

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 COUNTY OF ANTIGONISH** to confirm the number of councillors and to confirm the boundaries of polling districts

BEFORE: Roland A. Deveau, K.C., Vice Chair
Jennifer L. Nicholson, CPA, CA, Member
Bruce H. Fisher, MPA, CPA, CMA, Member

APPLICANT: **MUNICIPALITY OF THE COUNTY OF ANTIGONISH**
Glenn Horne, CAO

FINAL COMMENTS: June 10, 2024

DECISION DATE: **June 21, 2024**

DECISION: **Application approved. The Board directs the Municipality to conduct full public consultations and file a new study and application by December 31, 2025.**

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 County of Antigonish applied to confirm the number of councillors and to confirm the existing boundaries of the polling districts. The Board approves the application and sets the number of councillors and polling districts at 10 and confirms 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 County of Antigonish (Municipality) applied to the Board on May 14, 2024, to confirm the present number of councillors at 10, and further, to confirm the existing boundaries of the polling districts.

[5] As described below, this matter was considered as a paper hearing process. The Notice of Hearing was advertised in the Casket and the Chronicle Herald newspapers on May 22 and May 29, 2024, respectively. The Notice invited members of

the public to notify the Board of any written objections to the application no later than June 10, 2024. The Board did not receive any objections.

[6] The background leading to this application has been eventful and acrimonious, to say the least.

[7] The Municipality's municipal boundary review and application was originally required to be filed with the Board by December 31, 2022, as required for all municipal units in the province under the *Municipal Government Act*. However, the Municipality wrote to the Board on December 10, 2021, requesting an extension to file its municipal boundary review to at least June 30, 2023. The request was made to allow it to investigate and consider a consolidation of the Town of Antigonish and the Municipality, in conjunction with the Department of Municipal Affairs and Housing. The Board granted the request for an extension until June 30, 2023.

[8] By letter dated January 30, 2023, the Municipality reported that on October 20, 2022, both the Municipality and the Town each approved a motion requesting that "the provincial government consolidate the Municipality of the County of Antigonish and the Town of Antigonish into one municipal unit through special legislation". On December 16, 2022, the Minister of Municipal Affairs and Housing wrote the Municipality and Town stating that the earliest that new legislation could be introduced would be in the Legislature's Spring 2023 session, and that the Municipality and Town's requests would be considered by the Province. The Municipality asked the Board to consider a further extension as the parties awaited formal notification from the Minister. On February 6, 2023, the Board granted the extension, without date, and asked for a status update by May 31, 2023.

[9] In a letter dated May 23, 2023, the Municipality confirmed that legislation was not introduced in the Legislature's Spring session and the Municipality and the Town were awaiting notification whether the requested legislation would be introduced in the 2023 Fall session. The Municipality and Town suggested another extension while awaiting formal notification from the Minister about the legislation.

[10] The Board wrote to the Municipality on May 30, 2023, approving an extension of the adjournment. However, the Board cautioned the Municipality that it should manage the timeline for the conduct of meaningful studies under s. 369 of the *Municipal Government Act* about the municipal council size and district boundary issues. The Board noted this must be completed before the Board's hearing process, and account for the requirements under the *Municipal Elections Act* to prepare for the October 2024 municipal election. The Municipality wrote on August 16, 2023, confirming it had retained Stantec Consulting Ltd. for the required boundary review, that the study would commence immediately, and would be submitted to Municipal Council by the end of 2023.

[11] In the interim, in a matter brought by residents of the Municipality, the Nova Scotia Supreme Court confirmed the right of municipal units to ask the Provincial Government to introduce special legislation amalgamating municipal units: *Long v. Antigonish (Municipality)*, 2023 NSSC 394.

[12] On January 24, 2024, the Minister of Municipal Affairs and Housing wrote to the Town and Municipality asking the municipal units to confirm their wish to consolidate, given the intervening Supreme Court decision, the "considerable discourse and public engagement on this subject", and the passage of time since the initial Council resolutions requesting the legislation.

