

REPEALED

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE



BY-LAW

NO. 2005 – 140

(as amended by the Order of the Ontario Municipal Board issued December 20, 2005 as Order No. 3326)

BEING A BY-LAW TO DISSOLVE THE WARD SYSTEM OF ELECTORAL REPRESENTATION FOR THE MUNICIPALITY OF KINCARDINE AND INSTITUTE AN AT-LARGE SYSTEM OF ELECTORAL REPRESENTATION AS AMENDED

WHEREAS Section 25.2 of the *Municipal Act R.S.O. 1990 c.M.45* provided the government of the Province of Ontario with a process to facilitate municipal restructuring over large geographic areas involving local municipalities in counties;

AND WHEREAS an order made under the authority of the *Municipal Act R.S.O. 1990 c.M. 45* by the Minister of Municipal Affairs and Housing and dated January 30, 1998 gave effect to a restructuring proposal affecting the 27 municipalities located within the County of Bruce;

AND WHEREAS pursuant to the said Minister's Restructuring Order, Wards – Section 10, the Township of Kincardine-Bruce-Tiverton was divided into three (3) wards;

AND WHEREAS Bill Pr15, *An Act to Change the Name of The Corporation of the Township of Kincardine-Bruce-Tiverton to The Corporation of the Municipality of Kincardine* received Royal Assent on December 23, 1999;

AND WHEREAS pursuant to the said Minister's Restructuring Order, Local Councils – Section 19, the head of council shall be elected at large, the deputy head of council shall be elected at large and shall act in the place of the head of council in the event of illness, absence from the municipality or vacancy in the office of the head of council; three members of council shall be elected from Ward one; and two members of council shall be elected from each of Wards two and three;

AND WHEREAS Section 222(1) of the *Municipal Act, 2001, S.O. 2001, c.25, as amended* provides that a municipality may divide or redivide the municipality into wards or dissolve the existing wards;

AND WHEREAS Section 222(2) of the said *Municipal Act 2001, S.O. 2001, c.25, as amended*, states that prior to passing a by-law under Section 222(1) of the Act, the municipality shall give notice of its intention to pass the by-law and hold at least one public meeting to consider the matter;

AND WHEREAS the Council for The Corporation of the Municipality of Kincardine held public meetings to consider the matter on August 24, 2005 and September 2, 2005;

NOW THEREFORE the Council of the Corporation of the Municipality of Kincardine
ENACTS AS FOLLOWS:

1. Definitions:

In this by-law,

- i) "at-large system" means an electoral system in which all eligible voters within the municipal boundaries vote on the same list of candidates.
 - ii) "ward system" means an electoral system in which a municipality is broken down into smaller areas (wards) and voters living in each ward vote on their own list of candidates wishing to represent that ward.
2. The ward system for the Municipality of Kincardine is amended by replacing the ward system as set out in this by-law.*
3. The composition of Council shall be:
- (a) A mayor elected at-large;
 - (b) Four (4) councillors elected at-large, the one with the most votes being Deputy Mayor;
 - (c) Four (4) councillors elected from the three wards as they existed prior to the passage of this by-law with two (2) being elected from the former Town of Kincardine (Ward 1) and one each from the former Townships of Kincardine (Ward 2) and Bruce (Ward 3).*
4. The Deputy Mayor shall have the same duties after the 2006 municipal election as before the passing of this by-law.*
5. This by-law shall come into force and effect for the 2006 regular municipal election.
6. This by-law may be cited as the "At-Large Electoral System" By-law".

READ a FIRST, SECOND and THIRD time and FINALLY PASSED this 2nd day of September, 2005.

This By-law **AMENDED** by the **Order of the Ontario Municipal Board** issued December 20, 2005 as **Order No. 3326**.



