

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPLICATION by the TOWN OF ANTIGONISH for an Order to annex lands within the Municipality of the County of Antigonish

-and-

IN THE MATTER OF AN APPLICATION by the MUNICIPALITY OF THE COUNTY OF ANTIGONISH for an Order for the amalgamation of the County and the Town of Antigonish

BEFORE:

Roland A. Deveau, Panel Chair
Kulvinder S. Dhillon, P.Eng., Member

COUNSEL:

TOWN OF ANTIGONISH
Jack A. Innes, Q.C.

MUNICIPALITY OF THE COUNTY OF ANTIGONISH
Robert G. Grant, Q.C.
Nancy G. Rubin, LL.B.

BOARD COUNSEL
S. Bruce Outhouse, Q.C.

WRITTEN BRIEFS:

July 28, 2006

DECISION DATE:

October 30, 2006

DECISION:

Applications for amalgamation and annexation are denied.

INTRODUCTION

[1] This decision follows an earlier decision of the Nova Scotia Utility and Review Board (the “Board”) dated February 17, 2005 (the “preliminary decision”, reported at [2005] NSUARB 12) respecting an application by the Town of Antigonish (the “Town”) to annex 3,814 acres from the Municipality of the County of Antigonish (the “Municipality”) and further respecting an application by the Municipality to amalgamate the Town and the Municipality.

[2] In addition to determining that neither the status quo nor annexation were in the best interests of the inhabitants of the area (because of the negative financial and social implications), the Board formed the preliminary view that it would be in the best interests of all inhabitants of Antigonish County (comprising the inhabitants of both the Town and the Municipality) to amalgamate the Town and Municipality into one municipal unit. The thrust of the Board’s conclusion is outlined in paragraphs 5 to 7 in the summary of the Board’s 213 page preliminary decision:

[5] However, the Board considers that amalgamation would result in positive financial and social implications for the inhabitants of the entire County. Compared to the status quo, amalgamation would decrease the total combined costs for municipal government on a County-wide basis. The Board estimates that amalgamation would result in annual savings of at least \$245,121, compared to the combined expenses of the Town and the Municipality under the status quo. Moreover, the Board considers, on the basis of the evidence at the hearing, that there are compelling reasons to suggest than [sic] an amalgamated municipality could maintain its current cost-sharing formula for policing costs (70% by the Municipality and 30% by the Province), which would result in additional savings of \$340,000, for potential total savings, annually, of \$585,121. Further, the Board considers that amalgamation could facilitate the more efficient design and construction of municipal infrastructure systems and the more efficient delivery of municipal services. This would result in additional savings or, alternatively, an improved level of service, for an identical cost.

[6] The Board considers that amalgamation would also result in positive social implications for the inhabitants of the entire County, including a coordinated approach to development of the proposed realignment of the Trans-Canada Highway corridor, as well as

improved land-use planning in the area immediately surrounding the Town.

[7] Taking into account all of the evidence, the Board has formed the preliminary view that it would be in the best interests of all inhabitants of Antigonish County to amalgamate the Town and the Municipality into one municipal unit. However, the Board is mindful that the success of such a change may depend upon the degree of public support for amalgamation. Accordingly, the Board directs that the Town and Municipality jointly hold a plebiscite seeking to determine the degree of support for amalgamation. This plebiscite is to be held no later than September 17, 2005. Upon receipt of the plebiscite results, the Board will consider all the evidence, including the evidence tendered at the hearing as well as plebiscite results, and render a final decision.

[3] The Town then appealed the Board's jurisdiction to consider the amalgamation application. In a decision dated March 7, 2006, the Nova Scotia Court of Appeal dismissed the appeal, confirming the Board's jurisdiction to consider the application for amalgamation of the Town and Municipality (reported at [2006] NSCA 9).

[4] Immediately following release of the Court of Appeal's decision, the Board initiated proceedings to schedule the plebiscite referred to in its preliminary decision. The Board convened preliminary conferences on March 11 and 24, 2005, during which it received and considered the submissions of: Jack A. Innes, Q.C., Counsel for the Town; Robert G. Grant, Q.C., and Nancy G. Rubin, Counsel for the Municipality; Gary Cusack, representing the Antigonish Chamber of Commerce; S. Bruce Outhouse, Q.C., Board Counsel; Cathleen O'Grady, Counsel for Service Nova Scotia and Municipal Relations; Janet Willwerth, Municipal Elections Officer; and Christine McCulloch, Q.C., Chief Electoral Officer.

