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Proposed Ward Boundary Review Staff Report to Council

Report Number: 2020-05

Department(s): Legislative Services

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Meeting Date: January 13, 2020

Recommendations

1. That the report entitled Ward Boundary Review dated January 13, 2020 be received; and,
2. That Staff be directed to retain an independent consultant to conduct a ward boundary review; and,
3. That Council approve an expenditure on a ward boundary review to a maximum of \$100,000, and the use of Reserve Funds to offset the costs; and,
4. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Executive Summary

The Town of Newmarket has seen significant development and population growth in the past two decades. Newmarket's current ward boundaries were established in 2002 with a view toward recognizing the impacts of growth in different parts of the Town and its impacts on representation. Undertaking a ward boundary review at this time will allow for adjustments to ward boundaries that acknowledge that Newmarket has seen growth that varies strongly between wards, and that growth is projected to continue to exacerbate the representation imbalances between wards. As described in this report effective "voter representation" and "voter parity" are cornerstones of Canadian democracy and key considerations in a ward boundary review. Staff have reviewed current and projected population numbers and have determined that by the end of this term of

Council and through the next term significant variation in ward populations will result in ward populations exceeding the maximum level of deviation from the average.

Purpose

The purpose of this report is to provide Council with information on a ward boundary review for the Town and to provide direction to staff to proceed with a Request for Proposal (RFP) to engage a consultant to conduct a ward boundary review.

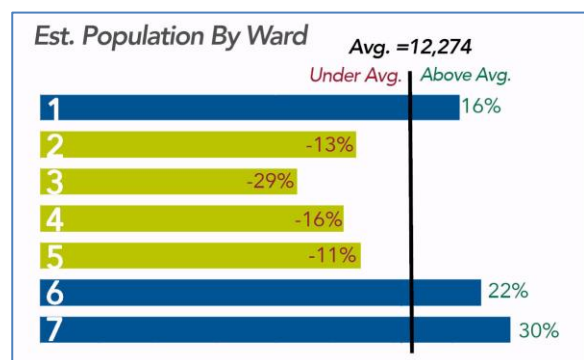
Background

Newmarket's current ward system boundaries were established by By-law 2002-62 for implementation following the 2003 Municipal Election. Corporate Services Report 2002-21 (see **Attachment A**) provided several options for the division of the Town into wards and provided an overview of the consultation and background information and criteria for a ward system.

The Municipal Act, 2001 ("The Act") gives municipalities the authority to determine the composition (including size) of Council, subject to certain parameters. Municipalities may determine ward boundaries through a process outlined in the Act. Residents may also petition Council to create or revise a ward structure, and a failure to act upon such a petition may be appealed to the Local Planning Appeal Tribunal (LPAT). Any Council decision with respect to ward boundaries may be subject to appeal through the LPAT

Primarily, a review of ward boundaries is intended to achieve "effective representation" or "voter parity" as established by the Supreme Court of Canada¹. The ward boundaries established in Newmarket in 2002 were established with significant variation, but with anticipated future development they were expected to meet the test of voter parity within 5 to 10 years. Further future development beyond the original 5 to 10 year projections including density increases, population shifts and intensification were not a factor that was considered at the time the ward boundaries were established.

Population size variances of between 25 to 33 percent are generally accepted as the maximum variance to achieve voter parity; that is to say, no ward should have population greater than 33% above the average for all wards or less than 33% below the average for all wards. Current ward populations fall within this range with a 29% variance in Wards 3 and 30% variance in Ward 7 as illustrated in the bar graph. Ward 3 is 29% below the



¹ Reference re Prov. Electoral Boundaries (Sask.), [1991] 2 SCR 158, 1991 CanLII 61 (SCC), <<http://canlii.ca/t/1fsl1>>

average ward population size and Ward 7 30% above. See **Attachment B** for a 2019 map showing population per ward. Future projected populations will cause wards to be at a greater variance to this range as is described later in this report.

Although the existing provincial legislation provides for municipalities to establish and amend ward boundaries on their own (subject to some statutory requirements and the role of the LPAT as described below), it is important to note that the provincial government has the ultimate authority in the determination of municipal ward boundaries, as well as Council size. Given the results of the Regional Review and the recent decision not to impose a top-down approach on municipalities it is possible that the Province will abide by this policy with respect to matters such as ward boundary reviews as well. Additionally, the Municipal Act requires York Region Council to review its governance structure by December 2020.

