

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 22, 2021

CASE NO(S): MM210008

PROCEEDING COMMENCED UNDER subsection 222(4) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended

Appellant:	Tony McQuail
Subject:	By-law No. 89-2020 (Ward Boundary) to dissolve existing wards
Municipality:	Township of Ashfield-Colborne-Wawanosh
OLT Case No.:	MM210008
OLT File No.:	MM210008
OLT Case Name:	McQuail v. Ashfield-Colborne-Wawanosh (Township)

Heard: September 29 and October 1, 2021 by video hearing

APPEARANCES:

Parties

Tony McQuail

Township of Ashfield-Colborne-Wawanosh

Counsel

Self-represented

Brandon Carter

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Tony McQuail ("Appellant") appealed the passage by the Township of Ashfield-Colborne-Wawanosh ("Township") of By-law No. 89-2020 ("By-law"), which dissolves

the Township's electoral ward boundaries to create an at-large voting system. The appeal was brought under s. 222(4) of the *Municipal Act*.

[2] The Township is located in the County of Huron. It is composed of three wards: Ashfield, Colborne and Wawanosh. Ashfield Ward is geographically the largest of the three wards. It is roughly situated in the northern section of the Township. It borders Lake Huron to the west, Colborne Ward to the south, and Wawanosh Ward to the east. Colborne Ward is geographically the smallest of the three wards. It is situated in the southern section of the Township and borders Lake Huron to the west and Ashfield and Wawanosh Wards to the north. Wawanosh Ward lies in the north-eastern portion of the Township. It borders Ashfield to the west and Colborne to the south.

[3] The three wards were once each distinct townships. In 2001, the Province amalgamated them into one township and a ward-based electoral system was created with each becoming a separate ward. Until 2018, voters from each ward elected two councillors. The seventh member of Council was the reeve, who was elected on an at-large basis (all voters in the Township being able to vote for the reeve). In 2018, the system was changed so that voters in each ward elected one councillor from their ward and two additional councillors, a deputy mayor, and a mayor on an at-large basis.

[4] The number of voters in each of the three wards is distinct. Ashfield presently has 2,532 voters, Colborne has 2,154 voters, and Wawanosh has 1,094 voters.

[5] On December 15, 2020, the Township Council passed the By-law. It dissolves the electoral ward boundary system in the Township so that all members of Council will now be elected on an at-large basis. In other words, voters across the Township, regardless of their ward, may now vote for candidates to fill each of the seats in Council.

[6] On January 29, 2021, the Appellant appealed the By-law to the Tribunal.

[7] The appeal was heard by video hearing over two days on September 29 and October 1, 2021.

ISSUES

[8] In his appeal materials, the Appellant sets out two main issues to be adjudicated:

1. whether the Township's decision-making process when passing the By-law was fair and reasonable in the circumstances; and
2. whether the By-law achieves more effective representation.

[9] Each of these issues is addressed below.

DISCUSSION

Issue 1: Whether the Township's decision-making process when passing the By-law was fair and reasonable in the circumstances

The Appellant's Evidence and Submissions

[10] The Appellant provided fact evidence. He stated that there was limited public notice of the Township's plans to dissolve its ward boundary system prior to the passage of the By-law. In fact, he submits that he and others did not become aware of the issue being discussed until after the By-law was passed and its Notice of Passing was posted in local newspapers in January 2021. He noted that in 2016, the Township Council had discussions about dissolving the ward system, but the issue had been resolved with Council deciding against dissolving the wards. He referred to evidence of interventions made before Council at an open forum in May 2017, where opposition was voiced, and to letters from that time period by members of the public who were opposed to the dissolution of the ward system. After the passage of the By-

law, he stated that a public petition was signed requesting the By-law's repeal; however, Council did not take action.

[11] The Appellant argued that due to accessibility and communication challenges in 2020 posed by the COVID-19 pandemic, the Township should have made concerted efforts to notify and consult with residents regarding the proposed dissolution of the ward system before passing the By-law. He said the issue was considered at only two Council meetings, both of which were in December 2020 before the holidays. He said it is unfair to expect the public to read Township meeting minutes, both during a pandemic and immediately prior to the holidays, to be notified and engage in the process.

