

COUNCIL MEETING - MARCH 19, 2013

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PETITION RE: WARD BOUNDARIES

Recommendation

The City Clerk recommends:

- 1) That the communication from Mr. Antony Niro submitting the report by Dr. Ronald G. Landes entitled 'Public Ward Boundary Review' be received;
- 2) That the petition submitted to the Committee of the Whole meeting of February 26, 2013 be formally received by Council; and
- 3) That the options in this report be submitted to the Committee of the Whole (Working Session) for consideration and public input.

Contribution to Sustainability

A balanced ward system that provides effective representation is a key component of a sustainable governance structure.

Economic Impact

If Council does not pass a by-law in accordance with the petition within 90 days of its receipt, any of the electors who have signed the petition may apply to the Ontario Municipal Board (OMB) to have the municipality divided or re-divided into wards or the existing wards dissolved. Additional expenditures would likely be incurred to represent the City's interests at the Ontario Municipal Board.

If Council commences a ward boundary review, consultant's fees for facilitation and planning projects are estimated at \$40,000 to \$200,000, depending on the level of involvement and time frame. In addition, if after adoption of a ward boundary by-law the by-law is appealed to the Ontario Municipal Board additional expenditures will be incurred.

Funding would be from the election reserve but would need to be replenished to ensure the proper administration of the election.

Communications Plan

A public consultation plan will be a key component of any changes to the ward boundaries.

Purpose

The purpose of this report is to outline the options for responding to the petition filed pursuant to S. 223 of the *Municipal Act*, S.O. 2001, c. 25 requesting that Council pass a by-law dividing or re-dividing the municipality into six (6) wards.

Background – Analysis and Options

Legislative Framework

Under Section 223 of the Municipal Act, 2001, S.O. 2001, c. 25, electors may present a petition to Council requesting that Council pass a by-law dividing, re-dividing or dissolving wards. The petition requires signatures of 1% of the total number of electors in the municipality or 500

electors, whichever is less, but with a minimum of 50 signatures. Five hundred (500) electors would have to sign a petition in the case of a population the size of the City of Vaughan.

If Council does not pass a by-law in accordance with a petition within 90 days after receiving it, any of the electors who signed the petition may apply to the Ontario Municipal Board (OMB) to have the municipality divided or re-divided or have the existing wards dissolved. The OMB will hear the application and may make an order dividing, re-dividing or dissolving wards.

Ward Boundary Petition

At the Committee of the Whole meeting of February 26, 2013, a petition pursuant to S. 223 of the Municipal Act, S.O. 2001, c. 25 was submitted by Mr. Antony Niro asking Council to pass a by-law re-dividing the municipality into six wards. Committee received the petition and directed that the City Clerk report to the March 19, 2013 Council meeting on the petition and any other necessary action. The City Clerk's Office has reviewed the petition submitted for statutory compliance and found that it has met the threshold number of 500 electors.

On March 7, 2013, Mr. Niro submitted an additional report to the Office of the City Clerk entitled 'Public Ward Boundary Review' prepared by Dr. Ronald G. Landes. A copy of this report is included as a communication with the March 19, 2013 Council Agenda.

Recent Council Consideration of Ward Boundary Review

The City Clerk provided a Ward Boundary Review summary report to Committee of the Whole (Working Session) at its meeting of November 22, 2011 [Report No. 53, Item 2]. The report summarized information from the 2009 ward boundary review and provided additional background information to enable Council to decide whether a further ward boundary review should be conducted. Council adopted a recommendation that staff provide a follow up report outlining the next steps and options for a ward boundary review.

In the follow up report to the February 14, 2012 Committee of the Whole (Working Session) [Report No. 7, Item 2], the City Clerk outlined three options for a ward boundary review:

- Option 1 - Conduct the Review
- Option 2 - Defer Consideration
- Option 3 - Do not conduct a Ward Boundary Review

In presenting the options, the City Clerk noted that a key consideration in determining whether a ward boundary review should take place is the question of whether the citizens of Vaughan are receiving (and will receive, for the elections contemplated by the review) effective representation from their Council. Effective representation, as noted in previous reports on this matter, is not simply a mathematical concept. Amidst the array of factors and considerations that are taken into account in assessing models for 'effective representation', the primary goal is to establish relative parity of voting power.

