

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 03, 2021

CASE NO(S): OLT-21-001139

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

Appellant:	Alan Hall
Subject:	By-law No. (2021)-20613 (Ward Boundary) to alter all six of the City of Guelph's wards
Municipality:	City of Guelph
Municipality Reference No.:	BL(2021) – 20613
OLT Lead Case No.:	OLT-21-001139
OLT Case No.:	OLT-21-001139
OLT Case Name:	Hall v. Guelph (City)

Heard: November 4 and 5, 2021 by video hearing

APPEARANCES:

Parties

Counsel*/Representative

Alan Hall	Self-represented
City of Guelph	Allison Thornton*

DECISION DELIVERED BY M.A. SILLS AND ORDER OF THE TRIBUNAL

[1] This matter was an appeal by Alan Hall (“Appellant”) from the passing of By-law No. (2021)-20613 (“By-law”) by the Council of the City of Guelph (“City”), pursuant to s. 222(4) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended (the “Act”).

[2] On July 22, 2019, the elected Council of the day directed that a Council Composition and Ward Boundary Review (the “Review”) be conducted by a third-party

during the 2018-2022 term of Council, with the intent that any changes to the composition of Council and/or ward boundaries take effect for the 2022-2026 term of Council. The By-law follows the Review.

[3] Watson and Associates Economists Ltd., partnered with ICA Associates Inc., Dr. Robert J. Williams and Dr. David T. Siegal, (hereafter, collectively is referred to as the “Consultants”) was the successful candidate in a Request for Proposals procurement process. The operational principles established for the Review were: (a) representation by population (b) projected growth patterns (c) communities of interest, and (d) natural boundaries and geographic features.

[4] In a Final Report presented to Council on June 21, 2021, the Consultants recommended Option 8-1 (eight wards with one councillor each), with Option 6-2 (six wards with two councillors each) as an alternatively recommended scenario should a six-ward option be preferred.

[5] At its meeting on June 23, 2021, on a recorded vote of 12 to 1, Council passed the following resolution:

1. That Guelph City Council be comprised of twelve councillors plus the Mayor.
2. That two City councillors be elected per ward.
3. That the employment status of City Councillors be referred to the City Council Remuneration and Support Advisor Committee.
4. That the revised City of Guelph ward boundaries included as final option 6-2, in the *City Council Composition and Ward Boundary Review, Phase 2 – Final Report*, dated June 21, 2021, be approved, to take effect for the 2022 municipal election.

[6] The Appellant has challenged that decision.

[7] The Tribunal's authority in this matter is derived from the *Act*.

- Section 222(1) of the *Act* authorizes a municipality to divide or re-divide the municipality into wards or to dissolve the existing wards [2006, c. 32, Sched. A, s. 96(1)].
- A by-law passed to divide or subdivide a municipality into wards under s. 222(1) of the *Act* may be appealed to the Tribunal pursuant to s. 222(4).
- In the case of an appeal of a by-law to divide, re-divide or dissolve existing wards, the Tribunal may affirm, amend or repeal the by-law [2001, c. 25, s. 222(7): 2017, c. 23, Sched. 5, s. 49(4)].
- Section 217(1) of the *Act* provides the authority for a municipal council to change the size and composition of council.
- There is no right of appeal to the Tribunal on a decision of a municipal council pursuant to s. 217(1), regarding the size and composition of council.

Submissions by the Appellant

[8] The Appellant is a nineteen-year resident living in the west end of the City (Ward 4). He was self-represented and did not call any witnesses. He did, however, make opening and closing submissions and testify on his own behalf, and was permitted to ask questions of the City's witnesses for clarification purposes.

[9] The Appellant submits there are two issues that must be determined by the Tribunal:

1. Does the By-law satisfy the criteria related to: a) representation by population; b) projected growth patterns; c) communities of interest; and d) natural boundaries and geographic features?
2. If the Ward Boundary By-law is not found to be reasonable in respect of this criteria, what is the preferred alternative for the re-division of ward boundaries?

[10] The Appellant agrees that the process followed by the City for the Review was appropriate, and that the population figures used in the exercise were fair and accurate. Despite this, it is his position that the City's decision to pass the By-law was not reasonable and operates to diverge from the overriding principle of voter equity and effective representation.

[11] The Appellant claims that 60% of the City's population lives north of the Speed and Eramosa Rivers, while the other 40% reside to the south. It is his contention that if the 60/40 split was represented fairly on Council, then there should be 3.6 wards in the northern half, and 2.4 wards in the southern half of the City.

[12] The By-law retains the existing four wards in the northern part and two wards in the southern part of the City. The two southern wards have an average 2021 population which is 26% higher than the average population of the four northern wards. By 2031, this gap widens to a 37% differential.

