

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPLICATION by the **MUNICIPALITY OF THE DISTRICT OF CLARE** to confirm the number of councillors and to alter the boundaries of polling districts

BEFORE: Roland A. Deveau, K.C., Vice Chair

APPLICANT: **MUNICIPALITY OF THE DISTRICT OF CLARE**
Stéphane Cyr, Chief Administrative Officer

HEARING DATE: May 18, 2023

UNDERTAKING FILED: July 18, 2023

DECISION DATE: **October 16, 2023**

DECISION: **Application approved, as amended.**

Erratum:

[1] In paragraph [2], the word “alter” is amended to “confirm” and the words “approves the proposed changes to” are amended to “confirms”. The remainder of paragraph [2] remains unchanged.

ERRATUM DATED: January 25, 2024

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I SUMMARY

[1] The *Municipal Government Act* requires every municipal council to conduct a study and apply to the Nova Scotia Utility and Review Board to confirm or alter the number of councillors and the boundaries of the polling districts.

[2] The Municipality of the District of Clare applied to confirm the number of councillors and to alter the boundaries of the polling districts. The Board approves the application and sets the number of councillors and polling districts at eight and approves the proposed changes to the polling district boundaries.

II BACKGROUND

[3] The *Municipal Government Act*, S.N.S. 1998, c. 18, requires every municipal council to conduct a study and apply to the Nova Scotia Utility and Review Board to confirm or alter the number of councillors and the boundaries of the polling districts. Section 369 states:

369 (1) In the year 1999, and in the years 2006 and every eighth year thereafter the council shall conduct a study of the number and boundaries of polling districts in the municipality, their fairness and reasonableness and the number of councillors.

(2) After the study is completed, and before the end of the year in which the study was conducted, the council shall apply to the Board to confirm or to alter the number and boundaries of polling districts and the number of councillors.

[4] The Municipality of the District of Clare (Municipality) applied to the Board to confirm the present number of councillors at eight and to alter the boundaries of the polling districts.

[5] The Notice of Hearing was advertised in the Le Courier on March 10, 2023, and The Clare Shopper on March 23, 2023. The Notice invited members of the public to provide written comments to the Board before the hearing, or to request to speak at the

public hearing. The Board did not receive any objections, letters of support, or requests to speak. The hearing was held at Municipal Council Chambers at Clare, Nova Scotia, on May 18, 2023. No councillors or members of the public were present during the hearing.

[6] Stéphane Cyr, Chief Administrative Officer, presented the application for the Municipality. He was accompanied by Derek Robertson, of C&D Community Design, a planning consulting firm engaged by the Municipality to conduct the municipal boundary review, including the public consultation.

[7] There are presently eight councillors elected from eight polling districts. The population of the Municipality according to the 2021 Census is 7,678, a reduction since the 2016 Census.

[8] The Municipality's last municipal boundary review was conducted at the Board's direction in 2018. At that time, the Municipality engaged Stantec Consulting Inc. to conduct the study, including the public consultation. The Board approved the Municipality's application to adopt Stantec's recommendations to maintain the number of councillors at eight and to amend the boundaries of the polling districts [2018 NSUARB 138]. These polling district boundaries were used in the October 2020 Municipal election.

[9] Table 1 sets out the number of eligible electors in each polling district in the last municipal election held in 2020:

[Remainder of page left blank intentionally]

Table 1 Polling Districts			
Polling District	Number of Electors	Variation from Avg. Number of Electors	
		#	%
1	944	75	8.74
2	791	-78	-8.9
3	876	7	0.91
4	772	-97	-11.1
5	944	75	8.74
6	845	-24	-2.65
7	876	7	0.91
8	897	29	3.33

Total number of electors: 6,945
 Number of councillors: 8
 Average number of electors per councillor: 869

[10] Table 2 gives some of the statistical information which was included in the application. This Table sets out the estimated number of eligible electors in each polling district, based on the eight polling districts proposed in the application:

Table 2 Proposed Polling Districts			
Polling District	Proposed Electors	Variation from Avg. Number of Electors	
		#	%
1	888	19	2.1
2	822	-47	-5.4
3	947	78	9.0
4	903	34	3.9
5	877	8	0.9
6	814	-55	-6.1
7	882	13	1.5
8	812	-57	-6.6

Total number of electors: 6,945
 Number of councillors: 8
 Average number of electors per councillor: 869

[11] The reasons given in the application for maintaining the same number of councillors and altering the boundaries of the polling districts were:

As District 4 has slipped out of the required 10% Parity, it is necessary to adjust the District Boundaries to maintain the status quo.

