

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: May 13, 2021

CASE NO(S): MM200018

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Robert Bruce Orrell
Subject:	By-law No. 6271-20 (Ward Boundary), to divide the Town of Aurora into six (6) wards
Municipality:	Town of Aurora
LPAT Case No.:	MM200018
LPAT File No.:	MM200018
LPAT Case Name:	Orrell v. Aurora (Town)

Heard: May 3, 2021 by video hearing

APPEARANCES:

Parties

Counsel*/Representative

Robert Bruce Orrell

Self-represented

Town of Aurora

Andrew Biggart*
Natalia Sheikh*
Patricia De Sario*

DECISION DELIVERED BY R.A. BECCAREA AND S BRAUN AND ORDER OF THE TRIBUNAL

[1] The Town of Aurora (“the Town”) enacted By-law No. 6271-20 (“the By-law”) on July 14, 2020 that divided the Town into six wards, in order that it would govern the municipal election scheduled for October 24, 2022.

[2] Currently the Town is governed by a Mayor and six Councillors who are elected “at-large”. The Bylaw changes the electoral process such that, while the Mayor continues to be elected at large, the Town Councillors are to be elected by the ward structure.

[3] The Appellant, Robert Bruce Orrell, who has resided at 83 Brookeview Drive since 1995, appealed the Town’s passing of the By-law to the Local Planning Appeal Tribunal (“the Tribunal”) on August 24 2020, pursuant to s. 222(4) of the *Municipal Act*, S.O. 2001, c. 25 as amended (Exhibit 1).

[4] Mr. Orrell’s appeal essentially maintains that the Town has been using the at-large system for electing Town Council for many years and should maintain that system. He indicated in his appeal that although he was the one to bring this appeal, he represents the views of many other residents who feel similarly about the proposed change to a ward system for Aurora.

[5] On March 25, 2021, Members Tousaw and Braun issued a Procedural Order requiring the Parties to provide their witness and expert witness statements to each other; Reply Witness Statements and expert’s Reply Witness Statements; and a finalized Issues List prior to this Tribunal’s scheduled hearing on May 3, 2021.

PRODUCTIONS

[6] The Town notified Mr. Orrell and the Tribunal of its intention to call Beate Bowron and Dr. Gary Davidson, seeking to have each witness qualified as professional planners with particular expertise in ward boundary matters who, without objection, were so qualified at the hearing.

[7] The Town also provided Mr. Orrell and the Tribunal with a Document Book dated April 15, 2021 (Exhibit 2), containing 11 Tabs of relevant material including the Issues List of Mr. Orrell (Tab 7) and the Curriculum Vitae of both Ms. Bowron and Dr. Davidson (Tabs 5 and 6). In addition, the Town provided Mr. Orrell and the Tribunal with the Witness Statement of Mr. Bowron and Dr. Davidson (“the Consultants”) dated April 16, 2021 (Exhibit 3), who provided their opinion evidence before the Tribunal as a panel.

[8] Mr. Orrell advised the Tribunal that he did not intend to call witnesses or experts and would rely on his own evidence at the hearing. He did not provide any further or additional material.

THE TOWN’S REQUEST FOR PROPOSALS FOR CONSULTING SERVICES FOR AN ELECTORAL SYSTEM REVIEW

[9] On July 25, 2019, the Town issued a Request for Proposals (“RFP”) (Exhibit 2, Tab 1) that contained in Part 2, 2.41 the objective of the review to be conducted, noting that the Town has experienced significant growth over 20 years with an expected population of 70,000 by the year 2026. Given this expected growth, the Town queried whether the current at-large system could or would still meet the needs the residents of Aurora.

[10] Part 2, 2.41 further indicated that the “electoral system review will propose various scenarios that subdivide the municipality into wards” adding the following direction: that the review conducted “shall” include a “broad engagement and consultation” with residents, existing community groups, key stakeholders and Council members.