Mayor



Clerk

* *Amendments ordered by Ontario Municipal Board.*





BY-LAW

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| <p>2. The existing ward system in the Municipality of Kincardine is hereby dissolved.</p> <p>3. The ward system shall be replaced by an at-large system for the Municipality of Kincardine.</p> <p>4. The composition of Council elected at-large system for the Municipality of Kincardine shall be comprised of the Mayor, the Deputy Mayor and seven (7) Councillors, all positions elected at large.</p> | <p><i>amended by
Order of OMB
No. 3326</i></p> |
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5. This by-law shall come into force and effect for the 2006 regular municipal election.

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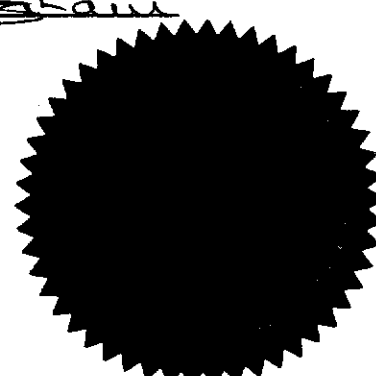
READ a FIRST, SECOND and THIRD time and FINALLY PASSED this 2nd day of September, 2005.



Mayor



Clerk



ISSUE DATE:

Dec. 20, 2005

DECISION/ORDER NO:

3326



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL050946

Tiverton and District Ratepayers Association Inc., Dean Ribey, Karen L. Smith, and others have appealed to the Ontario Municipal Board under subsection 222(4) of the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended, against By-law No. 2005-140 to dissolve Wards in the Municipality of Kincardine
OMB File No. M050124

APPEARANCES:

Parties

Counsel*/Agent

Municipality of Kincardine

George C. Magwood*

Karen Smith

Grant Hopcroft

Tiverton and District Ratepayers Assoc. Inc.

Edmund Roberts

Marilyne Wilson

Lawrence (Larry) Kraemer

John Copeland

Inverhuron District Ratepayers Association

Eugene Bourgeois

Karen Ribey

Peter Vaughan

**DECISION DELIVERED BY J. FLINT AND D. GATES AND
ORDER OF THE BOARD**

This hearing concerned the system of voting in the Municipality of Kincardine (the Municipality), a community of approximately 12,000 people on the east shore of Lake Huron. The Council of the Municipality is composed of a Mayor, a Deputy Mayor and seven councillors. In September 2005 the Council approved a by-law to dissolve the

Ward system (whereby the Municipality was divided into three geographic areas called wards, and voters living in each ward vote on their own list of candidates wishing to represent that ward on the Municipal Council), in favour of an at-large system of voting (in which all eligible voters within the municipal boundaries vote on the same list of candidates). Fifteen people appealed, ten as individuals and five who represented other individuals or associations.

The 578-square kilometre Municipality, that is at least 18 kilometres wide and 29 kilometres from north to south, is located on the east side of Lake Huron about half way between the towns of Owen Sound and Goderich, and is one of eight municipalities that together form Bruce County. The largely rural municipality contains at least five settlement areas, including three hamlets, a shoreline community of seasonal and permanent residents, and the former Town of Kincardine, that contains approximately half the population. There is also a large provincial park in the municipality. The major employer is Bruce Power, commonly known as the Bruce nuclear plant.

In 1999, when the Municipality was created as a result of provincial restructuring, a ward system was imposed. Boundaries were drawn along historical lines. The former Town of Kincardine located in the southwest corner became Ward 1. It occupies approximately two percent of the area of the Municipality. The rural and shoreline area that runs for fifteen kilometres east and north of the former Town, and was previously known as the Township of Kincardine, became Ward 2. It covers forty-five percent of the Municipality. The former Township of Bruce, a rural and shoreline area in the north part of the Municipality, that makes up the remaining fifty-three percent, became Ward 3. Three councillors were elected from Ward 1, and two were elected from each of Wards 2 and 3. A mayor and a deputy mayor were elected at-large.

