

MUNICIPALITY OF LAMBTON SHORES  
COUNCIL COMPOSITION AND WARD  
BOUNDARY REVIEW

# **PRELIMINARY REPORT**

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## *Executive Summary*

Lambton Shores has not changed its council composition or ward boundaries since it was created in 2001. The Council has considerable freedom to make its own decisions on these matters, but their actions or inaction can be appealed to Ontario's Local Planning Appeal Tribunal. Its predecessor, the Ontario Municipal Board, has made a number of decisions that shape the regulatory framework in which this review is taking place. There are three inter-related issues addressed in this report: council size; at-large vs. ward elections; and the drawing of possible ward boundaries. Because of the need to address "voter parity", this last issue requires data about population and/or numbers of electors. In the case of Lambton Shores, the existence of significant numbers of property-owning seasonal residents, mainly along the lakeshore, complicates any discussion of voter parity. After adopting a mechanism for determining the appropriate population numbers for the current wards, the report concludes that the current ward boundaries cannot be defended because they violate the requirements of voter parity. Four alternative options are presented: two with five councillors and a mayor and deputy mayor and two with seven ward councillors and a mayor and deputy mayor. These options are designed to provide a framework for a consultation process that will take place before the consultants provide a final report to Council later this autumn.

## 1. INTRODUCTION

Since its creation in 2001, the Municipality of Lambton Shores has been governed by a council comprising a mayor and a deputy mayor elected at-large and seven councillors, one from each of seven wards. The ward boundaries have not been changed since the municipality's creation. The mayor and deputy mayor represent Lambton Shores on the Lambton County council. Lambton Shores was the result of the amalgamation of the Town of Bosanquet, the Village of Grand Bend, the Town of Forest, the villages of Thedford and Arkona, and parts of Warwick and Plympton townships. Agriculture and tourism are the municipality's main economic drivers. The total population of Lambton Shores has been relatively stable over the past twenty years but, as will be explained in detail later in this report, there is now considerable variation in the populations of the seven wards. A complicating factor—also to be explored in more detail later—is that a substantial portion of the dwellings located near Lake Huron are occupied by seasonal residents.

## 2. REGULATORY FRAMEWORK

Ontario municipalities have broad authority to determine their own electoral systems. Section 222 (1) of the Ontario *Municipal Act* authorizes municipalities to divide or redive their municipality into wards or to dissolve existing wards. Similarly, Section 217 (1) authorizes municipalities to determine the composition of their own councils. There are some constraints, of which the most important is that councils must have a minimum of five members. There are additional rules for upper-tier municipalities. But municipal councils can change both their electoral system and council compositions through normal by-laws.<sup>1</sup>

From a strictly legal perspective, only municipal by-laws that affect ward boundaries can be directly appealed to the Local Planning Appeal Tribunal (LPAT).<sup>2</sup> A by-law changing the number of councillors elected at-large, for example, could not be appealed, nor could one that changed the number of councillors elected in each ward. In practical terms, however, all aspects of a municipal electoral system can become the subject of a hearing at the LPAT. This is because Section 223 of the *Municipal Act* outlines a procedure whereby citizens can petition their municipalities to have ward boundaries drawn, redrawn, or dissolved altogether. If the municipality does not act upon the request, the petitioners can then appeal to LPAT, whose authority in such appeals is limited to the determination of ward boundaries. But, for obvious reasons, increasing or decreasing the number of wards can leave municipalities with little choice over the size of council.<sup>3</sup>

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<sup>1</sup> Municipal Act, 2001, S.O. 2001, c. 25

<sup>2</sup> LPAT is the successor to the Ontario Municipal Board (OMB). The term “LPAT” or “Board” will be used in this document in referring to cases that might actually have been determined by the OMB.

<sup>3</sup> For example, see *Wagar v. London (City)* (2005) O.M.B.D. No. 1329.

Just as there are no provincial criteria or regulations that municipalities must follow when they make changes to their electoral systems, there are none to guide LPAT in hearing appeals of such decisions. In the absence any such criteria, the Board has come to rely heavily upon the 1991 decision by the Supreme Court of Canada in the Carter case.<sup>4</sup> The case is important because in its decision the Court articulated a requirement for “effective representation” in the House of Commons and provincial legislatures. The Court recognized the importance of “relative parity of voting power,” but it also ruled that other considerations, including “community history, community interests and minority representation” are factors which “may need” to be weighed to ensure that elected bodies are effectively representative.