[5] All parties considered it expedient that a plebiscite ordered by the Board be conducted pursuant to the *Municipal Elections Act*, R.S.N.S. 1989, c. 300, and representatives from both the Town and Municipality undertook to pass resolutions of their

respective councils in order to facilitate the taking of the plebiscite under the above *Act*.

[6] On March 24, 2006, the Antigonish Chamber of Commerce advised the Board by letter that it wished to withdraw from its formal standing in these proceedings and it took no further part in this matter.

[7] On March 30, 2006, the Board issued an Order setting the plebiscite for Saturday, June 17, 2006, to allow for compliance with various procedural requirements under the *Municipal Elections Act*, including the preparation of voters' lists and advertising the plebiscite. The operative parts of the Board's Order were as follows:

IT IS HEREBY ORDERED:

1. THAT a plebiscite be held in the Town and the Municipality on Saturday, June 17, 2006 (the "ordinary polling day");
2. THAT the plebiscite question shall be: ***"Do you favour the amalgamation of the Town of Antigonish and the Municipality of the County of Antigonish into one municipal unit?"***;
3. THAT there shall be two possible answers to the plebiscite question: **Yes** or **No**;
4. THAT the following conditions shall apply to the taking of the plebiscite:
 - a. The plebiscite, including but not limited to the dates for revision of the preliminary list of electors, advance polling days and ordinary polling day, shall be scheduled to occur on concurrent days and times in the respective municipal units;
 - b. A representative of each municipal unit shall be authorized to represent its municipal unit at all polling stations in both the Town and Municipality and to be present at the polling station during the taking of the plebiscite, including the counting of votes;
 - c. All fees, costs, allowances and expenses associated with the conduct and taking of the plebiscite vote in each respective municipal unit shall be borne by that municipal unit;
5. THAT upon completion of the plebiscite and the compilation of results, the returning officers shall issue a joint statement announcing the provisional results of the plebiscite, broken out by polling division and also providing a total result;
6. THAT the returning officers for both the Town and Municipality shall file a

recapitulation sheet of the results with the Board no later than 4:00 p.m. on the fourth day after ordinary polling day;

7. THAT failing agreement between the returning officers for the Town and the Municipality on any matter relating to procedure or the format of forms required for the taking of the plebiscite, such disagreement shall be referred to the Board and the Board shall make a final determination on the matter, which decision shall be binding on each returning officer and the parties;

8. THAT the Board reserves the jurisdiction to issue such further orders and directions, and do or cause to be done all such other matters and things as, in its opinion, are necessary or incidental to the taking of the plebiscite;

9. THAT upon receipt of the plebiscite results, the Board will render a final decision.
[Emphasis in original]

[8] Following the issuance of the above Order, the Town and Municipality, on March 30, 2006 and April 4, 2006, respectively, each passed resolutions of their respective councils directing that a plebiscite be held on June 17, 2006, and further directing that the plebiscite be conducted pursuant to the provisions of the *Municipal Elections Act*.

[9] The results of the plebiscite held on June 17, 2006 are set out below commencing at paragraph 12. In summary, electors in the Municipality overwhelmingly voted in favour of amalgamation, while electors in the Town expressed the opposite view (in similarly strong numbers). The turnout of electors for the plebiscite was relatively poor in both the Town and the Municipality.

[10] Following receipt of the plebiscite results, the Board requested submissions from the parties. In a letter dated June 20, 2006, the Board noted:

As noted in the Board's Decision dated February 17, 2005, the Board must make its decision based upon the totality of the evidence, including, but not limited to, the plebiscite results (see paragraph 446).

The Board wishes to provide the parties with an opportunity to file written submissions respecting the impact of the plebiscite results upon the remaining body of evidence. The timeline of the submissions shall be as follows:

Original submissions by all parties July 14, 2006

Rebuttal submissions by all parties July 28, 2006

The Board observes that the submissions should be directed to the ultimate test to be applied pursuant to s. 363(1) of the **Municipal Government Act**, which is to determine what "is in the best interests of the inhabitants of the area taking into account the financial and social implications of the [amalgamation]" of the Town of Antigonish and the Municipality of Antigonish.

[11] The submissions of the parties are considered below.

PLEBISCITE RESULTS

[12] The results of the plebiscite were filed with the Board by the Returning Officers for the Town and the Municipality. The results for both the Town and the Municipality are set out below in Tables A and B, respectively.