At the beginning of the hearing seven of the appellants, Floyd Steen, June White, Dome Fitzsimmons, Dean Ribey, Sandy Ribey, Bob Slessor and James Diehl, chose participant status. Parties to the appeal were identified as the Municipality of Kincardine and the remaining eight appellants: Mr. Lawrence (Larry) Kraemer and Ms Karen Ribey who appeared as individuals; Mr. John Copeland, Ms Marilyn Wilson and Mr. Peter Vaughan who were authorized to speak on behalf of other concerned electors; Ms Karen Smith, who was represented by an agent; and Mr. Edmund Roberts and Mr.

Eugene Bourgeois who appeared on behalf of the Tiverton and District Ratepayers Association Inc., and the Inverhuron District Ratepayers Association respectively.

Ms Rosaline Graham, Clerk of the Municipality, testified on behalf of the Municipality. Mayor Glen Sutton testified in support of the by-law, as did Councillors Maureen Couture, Barry Schmidt and Barry Anderson. Former Mayors/Reeves Mr. Norman Annettes and Ms Donna Wilson also spoke in support. Appellant parties did not call witnesses, but gave testimony and summations and cross-examined witnesses. Irene McKinnon, John Shepherd, John Gillespie, Christine Moulton, Ron Mattmer, Donna Irvine, Lloyd McGillvray and Marjorie Young, all of whom prefer the ward system, also addressed the Board.

Ms Graham detailed a sequence of events beginning with the receipt of a memo from the Province reminding the Municipality of the December 31, 2005 deadline to make changes in the electoral system for the 2006 municipal elections, through to the passing and appeal of By-law 2005-140. She testified that there was adherence to all procedures and compliance with all applicable provisions of the *Municipal Act*.

Section 222 of the *Municipal Act* that governs wards states:

222. (1) Despite any *Act*, a municipality may divide or redivide the municipality into wards or dissolve the existing wards.

Public meetings

- (2) Before passing a by-law under subsection (1), the municipality shall,
- (a) give notice of its intention to pass the by-law and hold at least one public meeting to consider the matter; and
 - (b) have regard to criteria for establishing ward boundaries prescribed by the Minister.

Notice

- (3) Within 15 days after a by-law is passed under subsection (1), the municipality shall give notice of the passing of the by-law to the public specifying the last date for filing a notice of appeal under subsection (4).

Appeal

- (4) Within 45 days after a by-law is passed under subsection (1), the Minister or any other person or agency may appeal to the Ontario Municipal Board.

Ms Graham also told the Board that the municipal procedural by-law requires public meetings to have fifteen days notice and sets out the manner in which notice is to be served. She said that the municipality held two public meetings before Council: one had fourteen days notice and the other had fifteen days notice. Notices were properly served and notice of intention was included in both. All Council decisions were made in public. In her opinion, all applicable requirements of the *Municipal Act* were met.

The appellants, without exception, expressed annoyance and frustration with the hasty manner in which the Council made its decision to dissolve the wards and institute an at-large system of voting. There was criticism of the effectiveness of the notices, the inconvenient timing of the public hearings -- one of which was held at 4:00 p.m. on the Friday before Labour Day weekend -- and the cramped venue that could not accommodate the number of attendees. There were allegations of deceit and subterfuge, and feelings expressed of being cheated and disenfranchised by the process.

Appellants felt that more than the minimum time required by the province should have been provided for the electorate to consider a change in the system of voting and influence the outcome. Even though they did not accept the reasons given for dissolving the wards or for embracing an at-large system, they took particular exception to the haste in which Council made the decisions and the manner in which those decisions were made. They reluctantly accepted that the minimum provisions of the *Municipal Act* had been met, but maintained that they did not get a fair hearing because councillors had already made up their minds to move to an at-large system. Mr. Vaughan testified that his appeal of the by-law is based entirely on his firm opinion that Council abused the process and betrayed the trust of the electorate.