[13] On February 27, 2024, the Government of Nova Scotia introduced Bill No. 407, the *Antigonish Consolidation Act*, in the Legislature. However, after considerable public debate in the ensuing weeks, the Province announced on April 4, 2024, that Bill 407 to consolidate the Town and Municipality would not proceed.

[14] On April 5, 2024, the Board wrote to the Municipality stating that the Municipality was required to file its municipal boundary review application, adding that Tuesday, June 18, 2024, was reserved for a hearing in Antigonish, Nova Scotia. The Board then received numerous emails from residents concerned about the timeline of the Municipality's boundary review process, completion of the Board's hearing process and the release of its decision, in the context of the upcoming October 2024 municipal elections. These concerns included the Municipality's ability to conduct an effective public consultation process before the application was made to the Board.

[15] On April 16, 2024, the Board received a formal request from Anne-Marie Long, a resident of the Municipality, asking that the Board adjourn the municipal boundary review until after the October 2024 municipal election. She proposed that the review be deferred until 2025. Several other similar requests were also received by the Board.

[16] On April 18, 2024, the Board wrote to the Municipality requesting its response to Ms. Long's request for an adjournment:

The *Municipal Government Act* requires a municipal boundary application to be filed by the Municipality no later than the end of December 2022. As you are aware, the Municipality requested several extensions to deal with the potential consolidation process for the Municipality and the Town. These adjournments were granted by the Board. While the Municipality is required to file an application to be dealt with by the Board in advance of the October 2024 municipal election, the Board has in the past approved the status quo in similar circumstances, with a direction that a full public consultation process be held and an application be filed by the municipal unit within a prescribed timeline after an impending municipal election: see, for example, *Cape Breton Regional Municipality (Re)*, 2007 NSUARB 154, and *Municipality of Clare (Re)*, 2016 NSUARB 37.

As noted in paragraph 19 of the Board's *Municipality of Clare* decision (attached), the Board considered that the impending regularly scheduled municipal elections would cause

undue confusion for the electors and “the quality of the study and public consultation could be compromised by the relatively short timeline which is available before preparations commence for the 2016 municipal election. Given the level of debate on this topic, the process should be given sufficient time to be conducted properly, without the pressure of an impending municipal election”.

The purpose of this letter is to request the Municipality’s position on Ms. Long’s formal request to delay the comprehensive public consultation process until after the October 2024 municipal election, and that the process be held in 2025. If the Municipality is inclined to look favourably on Ms. Long’s request, the Board would contemplate the receipt of a summary application by the Municipality requesting the status quo for the October 2024 municipal election, and suggesting a timeline for a public consultation process and application to the Board in 2025. In such an instance, subject to the receipt of comments from the public in an expedited paper hearing process held by the Board, and after reviewing the updated variances from the average number of electors per district, the Board could consider issuing an Order approving the status quo for the October 2024 municipal election and making a formal direction that the Municipality file a new study and application by a fixed deadline in 2025.

[Board letter, April 18, 2024, pp. 1-2]

[17] The Municipality responded on April 25, 2024, confirming that its Committee of the Whole met on April 25, 2024, and passed a motion recommending to Municipal Council that it apply to the Board to request the status quo for the 2024 municipal election and to defer the ongoing boundary review until after that election. The Committee further requested a deadline of December 31, 2025, for filing a new study and recommendation with the Board. The Municipality said the Municipal Council would consider the recommendation at its regular monthly meeting on May 14, 2024. On that date, the Municipality confirmed that Municipal Council had passed a motion that evening to apply to the Board “to approve a status quo municipal boundary application for the 2024 municipal election and defer the ongoing boundary review until after that election”. It also enclosed its completed FORM C application under the *Municipal Government Act Rules*.

[18] The Board decided to conduct the matter by way of a paper hearing process, but reserved the right to convert it to a virtual hearing by webinar if there were objections to the application. The Board issued its Notice of Hearing on May 21, 2024, and arranged to have it posted in the newspaper and in the social media channels of the

Municipality and the Board. The Board did not receive any objections to the Municipality's application by the stated date of June 10, 2024.

