

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 ANNAPOLIS** to confirm the number of councillors and polling districts and to alter the boundaries of polling districts

BEFORE: Richard J. Melanson, LL.B., Member

APPLICANT: **MUNICIPALITY OF THE COUNTY OF ANNAPOLIS**

HEARING DATE: September 6, 2023

DECISION DATE: **October 19, 2023**

DECISION: **The application is approved as filed, with directions on a further public consultation and a new application to be filed before 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 Annapolis applied to alter the boundaries of polling districts and to confirm the number of councillors. The Board approves the application and sets the number of councillors and polling districts at 11 and approves the proposed changes to the polling district boundaries.

[3] The Board directs the Municipality to conduct further public consultations on the issue of the number of councillors and polling district boundaries. The Municipality must apply to the Board following the public consultation, and before December 31, 2025. The size of Council and the polling district boundaries will be revisited at that time.

II BACKGROUND

[4] 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.

[5] The Municipality of the County of Annapolis (Municipality) applied to the Board to confirm the present number of councillors and polling districts at 11, and further, to alter the boundaries of the polling districts.

[6] The Notice of Hearing was advertised in the Annapolis Valley Register (Newspaper) on July 27, 2023. The Notice was also posted on the Municipality's website, Facebook page, and on Twitter (now X). The Notice invited members of the public to provide comments to the Board before the hearing, or to request to speak at the public hearing. The Board received four letters of comment objecting to the application, no letters of support, and four requests to speak. The hearing was held at Municipal Council Chambers at 752 St. George Street, Annapolis Royal, Nova Scotia, on September 6, 2023. Several municipal councillors and staff were present during the hearing.

[7] Carolyn Young, Municipal Clerk, presented the application for the Municipality. She was assisted by Warden Alex Morrison and Cheryl Mackintosh, Civic Address Coordinator/GIS Technician. There are presently 11 councillors elected from 11 polling districts. The population of the Municipality according to the 2021 Census, is 18,834, showing little difference since the 2011 Census.

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

DISTRICT	NUMBER OF ELECTORS	% OF TOTAL ELECTORS	VARIATION FROM THE AVERAGE NUMBER OF VOTERS	
			#	%
1	1345	9%	-38	-3%
2	1326	9%	-57	-4%
3	1482	10%	99	7%
4	1370	9%	13	-1%
5	1212	8%	-171	-12%
6	1304	8.5%	-79	-6%
7	1409	9%	26	2%
8	1293	8.5%	-90	-7%
9	1516	10%	+133	+10%
10	1481	10%	+98	+7%
11	1474	9%	+91	+7%

Total Number of Electors: 15,212
 Total Number of Councillors: 11
 Average Number of Electors per Councillor: 1383

[Exhibit A-4, p.13]

[9] Table 2 gives some of the statistical and analytical information which was included in the application. This Table sets out the estimated number of eligible electors in each polling district, based on the 11 polling districts proposed in the application:

DISTRICT	NUMBER OF ELECTORS	VARIATION FROM THE AVERAGE NUMBER OF VOTERS	
		#	%
District 1 – No change, meets the ($\pm 10\%$) variance from the average			
1	1345	38	-3%
District 2 – Add electors to District 2 to bring District 10 down so that electors from District 9 can move to District 10			
2	1468	85	6%
District 3 – No change, meets the ($\pm 10\%$) variance from the average			
3	1482	99	7%
District 4 – No change, meets the ($\pm 10\%$) variance from the average			
4	1370	13	-1%
District 5 – No change, the average is below the (+/-10% average) at -12%, this is a large geographic district in an area that has geographical features, such as the Bay of Fundy and the Annapolis Basin, which limits expanding the area and would have compromised the community of interests for Granville Ferry and Hampton. It was decided that it would be better to keep the community of interest intact rather than trying to bring the elector numbers up closer to the variance.			
5	1212	-171	-12%
District 6 – No change, meets the ($\pm 10\%$) variance from the average			
6	1304	-79	-6%
District 7 – No change, meets the ($\pm 10\%$) variance from the average			
7	1409	26	2%
District 8 – No change, meets the ($\pm 10\%$) variance from the average			
8	1293	90	-7%

District 9 – Variance is 10%, changes are necessary to bring the variance down and allow for growth.			
9	1454	71	5%
District 10 – Changes to District 10 were necessary in order to lower District 9 electors and allow for growth.			
10	1448	98	5%
District 11 – While the current variance for District 11 is at 7%, slight adjustments were made to allow more room for growth in this historically growth area.			
11	1427	44	3%

[Exhibit A-4, pp.14-15]

[10] The reasons given at the hearing for maintaining the same number of councillors and altering the boundaries of the polling districts were:

- Maintaining communities of interest such as schools, shopping patterns, and banking;
- Keeping within the suggested Board variances;
- Geography related to the 12% variance for District 12;
- Potential future growth in Districts 2, 9, 10 and 11.