By the evidence of all parties and participants, the two Council meetings were well attended and well covered by the print, radio and television media. According to two witnesses, the prospect of moving to an at-large system was the dominant topic of

conversation in the municipality prior to both meetings. People obviously knew and understood the issue. Speakers who addressed Council were not held to time limits and the meeting hours were extended. By all accounts, the official decisions were made in public.

The Board, having considered the oral submissions and written evidence, finds that the requirements of the procedural by-law and Section 222 of the *Municipal Act* in relation to the matter of the consideration and passing of By-law 2005-140 were met. And while the time frame may have been condensed to the minimum, the Council had reason to do so due to a time line set by the Province. The Board finds that it is reasonable to conclude that, by the timing of its memo, the Ontario Ministry of Municipal Affairs and Housing (Exhibit 6) considers six months to be adequate time for a municipality to make changes to its electoral system; and that it was compliance, rather than deliberate obscuration that motivated the Council.

Having found that all legal requirements were met, the Board must address the matter of whether or not By-law 2005-140 constitutes effective representation.

The case for the municipality was put forth by the Mayor, three Councillors and a former Mayor/Reeve. They were supported at the hearing by Ms Donna Wilson, a former Mayor/Reeve who addressed the Board as a member of the public.

Mr. Sutton told the Board that, in his experience and opinion, effective representation in the Municipality can be best achieved by all councillors being elected at-large. This has worked well in the neighbouring Municipality of Brockton that has a similar population and character. The current ward system makes it difficult for ward councillors to seek the best interests of the entire municipality because they are often locked into rigid ward positions. In his mind, the current system is so fractious that it warrants another system being tried.

Mr. Sutton testified that the "FYI" memo from the Province triggered Council's actions. Subsequent decisions were made without a staff report or presentation because, on the advice of the Clerk, Council considered changes to the voting system to be a political matter.

He explained that weeks before the by-law was considered and approved by Council, he made sure that each councillor was provided with a comparison of the pros and cons of both the ward and at-large systems as reviewed and evaluated by a political scientist. Notices published in the newspapers likewise informed the electorate, although not to the same level of detail. Also, the timing of the public hearings benefited seasonal residents. He pointed to the fact that mayors and deputy mayors have come from all the wards. This leads him to reject any claims that the town vote would dominate elections and disenfranchise rural voters. He testified that he has been able to understand and represent and be accountable to voters across the municipality and feels that councillors can do the same.

Speaking to the issue of a referendum, he said that at the time of the 2003 election he considered a referendum on the voting system to be a good idea. However, in light of revised provincial regulations on referendums, that require a fifty percent voter turnout and a majority within that fifty percent in order to be binding, combined with traditionally low turnouts at the polls on election day and a twenty-five percent voter participation in a previous referendum, he changed his mind.

Ms Couture, who is serving her first term as one of the three Ward 1 councillors, told the Board that once Council decided not to maintain the status quo, it needed to decide on another system. She said that half of the telephone calls she receives are from people who live outside Ward 1. She attended all meetings, listened to deputants, heeded communications, and heard many opinions before making up her mind which system to chose. She defended the mode of delivery of her comments at the Council meeting when the vote on the new by-law was being taken: she read her comments into the minutes so that, later, people would remember, or could find out, exactly what she said. She painted a picture of a Council at loggerheads under an imposed ward system and said that she wants to move forward with unity of purpose rather than acrimony.

Mr. Schmidt, who has been elected to office for 15 years, has lived in all three wards. His opinions on the best electoral system for the Municipality have evolved over the past six years. He reported that there was friction on Council in the first post-amalgamation term but he thought it was normal with so much work to do. But as time went on the conflicts continued. He believes that conflict is being prolonged by the ward system. A better method is needed and the at-large system is the best alternative. He

added that under the ward system, fifty-five percent of the population lives in Ward 1 where voters elect three councillors; whereas forty-five percent of the population lives in Wards 2 and 3 where voters elect four councillors. He feels that concern for the entire municipality is a mandate for councillors not an option, and that every vote should have equal value. He noted that an at-large system enables people who retire and move to a different part of the municipality to support familiar candidates.

