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Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

MM130067

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

Application by: Lana Calder, Gregory Seguin, Dave Lounsbury
Subject: Application to dissolve the existing wards
Municipality: Municipality of Killarney
OMB Case No.: MM130067
OMB File No.: MM130067

APPEARANCES:

Parties

Counsel*/Agent

Municipality of Killarney

Stephen Watt*

Lana Calder
Gregory Seguin
David Lounsbury

Lisa Pietrow

DECISION DELIVERED BY J.E. SNIEZEK AND ORDER OF THE BOARD

INTRODUCTION

[1] Lana Calder, Gregory Seguin and David Lounsbury filed a petition to dissolve the existing wards in the Municipality of Killarney ("Municipality") in order to convert from a ward system to an at-large system for the election of council. The petition was reviewed by the Municipality and an Ad Hoc Committee Report recommended changing the representation from three councillors for Ward 1 and one councillor for Ward 2 to three councillors for Ward 1 and two councillors for Ward 2. The petitioners appealed council's refusal of the petition to the Ontario Municipal Board ("Board").

[2] The Board received verbal and written submissions in support and in opposition to the petitioners' position. The Board will review the evidence of all the parties, review the law and come to its findings and conclusions.

THE REVIEW OF THE EVIDENCE

[3] The Board received form letters of support for the council's position signed and sent by the following:

- Elaine and Leo Ouimette of Hartley Bay Road
- Art and Brenda Barefoot of Hartley Bay Road
- Shirley Young of Island 25
- Ed and Yvonne Lacasse of Hartley Bay Road
- Virginia and Jim Rook of Hartley Bay Road
- K. Hollos of Allen Island
- Mary Antonioli of Hartley Bay-Father's Point
- Michael and Jean Richards of French River

[4] The Board heard testimony from the following:

- Julie Solomon, under summons from the petitioners, member of the Ad Hoc Committee and a municipal employee, testified how the members of the Ad Hoc Committee worked on the report. The members of the committee all contributed to the report in various ways. She reviewed the supporting documentation for the recommendation for Option 7:
 - Ward 1 - three councillors ratio of one councillor/261 electors (783/3)
 - Ward 2 - two councillors resulted in a ratio of 271 electors/councillor (541/2)a variance of 4%.
- Peter Turkstra, fishing lodge owner from the Key River area, expressed his frustration with the actions of council and expressed support for the petitioners' position.

- Rosemarie Roque, a former member of council, expressed her frustration with the isolated ratepayers' lack of understanding of the expenditures that had been made in seasonal residential areas. She pointed to recent road expenditure that amounted to 57% of the municipal budget but Ward 2 only accounted for 37.5% of the assessment. She said that the 3/2 councillor split effectively equalized the voting power. She wanted the petitioners to pay the costs incurred because she felt that their appeal was vexatious and without merit. In cross examination, Ms. Roque pointed to the fact that the Municipality had instituted a mail ballot to facilitate the participation of seasonal property owners.
- Paul Hodgkinson of Tyson Lake expressed his support for the position of the petitioners. He noted that his taxes had increased from \$27/year to \$1600/year with no increase in service. He felt taxation levels for seasonal residents were unfair.
- Sue Cardy had written letters to council and felt that there was a great deal of anger and misrepresentation. She said service levels in the rural area were different and that the report of the Ad Hoc Committee was fair and balanced.
- Richard Sequin, a resident of Hartley Bay Road, reviewed the evolution of the isolated ratepayers group and their previous actions related to a return to the original ward boundaries and the creation of a separate ward for the "lakes" area.
- Maurice East, local business owner and former councillor, expressed the view that the Ad Hoc Committee best represent the feelings of the community. He commented that the amalgamation was ill-conceived. The proposed system represents parity and equity and was developed in the best spirit and intentions and that he endorsed it.
- Greg Seguin, one of the petitioners and one of the appellants, lives in Sudbury and owns a cottage on Tyson Lake. He is a project manager and has post graduate training. He researched the issue of effective representation. The proposed system is unfair and unreasonable. The at-large system provides undiluted voting power. He reviewed the evolution of

the ward boundaries and the “lakes” area was removed from Ward 2 and that the split between the wards where two councillors represented Ward 2 and three councillors represented Ward 1 mean that the interests of Ward 2 will never overcome the interests of Ward 1. The at-large system evens the playing field.