TABLE A						
TOWN PLEBISCITE RESULTS						
POLLING STATION		Number of Electors	Total voted	BALLOTS CAST		
Polling Division	Name or Number			IN FAVOUR OF	OPPOSED TO	REJECTED BALLOTS
1	1	435	137	51	86	0
1	2	483	163	42	120	1
1	3	461	148	39	109	0
1	4	468	170	40	130	0
1	5	475	162	55	107	0
1	6	482	161	45	116	0
1	7	458	138	46	92	0
1	Adv1	32 (Added)	371	76	293	2
1	Adv2	64 (Added)	366	71	295	0
2	Mobile	133	49	16	33	0
TOTAL		3,491	1,865	481	1,381	3
			100.0%	25.8%	74.1%	0.1%

[13] The Board observes that 74.1% of electors in the Town opposed

amalgamation. Voter turnout in the Town was 53.4%.

TABLE B						
MUNICIPALITY PLEBISCITE RESULTS						
POLLING STATION		Number of Electors	Total Voted	BALLOTS CAST		
Polling Division	Name or Number			IN FAVOUR OF	OPPOSED TO	REJECTED BALLOTS
1	1	626	315	293	22	0
1	11	215	136	119	17	0
2	2	749	238	196	41	1
2	22	478	162	143	19	0
3	A	703	295	267	27	1
3	B	297	124	111	12	1
4	A	744	233	186	46	1
4	C	523	153	138	15	0
5	A	719	201	160	41	0
5	B	361	153	133	20	0
6	A	308	140	126	14	0
6	B	625	209	177	32	0
6	C	369	167	152	15	0
7		818	309	278	29	2
8	A	607	158	130	28	0
8	B	517	87	65	22	0
9	(A-G)	581	172	146	25	1
9	(H-Z)	557	223	188	33	2
10A	(A-L)	382	127	89	37	1
10A	(M-Z)	428	121	92	29	0
10B		658	197	155	42	0
Adv.	East		275	194	77	2
Adv.	West		602	481	120	1
TOTAL		11,265	4,797	4,019	763	13
			100.0%	83.8%	15.9%	0.3%

[14] The Board observes that 83.8% of electors in the Municipality favoured amalgamation. The turnout of electors was 42.6% in the Municipality.

[15] Based on the above results for the Town and Municipality combined, 67.6% of electors who voted in all of Antigonish County favoured amalgamation. For the Town and Municipality combined, only 45.1% of eligible electors cast ballots at the plebiscite.

[16] It is noted that at the request of the Board, the Town filed on October 26, 2006, a revised compilation of its plebiscite results, which corrected the total number of eligible electors in the Town. These revised figures were incorporated into Table A above.

SUBMISSIONS OF THE PARTIES

[17] After reviewing the Board's preliminary decision, including some of the excerpts from the preliminary decision set out below, counsel for the Town stated in his written submission:

...

9. Overall, the Board has characterized the need for public support for amalgamation as a significant factor in moving ahead with that option. To the extent that the plebiscite results provide the Board with a clear indication of public feeling in relation to its recommendation to amalgamate the Town and the County, those results must necessarily play a significant role in the final Decision of the Board.

...

22. In light of the plebiscite results, the overwhelming rejection of amalgamation by Town residents must be of considerable significance to the Board's ultimate decision.
23. While the design of the CRA poll may have contributed in part to the discrepancies, as suggested by Mr. Hesseltine, a second contributing factor for the significant differences may simply be that circumstances have changed since the poll was conducted and voters participating in the plebiscite were better informed about the

issues and possible outcomes resulting from amalgamation than those who responded to the poll in 2003.

24. In the three years since the CRA poll was conducted, residents have had the benefit of reviewing the Board's preliminary decision and its stated reasons for concluding that amalgamation is in the best interests of the residents. There have also been significant events, changes and information within the public sphere affecting the impacts of the proposed amalgamation, including decisions taken by the Governments of Nova Scotia and Canada. Any one of these elements may well have had an influence on the electors as they weighed benefits and burdens resulting from amalgamation.

...

26. While it may be argued that the Board cannot take into consideration events which have occurred subsequent to the Board hearings, the residents of the Town were not so restricted. When asked for their view of amalgamation in the plebiscite, they no doubt factored into their decision all of the available information concerning the impact of the proposed amalgamation.

27. Whatever the reason(s), Town residents have overwhelmingly rejected the Board's preliminary finding that amalgamation is in the best interests of residents of the Town.