That said, the current legislation, as written, does provide for a municipality to establish and change ward boundaries and to determine the size of council on its own. In particular, the Act includes provisions relating to the following:

A municipality may establish and change its ward boundaries.

Subsection 222(1) states that a municipality is authorized to “divide or re-divide the municipality into wards or to dissolve the existing wards.”

A municipality is required to provide public notice of a Council-approved ward boundary by-law.

Subsection 222(3) provides that a municipality is required to give public notice that a ward boundary by-law has been passed within 15 days after the by-law is passed. The notice must specify the last date for filing a notice of appeal.

A Council-approved ward boundary by-law may be appealed to the Local Planning Appeal Tribunal.

Subsection 222(4) states that within 45 days of the ward boundary by-law being passed, it may be appealed to the LPAT by “the Minister or any other person or agency. The appeal is made 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. The municipality is required to forward any notices of appeal to the LPAT within 15 days after the last day for filing the notice [Subsection 222(5)].

The timing for new ward boundaries to come into force, depends on when Council approves the ward boundary by-law.

Subsection 222(8) provides that a by-law to establish ward boundaries comes into force for the next regular election if the by-law is passed before January 1 of a regular election year and no notices of appeal are filed, or if any notices of appeal are withdrawn prior to January 1 of the election year, or if notices of appeal are filed and the LPAT issues an order to affirm or amend the by-law before January 1 of the election year. In all other

cases, except when a by-law is repealed by the Tribunal, the by-law comes into force for the second regular election after the by-law is passed.

In order for any ward boundary changes to be in effect for the **2022 Municipal Election**, any by-law establishing new ward boundaries must be in **force before January 1, 2022**. Specifically, if the by-law establishing new ward boundaries is appealed to the LPAT, the notices of appeal must be withdrawn, or the Tribunal must have issued an order to affirm or amend the by-law, before that date.

If Council opts to not proceed with a Ward Boundary Review, electors may use a petition to request a change to ward boundaries.

Under Subsection 223(1), electors in a municipality may at any time “present a petition to the council asking the council to pass a by-law dividing or re-dividing the municipality into wards or dissolving the existing wards.”

The petition requires the signatures of one per cent of the electors in the municipality or 500 of the electors in the municipality, whichever is less. Since one per cent of electors in Newmarket would be 567² electors, a petition to Newmarket Council asking for a ward boundary review would require 500 elector signatures.

If Council did not pass a by-law in accordance with the submitted petition within 90 days of receiving the petition, Subsection 223(4) provides that “any of the electors who signed the petition may apply to the Local Planning Appeal Tribunal to have the municipality divided or re-divided into wards or to have the existing wards dissolved.”

The Tribunal is required to hear the application, and may make an order “dividing or re-dividing the municipality into wards or dissolving the existing wards” [Subsection 223(5)].

Similar to the timelines under which a ward boundary by-law comes into force, the order of the LPAT with respect to a petition application would take effect for the following election if the order is made prior to January 1 of a regular election year (e.g., before January 1, 2022). The order of the Tribunal would be effective for the subsequent election if the order is made on or after January 1 of a regular election year but before Voting Day (e.g., on or after January 1, 2022).

Discussion

The process for revising or determining ward boundaries is founded in the principles of democracy and should be based on fair, impartial review, include public consultation and comply with the five factors described below:

1. Voter parity;
2. Protecting communities and neighbourhoods of interest;

² Based on elector data from the 2018 Municipal Election.

3. Respecting physical features or natural barriers as boundaries;
4. Reviewing existing and proposed developments for future population growth projections; and,
5. Ward history

Staff have not received any feedback from Council or the public with respect to concerns about Newmarket's ward boundaries. Staff have conducted a review of current and projected ward population numbers based on current planning applications. The table included as **Attachment C** outlines projected population growth by ward for this term and next term of Council.

These projections are based on current development proposals in the planning process, broken down by the type of dwelling and the average population size per dwelling type. These numbers are assumptions based on when planning approvals may be completed. Actual timelines for these development proposals are determined by the developers and based on a variety of factors such as development financing. This is intended only as an indicator of possible population growth. A ward boundary review would include a more complex analysis of demographic and economic factors which may result in different predictions.

As a result of the increased growth in Ward 7 and no growth projected for Ward 3 the projected deviation from average population is expected to increase in both wards with Ward 3 being overrepresented and Ward 7 underrepresented.

As a result of these projections staff are recommending a full ward boundary review be undertaken in this term of Council. Staff are not recommending a review of the Town's governance structure or Council composition at this time.

