



# The Corporation of the TOWN OF MILTON

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Report to: Mayor Krantz and Members of Council

From: Troy McHarg, Town Clerk

Date: April 28, 2008

Report No. ES-021-08

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Subject: Ward Boundary Review – Terms of Reference

**RECOMMENDATION:** THAT the Terms of Reference for the ward boundary review attached to report ES-021-08 as Appendix 1 be approved;

**AND FURTHER THAT** sole source approval be given to retain Dr. Robert Williams to lead a public process, develop options, and make final recommendations for Council's consideration;

**AND FURTHER THAT** a ward boundary review capital budget account not to exceed \$40,000 be created and funded from the slots reserve fund;

**AND FURTHER THAT** the Manager, Purchasing be authorized to execute contracts and the Mayor and the Town Clerk be authorized to sign any and all required paperwork as may be required.

## **EXECUTIVE SUMMARY**

The purpose of this report is to receive Council approval of a Terms of Reference and external assistance for the ward boundary review. The budget for this project includes approximately \$20,000 for external assistance as well as a contingency for an OMB appeal should one be received. Please refer to the financial impact section for details.

## **REPORT**

### **Background**

On February 3, 1997, the Town of Milton endorsed Resolution No. 839-97 whereby it was resolved that Ward 2 would be divided into two urban wards to be known as Ward



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2 and Ward 4. No adjustments were proposed to alter either Ward 1 or Ward 3 at that time. Subsequent to the public process, By-law No. 10-1997 was passed on February 17<sup>th</sup>, 1997, to adjust the ward boundaries and these boundaries remain unchanged from that time. Council also approved the following principles concerning representation: two Local Councillors per ward; the Mayor is one of the Town of Milton's representatives on Regional Council; and that Regional Councillors from the Town of Milton sit on both Town and Regional Council.

In March 2005, Council directed that staff undertake a formal ward boundary review for the 2009 election (now 2010 election with the change in the term of office).

On March 26, 2008, Regional Council acknowledged that there would be no change in regional representation before the 2014 election.

## **Discussion**

The Municipal Act allows a municipality to establish, re-divide or dissolve wards. The decision of Council is to be enacted by by-law which is then open to appeal by the Minister of Municipal Affairs and Housing, any person or any agency within certain timelines. With subsequent amendments to the *Municipal Act, 2001*, the only restriction on the size and composition of Town Council is that it must be comprised of at least five members, including a head of council who is elected by general vote.

For the changes to Council composition or ward boundaries to be effective for the 2010 election, it is required that the by-law(s) come into force prior to the end of 2009.

If Council decides to change the number of Councillors then a by-law would need to be adopted and, unlike ward boundaries, the decision is not open to appeal.

Undertaking a ward review should not be taken lightly. Since Councillors are elected by ward, it is important that the ward be effectively represented and that communities of interest are protected and not divided. An improper process, disregard for the Terms of Reference, or evidence of gerrymandering could cause an appeal of the review, and a costly hearing before the Ontario Municipal Board (OMB).

The intent of the ward boundary review that is being proposed is to undertake a completely public process under an approved Terms of Reference with the process being undertaken by an independent, experienced third party. The project will be lead by the Town Clerk and, if approved, Dr. Williams will be supported by a staff team with representation from IT, Communications, Planning and Development, and others as



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required. Council's role will be to: 1) approve the Terms of Reference and consultant 2) members will be consulted as stakeholders 3) decision-maker when the final recommendations are presented.

#### Ward Boundary Reviews – Other Experiences

In preparing the terms of reference to be used for the ward review, staff have reviewed previous ward reviews undertaken by other municipalities, especially those that were appealed to the OMB. It is the City of Ottawa review that is of particular importance since their first ward review was quashed by the OMB and the subsequent review is now a model for other municipalities to follow. The model used by Ottawa has been referenced by the OMB in other decisions including the 2005 City of London appeal. Also referenced by the Board has been the Supreme Court of Canada decision in the Carter case wherein it was established that 'effective representation' not 'representation by population', is the common law standard in Canada. This is expanded upon later in this report.