[11] The Municipality undertook a consultation process to seek public input regarding the size and style of municipal government as well as the boundaries of polling districts. Initially, Council asked staff to prepare information on 11, 9 and 7 polling districts. All scenarios assumed no change from the current system of government. Subsequently, Council directed staff to also seek public input on whether a system of government with a mayor elected at large should be introduced, instead of a warden elected by sitting Councillors.

[12] Ultimately, staff prepared six scenarios. These were the initial three scenarios, as well as scenarios with a mayor and 10, 8 and 6 Councillors. These scenarios were presented to Council's Committee of the Whole for review. On June 14, 2022, Committee of the Whole approved the mapping prepared by staff for presentation to the public to obtain input. On June 21, 2022, Council directed staff to proceed with public engagement on both the system of government and the boundary review, based

on the six scenarios shown in the mapping. Council set out the parameters of public engagement.

[13] Public engagement consisted of the following:

- An online survey, with background information and the six scenarios mapping, which was open for response on the Municipality's website from July to November 2022;
- Notice was provided in the Annapolis Valley Register and Bridgetown Reader, which also had a telephone number residents could call if they wished to complete the survey this way; the same information was included in a September 2022 mailout to every Municipal address;
- In-person meetings were held in each of the 11 polling districts from October 24th to November 9th, 2022, where large maps for the six options could be viewed.

[14] Ms. Young presented the results of the survey to Council in an information report reviewed at Council's December 13, 2022, meeting:

2022 Boundary Review and Governance Survey Summary

- There were 400 responses to the on-line survey which ran from the end of July until the middle of November
- As expected, there were 1, 2, or 3 responses from a single IP address – it is assumed that different family members completed the survey
- One IP address submitted 19 varying responses, other single IP addresses submitted 12, 9, 9, 8, 6, 5. It is not known if these were acts of dishonesty (purposely submitting more than one response) or if it was a public computer used by many people, at a library, for example
- 1 respondent was not Canadian
- 1 respondent was not 18
- 1 respondent was not a resident of Annapolis County
- 6 respondents voted on the Governance question, but not the District question

55 votes Warden 11 districts

59 votes Warden 9 districts

56 votes Warden 7 districts

42 votes Mayor 10 districts

67 votes Mayor 8 districts

114 votes Mayor 6 districts

[Exhibit A-4, p. 82/186]

[15] At its Council meeting on January 17, 2023, Council determined that the warden system should be maintained. Council also determined the number of polling districts and councillors should be maintained at 11, with some modifications to the polling district boundaries.

[16] Individual councillors provided several rationales for maintaining the *status quo* with minor boundary changes, which were summarized in the application:

