were dissolved following a fair process.

[32] Based on the evidence before it, the Board finds that a proper process was undertaken by Council when making its decision to pass the By-law. The Board notes that there are no statutory provisions requiring that a specific process be followed or public notice be given before a by-law is passed; however, the process must be fair. The Municipality made significant efforts to raise public awareness and engage the public on the issue. It held 10 public meetings addressing the issue, including two Special Meetings of Council focusing on the matter. Although only one Council meeting was held during a summer month, the Board finds that it would be unreasonable for it to find that certain municipal decisions must be discussed during the summer when seasonal residents may be more widely available. This is particularly so on matters such as those in dispute where there are statutory requirements necessitating that certain actions be taken within a set timeframe, including responding to a petition under s. 223 of the Act (which requires Council to respond within 90 days of receipt), or having a system in place before January first of an election year under s. 222(8) of the Act. A municipality's business is ongoing and continuous and must necessarily be conducted on a year-round basis. The Board further finds that it would be unreasonable for it to find that certain matters must be communicated to residents in specific ways, such as by inserting notices with property tax bills, particularly when there are no statutory requirements prescribing notice of a pending municipal decision or public engagement on these issues.

[33] In the present case, fewer residents participated in the decision-making process than some people would have liked. However, the Board finds that this does not make the process unfair. The Board finds that the Municipality made reasonable and sufficient efforts to generate public awareness and to solicit public inputs, including through the circulation of a public questionnaire, the holding of two Special Meetings on the matter, and publication of notice of the Council meeting at which the By-law was to

be considered for adoption. The Board notes that there are concerns regarding the options listed in the questionnaire, but agrees with the evidence of Dr. Davidson that although the *status quo* was not a very good option, it was still one that was available, particularly if it could have been demonstrated that such a course was justified based on the factors set out in *Carter*.

[34] The Board further notes that voter preference is not a factor for consideration under *Carter*. This is reiterated in *Teno*, at para. 30, where the Board found that public support is not a criterion for assessing ward boundaries. A fair process does not require that public inputs be followed by Council. There was no evidence before the Board that Council timed or structured its decision-making process in a way that unduly prejudiced people on one side of the issue or another.

[35] Based on the evidence before it, the Board finds that there are no clear and compelling reasons to interfere with the decision of Council. The Board finds that several options were considered by Council, opportunities for public inputs were given, and professional advice was sought and provided and, given the uncontested expert evidence before the Board that the By-law will achieve effective representation, the Board finds that the decision of Council was reasonable.

Conclusions

[36] The Board finds that the dissolution of the ward structure as set out in the By-law provides for effective representation. The decision made by Council to adopt the By-law was fair and reasonable. The fact that there may be other options is not a basis for the Board to interfere with the structure that the duly elected Council has determined is best for the Municipality.

ORDER

[37] The Board orders that the appeal is dismissed and By-law No. 2017-035 dissolving the Municipality's ward boundaries is approved.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

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Ontario Municipal Board

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