Even though the Supreme Court decision does not apply to Canadian municipalities, LPAT has adopted “effective representation” as its guiding principle with respect to electoral systems. It would be misleading, however to claim that LPAT has developed a clear or coherent definition of “effective representation,” as it applies to municipalities. LPAT is a quasi-judicial body, and is not bound by the precedents set in previous cases, as Ontario municipalities know all too well. Board members are free to develop and apply their own criteria on a case-by-case basis. It is should not be surprising, then, to find that there is considerable variation among Board members in the firmness with which they have embraced the doctrine of effective representation.

For some members, there is no ambiguity. In one case, the Board linked a municipality’s by-law about its council make-up directly to the wording of the Supreme Court decision: “The issue before the Board is whether the By-law provides for effective representation within the context of Tay Township as prescribed in The Supreme Court of Canada in Reference re: Provincial Boundaries.”<sup>5</sup> In *McPherson v. Prince Edward* (2005), a case involving a petition to reduce the number of wards, the Board instructed the appellant to “present evidence on how their proposal would achieve effective representation and in doing so, specifically address the criteria enunciated by the Supreme Court of Canada.”<sup>6</sup> On this view, the Carter decision described above and “effective representation” are to be straightforwardly applied, as most forcefully expressed by the Board in *Teno v. Lakeshore* (2005):

The Board agrees that this Board does prefer local solutions. However, the Board must assume that there is a reason the legislation provides for an application to this Board when a petition to redivide electoral boundaries is not acted on by the municipality. The legislation anticipates that the various positions of the interested parties can be presented to the Board and that the Board can make a decision that ensures that any decision on electoral boundaries that is made, is made in accordance with the principles set down by the Supreme Court, in interpreting the Charter of Rights. Anything else would be a derogation of the Board's duties in this

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<sup>4</sup> Supreme Court of Canada, Reference Re. Prov. Electoral Boundaries (Sask), [1991] 2 S.C.R. 158.

<sup>5</sup> *Pearson v. Tay (Township)* (2012) MM120006.

<sup>6</sup> *McPherson v. Prince Edward (County)* (2009) O.M.B.D. No. 989.

regard.<sup>7</sup>

In other cases, however, Board members have articulated a more nuanced position, recognizing that the principle of effective representation must be adapted to apply to the case of municipal electoral systems. In *Savage, Murphy, and Ross v. Niagara Falls* (2002), the Board heard the appeal of a by-law replacing an electoral system based on ten wards with one comprising eight members elected at-large. In denying the appeal, the Board sought to explain the relevance of the Carter decision to local choices about municipal electoral systems:

Adopting the Court’s reasoning, in the context of this appeal, the Board must be satisfied that the decisions of council to deviate from the ward system, will not deprive the citizens of Niagara Falls of fair and effective representation and will not dilute the current form of governance they already have.<sup>8</sup>

In *Lauer v. Oshawa* (2005), the Board presented what is perhaps the clearest statement about the applicability of the Carter decision and the doctrine of “effective representation” to municipalities in Ontario:

It is important to understand that the Saskatchewan [Carter] decision is based upon provincial electoral districts, provincial legislation in Saskatchewan and Section 3 of the Charter – “Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein” – does not speak directly to municipal councils. Nonetheless the case is relevant in the absence of a regulation permitted under Section 222 (2b) of the Ontario *Municipal Act* to prescribe standards.”<sup>9</sup>

Finally, some Board decisions about municipal electoral systems contain no reference to the Carter decision or to the principle of effective representation. In *Diemart and Letteau v. South Bruce* (2009), a case involving the appeal of a by-law replacing wards with an at-large system, the Board similarly noted the absence of any guiding criteria or standards of review. In allowing the appeal, the Board preferred its own standard: “I am not satisfied that the proposed By-law is in the interest of the Municipality, moves it forward or is an improvement to the existing system.”<sup>10</sup>