Additional Supporting Comments from Councillors for Keeping 11 Districts

- A councillor must know their District, increasing the size works against this
- The population of Annapolis County has been on the increase recently due to both the number of Canadians who have moved to our area during the pandemic, as well as the number of immigrants who have chosen to re-locate here.
- The role of councillor will continue to expand as their district continues to grow.
- Annapolis County is an area of diversity as well as one of connectivity. While there are a number of similarities among many of our communities, we also have communities in some of our more rural areas that are currently not as connected with other parts of the county, mainly due to geography. Councillors are expected to serve everyone and that is as it should be.
- On-going growth and development in all of the current districts within the County, as well as the need to continue with the status quo of 11 districts within the municipality.
- The current status of 11 districts will allow councillors to continue to connect and to interact with the residents of their district as well as those of the entire county. This will help to ensure that communication between constituents and their municipal government will continue to be a two-way street.
- The survey did not show any real preference for a reduction in the number of councillors
- West Hants and East Hants have similar populations with 11 councillors; Annapolis has a smaller population density.
- The survey that was circulated was not a helpful tool. The results were only from approximately 1% of the population. Because it was not a plebiscite the results were not a clear representation of the thoughts of the constituents of the County of Annapolis
- Residents of my district were not in favor of change at this time. "If it's not broke don't fix it".
- No comment (ie completing the survey) generally means acceptance of the status quo. Approximately half of 1% of the population on the survey indicated they would like change. That leaves approximately 99% that by lack of response may indicate no strong concerns or desire to make a change at this time.
- A change to reduce the number of districts the remaining Councillors would have a larger work load and expect more compensation.
- The current number has generally worked well. The diversity of points of view and general open mindedness has fostered a healthy discussion and decision making process.
- The number on council has to be looked at by taking into account both the density of population and the expanse of the geographic areas when looking after the constituents needs.
- Our Strategic Plan for the County has indicated the desperate need for housing which is evidence of the growth in our county. The plan also indicates the expansion of infrastructure to meet the growing requirements of the County to accommodate new residents. Increased population results in a rise in tax dollars and allows the County to prosper.
- Continuing with the current boundaries and 11 councillors would allow more concise decision making based on the population each individual councillor represents and the needs of County residents.

- The Premier wishes to increase the population by 1 million. This will certainly increase the move to rural areas. Immigration will also increase population especially now that travel has opened up to the world.
- The districts are large now, some are larger than others because of resident numbers. Larger districts would increase travel time, which is not better for anyone and larger is not better.
- A decrease in the number of councillors would mean an increase in pay so it would not be saving money.
- We are in the communities 24/7. A great deal of time is already needed to service the number of constituents we have.
- Some districts are already spread out over great areas.
- Don't make the job so big we can't support our communities.
- In 2015 Bridgetown was absorbed into Annapolis County. This reduced the number of councillors from 16 [Bridgetown (5) and Annapolis County (11)] to 11. Thus, the number of citizens represented by the "new 11" increased. This arrangement has worked well and Council believes it should be continued.

[Exhibit A-4, pp. 185-186]

III FINDINGS

[17] 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.

[18] 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.

[19] 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.

[20] The Board received four letters of comment opposing the application. One letter of comment addressed exclusively the issue of whether the Municipality should change to a mayoral system, expressing disappointment at Council's decision, given the survey results. One letter of comment dealt almost exclusively with concerns about the process followed by Council to engage the public. Another letter of comment criticized the rationale of Councillors who dismissed the survey when deciding not to follow its results. This writer favoured both a mayoral system and a reduced Council size. Finally, one writer was encouraged by the process used by Council to solicit public opinion about this review. The person was, however, very disappointed that the results of the survey did not lead to any significant change. He suggested this only increased public cynicism.

[21] There were four public speakers who presented before the Board during the hearing. Steve Raftery, Heather Spurr and Maria Hagen all spoke against the application. They were all concerned about Council's failure to follow the results of the opinion survey. Ms. Spurr's comments focussed on the cost savings available through a reduction in the size of Council. Both Ms. Hagen and Mr. Raftery, while addressing costs, also discussed past governance issues which might be addressed by reducing the size of Council. Concerns about the notice of public consultation were reiterated by Ms. Hagen. Mr. Raftery was concerned about the impact of not following through on the public's views. No one accepted some Councillors' rationales about some responses coming from the same IP address, or that such a low response rate indicated satisfaction with the current size of Council. Comparisons about councillor to elector ratios, and the comparative cost of Council, were made with other municipalities, including the neighbouring Municipality of the County of Kings.

[22] Councillor Brian “Fuzzy” Connell spoke in favour of the application. He spoke about his background in the community and on Council. He elaborated on the role of a municipal councillor, and the time and travel commitments involved. He said reducing the size of Council would make it difficult to fulfill this role. While indicating that given these commitments councillors were not pursuing public office for financial gain, he also said that if the workload was increased, it would be difficult to attract candidates at the current remuneration. Mr. Connell was one of the Councillors who was concerned about multiple survey response from the same IP address and felt the low response rate was an indication of public satisfaction with the *status quo*.

[23] The Board will first address an issue it raised at the outset of the hearing. A review under s.369 of the *Municipal Government Act* does not give the Board the authority to decide whether the Municipality should implement a mayoral system of government. Its role is limited to determining the appropriate number of councillors and polling districts, as well as approving polling district boundaries.