The Township's Evidence and Submissions

[12] Florence Witherspoon is the Township's Clerk. She provided fact evidence to the Tribunal. She stated that, as the Township's Clerk, she is responsible for preparing documents and reports for Council's consideration. She said Council meetings are open to the public, are recorded, and, during the pandemic, held virtually. She stated that members of the public may request a copy of the agenda for Council meetings and that Council meeting documents and agenda are available online prior to Council meetings.

[13] Ms. Witherspoon stated that in 2016, Township Council expressed an interest in gradually moving toward an at-large voting system. She said Council decided at that time to circulate information to the public (sent with the Township tax bills) regarding the proposed changes and inviting public feedback. She said feedback was received and considered by Council. It was decisively opposed to the dissolution of the ward system with 6 respondents in favour of dissolution and 62 opposed. She stated that the Township also received letters in September 2016 from members of the public who were opposed to the proposed dissolution of the ward system. She said views of the public were also voiced at an "open forum" session before Council in 2017. Taking these views into account, she said Council changed the composition of Council for the

2018 municipal election from two councillors representing each ward and the reeve to the current hybrid system of one councillor elected for each ward and two councillors, a deputy mayor and mayor elected at-large (By-law No. 25-2017). She stated that this was a first step toward creating an at-large system.

[14] Ms. Witherspoon stated that at a Council meeting on November 17, 2020, she was instructed by the Township Council to prepare a report on options regarding electoral voting systems that would work in the Township. She said that she prepared the report and it was discussed at the Council meeting on December 1, 2020. It presented three options:

- maintain the existing hybrid voting system with seven Council members;
- create a fully at-large voting system with five Council members; or
- create a fully at-large voting system with seven Council members.

She acknowledged that Township staff received no instructions from Council to consult with experts or constituents on the issue and that she was not familiar with the ward review processes in other municipalities or whether other municipalities generally hold public consultations on such issues. However, she stated that she contacted the Ministry of Municipal Affairs and Housing for general guidance, reviewed reports and by-laws from other municipalities, and researched the relevant issues online.

[15] Ms. Witherspoon said concerns were raised by some Councillors at the December 1, 2020 Council meeting that voters from the smaller populated Wawanosh Ward may not feel fairly represented in an at-large voting system; but she said the Councillors agreed in the end that an at-large system with seven members would be in the best interests of all residents. She said the main rationale for this was that such a system is fair in that it allows each voter to vote for the filling of each of the Council seats. She stated that at the Council meeting on December 15, 2020, the By-law was passed unanimously. She stated that the Notice of Passing was published in two local

newspapers and on the Township's website. She said the Mayor subsequently wrote an open letter that was placed on the Township's website responding to public concerns and setting out the rationale for the By-law.

[16] Nigel Bellchamber also provided evidence on behalf of the Township. He is a consultant who works on municipal governance issues. He has never worked on ward boundary change issues in the past but has been engaged in activities related to them. He is a cottager in Ashfield Ward and a member of local cottagers' associations in the Township. He stated that the Township Council had discussed dissolving the ward system since 2016 and there were opportunities for public participation and consultation at Council meetings throughout that time period. He acknowledged that the Township could have held more public consultations than it did, but Council undertook a multi-step decision-making process over a number of years.

Analysis and Findings

[17] Section 222(1) of the *Municipal Act* provides municipalities with the authority to enact by-laws to divide or subdivide into wards or to dissolve existing wards. The *Municipal Act* does not require a specific process or public notice before such a by-law is passed. However, as noted by the Ontario Municipal Board in *Savage v. Niagara Falls (City)*, [2002] O.M.B.D. No. 1074 ("Savage"), at paragraphs 44-45, the process must be fair and reasonable. In this context, the Board stated that it should not lightly interfere with the decision of a municipality unless there are very clear and compelling reasons to do so. The Board stated:

44. This Board should not lightly interfere with that decision unless there are very clear and compelling reasons to do so. The Board should be satisfied that city council acted fairly and reasonably. If the Board is so satisfied, deference should be accorded to Niagara Falls council, who are in a better position than the Board to determine what is the appropriate electoral system to provide fair and effective representation to its constituents.