Mr. Anderson is a beekeeper/farmer who lived in Ward 3 for seven years, though he now lives in and represents Ward 1. He is on record in 2001 as supporting an at-large system for he believes that he can understand the various issues and communities throughout the Municipality. Since then he has spoken to many people about an at-large system, including people in Wards 2 and 3, and has found much support. He has also listened carefully to the opinions of those who favour the ward system, but is not persuaded by their views. He believes that some of them still want to de-amalgamate. He stated that he wants to build a better community not tear it down. In regard to suggestion that a referendum be held, he explained that councillors that now want a referendum persuaded him during a request for referendum on another issue that they opposed, that "referendums don't work". He also rejected accusations from Ward 3 people that they "get nothing".

Mr. Annettes and Ms Donna Wilson testified from personal experience that politicians can effectively represent and be accountable to the entire electorate; and that councillors elected under a ward system tend to polarize issues on Council rather than build consensus. Ms Wilson does not like the fact that councillors elected from other wards will not talk to her about her ward issues and are not informed or interested in them, but still vote on them. She said she does not want conflicts among factions to blemish the Municipality's reputation or hurt the tourist trade.

The Mayor and councillors testified that, by their own experiences and the example of municipalities with at-large systems, they believe they can represent all the people who live in the Municipality. They can grasp complex issues, including those involving the presence and impacts of the Bruce Power Generating complex. They can understand the problems facing farmers, shopkeepers, seasonal residents and those who enjoy living in the various hamlets and communities, and can act in the best interests of all when dealing with the challenges of infrastructure, jobs, the environment

and tourism. Moreover, they are willing to have their accountability tested by the entire electorate.

The appellants, all of whom reside in or near Ward 3, feel that the at-large system does not guarantee representation from their largely rural community that, unlike Brockton, contains a nuclear power plant. They note that half the population of the municipality lives in the former Town of Kincardine where there is a higher turnout of voters and the population is growing. On the other hand, they live in a rural/agricultural area where the largest hamlet has fewer than 800 people and that they don't particularly want it to be any bigger. There are also seasonal residents in all three wards of the municipality. Future mail-in ballots for municipal elections will further imbalance the vote against rural voters.

Several parties indicated that they did not feel as though they were part of the Municipality. They live nearer to towns in other municipalities and shop and socialize there rather than drive the distance to the Kincardine urban centre. Others spoke of conflicts with the Municipality over issues such as a new municipal water line and a deep nuclear waste depository that affects them most because it is located in their ward. There are still hard feelings over their forced amalgamation with the former Town and Township of Kincardine that they fought all the way to superior court. There is a strong feeling that they pay taxes and receive no benefits. In the words of Mr. Copeland, "I got tired of holding my nose and paying".

Some appellants observed that there are at least five communities of interest in the municipality and confirmed that there are clearly "two camps" on Council.

Mr. Bourgeois has lived most of his life since 1974 in Inverhuron, a beach community of 350 people that straddles the Ward 2/Ward 3 boundary. It is the earliest known settlement area along the eastern shores of Lake Huron. He stated that, in 1999, Inverhuron was arbitrarily reduced in size by fifty percent. There are now 180 residents: three, including him, are farmers, and others work at the power plant, are seasonal residents or retired. Each year in July the population swells to 1200 people -- 400 more if the provincial park visitors are included.

Mr. Bourgeois, who said he is the closest resident to the nuclear plant, aired the views of many parties and participants when he said that people in Ward 3 have felt

downtrodden since amalgamation. One primary reason is that their concerns and opinions "don't count". He gave as a prime example, the controversial and expensive waterline the Municipality wishes to construct with no exemption from the full cost recovery policy for the residents of the Hamlet of Tiverton who have their own water system and don't need or want another. When polled, ninety-eight percent of the residents said no, yet it was still approved. Similarly, a poll taken regarding the deep nuclear waste depository in his neighbourhood failed to inform him and others within eight kilometers of the site, including Tiverton, what the impacts on them and their properties would be.