In cases where the Board has relied on effective representation as its guiding principle, it has been invoked to justify changes to nearly every conceivable electoral arrangement. In *Dingwall v. Kearney* (2005), the Board granted a petition to dissolve existing wards in favour of an at-large system, because the wards—still wedded to old municipal boundaries—unjustifiably violated voter parity.<sup>11</sup> In *Osgoode v. Ottawa* (2003), the Board granted the appeal of a city by-law redrawing ward boundaries on the grounds that the redrawn boundaries placed too much emphasis on voter parity, and therefore deprived

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<sup>7</sup> *Teno v. Lakeshore (Town)* [2005], O.M.B.D. No. 1245

<sup>8</sup> *Savage, Murphy, and Ross v. Niagara Falls (City)* (2002) O.M.B.D. No. 1698.

<sup>9</sup> *Lauer v. Oshawa (City)* (2005) O.M.B.D. No. 3253.

<sup>10</sup> *Diemart and Letteau v. South Bruce (Municipality)* (2009) MM090003.

<sup>11</sup> *Dingwall and Sainsbury v. Parry Sound/Kearney (Municipality)* 2009 MM080065.

rural residents of effective representation.<sup>12</sup> However, in 2017, it appeared that the Board’s position on rural representation was evolving. Faced with a council decision that maintained rural wards with low population in the amalgamated city of Hamilton, the OMB overturned the council’s choice by stating that in the past there had been

... an over-arching emphasis on the protection of an exclusively rural ward as a means of protecting a rural voice on council. While such protections may have been appropriate in the unique circumstances of Ottawa in 2003, it is open to review and reconsideration years after amalgamation. Similarly, the maintenance of a founding compromise that favoured rural representation on council in order to make amalgamation acceptable to those opposing it at the time, should not be considered a permanent solution, especially in the face of ongoing changes in population numbers and the character of the population.<sup>13</sup>

In *Tiverton v. Kincardine* (2005), the Board granted the appeal of a by-law dissolving a three-ward, seven-councillor electoral system in favour of an at-large council—but only in part. Although the Board conceded that “the council exercised its prerogative and made the choice it thought best” it nevertheless concluded “that the nuclear industry [via Bruce Power] exerts a powerful influence on governments at all levels” and “that without a guaranteed Ward 3 representative on Council there might be no spokesperson for other interests or dissent against the nuclear industry.” The solution, as ordered by the Board, was “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.”<sup>14</sup>

For Lambton Shores, there must be discussion about the counting of seasonal residents for the ward boundary review. The main issue is whether population numbers will be used (as determined by the latest census) or whether population numbers for wards will be based on the number of electors. We have found three OMB cases where this issue was discussed.

In the first case, *Dingwall vs. Kearney*, an application was brought forward by petitioners to eliminate the town’s ward system in favour of an at-large system.<sup>15</sup> The petitioners argued that the ward system provided inadequate representation for the entire population, which included both permanent residents and a sizable number of seasonal cottagers. In their decision, the OMB argued that the Town of Kearney failed to demonstrate any reason to perpetuate a system that did not facilitate voter parity and effective representation. Special condemnation was reserved for the Mayor, who was found to have favoured a system that placed seasonal residents at a political and electoral disadvantage:

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<sup>12</sup> Osgoode Rural Community Association, the Rideau Rural Community Association Inc., and the West Carleton Association Inc. v. Ottawa (City) 2003 O.M.B.D. 0605.

<sup>13</sup> Dobrucki and Richardson v. Hamilton (City) 2017 Case # MM170025, p. 378.

<sup>14</sup> Tiverton and District Ratepayers Association, Dean Ribey, Karen L. Smith et al. v. Kincardine (Municipality) (2005) O.M.B.D. No. 3326.

<sup>15</sup> Dingwall vs. Kearney (Town), [2009] O.M.B.D. No. 874.