In 2001 following the amalgamation of Ottawa-Carleton from a 2 tier structure to single tier City, the City of Ottawa began the process of reviewing its ward boundaries. A citizen's task force to undertake a public process was struck, given direction from Council and in 2002, Council adopted a by-law for the new ward boundaries. Immediately following thereafter, several appeals were submitted to the OMB based on 6 issues which included: disregarding the terms of reference for the review; too much reliance on representation by population over other criteria; failure to consider and preserve communities of interest; insufficient public consultation; failure to recognize the uniqueness of rural communities; and, the elimination of rural representation. Note that the principle of protecting 'communities of interest' does not mean that each community should have its own representative on Council. It does mean that where possible and appropriate, these communities should not be fragmented or divided.

The OMB granted the appeals based partly on the fact that the Terms of Reference established by Council were flawed in that they precluded the opportunity to increase the number of wards. Additionally, the decision referenced the Supreme Court of Canada case known as *Carter* wherein it was established that "effective representation" not representation by population, is the common law standard for electoral boundaries in Canada. Subsequent to the Board's decision, the City re-commenced its ward review this time using an independent consultant that led the public process and made final recommendations to Council. This second approach not only achieved a successful ward re-alignment, but the criteria used in the review have been referenced in and have formed part of other OMB decisions.

In 2005, the City of London also had a successful appeal of its ward review. In that decision, the OMB partly based its ruling on the fact that the communities of interest



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were not being protected nor served under the then current ward boundaries. As well, the decision included that the City shift from 14 Councillors (2 representing each of the 7 wards) to 14 Councillors representing 14 smaller wards. During the hearing there was some discussion regarding the appropriateness of 1 or 2 Councillor(s) per ward and in the end, the OMB sided with the argument that the citizens would be best served with one Councillor per ward.

## Principle of Effective Representation

In 1991, the Supreme Court of Canada addressed various constitutional issues surrounding proposed changes to the provincial electoral boundaries in Saskatchewan and, in particular, the principle referred to as “effective representation”. In light of the high Court’s ruling in *Reference Re Provincial Electoral Boundaries (Sask.)*, known generally as the *Carter* case, the OMB described the importance of that principle as follows:

The Supreme Court of Canada in the *Carter* case reviewed the extent to which variance from strict representation by population was permissible. The decision establishes that “effective representation” not representation by population, is the common law standard for electoral boundaries in Canada.

The Court held that the right to vote in Canada means that each citizen is entitled to be represented in government. Representation means having a voice in the deliberation of government as well as the idea of the right to bring one’s grievances and concerns to the attention of one’s representative. Effective representation is premised upon 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 to the citizen whose vote is diluted. This results in uneven and unfair representation. It is a practical fact that effective representation often cannot be achieved without taking into account countervailing factors. First, absolute parity is impossible as voters die, voters move. Secondly, such relative parity, as may be possible to achieve, 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 representation of the diversity of interests. These factors are examples of considerations, which may justify departure from absolute voter parity in the pursuit of more effective representation, but the list is not closed.

It should be stressed that although ‘effective representation’ is the overriding principle when it comes to dividing wards, population is obviously another factor that must be considered. The population of the wards should be as equitable as possible in this



regard and at the same time, ensure that each voter is being fairly and equitably represented. As noted in the attached Terms of Reference, a degree of variation will be acceptable given the varying geography and population densities in Milton.

#### Ward Boundary Review - Proposed Process

In the case of the aforementioned OMB decisions, the City of London had its wards decided in part by the OMB whereas the OMB quashed the City of Ottawa by-law and the City was forced to start the process again. It would be prudent to enter into this review on the right foot, allowing for a public process to take place and ensuring the criteria/guidelines have been taken into consideration. To this end it is being recommended that Milton closely follow the successful process undertaken by the City of Ottawa generally explained as follows and detailed further in the Terms of Reference attached as Appendix 1 to this report:

- That a consultant reporting to the Town Clerk be retained to:
  - lead a 2-part public consultation process
  - receive and review comments/submissions (Part 1 of public consultation)
  - develop options for further public consultation
  - present options to the public for comments/submissions (Part 2 of public consultation)
  - prepare and present a final report with recommendations for Council's consideration
  - act as a witness at the OMB should it be required
- That a staff team provide resources and technical support to the consultant
- That the Council-approved Terms of Reference be the guiding document during the review
- That the final report be presented for Council's consideration

Consideration was given to using the expertise that may be available through a citizen's advisory group or committee instead of a consultant to undertake the ward boundary review. It is felt that the use of a consultant offers the following advantages when compared to the use of such a group or committee: all citizens, neighbourhood associations and special interest groups will have equal access to the public consultation process; proven successful process as evidenced in the second City of Ottawa case; totally independent without any vested interest in the outcome; and the fact that the recommended consultant is an expert in the field (as noted below).