28. From the perspective of residents of the County, all of these factors increase the benefits to County residents in an amalgamated municipality. In effect, amalgamation permits County residents, on the one hand, to share in the Town's good fortune while on the other to ameliorate the negative impacts of lower equalization grants and higher waste disposal costs. Once again, as with Town residents, any one of several elements may have resulted in greatly increased support for amalgamation by County residents.

...

32. The Town submits that the plebiscite results provides strong objective evidence to support the assertions made by those Town residents who attended the evening sessions. As a result of the plebiscite, the Board no longer need speculate about the views of Town residents on this important issue but rather knows that the Town residents feel strongly that the Town should not become part of an amalgamated municipality. It is also noteworthy that in paragraph 358, the Board once again relied upon the polling results of CRA in concluding that amalgamation would not adversely affect residents' sense of belonging to their community. As previously stated, the CRA poll results cannot be accepted as reliable in light of the plebiscite results.

...

35. As previously stated, it is impossible to state with any degree of certainty exactly what factors gave rise to such a large percentage of Town voters rejecting the concept of amalgamation. The Town has put forward a number of possible factors influencing Town voters, some of them financial, at paragraph 25 of this submission.

Conclusion

36. In the final analysis, whether from the perspective of financial or social implications, the residents of the Town have, in the most basic form of communication within a democratic society, rejected the proposal to bring an end to the Town and create a new order of municipal government through an amalgamation with the County. While the plebiscite results are, as stated by the Board, simply additional evidence for the Board to consider, the degree of rejection exhibited by Town residents in the plebiscite results should be given considerable, if not determinative, weight by the Board in reaching its final decision.

[18] In their brief, Mr. Grant and Ms. Rubin similarly reviewed excerpts from the Board's preliminary decision, and stated:

- ...
4. The utility of the plebiscite, therefore, is to gauge the likelihood of a successful amalgamation by evaluating public acceptance of the change in governance. A plebiscite is not and cannot be determinative of the outcome. The ultimate decision-maker remains the Board.
- ...
6. Overall there were 6,662 people who voted (1,865 in the Town and 4,797 in the Municipality). Approximately 68% of voters in favour of amalgamation; 32% were opposed.
- ...
9. There were 14,654 total eligible electors in the whole County (including the Town and Municipality). Only 6,662 voted (45%) with higher voter turnout in the Town of approximately 55% and voter turnout in the Municipality of approximately 42%.
 10. The low voter turnout suggests that the representativeness of the vote is questionable. If one accounts for all eligible voters, overall 31% of electors voted in favour of amalgamation; 15% voted against. Broken down regionally, within the Town, 15% of electors voted in favour of the amalgamation; 41% voted against. Within the Municipality, 36% voted in favour; 7% voted against.
 11. We would submit that in a plebiscite of this type it is more likely that persons opposed to change in the status quo will turn out to register to vote. Those who perceive the proposed change as benign are less likely to register their opinion. Even within the Town, a total of 59% of the electorate either voted in favour of amalgamation (14%) or did not feel strongly enough about the proposed amalgamation to register a vote against the proposal (45%). It is noteworthy that more Town electors declined to vote at all than voted against the proposed amalgamation.
- ...
15. Appended to this submission is a copy of "campaign" materials disseminated by the

Town and by the Municipality and media coverage: ...

16. As is apparent from the attached, the approach taken by the Town was to publicly challenge and undermine the Board's findings and conclusions which form the basis of the Board's opinion. The Town was arguing its appeal in the public arena with the direct message being (Tab B):

AMALGAMATION = TAX INCREASE

17. In the advertisement, the Town referred to "the Board's financial consultant" who "stated that upon amalgamation Town residents will pay 7% more in taxes."

...

19. The message "**AMALGAMATION = TAX INCREASE**" is simplistic fear-mongering. The reference to the "Board's financial consultant" is misleading as it puts the weight of authority behind the statement and implies that this was a determination made by the Board.

20. Another Town advertisement placed in the Casket on June 14, 2006, three days before the vote, declared "**Amalgamation = Increased Bureaucracy and Costs with Less Control From the People.**"

21. This advertisement is directly contrary to the Board's decision and is materially misleading. The Board concluded that amalgamation would result in cost savings as compared to the combined expenses of the Town and the Municipality under the status quo, rather than *increased* costs. As to the claim of "increased bureaucracy", in fact, the Board concluded that amalgamation could facilitate more efficient delivery of municipal services, resulting in additional savings or improved levels of service for an identical cost.

...