[11] Ms. Bowron’s firm, in cooperation with Dr. Davidson’s firm as well as Hemson Consulting LTD, were awarded the RFP contract.

[12] The Tribunal heard from both Ms. Bowron and Dr. Davidson as to the particular extent of their reviews that are contained in a November 2019 Options Report (Exhibit

2, Tab 8) and their June 2020 Final Report (Exhibit 2 Tab 9), which are reviewed in further detail below.

[13] Mr. Orrell indicated, that the grounds for his appeal of the By-law, (particularized in his Issues List, Exhibit 2, Tab 7) could be adequately summarized as a concern over the process governing the exercise undertaken by the Consultants and ultimately the options considered by the Town, which he viewed as being “flawed and preordained” towards a ward system as opposed to a comprehensive consideration of *all* options, including maintaining the current at-large system.

[14] In his view, the Council resolutions prior to the RFP inappropriately limited the scope of the study ultimately undertaken by the Consultants and should have explicitly included a consideration of retaining the current at-large system. He submitted therefore, that the question to be answered by the Consultants was not “what is the best system for Aurora?” but rather, “what is the best ward-based system for Aurora?”

[15] Mr. Orrell pointed out that the proposed By-law providing for a six-ward system passed only by a four to three vote of the Town’s Council members.

[16] Mr. Orrell did not seriously, the Tribunal finds, question “how” Ms. Bowron and Dr. Davidson conducted their review, but “why” they did so.

[17] In response to Mr. Orrell’s appeal, the Consultants provided a detailed Response to his Issues List contained in their Witness Statement (Exhibit 3).

THE EVIDENCE OF THE APPELLANT, ROBERT BRUCE ORRELL

[18] Mr. Orrell requests an Order of this Tribunal rescinding By-law No. 6271-20. The effect, should the Tribunal agree, would be that the Town would conduct an at-large election in October, 2022, unless there would be time for it to perform what Mr. Orrell termed “an honest” all encompassing electoral review, which would necessarily include

a serious consideration of retaining the at-large system, in addition to the consideration of changing to a ward-based system.

[19] Section 222(8)(a) of the *Municipal Act* mandates that any by-law adopted under s. 222 must be done so on or before **Friday, December 31, 2021** of the year prior to the year of an election. Therefore, in this instance, the bylaw must be in-force, including the outcome of any appeal, by **Friday, December 31, 2021**.

[20] Mr. Orrell listed six considerations in his Issues List. He pointed out that the historical perspective of the ward vs. an at-large system was not considered in the Council table discussion of Council. He also noted that, in 2014 when a Municipal Election Ballot posed the question of whether Aurora should move to a Ward-based system, fifty-five percent of the votes rejected such a system of governance for the Town.

[21] Mr. Orrell further pointed out that, in May 2019, when budgeting for the Electoral System Review report, Council on motion endorsed in principle, electing all councillors by a ward vote. In his view, this effectively eliminated the option of retaining the current at-large system.

[22] At the hearing, Mr. Orrell discussed the difference between what he termed the “passive” survey that the Consultants adopted, as opposed to formulating an “active” one. Even then however, he pointed out that of the 174 survey responses received, 52 were strongly opposed to a ward system.

[23] Advancing the position that there was no “substantial” public consultation, Mr. Orrell pointed to the fact that only nine attended the first public meeting and fifteen attended the second one. Believing further that for the Aurora municipality of then 60,000 residents, he argued that issue should have been on the ballot.

[24] Mr. Orrell further pressed the two Consultants to answer why they did not consider, in conducting their review surveys, posing the option to the public of keeping the at-large system.

[25] Mr. Orrell argued that the stated goal as directed by Council was for the Consultants to provide support for a ward system.