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## Dr. Williams

Dr. Williams holds a Ph.D. in Political Science and taught at the University of Waterloo for 35 years until his early retirement in 2006. Throughout his career, his research and teaching interests have included municipal government, Ontario politics and electoral systems. He has also lead or reported on ward reviews for the Cities of Kitchener, Cambridge and Waterloo. He has served as an expert witness in eight OMB hearings on ward applications including hearings involving the City of Guelph, the City of Belleville, the Town of Aurora, the Town of Newmarket, and the City of Vaughan.

In 2007, he was retained by Elections Ontario and by the Ontario Ministry of the Attorney General (Constitutional Law Section) to assist, respectively, with the education campaign for the provincial referendum on electoral reform and an appeal on a portion of the Ontario *Election Act*.

Earlier this year, he was selected to conduct a ward boundary review for the City of Kitchener. This process begun in January and a discussion paper was published at the beginning of April. A final recommendation will go to Kitchener Council in June.

In reviewing Dr. Williams' qualifications and after consulting with municipal staff and staff from the Ministry of Municipal Affairs and Housing familiar with Dr. Williams and his work, staff are recommending sole source approval of Dr. Williams as the Town's consultant in this matter.

## Size of Council

In 1997, in conjunction with the decision on ward boundaries, deliberations resulting from report CL-5-97 saw Council defeat a motion to reduce the size of Council to nine members from eleven members.

Should Council wish to pursue further discussion on the matter of Council size, the timing is appropriate to undertake this initiative now in conjunction with the ward review. If Council wishes to pursue changes to the number of Councillors, in addition to approving the recommendation in this report, staff also be directed at tonight's meeting to report back on the issue. If that does happen, the issue of Council size will be dealt with prior to proceeding with the ward boundary review and the timelines will be amended accordingly by the Town Clerk. If Council ultimately decides to change its



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size, then a by-law must be adopted and, as mentioned earlier, the decision is not open to appeal. If Council wishes to remain with an eleven member Council, it would be appropriate at this meeting to approve the staff recommendation as is and the ward boundary review will commence as proposed.

## **Relationship to the Strategic Plan**

The approval of the recommendation in this report and the associated Terms of Reference for the ward boundary review will see the Town “engage in transparent and accountable decision-making processes and actions” which will in turn help achieve the goal of “a responsible, cost effective, and accountable local government”.

## **Financial Impact**

Staff are proposing a budget of \$40,000 which would be funded from the slots reserve fund. This budget is based on the estimated consulting costs in the amount of \$20,250 plus expenses as well as costs for printing, advertising, presentation material and other costs associated with public consultation. As the Town is duty-bound to defend any appeal to the OMB that may arise, an allowance has also been provided in the proposed budget should one be received. If an appeal is not received it would result in a favourable variance and the funds would be returned to the slots reserve fund.

Respectfully submitted,

Troy McHarg  
Town Clerk

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If you have any questions on the content of this report: Troy McHarg, x 2132

Attachments: Appendix 1 – Ward Boundary Review Terms of Reference

CAO Approval: \_\_\_\_\_



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**APPENDIX 1**

**TERMS OF REFERENCE  
WARD BOUNDARY REVIEW**

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**OBJECTIVE:**

To conduct a comprehensive review of the municipal ward boundaries in the Town of Milton in order to arrive at an effective and equitable system of representation. Insofar as possible, the review should accommodate for growth in the Town for at least the next 12 years. The revised ward structure is to be in place for the 2010 municipal election.