[13] The Appellant alleges this disparity is a clear violation of the two distinct elements of representation by population ("rep-pop"); the first being, that every Councillor should generally represent an equal number of constituents, and the second, that the range of population variance should not exceed 25% unless it can be justified to meet one of the other criteria.

[14] In this case, although all six wards are within the 25% range for 2021, the two most populated wards are in the south and the least populated wards are in the north, with a considerable gap between the two groups. Despite having 40% of the City's population, the area south of the Speed and Eramosa Rivers currently has only 32% representation on council. The By-law raises this to just 33%.

[15] The Appellant maintains that with six wards, fair representation for the whole City would require three wards in the north, two wards in the south, and a central ward that crosses the two rivers, with all ward populations close to optimal. The alternative ward map would represent a dramatic change from the boundaries that have been in place for the last three decades.

[16] If all parts of the City are to be treated fairly then the two southern wards need to be made smaller, while the four northern wards need to grow in population. There is no alternative to this without changing the number of wards. The challenge here is that in order for one area to gain representation it must be at the expense of another. The Consultants referred to this as the 'ripple effect' and expressed the concern that it would disrupt the overall pattern of the ward system, with which the Appellant does not disagree. However, in his opinion having a ripple effect once every 30 years is a good thing for democracy if it helps achieve effective representation.

[17] The Appellant alleges the Consultants erred in not proposing a six-ward option that crossed both the Speed and Eramosa Rivers. Instead, they submitted a flawed proposal in the Final Report, which was ultimately accepted by Council. The result is that Council made a decision to maintain the existing ward balance at the cost of respecting the publicly-stated guiding principles of the Review process, and in opposition to caselaw.

[18] The purpose of the Review was to create a set of ward maps that could be used for the next three municipal election cycles (2022, 2026 and 2030). To facilitate this, the Consultants prepared population estimates for 2021 and population projections for

2031. Ward 6 currently has an estimated population that is 30% higher than the City average. Ward 6 as set by the By-law is projected to return to the same plus 30% level by 2031, a degree of deviation that is well beyond the 25% set by the Supreme Court of Canada in *Carter v. Canada*, 2015 SCC 5 (1991) (“Carter”) decision, and subsequently, recognized by the Tribunal.

[19] The ward boundaries set by the By-law follow major roads and waterways. The Appellant submits that the boundary lines look great on a map but have the unfortunate effect of unnecessarily dividing some City neighbourhoods between wards (Exhibition Park, St. Patrick’s Ward and Hanlon Creek).

[20] Should the Tribunal decide that the ward boundaries as described in the By-law do not meet a standard of reasonableness then a preferred alternative must be found. In the Appellant’s view, the obvious alternative should be to use the eight-ward map recommended in the Consultants’ Final Report (Option 8-1). However, in his opinion the Option 8-1 map is also seriously flawed.

[21] Although the rep-pop principle is much improved over the current By-law map in the 8-1 option, that scenario also contains a proposed ward that exceeds the 25% standard, although in the other direction. That is, the population of Ward 2 is projected to drop to 31% below the City’s population average in 10 years time. As well, there are four neighbourhoods that are split by the ward boundaries used in the Option 8-1 map.

[22] The Appellant expressed his concern with the unreasonable decision made by Council after being presented with two flawed ward map proposals by the Consultants. In his opinion, the six-ward options do not provide fair representation for all residents of the City. Both of these options contain wards that exceed the 25% population standard for 2031, and do not enhance effective representation; and both of these options unnecessarily divide recognized City neighbourhoods.

[23] The Appellant provides the following alternative scenarios for the consideration of the Tribunal:

1. Scenario A – Two Councillors from each of six wards (12 councillors in total) be elected (current composition);
2. Scenario B – One Councillor from each of eight wards to be elected;
3. Scenario C – One Councillor from each of twelve Wards, to include One Councillor from each of the eight wards used in Scenario B, and One Councillor to be elected from each of the four wards created by pairing those wards as follows: Northeast (Wards 1 & 2); Northwest (Wards 3 & 4); Centre (Wards 5 & 6); and South (Wards 7 & 8).

[24] The Appellant asserts that all three of these scenarios better respect the guiding principles set for the Review, than does the By-law adopted by Council.

[25] Based on the Consultants' population estimates and projections, the ward population in all three of these scenarios fall within the acceptable 25% population range, both in 2021 and 2031, and balance representation on both sides of the North-South divide. Neighbourhoods that are identified on the City's Neighbourhood Groups Map (website) are kept united to the greatest extent possible, and natural boundaries such as rivers, railway lines and major roadways are used for ward boundaries.