In his report, the City Clerk also noted that Council is not compelled to conduct a ward boundary review at this time. The OMB decision in the appeal of the last review concluded that the current boundaries respect the *Carter* principles at the point in time the Order was made. Though the OMB raised an expectation that the boundaries would be revisited, the City Clerk noted that it is for Council to determine whether the current model provides for effective representation for the purpose of the next election.

The City Clerk also outlined the steps necessary to undertake a ward boundary review, set out as follows:

Council to Adopt Ward Boundary Review (WBR) Principles and Terms of Reference

Staff will retain consultant(s)

Staff/consultants will hold Public Consultations

Council will consider a report on consultations and proposed option(s), and Adopt Ward Boundary By-law
(may involve multiple meetings to ensure broad consultation on proposed options that come forward)

Notice of Adopted By-law
Section 222(3) of the Act provides that within 15 days after a by-law to divide or re-divide wards is passed, the municipality shall give notice of the passing of the by-law to the public specifying the last date for filing a Notice of Appeal with the City of Vaughan

Appeal Period
Section 222(4) of the Act provides that within 45 days the Minister or any other person or agency may appeal to the OMB by filing a notice of appeal with the municipality setting out the objections to the by-law and the reasons in support of the objections

Forward any Appeals to the OMB
Section 222(5) of the Act provides that within 15 days after the last day for filing a notice of appeal under subsection (4), the municipality shall forward any notices of appeal to the OMB

New Wards Instituted
Section 222(1) of the Act provides for an approval process for Ward boundary changes and a municipal by-law to alter ward boundaries must be finalized by January 1, 2014 to become effective for the 2014 municipal elections

After taking these matters into consideration, Council, at its February 21, 2012 meeting, recommended that a Ward Boundary Review not be conducted before the 2014 general municipal elections.

Ward Boundary Petition and Background Study

The petition received on February 26, 2013 requests the addition of one new ward along with boundary adjustments to most of the other wards, increasing the number of wards from five to six. The petition states that population growth in Vaughan during recent decades has not been matched by an increase in the level of representation on City Council. In addition, the petition states that, "the additional ward will allow for the growth in size of the urban wards to be moderated, while creating a new Ward to better represent the Countryside Communities areas of Vaughan."

The report entitled 'Public Ward Boundary Review', received by the City Clerk's Office on March 7, 2013, outlines the review process and analysis used to prepare the request outlined in the ward boundary petition.

Ward Boundary Petition - Options for Council

As a result of receiving a petition pursuant to S. 223 of the Municipal Act, S.O. 2001, c. 25, requesting a re-division into six (6) wards, Council has the following options:

Option 1 – Pass a By-Law to Re-divide the Wards in Accordance with the Petition

The petition was presented as an addendum item at the February 26, 2013 Committee of the Whole meeting and the supporting documentation was submitted to the City Clerk's Office on March 7, 2013. The petition represents less than 0.5% of the population of Vaughan and there has not been an opportunity for broader public input or discussion on the proposal.

If Council wishes to consider this option, staff would need to undertake an analysis of the proposal and provide Council with that analysis at a future Committee of the Whole (Working Session). The public would also have an opportunity to provide input at that meeting.

Option 2 – Conduct Our Own Ward Boundary Review

A Ward Boundary Review is an extremely important and lengthy task. Based on the experience of many municipalities, including Vaughan, and the outcome of previous OMB Ward Boundary hearings, there are a number of guiding principles for a Council to consider in conducting a ward boundary review. This includes ensuring a strong and effective public consultation process.

Ward Boundary Reviews are to follow the principles set out by the Supreme Court of Canada in *Re: Provincial Electoral Boundaries (Sask.)*, the 'Carter' case. The purpose of a review is to achieve 'effective representation'.

In describing the concept, the OMB in its order on the 2008/2009 Vaughan ward boundary review quoted extensively from the Carter decision:

"In *Carter*, Madame Justice McLachlin (as she then was) stated:

To what extent, if at all, does the right to vote enshrined in the Charter permit deviation from the "one person – one vote" rule?... The purpose of the right to vote enshrined in s. 3 of the Charter is not equality of voting power per se, but the right to "effective representation"....