[24] The impact of reducing the size of Council on the operating costs of the Municipality was raised in the letters of comment and the public submissions. In response to a request from the Board, the Municipality provided the total direct budgeted costs related to Councillors for the 2023/24 fiscal year. The total cost for the entire council was \$550,700. These costs include remuneration, benefits, training and education, professional membership fees and dues, meeting expenses, hospitality expenses (budgeted at 0) and telecommunications services.

[25] The \$3000 membership fees and dues relate to the Nova Scotia Federation of Municipalities and the Federation of Canadian Municipalities. They are based on

population and not the size of Council. As well, included in the total are the higher salary of the Warden and Deputy Warden. It is unlikely this would change if the size of Council was reduced. They total \$45,842 plus associated benefits.

[26] The Municipality also provided its 2023/24 operating budget which totals \$24,104,956. The total cost of Council is therefore approximately 2.28% of the operating budget. The direct cost savings of reducing the size of Council by five councillors would be less than 50% of this amount. The calculation of savings assumes that additional remuneration, or more outside assistance, would not be required to maintain the efficiency of Council's work. That would not necessarily be the case. Therefore, while financial considerations are always important in municipal government, potential savings alone might not warrant a drastic change in the size of Council in this case.

[27] The issue of public consultation is more nuanced. While there can always be disagreement about where and how to provide notice of a survey or other form of consultation, the Board is satisfied that the Municipality provided sufficient notice and a sufficient opportunity to respond. This finding is supported by the fact that, while turnout at public meetings was relatively low, the staff report for the December 13, 2022, Committee of the Whole meeting indicated that "...the nearly 400 responses to the on-line survey is the greatest public input we've had!"

[28] The main concern the Board has with this application is how Council interpreted and applied the survey results in their reasoning for maintaining the *status quo*. The Board will address some of these issues. Councillor Connell compared the lack of elector identification and fraud protection in a survey process compared with voter identification requirements if a plebiscite is held. The Board realizes that this was not a

plebiscite. Council could theoretically choose to hold a plebiscite on the issue. It did not. Therefore, the results of the survey should not be dismissed because the same rigours about identification used for plebiscites do not apply to surveys.

[29] There are reasonable explanations why several responses came from the same IP addresses. No evidence was presented that any fraudulent conduct was involved. Possible explanations include the use of public facilities such as the library. As well, Mr. Raferty indicated several responses likely came from his IP address, as he held a meeting on the subject at his home and allowed people to use his computer to respond to the survey.

[30] The Board rejects the premise that approximately 400 responses to a survey should be afforded little weight because it represents a small proportion of the electorate. The opinions of engaged electors should not be discounted because others are less engaged.

[31] The Board discussed a similar argument in *Re Municipality of the District of Clare*, 2016 NSUARB 37, at para. [16]:

[16] To be clear, the Board does not accept the Municipality's submission, as noted in its applications, that there was a "lack of public opposition to the scenarios presented" or that there was a "low level of public participation in the consultative process". A total of 61 different residents attended three separate public meetings held in the second round of consultations held by the Municipality, as directed by the Board. Several letters of comment were filed with the Board. About 30-35 persons attended each of the Board's public hearings into the Municipality's first and second application. In the Board's experience in conducting similar hearing proceedings in municipalities and towns across the Province, the level of participation in Clare was significant compared to typical levels in other regions.

[32] In this case, while participation in the Board's hearing process was low, the Municipality's survey had a record number of respondents. Given the results of the survey, absent some timing issues, further consultation would have been warranted to discover the underlying rationales for the results that were obtained.

[33] The Board acknowledges that while the number of survey respondents is impressive, the results are not entirely clear. This is primarily because there were three scenarios involving a mayor elected at large and councillors elected by polling district, and three scenarios involving a system with a warden. This meant there were 6 different polling district options embedded in the survey.

[34] The three scenarios involving a mayor obtained 223 votes. Council ultimately decided to maintain the warden system of government. There was a clear preference for a smaller Council size in these responses (81%) and a majority favoured a mayor and 6 districts. That said, none of these scenarios can be authorised by the Board when establishing polling districts in this review.

[35] Of the 170 responses favouring a system with a warden, the number of votes were similar for each option. There was no majority support for any of the options, although the Board recognizes approximately 68% of respondents who favoured a system with a warden also supported a reduction in the size of Council in some form.