It seems that the Mayor is concerned that if the ward system is dissolved and Councillors are elected at-large, the full time residents of the Town would not be properly represented. Seasonal residents, through their lake associations, would have too much influence... After hearing from many residents of the Town at the public session, the Board understands that many seasonal residents have a great commitment to the Town and its well-being. Many residents, including the Mayor, who began as seasonal residents are now full time residents.<sup>16</sup> Ultimately, the Board held argued that the Mayor “presented no evidence” to justify his fear that an at-large system would cause permanent residents to be inadequately represented.”<sup>17</sup>

A second relevant case involved student populations. In *Wiener v. Kingston*, the Council of the City of Kingston passed a by-law to change its ward boundaries. This decision was appealed on the basis that it did not provide “effective representation.”<sup>18</sup> In their initial decision-making regarding the revised ward boundaries, Council used a projected number of electors, rather than total population, and excluded post-secondary students who claimed Kingston as their primary residence and who comprised about 20 percent of the City of Kingston’s total population.

The justification put forward by the city for excluding students from population determinations was summed up by the Board: “they do not vote and, as a result, their inclusion would dilute the vote in wards without, or with a limited, post-secondary student population.”<sup>19</sup> Ultimately, however, the Board found that Council “acted unreasonably” in adopting a system of ward boundaries that did not count more than 20% of the city’s population. Leaning heavily on the Supreme Court’s *Carter* decision, which puts weight on “effective representation” and maintains that “each citizen is entitled to be represented in government,” the OMB argued that, “whether that population [students] votes or does not vote is not the issue... *Carter* determined that effective representation, as well as voter parity, is a key principle upon which electoral boundaries should be determined.”<sup>20</sup>

The OMB essentially found that post-secondary students are a community of interest, while opening a discussion on the distinction between electors, taxpayers and residents. Although these are overlapping groups, they may also be considered distinct population sets. The OMB’s decision in Kingston found that the determination of electoral district boundaries should involve a consideration of all residents, not just those who are electors or taxpayers. In the case of seasonal residents in Lambton Shores, the issue is the extent to which electors and taxpayers who are *not* permanent residents should be counted.

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<sup>16</sup> Dingwall vs. Kearney (Town), [2009] O.M.B.D. No. 874, 6.

<sup>17</sup> Dingwall vs. Kearney (Town), [2009] O.M.B.D. No. 874, 9.

<sup>18</sup> Wiener vs. Kingston (City), [2013] O.M.B.D. No. 931.

<sup>19</sup> Wiener vs. Kingston (City), [2013] O.M.B.D. No. 931, 5.

<sup>20</sup> Wiener vs. Kingston (City), [2013] O.M.B.D. No. 931, 8.

There is a third OMB case that also relates to the issues being addressed in this review that merits our attention. In *Hodson v. Georgian Bay*,<sup>21</sup> the OMB heard an appeal to adjust ward boundaries in Georgian Bay following a 2012 ward boundary review (which was triggered, in part, by the filing of the appeal). The appellant argued that the ward boundaries failed to achieve equitable representation because they sought to balance population rather than electors. In dismissing the appeal, the OMB recognized that provincial legislation does not specify that population must be used (rather than electors) to draw ward boundaries, but found that past OMB decisions have upheld the use of population figures.

For the purposes of this electoral review, there are three important conclusions to draw from this brief review of the regulatory framework governing municipal electoral systems in Ontario. First, there can be no disputing that Lambton Shores, like all Ontario municipalities, has the authority to determine its own electoral system. Second, any decision to change the current electoral system—and, by extension, any decision *not* to change it—can be appealed in one way or another to LPAT. Third, in hearing such appeals, LPAT members have largely adopted “effective representation” as the guiding principle, although to varying degrees and sometimes to seemingly contradictory ends. This principle has been applied most directly to issue of ward boundaries, where it has the clearest relevance. In some cases, however, it has also been applied to questions concerning which system should be used to elect members of council (wards or at-large), where it has questionable relevance at best. Generally, though, LPAT has deferred to the decisions of municipal councils on such matters.

### 3. APPROACHING THE ISSUES

We are charged with reviewing both council composition and ward boundaries. In theory, it would be reasonable to expect the process to proceed sequentially with three distinct determinations:

1. Council size
2. Whether elections will be at-large, by wards, or some combination of both
3. If there are to be wards, drawing their boundaries.