After reviewing all the findings and speaking with constituents, Council feels that the existing eight (8) Council and Warden system, although large, is serving the community well. The language requirements, settlement patterns and Acadian Heritage activities mean that there are many small communities that require unique representation. Based on feedback, reducing the number of

Councillors may result in these small communities receiving less service from their elected officials. Larger districts could also have the unintentional consequence of the small communities becoming diluted into the wider District and losing their sense of community.

Our application to alter the existing District Boundaries to achieve parity includes revisions to every District in the Municipality. There are several districts nearing or greater than the recommended 10% parity. Our intention based for this application is to balance the Districts but also to keep into consideration Council's concerns about the existing linguistic profile of Districts 2, District 2 is predominantly English. Keeping the communities of this District together for language reasons is a high priority to Council.

[12] The Municipality undertook an extensive consultation process to seek public input regarding the size and style of municipal government as well as the boundaries of polling districts. The consultants provided various options for the public to comment on the municipal boundary review. An online survey was open from August 15 through October 10, 2022, in both English and French. Only 65 survey responses were received. About 56% of respondents wanted to maintain the Council size or increase it. Of the 44% that preferred a smaller Council, 87% cited the cost savings. However, the cost for one councillor is less than \$25,000. On an annual budget of \$11.6 million reducing Council size by one or two councillors would not have a material impact on the budget or the tax rate.

[13] While most agreed with the proposed district boundary changes, several expressed concerns about the proposed changes, including the ones noted by the Board later in this decision (Districts 6, 7 and 8) and other changes (Districts 1, 2 and 6). The Board notes that only 14% of respondents were from Districts 6 and 8.

[14] A public meeting was held on September 29, 2022. Notice of the meeting was advertised in the Clare Shopper and the Municipality's Facebook page. Background material was placed on the municipal website and information packages were available from municipal staff upon request (two were requested). Only five residents attended the

meeting. Media also attended. Attendees were provided with comment cards to submit, but only one was received.

[15] At its Council meeting on November 16, 2023, Council determined that the number of polling districts and councillors should be maintained at eight and it adopted the proposed revisions to the polling district boundaries.

[16] In the current application, the Municipality applied to amend the boundaries of all eight polling districts. At the hearing, Mr. Robertson explained that since 2018 one of the polling districts (i.e., District 4) had fallen outside the Board's recommended variance of $\pm 10\%$ from the average number of electors in each polling district. District 4 now had a variance of -11.1% . All other districts complied with the recommended variance. After consulting with Council and the public, the consultants tried to amend the district boundaries to rectify District 4. However, one change required other changes in adjacent districts to maintain the proper variances. Ultimately, all polling districts boundaries had to be amended to remedy the small variance in District 4.

[17] During the hearing, the Board noted that while it has guidelines that variances not exceed $\pm 10\%$, its User Guide states it will permit variances up to $\pm 25\%$, with the outer limits of this range only permitted in exceptional cases, where the affected municipality provides reasons showing that community of interest, geographic size, population density, or other factors justify the necessity of an increased variance within a polling district. The variance in the existing District 4 was only -11.1% . The Board noted that such a small difference in the variance over $\pm 10\%$ would have been acceptable in this case, especially where it would maintain the existing community of interest in that area, and in all other polling districts.

[18] It appeared that the Municipality and its consultants may have proceeded on the misunderstanding that the requirement for variances falling within $\pm 10\%$ was absolute, but that is not the case. The Board will allow variances over that amount to preserve communities of interest, or because of other factors such as geographic size. This is especially so where the variance exceeds the recommended variance by only a slight amount. When asked by the Board, Mr. Cyr acknowledged that Council may have kept the existing district boundaries if it had recognized that this was an appropriate option. It is clear from the evidence at the hearing that the review focussed almost entirely on bringing all polling districts within $\pm 10\%$ without exception.