45. The Minister has chosen not to prescribe regulations governing the criteria a municipal council must follow when deciding to divide,

redivide or dissolve its ward boundaries. The applicable legislation has been in effect since 1996 and the Board can only assume an intention on the part of the province to confer broad discretion on municipal councils to decide the type of electoral systems it wishes, provided council acts fairly and responsibly.

[18] A municipality has broad discretion regarding the voting system that it chooses to use. Often in these circumstances, a municipality will prudently hold consultations with the public through special meetings, information sessions or other tools and will retain experts to study the issues and present recommendations to the municipal council. This ensures transparency and accountability and assists the municipality in the decision-making process. However, the *Municipal Act* does not require these things. Each case before the Tribunal is unique and must be adjudicated based on its specific facts. In the present case, the Township Council discussed the issue several times over a five-year period and circulated notice to the public. It was aware of public concerns and it considered various options on how to move forward. The test that the Tribunal must apply is whether Council acted fairly and reasonably, not whether it took the best or most consultative process in coming to its decision. It would be inappropriate for the Tribunal to require that further notice be given, consultations held, or experts retained where there are no statutory requirements to do so. The Township made an effort to generate public awareness and to solicit public inputs through the notice sent with tax bills and engaged in Council discussions on the issue over a five-year period. Although better notice and consultations would have been prudent, the Tribunal finds that the Township's process was not unfair or unreasonable. As noted above, there must be very clear and compelling reasons for the Tribunal to interfere with a municipality's decision of this nature and the process leading up to it. The Tribunal finds that, in the present case, the Appellant failed to provide such evidence or reasons.

Issue 2: Whether the By-law achieves more effective representation*The Appellant's Evidence and Submissions*

[19] The Appellant stated that the ward system ensures that local communities have representatives who are accessible, accountable and represent them. He said that an at-large voting system would likely diminish minority representation and make it difficult for citizens to access councillors, especially if those councillors do not live in the local community. He identified several communities of interest in the Township, including farmers, seasonal cottagers, retired people, and an Amish community. He stated that Ashfield includes seasonal cottages and large farms, Colborne includes seasonal cottages and smaller farms, and Wawanosh includes an Amish community and farms. He said that roughly one-half of the voters in Ashfield and just less than one-third in Colborne are non-residents, while about one-ninth of the voters in Wawanosh are non-residents. He said that the disparate interests of these communities must be considered in the crafting of the Township's electoral system. For instance, he stated that the Amish community uses non-motorized vehicles and does not have ready access to telephones or computers. He said this presents accessibility issues where representatives are located far from the community. He said communities of interest would not be adequately represented in an at-large voting system. He said the Township failed to retain experts to study these issues and provide recommendations on available options.

The Township's Evidence and Submissions

[20] Ms. Witherspoon stated that, with the exception of its shoreline areas along Lake Huron, the Township is generally rural in nature with a spread-out population. She stated that the cottage areas in the Township, particularly in Colborne, are experiencing population growth, including among retired people, while most other areas in the Township are not. She stated that changing demographics should be considered when determining the appropriate electoral system for the Township.

[21] Mr. Bellchamber stated that voters in Wawanosh are over-represented on Council as it has roughly half the population of either of the other wards. He stated that to better achieve voter parity, Township Council must either reset the boundaries of each ward or create an at-large voting system. He stated that changing to an at-large system is a simpler process than changing ward boundaries and that an at-large system is a fair and effective system. He stated that the dissolution of the ward system would not dilute voter representation. He said the Township provides services throughout its area and that Council makes decisions in the best interests of the Township as a whole.

[22] Mr. Bellchamber stated that the Township is relatively small, its geography is generally uniform, and it is well serviced with roads. He stated that it does not take long to drive from one end of the Township to another. Under cross-examination, he acknowledged that for members of the Amish community it would take considerable time to travel across the Township, especially in winter. Mr. Bellchamber stated that he does not believe that the Township has a history of debating issues on a ward basis or that the wards historically have distinct issues or concerns that arise in Council. With respect to communities of interest and minority representation, Mr. Bellchamber stated that no electors will lose their right to vote. He said there are no specific community issues in the Township which would be affected by an at-large system. Regarding the Amish community in Wawanosh Ward, he stated that he does not have concerns regarding their access to councillors and that councillors can travel to the community. He stated that bloc voting, whereby the majority community's electorate has the ability to determine the composition of Council, would be difficult to orchestrate and is unlikely in the Township under an at-large system.

