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For release: January 19, 2010

## NEWS RELEASE

### **Council Responds to OMB Decision on Ward Boundary Hearing**

Picton ON – At its January 12, 2010 meeting, Prince Edward County Council formally received the Ontario Municipal Board Decision to dismiss the appeal of Lyle McBurney and Jim McPherson to change ward boundaries. After a lengthy debate on the pros and cons of attempting to recover the municipality's costs for the hearing, Council chose not to seek costs from the Appellants in this case. The motion did serve notice that the decision in no way binds Council from taking a far less lenient approach in the event that any further inappropriate attempts are made to interfere with or delay the course of adding a question to the ballot.

The lengthy and complex hearing involved many witnesses and an extensive amount of documentary evidence. The Appellants called seven witnesses. The County called four witnesses, including one independent expert witness. The cost, to be borne by taxpayers in defending this appeal, is \$118,097.88. The expenses included preparing for and attending a pre-hearing in August, a one-day hearing in September on a motion of the Appellants which the OMB dismissed, and the nine-day hearing in November including many days/weeks of preparing to respond to the numerous allegations raised by the Appellants.

"This entire exercise was seen by many as a pointless waste of time and the decision not to go for costs was not taken lightly. A request for costs would likely cost us more than we would recover as we are told the OMB rarely awards significant costs against citizens." said Mayor Leo P. Finnegan. "In the end, we are calling a halt to expending any further taxpayer dollars on this appeal. We will hear from the citizens at the polls if they wish to change the ward boundaries and, if so, we will do it with full public involvement and consultation, not by an ultimatum from two people."

In making its decision on seeking costs, Council took into consideration the following facts:

- The Appellants clearly stated they wanted a decision for the 2010 election.
- In August 2009, when the hearing date was set for November, the Appellants would have known the appeal could not be successful as a decision would have been needed well before the end of December to be in effect for the 2010 election.
- In October, the County Solicitor, the Mayor and Clerk met with the appellants and submitted a suggestion for settlement that would have avoided the need for and cost of a hearing. At that time the Appellants were told that their interpretation of the law, particularly a Supreme Court decision upon which they were heavily relying, was not correct. They would not accept the County's proposal or advice.
- Early in the hearing, the OMB Chair advised the Appellants that their interpretation of the law, on which they were basing their case, was not correct. The Chair advised them to seek legal advice and produce evidence to support their position. They did not provide the requested legal advice or evidence.
- Throughout the hearing, the Appellants did not submit evidence to support their case and in fact many of their own witnesses did not support their proposed six ward system.
- The Board's rules identify the reasons where costs could be awarded as appellants acting in such a manner that could be interpreted as unreasonable, vexatious or frivolous.
- There was ample evidence that the Appellants had, in this case, acted unreasonably but not that they were vexatious or frivolous.
- Should the County seek costs, it would result in a further hearing, incur legal and other expenses and prolong an issue which already has caused dissention and polarization in the community, significant disruption to County business and extraordinary costs to the taxpayer.
- Unlike the Courts, the OMB is reluctant to make a substantial award of costs against citizens as it could be seen as impairing the public right to appeal a decision of Council.

The appeal sought to change the current ten ward system to six wards. Council had decided to gauge public opinion on the desire for change by placing a question on the ballot for the 2010 municipal election. That process will now continue and a public meeting will be held to get public input on the question on the ballot.

The Council resolution on this matter is attached. The decision of the Ontario Municipal Board is available on the County website at [www.pecounty.on.ca](http://www.pecounty.on.ca).

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For more information, contact Mayor Leo P. Finnegan at 613-476-2148.

**Resolution of Council  
From its meeting of  
January 12, 2010**

WHEREAS a party to an Ontario Municipal Board hearing may seek an award of costs for the hearing pursuant to Rule 96 of the Ontario Municipal Board's Rules of Practice and Procedure; and

WHEREAS in the November 2009 OMB hearing regarding ward boundaries, the County reserved the right to seek to recover its costs from the Appellants; and

WHEREAS the decision of the OMB dated December 24, 2009 dismissed the appeal of the Appellants; and

WHEREAS County taxpayers incurred expenses of \$118,097.88 plus staff time related to preparing for and attending the nine-day hearing and all preliminary proceedings; and

WHEREAS a review of the OMB's Rules of Practice and Procedure indicates that there are grounds for seeking the recovery of costs; and

WHEREAS bringing a motion to seek costs from the Appellants would result in a further one day hearing [or longer] and further legal costs and staff time; and

WHEREAS Council, after much debate, has determined that seeking costs would perpetuate the proceedings and expenses to taxpayers; and

WHEREAS Council wishes to continue with the process authorized to place a question on the ballot;

THEREFORE BE IT RESOLVED THAT the County Solicitor be directed not to bring a motion before the Ontario Municipal Board seeking an award of costs against the Appellants, Lyle McBurney and Jim McPherson, for the hearing and all preliminary proceedings related to the ward boundaries appeal but that such direction is without prejudice to any future actions that Council may take in defending its process.