- Candy Beauvais, the Clerk/Treasurer of the Municipality, presented the history of the municipal organization and amalgamation with the ward boundaries and the allocation of councillors to the various wards. She reviewed the work of the Ad Hoc Committee. She stated that the process of the Ad Hoc Committee was open and transparent and that the single Ward 2 and one councillor from Ward 1 had voted against the realignment. The benchmark was fair and effective representation and that was what had been accomplished.
- Dr. Mary Powell, a political scientist from Laurentian University, proffered her opinions in support of the realigned councillor system and the at-large system proposed by the petitioners. She agreed that the former alignment of one councillor from Ward 2 and three councillors from Ward 1 was unfair and required correction. The realignment of the number of councillors corrected the deficiency. She noted that the petitioners’ analysis of the voting blocks requires unanimity of each group of councillors and that usually was not the case. The at-large system creates a mayor and the other councillors who are practically the mayor and it does not deal with the divisions of the permanent and seasonal residents. The only difficulty with the proposed system is the fact that council and the mayor will total six members and that creates the potential for tie votes. She noted that seasonal residents are the majority in both Ward 1 and Ward 2.

The Chronology

[5] Appendix A: Chronology of Events and Supporting Documents (Exhibit 2)

- January 1, 1999: The former Township of Rutherford & George Island amalgamation took effect annexing 14 unorganized townships (Document 1).
- January 1, 2001: The Municipality of Killarney annexed a number of islands from the Town of

Northeastern Manitoulin and the Islands (NEMI) as part of the NEMI restructuring order (Document 2).

- July 13th, 2005: In 2005, there was a realignment of the ward boundaries which extended the limits of Ward 1 to include properties located on the Highway 637 corridor which were aligned with Ward 2. This realignment was conducted in order that the constituents could be serviced better by the Ward 1 council representatives and further this realignment provided for a more equitable representation of ratepayer per Ward (Document 3).
- October 16th, 2012: Received petition with 127 signatures requesting that Council return the wards to their original state. The petition states: Whereas the passing of this resolution rendered the ratepayers of Ward 2 and the isolated ratepayers of Attlee, Carlyle, Johnny, and Tyson Lakes to be powerless and whereas taxpayers in these locations were not informed of motion regarding realignment we the undersigned petition the Council of the Municipality of Killarney as follows: We ask council to rescind bylaw 2005-22 passed in council July 13th, 2005, and return the wards to their state prior to the passing of said motion (Document 4).
- December 12th, 2012: Petition of October 2012 was addressed. A Council resolution was passed defeating the request to return the wards to their original state (Document 5).
- December 22nd, 2012: There was an appeal made to the Ontario Municipal Boards (OMB) claiming the present ward system and Council representation is unfair (Document 6).
- March 15th, 2013: Received requests from ratepayers to investigate the feasibility of eliminating the Ward System and creating a Councillor-At-Large System (Document 7).
- April 10, 2013: Council passed Resolution #13-140 to create an Ad Hoc Committee to study the possibility of changes in the municipal structure (Document 8).
- June 1st, 2013: The Ad Hoc Committee met at 1:00 pm at the French River Inn in Alban Ontario with the three ratepayers who filed the Ontario Municipal Board (OMB) Appeal.
- June 1st, 2013: Following the above meeting, the Ad Hoc Committee held a Public Input Meeting with ratepayers in Ward 2 at 2:00 pm at the French River Visitor Centre (Document 9).
- June 1st, 2013: Petition received by the Ad Hoc Committee with 214 signatures. The petition was submitted by three ratepayers and states: "We specifically request that Council bring forward and pass the appropriate by-law to dissolve the existing Wards under subsection 223 (1) of the Municipal Act at its earliest opportunity. We further request that council bring forward and pass the appropriate by-law to implement the electoral system of council at large. Thank you for providing the undersigned electors the opportunity to present their petition" (Document 10).
- June 4th, 2013: The Ad Hoc Committee held a Public Input Meeting with ratepayers in Ward 1 at 7:00 pm at the Veteran's Memorial Hall (Document 11).
- June 12th, 2013: Acknowledge receipt of petition requesting Council to dissolve the current ward system and adopt the councillor-at-large system (Document 12).
- June 20th, 2013: Petition received by the Ad Hoc Committee with 224 signatures. The petition was

submitted by one ratepayer and states: "WHEREAS we believe that due to their geographical distance, Wards 1 and 2 of the Municipality of Killarney form two distinct communities each of which are better served by representatives familiar with and residing within that respective area;

