

MEMO / NOTE DE SERVICE

To / Destinataire Mayor Watson and Members of Council File/N° de fichier:

From / Expéditeur M. Rick O'Connor
City Clerk

David White
City Solicitor

Subject / Objet Ottawa Ward Boundary Review 2020 – Date: April 9, 2021
Appeals Update and Motion

This memorandum provides Members of Council with information regarding a motion relating to the City of Ottawa’s ward boundaries that is to be brought forward to the City Council meeting of April 14, 2021. Specifically, the motion will seek Council’s approval for Legal Services to pursue a settlement with respect to two notices of appeal received further to the [Ottawa Ward Boundary Review 2020](#).

As described in the City Clerk’s memorandum to Members dated March 16, 2021 (attached as Document 1), the City received two notices of appeal during the statutory public notice and appeal process that followed Council’s enactment on January 27, 2021, of [By-law No. 2021-3](#). The by-law is to establish new ward boundaries and Council composition for the City beginning in the 2022-2026 Term of Council.

Pursuant to requirements under the *Municipal Act, 2001* (the Act), the City has forwarded the notices of appeal to the Local Planning Appeal Tribunal (LPAT). The Act provides that the Tribunal “shall hear the appeal and may, despite any Act, make an order affirming, amending or repealing the by-law.”

As described below in more detail, Legal Services has engaged in discussions regarding the notices of appeal with each appellant/appellant’s counsel, as the case may be, as well as the Mayor’s Office and the affected Ward Councillors. Further to these discussions, it appears that it may be possible to achieve a settlement acceptable to all parties, including the three affected Ward Councillors, that would resolve the narrow scope of matters raised in each notice of appeal. Such a settlement would need to be brought forward to the LPAT for ratification, which would provide for certainty at an early stage with respect to the ward boundaries and save the cost, time and resource requirements associated with a full hearing before the LPAT.

Therefore, staff recommend that Council on April 14, 2021, approve the motion attached as Document 2, which would provide for Legal Services to seek modifications from the LPAT to By-law No. 2021-3 that would reflect the limited changes sought in each notice of appeal. Some additional information is set out below.

Background

On January 27, 2021, Council enacted By-law No. 2021-3, being “A by-law of the City of Ottawa to establish ward boundaries and Council composition.” The by-law is to take effect for the 2022-2026 Term of Council and would implement a new ward boundary structure composed of 24 wards, with 12 urban wards, nine suburban wards and three rural wards.

As described in the staff report titled, “[Ottawa Ward Boundary Review 2020 – Recommendations Report](#),” which Council considered on December 9, 2020, the Act provides for a 45-day period in which appeals of a ward boundary by-law may be made to the LPAT through the City. Should any notices of appeal be received for the LPAT, Subsection 222(7) of the Act provides that the LPAT “shall hear the appeal and may, despite any Act, make an order affirming, amending or repealing the by-law.”

As described in the above-noted memorandum of March 16, 2021, two notices of appeal were received with respect to [By-law No. 2021-3](#):

1. The Overbrook Community Association filed a notice of appeal relating to the ward boundaries between the current Ward 13 and Ward 12 ([Schedule A-16](#) and [Schedule A-17](#)). Specifically, the notice relates to a change that originated by way of motion at the Finance and Economic Development Committee [meeting of December 1, 2020](#), which moved the southern boundary between the wards from McArthur Avenue to Donald Street, with the eastern boundary remaining Rue de L’église but extending west on McArthur Avenue and south on Brant Street to Donald Street. The Overbrook Community Association’s proposed modification is set out in Attachment 1 of the motion attached to this memo.
2. The Old Ottawa East Community Association filed a notice of appeal relating to the ward boundaries between the current Ward 17 and Ward 12 ([Schedule A-19](#) and [Schedule A-17](#)), and specifically the “transfer” of the uOttawa Lees Avenue campus from Ward 17 to Ward 12. The Old Ottawa East Community Association’s proposed modification is set out in Attachment 2 of the motion attached to this memo.

In accordance with the Act, the City forwarded the above-noted notices of appeal to the LPAT on March 29, 2021. In addition, Legal Services engaged in discussions regarding the appeals with the appellant/appellant’s counsel, as the case may be, as well as the Mayor’s Office and the affected Ward Councillors.

Legal Services recommendations

It is the opinion of Legal Services that, in the overall context of By-law No. 2021-3, the appeals to the City’s ward boundary by-law seek modest modifications to the by-law. While one of the appeals, being that by the Overbrook Community Association, is explicitly contrary to a motion that was defeated at Council on December 9, 2020, it is the opinion of Legal Services that an appeal in respect of such matter should be considered in the context of the entire by-law.

The practice of the City and that of the LPAT is to seek a resolution of matters as opposed to a contested hearing where such can reasonably be achieved. It is the opinion of Legal Services that in weighing the likelihood of success by the City in respect to the modifications sought by the appellants to By-law No. 2021-3 against the significance of such modifications in the overall

context of the by-law and the benefit of the by-law being finalized at the earliest possible date, that it would be preferable to accept such modest modifications at a settlement hearing.

Council motion of April 14, 2021, and next steps

Further to the above-noted discussions and Legal Services recommendations, staff recommend Council on April 14, 2021, approve the motion attached as Document 2, which would provide for Legal Services to seek modifications from the LPAT to By-law No. 2021-3 that would reflect the limited ward boundary changes sought in the two notices of appeal.

Should Council approve the attached motion, Legal Services would pursue from the LPAT the earliest possible settlement hearing date. Staff anticipate an LPAT settlement hearing date would occur no later than July of 2021.

Should Council not approve the motion, or should a tentative settlement not be reached with both appellants, Legal Services would approach the LPAT for the earliest possible full hearing date. Staff anticipate an LPAT full hearing date would occur in the third quarter.

Staff estimate the cost of a typical appeal to the LPAT requiring a full hearing to be approximately \$15,000 to \$75,000. A settlement hearing is not anticipated to require any additional funds beyond staff resources.

The LPAT has typically given priority to appeals of ward boundary by-laws to ensure that they are heard in a time frame to be effective for the subsequent election. Provided that any decision made by the LPAT occurs before January 1, 2022, it is anticipated that any new ward boundaries would be in effect for the October 2022 Municipal Elections. If the LPAT decision occurs after January 1, 2022 (and does not repeal the by-law), any new ward boundaries would come into force for the 2026 Municipal Elections.

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