In this report, we will proceed in accordance with this logic. However, we are open to the following possibilities with respect to Step 3 in the process:

1. We might determine that, once we start exploring ward boundaries, there is a number of natural communities of interest with roughly equal populations that would cause us to revisit the issue of the optimal council size, at least for Lambton Shores; OR
2. We might determine that all the possible configurations of ward boundaries are so defective that we should revisit the possibility of the at-large election of council

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<sup>21</sup> *Hodson v. Township of Georgian Bay* [2013]OMB Case No. MM130031

members.

All of this is another way of saying that every issue we are required to consider is closely connected to every other issue. Nevertheless, the discussion that follows is structured by the three issues outlined above.

### *3.1 Council size*

It is unusual for controversies about council size to be the subject of national concern, but that is exactly what happened in 2018 when the Government of Ontario sponsored legislation during a municipal election campaign to reduce the membership of the Toronto city council from 45 to 26. Although such a debate seems far removed from the concerns of Lambton Shores, it should be remembered that one of the stated reasons for all the municipal amalgamations of the late 1990s, including Lambton Shores, was to reduce the total number of elected municipal politicians in the province. It would be surprising indeed if there were not at least some residents of the municipality who have strong views on the subject.

We have already noted that the Ontario Municipal Act requires that all municipalities have a minimum of five members. Lambton Shores currently has nine. In theory at least, the size of the council could be reduced by 44 percent, approximately the same percentage as occurred in Toronto (42 percent). Any reduction in council size is likely to have only a minimal effect on total municipal expenditures because total council costs are relatively small compared to other municipal costs. In 2019 in Lambton Shores, total council costs were \$237,600; total tax-supported expenditures were \$12,832,500. A smaller council might lead to shorter meetings and less demand on staff time attending meetings. But remaining councillors might expect higher remuneration and more staff support. There is no empirical evidence that a council of five is more efficient or more effective than a council of nine; nor can there be because there can be no agreement about what constitutes desirable “outputs” from a municipal council. We are assuming that no one in Lambton Shores will be proposing a council larger than nine.

In Ontario most councils have an odd number of members. This is because mayors are entitled to vote in the same way as other council members and do not have a tie-breaking vote. If there is a tie vote in a municipal council, the item on which the vote has taken place is deemed to have been defeated. Having an odd number of council members is no guarantee that there will be no tie votes because one or more members are sometimes absent or unable to vote on particular matters due to a conflict of interest.

In order to address the issue of council size, we believe it is desirable for everybody to know about council composition in other comparable municipalities. To this end we have examined the twenty other lower-tier municipalities in Ontario that are within the same population range. By lower-tier, we mean municipalities that are also governed at the local level by counties or regional municipalities. Lambton Shores, for example, is part of Lambton County; the mayor and deputy mayor of Lambton Shores represent the municipality on the county council. For population data, we rely on the latest Census of

Canada, from 2016; the next census will be in 2021. In 2016, Lambton Shores had a population of 10,631, ranking 139<sup>th</sup> in Ontario. In the Table below we look at the other Ontario municipalities ranking between 128 (Erin) and 150 (Grey Highlands). We did not include Elliott Lake (137) and Timiskaming Shores (148) because they are single-tier and therefore have more municipal functional responsibilities than Lambton Shores.

**TABLE 1: Council composition in municipalities comparable to Lambton Shores**

Municipality	Population	Council size (includes mayor & deputy)	Is there a deputy mayor?	At-large councillors	wards	Result of post-1990 amalgamation?
Erin	11,439	5	No	4	0	Yes
Kincardine	11,389	9	Yes	3	3 (1 has 2 members)	Yes
North Dundas	11,278	5	Yes	3	0	Yes
Wellesley	11,260	5	No	0	4	No
Norwich	11,001	5	No	0	4	No
Meaford	10,991	7	Yes	5	0	Yes
Adjala-Tosoronto	10,975	7	Yes	5	0	Yes
Hamilton Township	10,942	5	Yes	3	0	No
South Dundas	10,833	5	No	4	0	Yes
Carleton Place	10,644	7	Yes	5	0	No
LAMBTON SHORES	10,631	9	Yes	0	7	Yes
Mapleton	10,527	5	No	4	0	Yes
Georgian Bluffs	10,479	7	Yes	5	0	Yes
Rideau Lakes	10,326	9	No	0	4 (each has 2 members)	Yes
Hawkesbury	10,263	7	Yes	6	0	No
North Dumfries	10,215	5	No	0	4	No
North Glengarry	10,109	7	Yes	1	4	Yes
South Huron	10,096	7	Yes	0	3 (2 have 2 members)	Yes
Tay	10,033	7	Yes	0	3 (2 have 2 members)	No