AND WHEREAS we believe that the existing structure of the wards is a natural division due to the unorganized territory which lies between the two wards;

NOW THEREFORE we, the undersigned, hereby petition Council to retain the existing ward structure but revise the councillor representation to provide that each ward elect two councillors with the Mayor elected at large. We believe that this structure will provide efficient and equitable representation of all ratepayers of the Municipality of Killarney in accordance with democratic principles" (Document 13).

- June 21st, 2013 A cancellation meeting notice was sent to ratepayers due to all responses received to date. The Ad Hoc Committee's report requires additional investigation and will not be ready for presentation in June. A notice of submission deadline was also sent to ratepayers (Document 14).
- June 25th, 2013 A notice was sent by the Ad Hoc Committee informing the ratepayers of the reason why the report submission has been postponed (Document 15).
- July 10th, 2013: Acknowledge receipt of petition requesting Council retain the existing ward structure but revise the Councillor representation to provide that each ward elect 2 Councillors with the Mayor elected-at-large (Document 16).
- August 6th, 2013: The Ad Hoc Committee held a Public meeting at 6:30 pm with ratepayers in Ward 2 at the French River Visitor Centre to present their draft Report (Document 17).
- August 7th, 2013: The Ad Hoc Committee held a Public meeting at 6:30 pm with ratepayers in Ward 1 at the Veteran's Memorial Hall to present their draft Report (Document 18).

CASE LAW SUMMARIES FOR MUNICIPAL WARD BOUNDARIES

[6] The case law on municipal ward boundaries can be categorized into two classes: court cases and Board cases. The Board cases can be further classified as by-law cases where the Municipality initiates the change and petition cases where a group of citizens initiates the change.

Court Cases

[7] The Board was presented with the seminal case on electoral boundaries and voting rights, the Supreme Court of Canada decision on Reference Re: Provincial Electoral Boundaries (Sask.) (1991 S.C.J. No. 46), known as the Carter case. Justice McLachlan outlined the electoral boundaries question in terms of a Charter challenge

that votes were not to be measured in terms of equality but in terms of effective representation, and that relative voter parity could justify electoral district imbalances of up to 25%. Factors to be considered in creating these imbalances were geography, community history, community of interests and minority interests may need to be taken into consideration in order for legislative assemblies to effectively represent the diversity of our social mosaic. This case has been referred to a number of times in recent Board cases and can be considered the gold standard against which the divisions of electoral boundaries are measured.

Board Cases

[8] The Board was presented with two Board cases Teno v. Lakeshore (Town), [2005], O.M.B.D. No. 1245 and Dingwall v. Kearney (Town), [2009] O.M.B.D. No. 874 (“Dingwall and Sainsbury v. Kearney (Town)”) – Board No. MM080065.

[9] In the case of Teno v. Lakeshore (Town) [2005], O.M.B.D. No. 1245 (a petition case), at Exhibit 4A, Tab 9 Member Rogers stated a key finding when the Board review petition cases:

The Board agrees that this Board does prefer local solutions. However, the Board must assume that there is a reason the legislation provides for an application to this Board when a petition to redivide electoral boundaries is not acted on by the municipality. The legislation anticipates that the various positions of the interested parties can be presented to the Board and that the Board can make a decision that ensures that any decision on electoral boundaries that is made, is made in accordance with the principles set down by the Supreme Court, in interpreting the Charter of Rights. Anything else would be a derogation of the Board's duties in this regard.

[10] In the case of Dingwall and Sainsbury v. Kearney (Town) the facts are completely different and the Board's conclusion is supported by a continuing voter disparity that was not addressed by council.