[19] The Board noted various concerns about the communities of interest resulting from the changes proposed in this application including, but not limited to, the areas of St. Alphonse, Lake Doucette and Mayflower. For example, electors in Lake Doucette and Mayflower, located at the extreme southern end of the Municipality, would be transferred from its traditional community of interest in District 8 (including Salmon River, Woodvale and Mavillette) to District 6 (Meteghan Centre and Meteghan Station), located near the middle of the Municipality, and only connected by a road which is not the typical means used by residents of the area to access services and other communities in the Municipality. Further, St. Alphonse would be transferred from its traditional community of interest in District 7 to District 8. There were also concerns expressed in the online survey about the boundary between Districts 1 and 2. Finally, the Board noted that changes to the boundaries of all polling districts might lead to voter confusion in the October 2024 Municipal election, since many voters in all districts would vote in different polling districts than in October 2020.

[20] In the circumstances, the Board allowed the Municipality to reconsider its application and indicate whether it wished to amend the application to maintain the existing polling district boundaries, or only amend some of the districts, instead of amending all eight polling districts. Mr. Cyr indicated that he would raise the issue at the next Municipal Council meeting in June. Following the hearing, the Board wrote to the Municipality on May 24, 2023, to confirm that it would await a response from the Municipality after Council has re-considered the matter.

[21] In a letter dated June 30, 2023, and received July 18, 2023, the CAO wrote:

In response to the letter issued by the Nova Scotia Utility and Review Board (NSUARB) dated May 24, 2023, Council for the Municipality of the District the Clare discussed the Board's offer to allow the Municipality to reconsider and amend its application to maintain the existing polling district boundaries. Following this discussion, Council voted unanimously in favor of maintaining the existing boundaries. Attached is a true copy of the motion passed during the Council meeting on June 21, 2023.

[CAO letter, June 30, 2023, p. 1]

III FINDINGS

[22] Section 368(4) of the *Municipal Government Act* sets out the criteria for the Board:

368 (4) In determining the number and boundaries of polling districts the Board shall consider number of electors, relative parity of voting power, population density, community of interest and geographic size.

[23] In 2004, the Board determined that the target variance for relative parity of voting power shall be $\pm 10\%$ from the average number of electors per polling district. Any variance more than $\pm 10\%$ must be justified in writing. The larger the proposed variance, the greater the burden on the municipal unit to justify the higher variance from the average number of electors.

[24] While the Board will permit variances up to $\pm 25\%$, the outer limits of this range should only apply in exceptional cases, where the affected municipality provides

detailed written reasons showing that population density, community of interest, geographic size, or other factors, clearly justify the necessity of an increased variance within a polling district. In most cases, however, the Board expects municipalities to meet a target variance of the number of electors in each polling district which is within a $\pm 10\%$ range of the average.

[25] There were no objections to the application. In the circumstances, it is important to note that the existing polling district boundaries were recently approved in 2018, following a Board-directed process. That application was also informed by an extensive public consultation. The Board accepts the Municipality's evidence that the current polling district boundaries still reflect communities of interest. As noted earlier in this decision, concerns were expressed about some of the proposed changes. Further, maintaining the existing district boundaries would cause less confusion leading to the October 2024 municipal election, since the districts were last revised for the October 2020 municipal election.

[26] All existing polling districts fall within the $\pm 10\%$ guideline applied by the Board, except for District 4 which exceeds it at -11.1%. The Board finds this to be acceptable as it is only a minor variance from the guideline.

[27] The Board commends the Municipality on the extensive consultation and study process followed. Its consultants worked diligently to ensure the views of the public were properly solicited and that relative parity of voting power was maintained among the polling districts (except for the minor variance in District 4), while respecting communities of interest.

[28] The Board approves the application. The number of polling districts is set at eight, each electing one councillor. The Board also approves the existing polling district boundaries.

[29] In its 2018 application, the Board approved digital maps of the existing polling districts. In recent years, some municipalities and towns have requested to provide the descriptions of its polling districts or wards using digital GIS technology. While the Board is mindful of the benefits of digital mapping over text descriptions, both in terms of cost and efficiency, the important factor to be considered is the subsequent use of any polling district or ward descriptions during the conduct of municipal elections. Regardless of the format adopted by a municipality or town, the description must be able to address any inquiry made by electors or municipal election staff during the conduct of municipal elections. Accordingly, it is necessary that the scale of any digital mapping descriptions be capable of being adjusted to respond to any inquiry. In addition to filing a large hard copy map showing all polling districts collectively, the Board also requires the separate filing of individual digital mapping for each polling district or ward. The Board approves the filing of the digital polling district maps by the Municipality, as were approved in the 2018 application. The same digital maps remain in effect.

[30] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 16th day of October, 2023.



Roland A. Deveau