Engaging a Consultant

It is recommended that a consultant lead the ward boundary review in order to ensure that there are no perceptions of staff conflicts in determining ward boundary recommendations to Council. Most urban municipalities that have undertaken ward boundary reviews have typically engaged consultants to lead the review. (See budget impact section to see financial comparisons). Based on staff's research, a well-designed ward boundary review generally means a municipality does not have to conduct another review until 4 general Municipal Elections have passed (i.e., approximately 16 years). Given this, staff will begin planning for the next ward boundary review by establishing a financial reserve so that a ward boundary review can be conducted ahead of the 2038 Municipal Election.

The consultant would conduct research, develop and execute a work plan that includes broad public consultation. Findings and recommendations would be reported to Council. In addition, the consultant would be an expert witness, if necessary, in the event of one or more appeals to the LPAT of any new Council-approved by-law to revise ward boundaries, as described in this report.

The consultant's specific responsibilities would include as follows:

- Undertaking a ward boundary review that will withstand legal scrutiny and possible appeals to the LPAT;
- Developing a ward boundary review work plan and community engagement strategy;
- Undertaking required electoral, public policy and other research to inform the ward boundary review process;
- Implementing a two-stage broad engagement and consultation strategy with residents, communities, key stakeholders and Members of Council to elicit input on current ward boundaries and input on ward boundary options; and
- Developing ward boundary options and a recommended option for Council's consideration in the fall of 2020.

The full scope of the consultant's responsibilities can be found in the draft Terms of Reference in **Attachment D**.

Projected Timeline

Staff are seeking approval to retain a consultant in order to meet statutory timelines to have any new ward boundaries in place for the 2022 Municipal Election. Staff have mocked up a draft timeline based on other municipalities ward boundary reviews and the required legislated timelines (see **Attachment E**). This timeline may be subject to some modification by the consultant once they are brought on board but overall deadlines are not likely to shift significantly. As stated previously, in order for any new ward boundaries to be in place for the 2022 Municipal Election, a by-law must be in effect by January 1, 2022, and any appeals to the LPAT must be concluded by this date.

Conclusion

Newmarket is expected to continue to grow and is in a unique position of largely being built out and is planning for significant intensification in certain areas such as the Yonge Street & Davis Drive corridors. Along with growth, Newmarket has seen and will continue to see, increases in diversity and changes in demographics. All of these factors make this an ideal time to review our current ward boundaries. The ward boundary review will consider future growth and will establish a recommended timeframe for any future ward boundary reviews. In order to do this effectively Staff recommend engaging a consultant to lead the review and public consultation process.

Business Plan and Strategic Plan Linkages

This report is linked the long term financial sustainability pillar of the 2018 to 2022 Strategic Plan as it relates to ensuring continuous improvement and service levels for residents.

Consultation

The Planning and Building Services, Financial Services, and Economic Development Departments were consulted in the drafting of this report.

Human Resource Considerations

There are no additional human resources required.

Budget Impact

Based on other ward boundary reviews for municipalities of similar size, it is estimated that the consultant will cost approximately \$100,000. The use of the appropriate reserve fund to cover these costs will be determined by the Treasurer.

Based on other ward boundary reviews costs range based on the size of the municipality and the complexity of the review. For example Aurora has budgeted \$60,000 for their review which includes possibly moving from at-large to wards. In discussions with Aurora Staff, it has been suggested that this budget amount may be increased due to the complexity of their review. Guelph has budgeted \$150,000 for a review that includes a governance review consisting of a review of the composition of Council, role of councillors, including ranked ballot considerations, and employment status of all members of Council.

Municipality	Timeline for completion	Budget
Ajax	completed 2017	Approximately \$5 - \$10,000
Aurora	currently underway	\$60,000
Guelph	currently underway	\$150,000 (budget)
Hamilton	completed 2017	\$227,000 (actual)
Milton	completed 2016	\$64,000
Ottawa	currently underway	\$710,000 (min estimate budget)
Toronto	completed 2017	\$810,000 (actual)

Attachments

Attachment A - Corporate Services Report 2002-21

Attachment B - 2019 Ward Map showing current populations

Attachment C - Table showing projected population growth

Attachment D - Terms of Reference for consultant

Attachment E - Projected Timeline

Approval

Kiran Saini, Deputy Town Clerk

Lisa Lyons, Director of Legislative Services/ Town Clerk

Esther Armchuk, Commissioner of Corporate Services

Contact

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