[36] The foregoing analysis does not provide a clear consensus or a compelling basis for establishing new polling districts. It highlights why the Board recommends a two-step process of first consulting about, and then determining, the system of government and the number of councillors, before proceeding to obtain public input on polling boundaries. In this case, where the entire process is combined, while the Board has information that the engaged public favours a smaller Council, it does not have sufficient evidence to establish polling districts based on this preference, and indeed, if that preference would hold if only scenarios involving a warden were put to the public.

[37] This situation would ordinarily lead the Board to direct the Municipality to conduct further public consultation to determine what scenarios the electorate would favour if only a warden system is proposed. It would be helpful if the survey questions delved into why particular options are preferred. However, because there are aspects of the upcoming municipal elections that must be in place by March 2024, it is now too late to conduct additional meaningful consultation in time to complete that process. This process would require sufficient time to develop the survey questions and provide time for public input on the results. Council would need time to determine a course of action based on that consultation. The Board would need to hold a new hearing to consider the results.

[38] The Board is, therefore, prepared to confirm the existing number of councillors and the polling districts presented in this application. It does so on the basis that there is no clearly acceptable alternative before it. As well, some of Council's rationales have some merit. These include:

- there would be relatively minor savings associated with a reduction in the size of Council;
- there are some relatively large geographic areas;
- there are extensive responsibilities associated with being a municipal councillor;
- there were significant changes when the Town of Bridgetown dissolve, resulting in an overall reduction in the number of elected municipal councillors for the combined municipality in 2015;

- the size of council is not disproportionate to some nearby and similar municipalities such as Municipality of East Hants and West Hants Regional Municipality.

[39] All proposed polling districts fall within the $\pm 10\%$ guideline applied by the Board, except for District 5. This is a relatively minor variance from the guideline. The Board accepts the community of interest and geographic reasons advanced by the Municipality in the context of this approval.

[40] The Board would simply caution that while the foregoing does provide some support for maintaining the size of Council in the context of this application, the public may make it known, during the consultation exercise, that none of the foregoing overrides a preference for a smaller Council. That will be determined another day.

[41] Given its findings on the requirement for more public consultation, and the results of the public survey, the Board does not believe the consultation should wait until the next required review of municipal boundaries under s. 369 of the *Act*. There was too strong a public response favouring a reduction in the size of Council to not seek further input before two election cycles have gone by. There is a precedent in the *Clare* decision for requiring an earlier review in somewhat similar circumstances.

[42] The Board will therefore exercise its jurisdiction in this application under s. 368(3) to "... grant such further or other relief as the Board considers proper." The Board orders and directs the Municipality to conduct a new study into its polling districts and boundaries. The Municipality is to apply to the Board before December 31, 2025, outlining the results of the public consultation and whether the Municipality proposes to alter or confirm the number and boundaries of the polling districts.

[43] The Board does not wish to criticize the good faith efforts of Municipal Staff. Council debated how to proceed and consultation on a mayoral system was added later in the day. This led to delays in the application process. An impressive survey participation level was achieved. It may well be that if input on the mayoral system of government had not been added late in the process, there would have been a clearer result from the survey. Despite the work done by Municipal Staff, the Municipality should give serious consideration to engaging external consultants. It might help alleviate some of the potential cynicism raised by Mr. Raftery and increase public confidence.

[44] At a minimum, if the Municipality revisits the issue of a mayoral system or warden system of government, that issue should be determined before more public consultation takes place on the number of councillors and the boundaries of polling districts. As well, any survey questions should seek more information on why electors favour a particular option. There is always a balance between having a survey which is so long it discourages public participation, and one which provides sufficient information to allow for an analysis of the results. The Board is confident the Municipality will rise to the challenge and provide the Board with public consultation results which are meaningful and well-analyzed.

[45] The Board approves the application, with directions to Council to conduct a new boundary review study. The number of polling districts is set at 11, each electing one councillor. The Board also approves the proposed changes to the polling district boundaries.

[46] The Municipality has filed PDF versions of digital maps of the proposed polling district boundaries. 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, 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. The digital maps were filed in the application in a PDF version. An order will issue upon receipt of the maps in the required digital format.

[47] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 19th day of October, 2023.



Richard J. Melanson