What are the conditions of effective representation? The first is relative parity of voting power. A system which dilutes one citizen's vote unduly as compared with another citizen's vote runs the risk of providing inadequate representation.... The result will be uneven and unfair representation.

But parity of voting power, though of prime importance, is not the only factor... in ensuring effective representation....

Notwithstanding the fact that the value of a citizen's vote should not be unduly diluted, it is a practical fact that effective representation often cannot be achieved without taking into account countervailing factors. First, absolute parity is impossible. It is impossible to draw boundary lines which guarantee exactly the same number of voters in each district....

Secondly, such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. These are but examples of considerations which may justify departure from absolute voter parity in the pursuit of more effective representation; the list is not closed.

It emerges therefore that the 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, 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 process (in this case), viewed as a whole, was fair. The original division between urban and rural ridings was the work of an unimpeded commission; the subsequent adjustment largely reflected population changes, and gave due weight to the principle of voter parity. The fact that the Legislature was involved in the readjustment does not in itself render the process arbitrary or unfair...

... It may be useful to mention some of the factors other than equality of voting power which figure in the analysis. One of the most important is the fact that it is more difficult to represent rural ridings than urban.... Thus the goal of effective representation may justify somewhat lower voter populations in rural areas. Another factor... is geographic boundaries... Yet another factor is growth projections. Given that the boundaries will govern for a number of years,...projected population changes within that period may justify a deviation from strict equality at the time the boundaries are drawn."

A preliminary budget estimate for a thorough Ward Boundary Review, based on information obtained from other municipalities, is approximately \$40,000 to \$200,000. This would include:

- Consulting Fees
- Public meetings/public consultation
- Internal staff time and resources
- Legal proceedings before the OMB (including external legal counsel)

Costs would depend on the level of involvement of staff and consultants and could be affected by a compressed time frame. An example of an estimated timeline to conduct a Ward Boundary Review is 19 to 32 weeks.

In accordance with the Municipal Act, S.O. 2001, c. 25, the process needs to be completed by January 1, 2014 in order for boundaries to come into effect for the 2014 general municipal elections.

Based on the timeline information, a ward boundary review would not be completed before the expiry of the 90 day period after the filing of the petition. If a petitioner did apply to the Ontario Municipal Board after 90 days, there is no certainty as to when the OMB hearing would be held. The matter could still be at the Board for scheduling while the ward boundary review is underway.

Option 3 – Do Not Pass a By-Law

If Council chooses not to pass a by-law within 90 days of receiving the petition, any elector who signed the petition may apply to the Ontario Municipal Board to have the municipality divided or re-divided into wards or to have the existing wards dissolved. The City would be able to present evidence in support of Council's position, but the decision would be left to the Ontario Municipal Board and the Board can make any decision on boundaries including no change to wholesale changes. Additional costs in consultant and legal fees would be incurred to represent the City's interests at the Board similar to what would be required in conducting a Ward Boundary Review.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council as set out in Vaughan Vision 2020, particularly:

MANAGEMENT EXCELLENCE –
Demonstrate Leadership and Promote Effective Governance

Regional Implications

n/a

Conclusion

With the filing of a petition under S. 223 of the *Municipal Act*, S.O. 2001, c. 25, Council has 3 options to consider:

- Option 1 – Pass a By-Law to Re-Divide the Wards in Accordance with the Petition
- Option 2 – Conduct a Ward Boundary Review
- Option 3 – Do Not Pass a By-Law

Any decision to change ward boundaries should include consideration of public input. Staff also requires time to undertake further analysis of the Public Ward Boundary Review proposal submitted by the petitioners. It is therefore recommended that consideration of these options be referred to a future Committee of the Whole (Working Session) where the public will have an opportunity to provide input and staff can provide further information.

Attachments

Refer to Communication C5 - Public Ward Boundary Review, Vaughan, Ontario, 2012 – 2013,
Report prepared by Dr. Ronald G. Landes submitted by Mr. Antony Niro on March 7, 2013

Report prepared by:

Donna Winborn, Elections Coordinator, Ext. 8241

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Barbara A. McEwan', with a stylized, flowing script.

Barbara A. McEwan
Manager of Administrative Services and
Deputy City Clerk