[19] There are presently 10 councillors elected from 10 polling districts. The population of the Municipality according to the 2022 Census is 15,855, about 500 more than in the 2011 Census.

[20] Table 1 sets out the number of eligible electors in the existing polling districts, based on the last provincial election held on August 17, 2021:

Polling District	Number of Electors	Variation from Avg. Number of Electors	
		#	%
1	1,097	-181	-14.1
2	1,700	422	33.0
3	1,250	-28	-2.2
4	1,577	299	23.4
5	1,282	4	0.3
6	1,346	68	5.3
7	1,165	-113	-8.8
8	1,041	-237	-18.5
9	1,044	-234	-18.3
10	1,276	-2	-0.1

Total number of electors: 12,778
Number of councillors: 10
Average number of electors per councillor: 1,278

III FINDINGS

[21] 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.

[22] 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.

[23] 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.

[24] There were no objections to the application. Indeed, several members of the public wrote to the Board supporting the deferral of the municipal boundary review until after the October 2024 municipal election. The Board is mindful of the extenuating circumstances faced by the Municipality in completing this recent municipal boundary review. There were significant ongoing discussions about the potential consolidation of the Municipality and the Town. In that context, it may have caused confusion for residents to conduct the boundary review while the consolidation discussions were happening. It would have also led to a duplication of resources.

[25] After it was announced in early April 2024 that the consolidation would not proceed, a very compressed timeline remained for the Municipality to conduct its study, apply to the Board and have it considered by the Board in a hearing process, and to carry out several preparatory requirements under the *Municipal Elections Act* before the October 2024 municipal election. As noted earlier in this decision, the Board has found in prior decisions that such circumstances could cause undue confusion for the electors and

the quality of the study and public consultation could be compromised by the relatively short timeline available before preparations start for the impending municipal election. The Board considers this to be an appropriate case in which to maintain the status quo for the upcoming municipal election and to defer the study and application to the Board until after the municipal election.

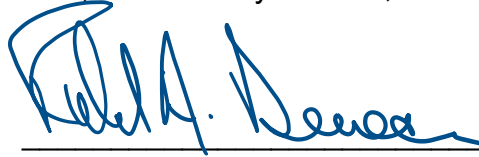
[26] The variances for five of the polling districts fall outside the $\pm 10\%$ guideline applied by the Board: District 1 at -14.1% ; District 2 at 33.0% ; District 4 at 23.4% ; District 8 at -18.5% ; and District 9 at -18.3% . The Board observes that the variances for all the polling districts were within $\pm 10\%$ in the Board's 2015 decision about the Municipality's municipal boundaries, 2015 NSUARB 93, para. 4. Clearly, there have been significant changes in the distribution of the electors among the polling districts since 2015. These large variances will have to be addressed in the upcoming review. However, in the circumstances, the Board confirms the polling district boundaries.

[27] The Board directs the Municipality to conduct a study after the October 2024 municipal election into the appropriate number of councillors and polling districts, and the fairness and reasonableness of the district boundaries, and to file its study and an application no later than December 31, 2025. The Municipality and its consultant must ensure the views of the public are properly solicited and that relative parity of voting power is achieved among the polling districts, while respecting communities of interest.

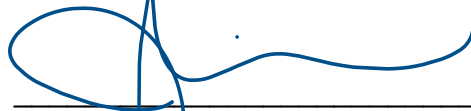
[28] The Board approves the application. The number of polling districts is set at 10, each electing one councillor. The Board also confirms the existing polling district boundaries.

[29] An Order will issue accordingly.

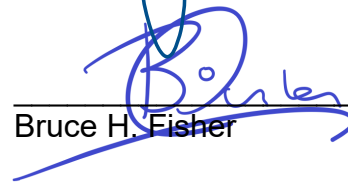
DATED at Halifax, Nova Scotia, this 21st day of June, 2024.



Roland A. Deveau



Jennifer L. Nicholson



Bruce H. Fisher