THE TOWN'S RESPONSE

[26] The Tribunal finds that the Witness Statement of the Consultants (Exhibit 3), stands as a complete response to the issues raised by Mr. Orrell, supportive of the Town's position that the process undertaken in advance of the passing of By-law No. 6271-20 was a full, fair and complete one in which Council answered the ultimate question posed in the RFP objective, which was whether the current at-large system could or would still meet the needs of the residents of Aurora or whether a move to a ward-based system was warranted.

[27] The qualifications of both Ms. Bowron and Dr. Davidson, as summarized in their Curriculum Vitae (Exhibit 2, Tabs 5, and 6) are impressive. Their expertise in ward boundary matters is significant and, as such, the Tribunal placed a substantial amount of weight upon their evidence.

[28] The Consultant's treatment of Mr. Orrell and his positions on the ward boundary exercise, were respectful yet firm in their denial of the suggestion that the study and their recommendations were not on all fours with the principles of "effective representation" as outlined in the frequently followed **Carter** decision of the Supreme Court of Canada (1991, 2 SCR 158).

[29] Section 3 of the Consultant's Witness Statement titled "AESA-Process and Effective Representations" (Exhibit 3) discusses and addresses in detail, at paragraphs 10-31, how their recommendations comply with the **Carter** principles.

[30] Mr. Orrell did not take issue with the details of the Consultant's two Reports or with their opinions, nor does the Tribunal.

[31] Section 4 outlines the extent of the public engagement that was undertaken. The Tribunal accepts that a high level of participation occurred and that there were many opportunities and mechanisms provided to the public to voice their opinions and concerns including, but not limited to: in-person meetings, online surveys and mail-in surveys. The Tribunal further accepts, despite Mr. Orrell's assertion to the contrary, that the Reports ultimately before Council did consider and specifically note the views of those who expressed opposition to the ward system.

[32] In the opinion of the Consultants, a ward system is appropriate and achieves effective representation for a rapidly growing municipality such as Aurora. In fact, Dr. Davidson testified that, only two of the Ontario municipalities of similar size surveyed by the Consultants, have retained an at large system (Exhibit 2, Table One, page 80) and further that only one (Vaughan) in eight York Region municipalities, operates under an at-large system (Exhibit 2, Table 2, page 81).

[33] The Consultants, on more than one occasion, stated that they were not asked to make a decision but rather, to provide a recommendation. Dr. Davidson, in particular, pointed out that the decision with respect to the electoral system governing Aurora moving forward was for Council to make, implying but not specifically saying, that it is Council members who must ultimately accept the consequences of such a decision.

[34] Dr. Davidson stated it was implicit that Council could have maintained the at-large system by simply not acting on the recommendations of the Consultants. Importantly, he opined that the Consultants' Terms of Reference did not need to include a comparison of a ward-based system vs. an at-large system, given that Council had been operating under an at-large system for many years and was therefore quite familiar with same.

CONCLUSION

[35] Based on a detailed examination of the material filed and on the evidence provided at the hearing, it is clear to the Tribunal that the Town undertook an extensive process to arrive at its By-law to create a ward system.

[36] Despite Mr. Orrell's contention, the Tribunal finds that the process was fair, reasonable and transparent and included a consideration of all options, including retention of the current at-large system. The Tribunal further finds that the Town's study included public consultation and that input received both for and against the change to a ward-based system was considered.

[37] The Tribunal accepts the opinions of both Ms. Bowron and Dr. Davidson, that the ward system they recommended to Aurora's Town Council meets the test for effective representation as outlined in the **Carter** decision. The Tribunal further accepts their opinion that the By-law which is the subject of this appeal meets the need of a rapidly growing municipality and is consistent with the electoral systems of other similar municipalities surveyed by the Consultants (Exhibit 3, para 47 and 50).

[38] The Consultant's opinions were not effectively challenged or countered by other independent professional opinions.

ORDER

[39] The Appeal is dismissed. The Tribunal affirms the Town of Aurora's By-law No. 6271-20.

"R.A. Beccarea"

R. A. BECCAREA
MEMBER

"S. Braun"

S. BRAUN
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248