23. The "Talk of the Town", the Town's newsletter distributed in the summer of 2006 (Tab E) purports to set out a "Fact Sheet" about why voters should "**Just Say No to Amalgamation**". The first point made is that amalgamation is not regional governance but is a "take over". It states as a fact that "**Town residents will be out-voted**" and the future of the Town Electric Utility will be in doubt. Amalgamation involves the continuance of the two Municipal Units as a new Municipality, better able to meet the needs of the residents than its predecessors. As to the statement that Town residents will be out-voted, this was argued before the Board and rejected ...

24. The viability of the Town Electric Utility is not in doubt or threatened on amalgamation. The Board saw no implications for the setting of rates as a result of amalgamation and observed that rate-setting is regulated by the Board. Therefore, utility users can be assured that the utility is earning an appropriate rate of return and that the assets of the utility are being appropriately utilized.

...

30. In short, none of the potential benefits of amalgamation as determined by the Board in its lengthy decision were communicated by the Town to the residents of the Town of Antigonish.

31. In contrast, the Municipality's presentation and advertisements drew heavily from the Board's decision, (Tabs G and H). The emotional hyperbole and rhetoric so evident in the Town's materials is absent from the material published by the Municipality.

...

33. The Municipality respectfully submits that the residents of the Town, rather than being better informed following the Board's decision are less informed, having been presented with a one-sided anti-amalgamation campaign.

IMPACT

34. Given the Town's strenuous opposition to the holding of a plebiscite and its earlier submissions that the public process adds little to the Board's decision-making, it is not persuasive for the Town to now argue that the Board should reverse its preliminary opinion on the basis of a perceived opposition to amalgamation by Town electors.

35. As this Board noted, the plebiscite is but one piece of evidence to be taken into account before the Board renders its final order. The weight to be given to the plebiscite results is questionable, given the low voter turn out and the misinformation contrary to the Board's findings put out by the Town.

...

40. Mr. Heseltine, who testified for the Town, had prepared an Amalgamation Review for the City of St. John's, Newfoundland (Exhibit A-67), which evaluated the nine largest amalgamations undertaken in Atlantic Canada since 1990. Mr. Heseltine's reported conclusion which was acknowledged on cross-examination, was that:

There are many lessons that can be derived from recent amalgamation experience in Atlantic Canada. Certainly transition has been smoother when municipal administrators supported the amalgamation initiative. Most important though, the evidence strongly indicates that amalgamation can save money and that amalgamation will be accepted in due course, regardless of the forcefulness of initial resistance. (A-67, pp. 2-3, emphasis added)

...

CONCLUSION

42. The Municipality respectfully submits that the results of the plebiscite do not afford a reasonable basis for the Board to retreat from the fundamental findings in its preliminary decision that amalgamation is in the best interests of all residents of Antigonish County. The decision was well-founded in 2004 at the time of the hearing and continues to be in 2006.

[Emphasis in original]

[19] With respect to Mr. Innes' submission that Town electors voted against

amalgamation because of a change in circumstances, counsel for the Municipality agreed, but for different reasons:

...

9. The Board in its preliminary opinion dated February 17, 2005, directed that the plebiscite be held no later than September 17, 2005. Because of the Town's appeal, this was delayed until June 17, 2006. The Board's decision was based on financial statements for the year ending March 31, 2001. The intervening time between the test year comparisons, the Board's preliminary opinion and the plebiscite was exploited by the Town to suggest that fundamental changes to the economics of amalgamation had occurred. Changes such as those suggested in paragraph 25 of the Town's submissions were not considered by the Board in its preliminary opinion and, indeed, were not tested before the Board. Reference to this additional information, not balanced by other potential considerations, served to obfuscate the financial issues and to confuse and unsettle town voters. For voters in such a frame of mind, maintenance of the status quo may appear more appealing than change.
10. The delay in holding the plebiscite coupled with the type of material distributed by the Town (as appended to the Municipality's July 14, 2006 submissions) resulted in an electorate which was less rather than better informed about the possible outcomes resulting from amalgamation compared to those who were randomly sampled for the CRA poll in 2003.
11. Political scientists have studied electoral issues and there is a growing body of evidence with respect to campaign effects and voter turnout. These studies indicate that exposure to campaign advertising and personal vote persuasion increases voter turnout among those previously not planning to vote.

...

13. Furthermore, in a plebiscite or referendum, campaigns can carry greater importance as compared to ordinary elections. Studies suggest that public opinions can appear to shift greatly due to campaigns. The insight offered by one political scientist is enlightening:

... They demonstrate the innate advantage often held by the NO side in referendum campaigns, and perhaps explain in part why the short-term trend in public opinion in such campaign is so often towards the negative side. NO campaigners do not necessarily have to make a coherent or persuasive case against a proposal. It is often sufficient to raise doubts in the minds of voters, question the motives of the proposers, or attempt to link it to other less popular issues or personalities...