Mr. Bourgeois said that the ward system has difficulties and perhaps an at-large system will help, but he does not know for sure because there is no definitive evidence to support it. As an academic and businessman, research is important to him. He would prefer that people identify their communities of interest, air their differences and work together to achieve consensus on an agreeable and proven system of voting that would satisfy and benefit everyone.

Working together, researching alternatives and consulting widely were common themes. In this regard many witnesses echoed Ms Karen Ribey's opinion that a referendum ought to be held as was suggested by candidates during the 2003 municipal election campaign. She maintained that ward councillors should look out for the entire municipality, and added that one of her concerns is the potential closure of a regional municipal office that Ward 3 taxpayers find more convenient than traveling to the municipal centre that is near the Kincardine urban area.

Mr. Roberts has lived in Tiverton in Ward 3 for twelve years. He spoke of it as a safe, friendly community of retired people, hydro workers and farmers who care for each other and live in respectful equality. He said that the Mayor, Deputy Mayor and Ward 1 councillors do not like the 800 residents of Tiverton standing up for themselves and their interests. The waterline issue, where they were disregarded and shoved aside, has proved to him that the Council cannot be trusted. Moreover, he and other Tiverton residents resent being asked for their input and then being ignored. Mr. Roberts expressed confidence in the current Ward 3 councillors. He knows them personally and

has a good working relationship with them that would be impossible with councillors who do not live in his community.

The importance of knowing that their councillor comes from within their community, is "one of them" and has an intimate knowledge and understanding of their special situation, and is readily approachable, was emphasized many times by Mr. Roberts and all the appellants as well as most deputants. They fear that they will lose representation under an at-large system, not gain it as others assert; and that they will be dominated by the larger voting block of town people.

Ms Wilson has lived in Tiverton for five years. She and the neighbours she represents support the ward system and rue the fact that, in their opinion, the majority of Council did not provide any reasonable or considerate way for them to air their views or listen to them when they did. She noted that there was a one-vote majority in favour of an at-large system and said that, in her opinion, five members of Council should not be empowered to make a decision on such a big issue.

Ms Smith has lived in the Municipality as both a seasonal and permanent resident. She told the Board that eleven percent of the residents are seasonal and are usually difficult to reach in the off-season. In her experience, communities of interest often conflict and, when problems arise, people go to their councillor first. The only reason she has heard for the change in voting systems is that council is "not working". She understands the at-large issue but is not happy with the change because she feels it was made without adequate information. She presented the results of her research into voting models in various Ontario municipalities and told the Board that she prefers a refiguring of the boundaries of the wards rather than their dissolution. Boundaries should be revisited on a regular basis, perhaps as much as every three terms, because circumstances change.

Ms Smith opined that protesting should be positive. She wants the ballot to be simple, not more complex as she says it would be in an at-large system with more names on the ballot. Seasonal residents in particular would find it more difficult to make informed decisions. She also confirmed that the impression held by many Ward 3 residents is that that people in Ward 1 only want the Ward 3 tax revenue.

Mr. Kraemer, who was Mayor of the Municipality from 2000 to 2003, said that he had intended to call the four dissenting councillors as witnesses but decided against it. He maintained that change is a right of the people, not politicians, and that the Town constituents have been treated poorly. He said that the at-large issue was raised during the 2003 election campaign and people were led to expect that a referendum would be held. Voters throughout the Municipality endorsed the ward system by the politicians they chose, even though he personally supported the ward system and was not re-elected.

In his experience, there has been a rural/urban split only on two issues: the waterline and ward system. Under his leadership there were between thirty and fifty recorded votes and they were decided by a random split, not a consistent rural/urban split as some people purport. He also maintained that the County system is, in effect, a ward system and it works well. Therefore a ward system can work in the Municipality.