[11] In the case of Dingwall and Sainsbury v. Kearney (Town) at Exhibit 4A, Tab 8 then Member S. B. Campbell stated:

The Board accepts the evidence of Mr. Dingwall, one of the Applicants, and Chair of the Committee, that the Committee worked with determination on the issue before them. Public input was invited and received; consensus was sought and eventually reached. The Mayor remained a member of the Committee throughout its work, although his attendance at meetings was inconsistent. On September 3, 2008 the Committee, after what this Board can only characterize as thorough, transparent and thoughtful work, voted 5 to 1 to “recommend to Council that they replace the present electoral Ward

system with an at large electoral system". The Mayor voted in favour of this resolution (Exhibit # 5, TAB 22).

...

The result of the September 11, 2008 Council meeting is found in the very brief minutes of Council from the meeting (Exhibit # 5, TAB 30). After Mr. Dingwall reviewed the Committee's work and presented its recommendation, Council, with no questions, debate or discussion, by a vote of 4 to 1 adopted a resolution to refuse the Committee's recommendation. The Board notes that the Mayor, who had voted in Committee in favour of recommending dissolution of the wards now voted against it.

...

The Applicants have done everything possible to examine the issue of ward boundaries and appropriate representation for electors in the Town. In the course of preparing for this hearing the Applicants sought and reflected the views of the public. These views were consistently expressed, both for and against dissolution of the ward system through the work of the Committee and then the work of the Applicants. The Applicants have also gone to the trouble of retaining Dr. Robert Williams, an expert on Ontario municipal government and electoral politics, to provide the Board with valuable evidence on the issue before it.

The Board must contrast this with the effort made by the Town before this Board. Town Council which established the Committee was under no obligation to accept the Committee's recommendation. Council must always retain its legislative function. However, the fact that the Committee's work was rejected by Council without so much as a moment's discussion or debate, after the Mayor and Councillors were involved in the Committee's work and recommendation does not bear close scrutiny.

...

The at-large electoral system which would replace the ward system is, on the evidence, the system preferred by municipalities with similar characteristics to the Town and in geographical proximity to the Town. The Applicants drew the Board's attention to Exhibit # 5, TAB 39, the 2006 Election Results of the Amalguin Region (in which the Town is located). The region is comprised of 19 municipalities; only Kearney has a ward system. Dr. Williams noted in his witness statement that all other Amalguin municipalities had abandoned the ward system in favour of at-large elections.

FINDINGS

[12] The cases indicate that the Board prefers local solutions and the Board appears to have one here. The revision to the number of councillors in Ward 2 improves the ratio of electors to councillors and provides relative voter parity. The Board agrees with the petitioners, Dr. Powell and the members of the Ad Hoc Committee that the previous system of having one councillor representing the interests of Ward 2 was unfair.

[13] In the case of Dingwall and Sainsbury v. Kearney (Town), the town failed to adjust the ratio of the number of councillors and had a recommendation from the Ad Hoc Committee to implement an at-large system in a local area dominated by at-large systems.

[14] Here we have a council that prepared a report that considered all the options and recommended a realignment of the number of councillors in Ward 2 (increasing the number from one to two). The Board heard testimony to the effect that surrounding municipalities all use the ward system much different from Kearney case where all the neighbouring municipalities used at-large systems.

[15] There appears to have been some political baggage that the isolated ratepayers brought to the table that clouded their objectivity in looking at the realignment option. Their focus on the process of the formation of and the members of the Ad Hoc Committee rather than the recommendations and the relative equity of the recommended proposal may have resulted from past political battles on other issues and may have resulted in a less than objective view of the results.

[16] The Board finds that the at-large system does not provide a sufficiently different solution in terms of voter parity than that proposed by the Municipality and fits within the context of the local ward election systems in the surrounding area.

[17] The clear and compelling reasons are not present for the Board to change the electoral system of the municipal council of the Municipality of Killarney.

ORDER

[18] The Board orders that the appeal of the petition to dissolve the wards in the Municipality of Killarney is dismissed.

“J.E. Sniezek”

J.E. SNIEZEK
MEMBER