14. The Town ran a NO campaign based on loss of identity, loss of the Town's history and a threat of increased taxes and a non-representative disinterested amalgamated Council. [Emphasis in original]

[20] In response to the submissions of counsel for the Municipality, Mr. Innes

replied:

5. In paragraph 10, the suggestion is made that because of low voter turnout, the representativeness of the vote is questionable. As with the observations regarding advance polls, there is no evidence that any of the individuals who stayed away from the polls were asked why they did so. Given that June 17th was the first fine Saturday for several weeks and the plebiscite followed a provincial general election by four days, I might be forgiven if I offered an observation that low voter turnout was probably the result of fine weather and election burnout. Whatever the cause, it does not support the conclusion that the representativeness of the vote is questionable.

...

10. It is rather insulting for the County to assert in paragraph 33 of its Brief that residents of the Town are less informed about the issues impacting them as a result of what is described as a "one sided anti-amalgamation campaign". This conclusion assumes that Town residents did not bother to read the Board's decision, or avail themselves of commentary in the press, etc. Once again, the Board is being asked to accept an unsubstantiated generalization about the uninformed nature of a typical Town resident with no evidentiary support whatsoever.
11. At paragraph 13, the County asserts that it has always supported the holding of a plebiscite to allow for the views of residents to be considered by the Board in arriving at its final decision. Now that the exercise has been completed and the results of the plebiscite are contrary to the County's interests, the County submits that the whole process is to be given no weight by the Board because somehow the Town's campaign ended up creating an uninformed electorate.
12. With respect, if one is in favour of a process to determine the degree of support for a proposition, it is surely disingenuous to argue no weight should be given to the outcome simply because the results do not favour your particular position.

...

ANALYSIS AND FINDINGS

[21] The jurisdiction of the Board in assessing the application for amalgamation is defined by s. 363(1) of the *Municipal Government Act*, S.N.S. 1998, c. 18, which provides:

Order of amalgamation or annexation

363(1) After the application has been heard, the Board may, if satisfied that the order is in the best interests of the inhabitants of the area, taking into account the financial and social implications of the order applied for, order an amalgamation or annexation

upon such terms as it considers advisable. [Emphasis added]

[22] As noted in its preliminary decision, s. 363(1) requires the Board to consider both the financial and social implications of the application for amalgamation, ultimately determining what is in the best interests of the inhabitants of the area. In considering the application, the Board must weigh the totality of the evidence before it, including the plebiscite results and all of the evidence presented during the hearing.

[23] In its preliminary decision, the Board stated:

[330] The Board considers public opinion to be a factor which it may take into account in assessing the applications. While the **Municipal Government Act** directs the Board to ultimately determine what is in the best interests of the inhabitants of an area, the extent of public support for a proposed change in municipal structure can have important social implications for the community. The Board is mindful that a change in municipal structure may significantly impact the residents of an area. The existence of public support, or the lack of support, for a proposed change can either help or hinder the new municipal government structure.

...

[450] In the view of the Board, a plebiscite should be held before initiating steps such as those suggested by the Municipality. First, a negative response to the plebiscite, if followed by the Board's denial of the amalgamation application, would result in such deliberations being moot and unnecessary. Second, a strong indication of support in a plebiscite, if followed by the Board's approval of the amalgamation application, may serve as incentive for elected officials of the Town and Municipality to resolve the issues leading to amalgamation. Finally, the Board is of the view that the question to be considered by the electors of Antigonish County should be a simple one, uncomplicated by extraneous issues. Specifically, a plebiscite should not turn into a referendum on a governance model, the number of councillors, the contents of a land-use planning strategy, the selection of staff or the preparation of a proposed budget. In the event there is support for amalgamation, and the Board, after reviewing all of the evidence in totality, determines that amalgamation should occur, it will be up to the elected officials of the Town and Municipality, along with their respective staff, under the guidance and direction of the Board, to resolve the issues leading to amalgamation. The Board concludes that, initially, the fundamental issue to be canvassed is whether there is public support for amalgamation.

...

[513] Taking into account all of the evidence, the Board has formed the preliminary view that amalgamation would be in the best interests of all inhabitants of Antigonish County. While the **Municipal Government Act** (which governs such applications) does not require the taking of a plebiscite, the Board has concluded that a plebiscite should be held to measure the degree of public support for an amalgamated municipal unit. The results of such a plebiscite are not binding on the Board, but they offer another piece of evidence for the

Board to consider.