The participants, without exception, endorsed all the opinions of the parties who oppose the by-law, and several expressed a willingness to contribute to a new process of examining the ward system and searching out possible options to improve it. None of the participants favoured an at-large system. Their reasons included the additional cost for candidates in mounting an at-large campaign, the extra time it would take for a councillor to serve constituents throughout the entire municipality, and the fear that councillors "wouldn't know their way around Ward 3". Both Mr. Steen and Ms White said that the Ontario Municipal Board has now heard reasons for and against the by-law that should have been aired before Council. And Mr. Dean Ribey, who is the son of one of the current Ward 3 councillors, said that a like-minded council is not necessarily a better one.

The members of the public who addressed the Board, with the exception of Ms Donna Wilson, all supported the ward system. They spoke of the friendliness of Tiverton compared to other places, and the fact that it takes more time to contact seasonal residents at their primary addresses than it does those who live in the Municipality and receive the local papers. They echoed the charges that there was a lack of adequate community consultation prior to the by-law being passed and said that people tend to

think with their emotions. Moreover, in their minds, Council ignored a commonly accepted problem-solving process that would define the problem, seek opportunities, select and evaluate options and only then make a decision.

The Board finds that all the witnesses were motivated by good intentions: councillors and those who support their point of view are looking for a voting system that promotes fuller accountability from every politician as the municipality moves forward. The appellants do not want to lose their voice or the character of their community when changes involved in moving forward are made. Deputants spoke out of sincere interest in their community.

Several witnesses believed that a referendum should have been held to determine the public's preferred voting system. They testified that some members of Council failed to live up to election promises, or near-promises, to hold such a referendum. The Board heard conflicting testimony regarding such a turnabout. On one hand, it was interpreted positively as a prerogative necessary for all elected officials to enable them to be flexible and able to adapt to changing circumstances or new information. On the other hand it was interpreted negatively as a deliberate intent to mislead and a manifestation of an intentional double cross.

In this instance, the testimony of the members of Council was that, based on past experiences, voter turnout and new information, they found reason to warrant changing a position they may have taken previously. This is not to say that their reasons for the reversal were accepted by voters, nor to validate charges of them being fearful that a referendum would result in a binding decision not to their liking.

In any event, the Board notes that referendums are an optional tool for municipalities, not a requirement. It is beyond the Board's jurisdiction to impose a referendum on a municipality or be the judge of whether or not one should be held. But, in this instance, the fact that referendums had been discussed by councillors in connection with the deep nuclear waste depository and rejected, weighed heavily on the decision not to have one, as did the election system change deadline that the council was working towards.

After listening to the oral testimony of all witnesses, and reviewing the exhibits and submissions, the Board finds that the parties and participants failed to introduce

evidence to demonstrate unequivocally that the ward system is completely dysfunctional and totally lacking in the best interests of the Municipality; or that the at-large system is free of bitterness and provides the most effective representation possible. The Board finds that, given the conundrum of polarization and conflicts that have continued unabated and remain largely unsolved over the past seven years, the council exercised its prerogative and made the choice it thought best.

The Board is satisfied by the testimony of the mayor and former mayors that it is possible to represent 12,000 individuals effectively. It is reasonable to expect them to do so as the Municipality grows because modern technology and good roads make communication considerably easier than in the past.

However, the Board agrees with the evidence of Mr. Copeland, corroborated by Mr. Kraemer and Mr. Bourgeois, that the nuclear industry exerts a powerful influence on governments at all levels and, that it can be considered a unique community of interest in the Municipality. The nuclear plant, though located in Ward 3, directly or indirectly provides two-thirds of the employment in the Municipality. The Board finds that no persuasive evidence or testimony was provided to contradict that of the appellants who asserted that the interests of voters impacted by the nuclear industry could prevail in an at-large system; and that without a guaranteed Ward 3 representative on Council there might be no spokesperson for other interests or dissent against the nuclear industry.