Analysis and Findings

[23] In appeals under s. 222(4) of the *Municipal Act*, the Tribunal is to hear the appeal and make an order affirming, amending or repealing the impugned by-law. As set out in *Savage*, at paragraphs 44-45, the Tribunal must determine whether the municipality's

decision-making process was fair and reasonable, but it also must determine whether the decision itself meets these criteria (see *Daniel v. Tecumseh (Town)* 2017 CarswellOnt 19180, at paragraph 14).

[24] A useful measure for determining this is whether the by-law ensures more effective representation (see *Preston v. Rideau Lakes (Township)*, 2017 CarswellOnt 13703 ("*Preston*"), at paragraph 49.) The conditions for effective representation were identified by the Supreme Court of Canada in *Re Provincial Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 ("*Carter*"). In that case, at paragraphs 27-32, the Court stressed the importance of striving for voting parity, emphasizing that a voting system should not unduly dilute a citizen's vote and risk providing inadequate, uneven or unfair representation. But it also stated that other factors must also be taken into account to ensure more effective representation, including geography, community history, community interests, and minority representation. There are limits to the application of these factors. The Court stated, at paragraph 32:

32. It emerges therefore that deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced. I adhere to the proposition asserted in *Dixon* at p. 414 [*Dixon v. British Columbia (Attorney General)*, [1989] 4 W.W.R. 393 (B.C.S.C)], that "only those deviations should be admitted which can be justified on the ground that they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed."

The Tribunal finds that the goal of effective representation and the factors set out in *Carter* for assessing progress toward that goal can be appropriately transferred to the municipal context to provide a useful framework and evaluative criteria for determining whether a municipality's electoral ward boundary decision is fair and reasonable (see *Preston*, at paragraphs 46-47 and 49).

[25] In the present case, the Tribunal finds that through the dissolution of the ward structure, the By-law provides for more effective representation by increasing voter

parity across the Township with an at-large system. Under the existing system, the voters in Wawanosh have an advantage with less than half the population of either of the other wards but the same number of councillors.

[26] Beyond voter parity, the other factors enumerated in *Carter*, including geography, historical context, communities of interest, and minority representation must also be taken into account. In the present case, the issues relating to geography and historical context were not disputed and the Tribunal finds that they do not play a determinative role. In terms of communities of interest, the Tribunal recognizes that there are distinct communities in the Township, including farmers, seasonal cottagers, and the Amish community. However, there is no convincing evidence before the Tribunal that the dissolution of the ward electoral boundaries would result in inadequate, uneven, or unfair representation of any of these communities or of any minority groups or that a deviation to address these communities of interest or any minority groups can be justified to provide for more effective representation or to contribute to better government of the populace as a whole.

[27] The Tribunal takes into account the concerns raised by the Appellant regarding representation of the Amish community. This is a distinct community, however, there is no evidence before the Tribunal regarding the unique interests of the community or how deviating from improved voter parity by providing the Amish community with greater representation would result in more effective representation overall. The Tribunal recognises the Appellant's concerns regarding local accessibility and accountability, however, there is no convincing evidence before the Tribunal that an at-large system would aggravate these issues. There is also no convincing evidence of a threat that an at-large system would result in the control of Council by a specific community or group.

[28] The Tribunal finds that the By-law effectively addresses the existing lack of voter parity in the Township and there are no clear and compelling reasons to interfere with Council's decision. The Tribunal notes that voter preference is not a factor to be considered by it in making its decision.

[29] The Tribunal finds that the By-law will improve voter parity and increase effective representation in the Township and that it is fair and reasonable.

DECISION

[30] The Tribunal orders that the appeal is dismissed and By-law No. 89-2020 dissolving the Municipality's ward boundaries is affirmed.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

Ontario Land Tribunal

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