Submissions of the City

[26] The City called three witnesses: Dylan McMahon – Deputy City Clerk/Manager of Legislative Services; Erik Karvinen – Manager, Watson & Associates Economist Ltd. ("Watson"); and Dr. Williams – Professor of Political Science – University of Waterloo (retired).

[27] Mr. McMahon was engaged in the administration of the Review from inception to completion. He provided factual evidence regarding the Consultants' procurement process, public consultation and engagement process.

[28] Mr. McMahon reported that three rounds of public consultation were undertaken. The first round, which began in January 2021, provided an opportunity for the public to prioritize the importance of the four established guiding principles: representation by population; projected growth patterns; communities of interest; and, natural boundaries and geographic features.

[29] On February 14, 2021, the Consultants presented a Preliminary Options Report that contained 13 preliminary ward boundary configurations. Virtual Town Hall events were again held on February 24 and March 10, 2021. The Appellant attended the March 10, 2021 event.

[30] On April 2, 2021, the final stage of the public consultation was launched. In this stage, the original 13 preliminary ward options were replaced with four final options: a five-ward option (Option 5-1), two six ward options (Options 6-1 and 6-2) and one eight ward option (Option 8-1). Two further Virtual Town Hall events were held on April 6 and April 21, 2021.

[31] In a final survey, the public was asked to rank the final four options from first to fourth choice. A total of 399 people responded to the survey. Of these, Option 6-2 received the most combined first and second choice votes and was the least preferred of the fewest number of public respondents. Option 8-1 received the most first choice votes, but also was the least preferred option of the greatest number of public respondents.

[32] The Consultants' Final Report was presented to Council in a Special Meeting held over two evenings. The Consultants' presentations and public delegations (13)

were heard on June 21, 2021. The Appellant was one of the delegates. Written submissions were provided by 17 additional groups and/or individuals.

[33] Council passed a resolution at the June 23, 2021, to retain two Councillors per ward and adopted Option 6-2 to take effect for the 2022 municipal election.

[34] Mr. Karvinen is a Professional Land Economist and a Registered Professional Planner. He has extensive experience in demographic and economic growth studies, growth management strategies and ward boundary reviews, and on that basis, was qualified by the Tribunal to proffer expert evidence and opinion in line with his areas of expertise.

[35] Mr. Karvinen provided a detailed and conclusive overview of the study processes undertaken by the Consultants, which included an extensive growth analysis component utilized to explore and assess population balances by ward in the current year (2021) and in the future (2031). This process enabled the Consultants to develop and present to the City a range of alternative ways to ensure an effective and equitable electoral arrangement for the election of councillors.

[36] The City is forecast to experience strong population growth and shifts through 2031 and beyond. To evaluate the existing ward structure and subsequent alternatives in terms of rep/pop in future years, detailed forecast population growth estimates for the 2021 to 2031 period were developed in accordance with the terms of reference, which identified the need to consider population change over a three-municipal election period through to 2031.

[37] The Consultants prepared two recommended options for Council to consider for adoption – Options 8-1 and Option 6-2. Option 6-2 was ultimately adopted by Council. Mr. Karvinen pointed out that Option 6-2 reflects a Council composition and ward boundary model that was strongly endorsed by the community through the review process.

[38] Dr. Williams, who is well-experienced in electoral arrangements and ward boundary reviews, was retained as part of the consulting team for the Review. He and his colleague, Dr. Siegal, interviewed senior City staff and elected officials in early 2020, on topics related to council composition. These interviews concentrated on the implications of a council composed of thirteen members; the two-member-per-ward model that has been operating in the City since the early 1990s; and the possible effects of full-time remuneration for councillors, all of which were spelled out in the terms of reference for the Review.

[39] Dr. Williams pointed out that their findings on these questions formed the basis for public engagement activities in the fall of 2020, and perspectives gained through that experience, along with their professional expertise, were considered in developing the recommendation that the City elect future councils in a system of eight wards with one full-time councillor each. A second alternative, that the City's existing six-ward structure be maintained, and the ward boundaries updated to ensure effective representation by the 2022 municipal election, was also provided. Recommended boundaries for wards were not provided at that time because information had not been given to council or the community about the considerations that go into the design of a successful ward system.

[40] Following the initial report, Council directed the Consultants to commence a ward boundary review without specific direction on the number of councillors per ward. The key operational principles for the ward boundary review were drawn from the terms of reference for the Review.

[41] Dr. Williams detailed his understanding that effective representation is a cumulative concept, meaning that it is not a free-standing principle that can be judged in isolation, but rather, it emerges from the consideration of all of the principles that the Consultants were directed to consider in the Review. Drawing on his professional experience, he said it is unlikely that a ward system design can uniformly meet all the

guiding principles because some criteria may work at cross purposes to another – “there is no ‘perfect’ solution”.