However, from time to time, ward councillors are pressured by constituents to speak out strongly against matters that by all accounts and evidence are intended for the best long-term interests of the whole Municipality. Under such circumstances, it is difficult for constituents to accept that their ward councillor is representing their interests too well at the expense of other citizens; or that in doing so he or she is contributing to conflict that puts the entire ward system into question. In this instance, however, the dissenting councillors were not called or summoned to testify. Their positions and opinions could not be argued or cross-examined and any value thereupon was lost.

Mr. Schmidt's testimony regarding a representation by population imbalance in the wards was unchallenged and uncontradicted. Many witnesses indicated that, in principle, they support changes to rectify this situation.

Section 222, subsection (6) states that, upon appeal of a by-law affecting electoral districts, the Ontario Municipal Board "shall hear the appeal and may, despite any Act, make an order affirming, amending or repealing the by-law".

The Board has heard two conflicting points of view and finds both have a merit. The at-large system in a normal situation should work well for a Municipality of 12,000 voters with a relatively homogenous population base. On the other hand, the Board heard of at least two distinct communities of interest, the rural community and in particular the nuclear power industry that support in different ways the retention of a ward system.

The Board finds that it is possible to expand the current at-large representation on council and balance the representation by population and still retain the ward system to guarantee area representation. Moreover, this can be achieved without increasing the number of councillors, or changing the number of wards or adjusting their boundaries, or adding confusion to the ballot.

The Board, therefore, allows the appeals in part. By-law 2005-140 is amended to retain the existing wards in accordance with Attachment 1. The mayor is to be elected at large. Two councillors are to be elected by the voters in Ward 1, one councillor is to be elected by the voters in Ward 2, and one councillor is to be elected by the voters in Ward 3. Four members of council are to be elected at-large; the one that receives the highest number of votes is to assume the duties of Deputy Mayor.

The Board, in making its determination, is cognizant of the fact that from time to time municipalities can and do review their ward boundaries, or lack of them, as well as the numbers of elected representatives and the systems of voting. Some do this as frequently as every ten years as Ms Smith recommends. Ongoing population shifts and increases support the need for timely reviews. It is not the intent of the Board to stifle such an initiative in the Municipality of Kincardine should it be appropriate at some time in the future. If and when that time comes, the Board advises the Municipality to allow sufficient time for study, public consultation and debate prior to determining and changes. Judging by the interest in this hearing there would be widespread, welcomed

and positive participation in such a process by the people throughout the Municipality.

The Board so Orders.

"J. Flint"

J. FLINT
MEMBER

"D. Gates"

D. GATES
MEMBER

Attachment 1

Kincardine By-law 2005-140 is hereby amended by deleting Sections 2,3 and 4 and replacing them with the following:

- (2) The ward system for the Municipality of Kincardine is amended by replacing the ward system as set out in this by-law.
- (3) The composition of Council shall be:
 - (a) A mayor elected at-large;
 - (b) Four (4) councillors elected at-large, the one with the most votes being Deputy Mayor;
 - (c) Four (4) councillors elected from the three wards as they existed prior to the passage of this by-law with two (2) being elected from the former Town of Kincardine (Ward 1) and one each from the former Townships of Kincardine (Ward 2) and Bruce (Ward 3).
- (4) The Deputy Mayor shall have the same duties after the 2006 municipal election as before the passing of this by-law.

Agenda	<input checked="" type="checkbox"/>	File No.:	<u>KOL DISSOLUTION</u>
CONSENT	<input checked="" type="checkbox"/>	Subject:	<u>OF WARD SYSTEM</u>
JAN 4/06	<input type="checkbox"/>		
COM.	<input checked="" type="checkbox"/>		
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by-law. 2005-140.
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Nancy ✓

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