The review will be conducted within the following parameters:

- Respect the principle of "effective representation" as enunciated by the Supreme Court in its decision on the Carter case;
- Build from the experience gained through other municipal ward boundary reviews and the outcome of OMB hearings in those cases where a review has been appealed (Best Practices);
- Council size is to remain at the current size of eleven members but the guiding principles should not be disregarded in favour of keeping the number of wards at 4;
- There will remain three members of Council, one being the Mayor, who sit as members of both local and regional Councils;
- Insofar as possible, develop a ward structure that will accommodate growth and population shifts for at least 12 years;
- Conduct all steps in the work program including research, public consultation, review of options with the public and provision of a final report and recommendations to Council no later than March 2009.

**GUIDING PRINCIPLES:**

Subject to the overriding principle of "effective representation" as set out in the Carter decision, the following criteria will be referred to for guidance in the conduct of the review:

- Communities of interest and neighbourhoods: It is desirable to avoid fragmenting traditional neighbourhoods or communities of interest within the Town;
- Consideration of representation by population: To the extent possible, and bearing in mind the requirements for effective representation, wards should have reasonably equal population totals. Given the geography and varying population densities and characteristics in the Town, a degree of variation will be acceptable;
- Consideration of present and future population trends: Insofar as possible, the ward structure should accommodate growth for at least 12 years;
- Consideration of physical features as natural boundaries. Wards should have a coherent, contiguous shape and the boundaries should be straightforward and easy to remember.



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## **PROCESS:**

The project will be completed by a consultant reporting to the Town Clerk with support from Town staff. A first round of public consultations will be undertaken. Following the first round, the consultant will develop a discussion paper and presentation containing draft options for new ward boundaries. A second round of public consultations, focussing on the draft option(s) will take place with two public open houses to be held at different locations in the municipality. The consultant will then table a report to Council with a recommendation based on these terms of reference; relevant research and public discussion and input.

### Project Sponsor:

The Town Clerk will be responsible for overseeing the contract for the consultant, ensuring that: necessary staff resources are available; timelines are met; and, public consultation proceeds in accordance with Town policies and guidelines.

### Consultant:

The consultant will be responsible for the conduct of all aspects of the project including, research, public consultation, formulation of options, and the preparation of a final report and recommendations for the consideration of Council.

The consultant will:

- lead the public consultation process;
- receive and review comments and submissions from citizens, school boards, community groups and associations, and members of Council ;
- formulate and test options with the public and community organizations;
- develop options for an appropriate ward structure that, insofar as possible, will accommodate growth and population shifts for at least the next 12 years;
- prepare and present a final report and recommendations to Council, and;
- act as a witness at the OMB should it be required.

The consultant will be assisted by Town staff in accordance with working arrangements to be developed as part of a more detailed work program. Town staff will provide comprehensive technical assistance to the consultant as follows:

- the Town Clerk will provide general assistance and act as liaison between the Town and the consultant;
- Communications will work with the consultant to develop a communications plan, displays and presentations;
- IT will provide GIS services for mapping purposes and, will create and maintain a web page on the Ward Boundary review;
- Planning will assist the consultant by providing information on current and future trends in development, population and growth projections as well as neighbourhood information;



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- Various staff will also provide information with respect to known current and future neighbourhood associations, communities of interest and information on the community in general.

## Timetable:

The following is a general timetable; an exact schedule will be developed with the consultant to the satisfaction of the Town Clerk.

- April 2008
  - consultant selected and Terms of Reference approved.
- July - August
  - work program including details of the support role to be played by Town staff, to be finalized;
  - review background, OMB cases, best practices, available resources, prepare process guide;
  - staff team creation.
- September
  - first round of public consultations; how this will be undertaken will be further developed;
  - Media engagement.
- October – early December
  - Consultant to develop discussion paper for ward boundary options.
- December 2008 - January 2009
  - Prepare public presentations and materials;
  - Prepare and manage two public open houses (January 2009) at different locations in the Town to present and discuss the options and receive further public comment and feedback.
- February 2009
  - consideration of all input and formulation of final report and recommendations.
- March 2009
  - Final report with recommendation(s) presented at a Council meeting for approval;
  - Media engagement;
  - Within 15 days following Council adoption of the By-law, notice will be given to the public specifying process and timelines for appeal;
  - Last date for appeal is 45 days following passage of by-law;
  - If appeal received within 15 days following the last date for appeal, notice of appeal forwarded to OMB.