[42] Dr. Williams emphasized that ultimately, the authority “to divide or re-divide the municipality into wards or to dissolve the existing wards” rests with the municipal council. The Consultants presented a recommendation, based in part, on what they had learned in the Review of the composition of Council, and in part, on the positive public responses to the final options for the Review. The survey of the residents did not produce a single “winner” – the respondents were almost evenly divided between those who preferred to keep the council at the same size as those who wanted to make the council smaller.

[43] In making the decision, members of Council had a set of comprehensive reports based on extensive public consultation on all components of the Review, and the professional insights of the Consultants, which allowed them to make an informed decision. By a vote of 12 to 1, council adopted a six-ward configuration (Option 6-2) to take effect for the 2022 municipal election. Option 6-2 reflects a relatively limited amount of change - it maintains the current ward model of municipal representatives, while making modifications and improvements to the ward boundaries to better align with the guiding principles. This option was designed to address the limitations identified in the present system during the initial stages of the ward boundary Review.

[44] It is his professional opinion that the City’s Ward Boundary By-law No. (2021)-20613 successfully meets the guiding principles established for this Review and provides a sound system of representation for the City.

Conclusions and Disposition

[45] In deciding this matter, the Tribunal had the benefit of substantive documentary evidence, the testimony of the expert witnesses, the oral presentations and submissions

of the Appellant and response by the City. Both the Appellant and the City provided a book of authorities.

[46] The Appellant is asking the Tribunal to allow his appeal and direct the municipality to adopt one of three ward boundary/council composition scenarios that he has created.

[47] Scenario A maintains the six wards with two councillors each scenario that was adopted by Council but results in changes to the ward configurations and boundaries.

[48] Scenario B results in a different number of councillors (eight) from what has been approved by Council (12). This is not a viable alternative because the *Act* does not grant the authority to the Tribunal to either change or determine the size and/or composition of a municipal council.

[49] Scenario C is not a viable option because it also deviates from the approved composition of council (2 councillors per ward).

[50] Should the Tribunal simply allow the appeal, the ward boundaries as they currently exist will remain in place. Such an outcome would effectively defeat the whole purpose and intent of the Review, and in Tribunal's opinion, is not a logical or reasonable outcome given, among other things, the cost and complexity of the Review. Furthermore, it disregards and disrespects the voice of the community and the right of the Council to govern the affairs of the municipality.

[51] The Tribunal has consistently demonstrated a reluctance to overturn or otherwise interfere with a decision of a duly elected municipal council regarding the electoral structure of a municipality unless there are clear and compelling reasons for doing so.

[52] In the final determination of this appeal, the Tribunal must be satisfied that the decision of Council is reasonable and appropriate in that it achieves effective representation and serves the best interest of the residents of the City. In making that

determination, the Tribunal accepts the data, representations and recommendations of the Consultants and the decision of Council.

[53] The Consultants have specialized expertise in demographic and population forecasting, municipal council structure and ward boundary reviews. A robust public consultation and engagement process undertaken as part of the Review attracted significant public involvement. The Appellant agrees that the Review process followed by the City was exemplary and the population figures that have been provided by the Consultants are fair and accurate. By contrast, the public was neither consulted nor given an opportunity to provide feedback on the scenarios provided by the Appellant. However, the ward structure and boundaries being proposed by the Appellant were reviewed by the Consultants and found to be problematic.

[54] In the course of the Review, and in response to feedback obtained through the public consultation and engagement process, the Consultants prepared a number of ward configuration and council composition scenarios, beginning with 13 options in the preliminary stages, then narrowing to four in the final round. In a Final Report to Council, the Consultants recommended Option 8-1 (eight wards with one councillor each), with Option 6-2 (six wards with each having two councillors) being recommended as an alternative. Ultimately, Option 6-2 was adopted by Council. This option was strongly endorsed by the community throughout the Review process.

[55] The Consultants pointed out that in high growth municipalities with new growth areas planned such as the City, it is challenging to provide a boundary alternative recommendation that meets the guiding principles and achieves balanced population by ward in both current and future years.

[56] Option 6-2 improves upon the current ward structure while maintaining the current model of municipal representation, achieving relative population parity, respecting communities of interest and natural boundaries, and is well supported in the community. This option largely meets the guiding principles established for the Review.

[57] Based on the evidence before me, the Tribunal finds that due diligence has been done and the public interest has been regarded and is being served. The Tribunal finds that these processes ultimately resulted in a ward by-law that achieves effective representation through relative parity of voting power and the consideration of the other factors and guiding principles considered by the consultants and Council. The By-law passed by Council implements the ward boundaries and is appropriate.

ORDER

[58] The Tribunal Orders that the appeal is dismissed.

“M.A. Sills”

M.A. SILLS
VICE-CHAIR

Ontario Land Tribunal

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