...

[517] The Board is mindful that it will have to carefully weigh the results of the plebiscite, including the degree of support or opposition originating from different parts of the County (i.e., from the respective polling stations of the Town and the Municipality). However, the degree of support within the Town, or within the Municipality, is simply one piece of evidence which the Board must consider. The Board must make its ultimate decision based upon the totality of the evidence presented at the hearing, including the plebiscite results, the polling results, the testimony and the exhibits, to determine what "is in the best interests of the inhabitants of the area taking into account the financial and social implications of the [amalgamation]". [Emphasis added]

[24] While the plebiscite results only represent one piece of evidence, the Board cannot ignore its significance in the present circumstances. As the Board noted at paragraph 426 of its preliminary decision, the Board considers that the success of amalgamation would likely necessitate public support. The combined results suggest that 67.6% of all electors who cast ballots favour amalgamation. In some instances, this level of support could provide persuasive weight leading the Board to conclude that amalgamation is in the best interests of the residents of an area. However, in this case, this level of support for amalgamation must be considered in the context of the strong opposition to amalgamation demonstrated by electors within the Town, where 74.1% of electors who voted indicated they did not favour amalgamation.

[25] The Board also observes that only 45.1% of electors for all of Antigonish County exercised their privilege to vote in the plebiscite. Almost 55% of electors did not express their opinion on the issue. While the timing of the plebiscite during the month of June may have been a factor, the Board considers that the low voter turnout may also be indicative of complacency by local electors, either with the application itself, or with their municipal government generally. For whatever the reason, the results do not show a high

level of interest, by electors collectively, in a change from the status quo.

[26] The Board noted in its preliminary decision that there is conflict between the Town and the Municipality, at least with respect to the competing visions held by their respective municipal governments respecting governance and other municipal issues. The plebiscite results confirm that the opposing views held by the municipal councils are shared by each of their respective electoral constituencies.

[27] The Board concludes that the degree of public support which is needed to proceed with amalgamation is insufficient to outweigh the challenges which will likely be occasioned by amalgamation. The strong public opposition to amalgamation by electors within the Town, along with the vehement opposition by Town officials to important initiatives requiring joint action with officials from the Municipality, as evidenced throughout the hearing process, lead the Board to conclude that all steps leading to amalgamation would face undue obstacles and strife. This potential result creates both practical and social implications which the Board must take into account and it attaches great weight to them. The resulting scenario would clearly not be in the best interests of the inhabitants of the Town and the Municipality. In fact, the Board concludes, an amalgamation process could lead to even greater collective animosity between the elected officials of the respective municipal units and, potentially, between their respective residents (when the Board refers to animosity in the context of this decision, it refers to the relationship between councils collectively, rather than individual relationships between members of the respective councils).

[28] Further, the Board accepts Mr. Innes' submission that, in the end, the success of amalgamation in other jurisdictions like the Region of Queens Municipality may not necessarily carry over to other jurisdictions, like Antigonish. As noted by Mr. Innes, the constituent municipal units in Queens (i.e., the Town of Liverpool and the Municipality of Queens) overcame their initial resistance and joined in a cooperative effort to form an amalgamated unit. In Queens, amalgamation has proven to be very successful in both social and financial terms.

[29] However, as noted during the course of the hearing, amalgamation may not be viewed as being beneficial in other regions, particularly where there is existing animosity or conflict between the elected officials of the respective municipal units. In his testimony, Mr. Heseltine, called as a witness for the Town, testified about his 2001 report [Exhibit A-67] respecting the possible amalgamation in Newfoundland of the cities of St. John's and Mount Pearl, with portions of the Town of Paradise. While his report recommended that the City of St. John's pursue amalgamation with the other municipal units, he acknowledged, on questioning by the Board, that "there's certainly animosity between the [elected officials from] the City of St. John's and the City of Mount Pearl." He also acknowledged that this animosity could, at times, be significant. Further, he observed that there is a lack of cooperation between St. John's and Mount Pearl, sometimes raising "serious potential issues", on such matters as economic development, planning and development control, as well as water and sewer systems (see p. 89 of Exhibit A-67).

[30] The Board observes that amalgamation proceedings do not appear to have advanced to any serious degree, if at all, between St. John's and Mount Pearl. Further,

it also notes that the contentious issues between the two cities appear strikingly similar to those causing difficulties between the municipal governments in Antigonish County.

