

ISSUE DATE:

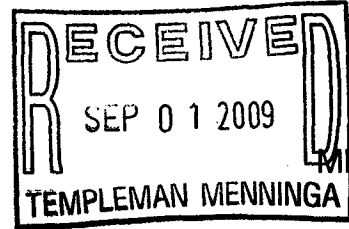
Aug. 28, 2009



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario



MM090016

IN THE MATTER OF subsection 223(4) of the *Municipal Act*, S.O. 2001, c. 25

Application by: Jim McPherson and Lyle McBurney
Subject: Application to restructure the existing ward structure
Municipality: County of Prince Edward
OMB Case No.: MM090016
OMB File No.: MM090016

APPEARANCES:

Parties

Counsel*/Agent

County of Prince Edward

W. Fairbrother*

Jim McPherson, Lyle McBurney

John Legate

DECISION DELIVERED BY K. J. HUSSEY AND PROCEDURAL ORDER OF THE BOARD

This pre-hearing conference deals with preliminary and procedural matters for the hearing of the appeal brought by Jim McPherson and Lyle McBurney pursuant to subsection 223(4) of the *Municipal Act*, from failure of Council of the County of Prince Edward for not passing a by-law within 90 days of receiving a petition to have the municipality re-divided into wards in accordance with the petition.

The Parties

The parties are as identified above.

The Participants

The following persons requested and were granted participant status:

John M. Hill

Paul Lang

Ian Inrig

Peter Sztuke

Monica Alyea

Hugh Sonnenberg

Ron Norton

The Issues

The parties have each submitted a list of issues to be determined at the hearing. These lists are appended hereto as Attachments "1" and "2".

The Witnesses

Mr. Legate, on behalf of the Appellants, informed the Board that the Appellants would be calling fifteen witnesses. The County intends to call four witnesses.

Other Matters

Council for the County requested the Board to set aside a date for hearing a motion, prior to the hearing. The Board has set aside September 16 and 17, 2009 for hearing the motion.

The Appellants have indicated a desire for mediation. If both parties agree and if mediation is deemed to be appropriate, the dates set aside for the motion may be used instead for conducting the mediation. The parties are directed to contact the Board as early as possible for a mediation assessment to be scheduled.

ATTACHMENT "1"

ISSUES LIST

CORPORATION OF THE COUNTY OF PRINCE EDWARD

Is the appeal premature?

Should the decision of Council of the Corporation of the County of Prince Edward to seek a determination from the electorate next fall as to whether or not there is significant support for change to the ward boundaries be given deference and allowed to be carried out?

Is there a need for change to the existing Ward boundaries?

Is there clear evidence of a significant groundswell of public support for the change to the existing Ward boundaries proposed by the Petitioners?

Does the petitioners' proposal for six wards result in "effective representation"?

Does the existing ward system in the County of Prince Edward constitute "effective representation"?

Have the Petitioners adequately consulted with the public?

Have the Petitioners adequately and fully informed the public in general [and those signing the petition in specific] as to the exact nature of their proposed Ward boundary adjustments?

Is the Petitioners' proposal for new Ward boundaries sufficiently clear and certain?

Is the Petitioners' proposal to have the municipal planning staff make the final adjustments to the boundaries an inappropriate delegation of authority?

If the County is to be divided into six wards for the election to be held in 2010, is there sufficient time to adjust the Council size before January 2010?

If there is not sufficient time and the County is to be divided into six wards for the election to be held in 2010 with the same Council size, how will the 15 members of Council be divided among the six wards? Will this result in "effective representation"?

If there is a demonstrated need for change for either or both Ward boundaries and Council size, is it more appropriate to deal with the issue of Ward boundary adjustments and Council size contemporaneously pursuant to a detailed, open public process?

ATTACHMENT "2"

12 Issues Identified by Appellants:

1. In its 1991 Carter Decision, the Supreme Court of Canada (SCC) defined "effective representation" and set standards to ensure voters do not have their vote unfairly diluted to the point where equitable and effective representation cannot be achieved. Justice Beverley McLachlin (now Chief Justice of Canada) then wrote "Voting is far too important and precious a right to be unreasonably and unnecessarily diluted."
2. SCC also identified in its Carter Decision the need to be cognisant of equality from the perspective of costs to candidates for campaigning and servicing constituents. The current County ward structure makes this a serious issue.
3. OMB has relied heavily on the Carter Decision standards of fairness (e.g. Ottawa, London, Blind River, Niagara Falls, Twp. of North Grenville).
4. Several other Ontario municipalities use these SCC standards to plan corrections of inequities in their own electoral structures.
5. However during negotiations leading to our 1998 P.E.County amalgamation, some towns, villages or townships feared loss of identity, and so established a structure wherein eight of ten wards fail to meet SCC standards of fairness.
6. We need to restore equitable voting by Dec. 31, 2009 for the 2010 election.
7. Repeatedly since amalgamation, councillors concerned about the flawed ward structure have moved to revisit the issue, but their motions were defeated.
8. Furthermore all councils since 1998 have failed to seek public input concerning council size/structure, or fairness of representation.
9. In January 2009, after debates requiring 6 ad-hoc committee meetings and 3 committee-of-the-whole meetings, council decided, without public input, to discontinue its review of ward and council structure, and to "let the people decide" in a ballot question in 2010. (On August 13th 2009 it proposed that the ballot question seek voter support to retain existing ward boundaries!)
10. In March 2009, faced with a further 5 1/2 years of inequity, the appellants submitted a petition to council, and 90 days later filed this appeal to OMB.
11. Although many citizens (and some councillors) believe the issue is both unfair representation and inordinate council size, this appeal is for **fairness**. Until there has been public consultation, we recommend only minimal ward boundary changes now, to correct inequities before 2010. Council would then have many options from which, in consultation with the public, it could choose a council size and structure to fit a more equitable ward structure.
12. To date the cost of this action has been borne by the appellants. The failure of the municipality to act in accordance with SCC standards should not result in a cost to citizens who seek a fair voting structure.

Hearing Date

The parties have requested that ten days be set aside for this hearing. The hearing is fixed to begin on Monday, November 16 at 10:30 a.m. at Council Chambers, County Building, 332 Main Street, Picton, Prince Edward County, Ontario K0K 2T0.

There will be no further notice.

This member is not seized.

So orders the Board

"K. J. Hussey"

K. J. HUSSEY
MEMBER