[31] The Board suspects the circumstances existing in St. John's and Mount Pearl, where discussions respecting amalgamation have not been fruitful, are analogous to those existing between the elected officials of the Town and Municipality of Antigonish. In this case (i.e., Antigonish County), the Board considers that the long standing history of costly disputes and the failure to cooperate on a broad range of issues between the respective municipal councils would serve as a formidable impediment to a successful amalgamation. In the case of Antigonish County, the different visions of municipal governance extend to the respective electorates as well, as evidenced by the plebiscite results. In this case, the Board does not foresee any successful advancement towards amalgamation until there is sufficient public support, within each individual municipal unit, to force municipally elected officials to work together towards that goal. As noted above, such support within the Town is lacking at present.

[32] While the Board had formed the preliminary view that amalgamation would be in the best interests of the inhabitants of the area, the Board concludes that the benefits of amalgamation cannot be achieved in the face of the continuing animosity which exists between the respective municipal governments, especially given the public support which each municipal unit enjoys for its position. The Board considers that the continuing discord related to amalgamation could impact the area's strong community of interest, the region's ability to attract business, and even the ability of local businesses to reconcile their individual business plans within the economic plan of the area (particularly in the corridor

of the proposed realignment of the Trans Canada Highway). Any potential benefits from amalgamation might well be outweighed by such negative impacts. These are potential social and financial implications which weigh heavily against the application.

[33] Taking into account the totality of the evidence before it, including the financial and social implications of the application, the Board concludes that amalgamation would not be in the best interests of the inhabitants of the area. Thus, the Board denies the application for amalgamation.

[34] The Board's decision to deny the amalgamation application effectively brings these proceedings to an end. The Board had also concluded in its preliminary decision that annexation was not in the best interests of the inhabitants of the area and it remains of that view.

[35] The Board is mindful that the status quo was considered, in its preliminary decision, as not being in the best interests of the inhabitants of the area. Notwithstanding that view, the Board concludes that the advantages of the status quo outweigh the negative implications which could result from amalgamation. At the very least, the status quo will maintain some level of stability in the community as elected officials and the public seek other solutions to municipal issues.

[36] However, the Board would be remiss if it did not observe that many of the issues raised by the parties during the hearing will likely persist under the status quo. Such issues include, but are not limited to, the need to accommodate growth within the Town, the need to adopt a comprehensive planning and development approach with respect to the impending realignment of the Trans Canada Highway corridor adjacent to the Town,

the sharing of water, sewer, and electric systems, and making more efficient use of scarce tax dollars. Without exception, all who testified at the hearing (on both sides of the issues) also asserted that the well-being of the entire County depends on the health of the urban core comprising the Town, but in a way which does not jeopardize the future of the surrounding Municipality. These issues must be addressed in a fashion which will benefit the residents of the Municipality and the Town.

[37] A common theme raised throughout the hearing was that the public is both frustrated and disappointed with the lack of cooperation, and often conflict, which exists between their respective municipal governments in addressing the important issues facing the region. The Board found in its preliminary decision that the confrontational approach taken by the opposing municipal units has cost the Town and Municipality a combined amount of almost \$240,000 over the past 10 years (see paragraph 312). It is fair to assume that this amount represents a minimum of the cost actually incurred, with these figures ignoring the resources committed by staff for each municipal unit on such conflicts, which involve matters respecting planning, utilities, or other issues. This has taken away from their ability to further the well-being of their respective residents. The Board expects that the public will not tolerate a continuation of these conflicts over the long term. Further, any lack of significant progress on such issues may indeed cause a shift in public opinion on the ability of both councils to address these matters, rekindling a demand for another application to the Board.

[38] Based on the overwhelming weight of the evidence presented at the hearing, including that of many members of the public who spoke at the evening session, it is

evident that the inhabitants of both the Town and Municipality want their elected municipal officials to cast their differences aside and to work together in a concerted effort to address the issues which affect the area. Otherwise, it is accepted by most who testified, and the Board concurs, that the region will fall behind and fail to realize on the potential which is recognized by many who live in the area and care for its future. The Board is hopeful that the elected officials of the Town and Municipality will not allow this to occur.

CONCLUSION

[39] The Board, taking into account all of the evidence (including the financial and social implications of the applications), concludes that neither amalgamation nor annexation is in the best interests of the inhabitants of the area. Accordingly, the Board denies the applications of both the Municipality and the Town.

[40] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 30th day of October, 2006.

Roland A. Deveau, Member

Kulvinder S. Dhillon, Member