Elizabethtown-Kitley	9,854	7	Yes	5	0	Yes
Grey Highlands	9,804	7	Yes	5	0	Yes

Source: 2016 Census of Canada and websites of listed municipalities

We also examined the council composition of the twenty municipalities in Canada outside Ontario that were closest in population to Lambton Shores according to the 2016 Census of Canada. Twelve of them were in British Columbia and Quebec, where the province legislates a council size of seven for municipalities in this population range. In BC, the mayor and councillors are elected at-large; in Quebec they are elected (except for the mayor) from wards. Among the remaining cases, all were in provinces where all the municipalities are single-tier, and therefore not directly comparable to Lambton Shores. Four were in Alberta: two of these have seven members (one with at-large elections, the other with a mayor and three wards electing two councillors each); one has six members all elected from wards (the reeve, or head of council, is chosen by the councillors from among themselves); and one (Yellowhead) has a council of nine members (a mayor and one councillor from each of eight wards). Two were from Nova Scotia: one has seven members all elected from wards (the warden, or head of council, is chosen by the councillors from among themselves); the other has eight members (a mayor and one councillor from each of seven wards). There was one municipality (Selkirk) from Manitoba; it has a mayor and six councillors elected at-large.

Among the municipalities in Ontario and the rest of Canada that we surveyed, none has more council members than Lambton Shores, but three (Kincardine, Rideau Lakes, and Yellowhead AB) have the same number (nine). Rideau Lakes and Kincardine, like Lambton Shores, are products of the municipal amalgamations of the 1990s. Yellowhead is a vast county (single-tier) that includes Jasper National Park and the rural and wilderness areas around Hinton and Edson.

Our conclusion is that Lambton Shores does have a large council compared to other municipalities with similar population levels. Given its special characteristics, however, the number can be justified. However, if most residents in different parts of the municipality consider the amalgamation no longer particularly relevant to how they think about their municipal government, then there is also justification for deciding to reduce the number of councillors.

### 3.2 *At-large elections, wards, or a combination*

Prior to our public consultations, we do not know if there is any appetite for at-large elections in Lambton Shores. However, given the prevalence of such elections in other Ontario municipalities with the same population level (and even among amalgamated municipalities), we believe that this option should at least be considered.

Arguments about wards vs. at-large municipal elections have reverberated in North

America for more than a hundred years. In the late Nineteenth Century “progressive” urban reformers wanted to get rid of ward elections because often-corrupt “ward-healers” were concerned only with delivering benefits to their local electors rather than paying attention to the overall well-being of their respective municipalities. Small councils elected at-large were supposed to be the solution. But in places where such systems were implemented they in turn frequently became the subject of criticism because territorially-concentrated minority groups often ended up with no representatives. In the United States, the Supreme Court has struck down at-large systems in racially divided cities precisely on these grounds.<sup>22</sup> Recent research, however, shows that the representation of racial and ethnic minorities improves only slightly in ward-based elections, and that the representation of women actually declines.<sup>23</sup>

In recent decades in Ontario, there has been a general trend towards ward-based elections, especially in rural municipalities that amalgamated in the 1990s. Nevertheless, the choice between at-large and ward-based systems remains a local one. The OMB did not express a preference in any of its rulings on electoral systems. As the Board stated in a 2002 hearing, “There are very good reasons for both systems of representation. That is why both systems are available to municipalities in Ontario.”<sup>24</sup> Among more populous Ontario municipalities, many have maintained at-large systems, with Oshawa, Sarnia, Owen Sound, and Aurora being prime examples. Others have a mix of the two systems. For example, in Thunder Bay the mayor and five councillors are elected at-large and seven more are elected from each of seven wards.

There can be no empirical evidence that one system is superior to the other. The choice is likely to be dependent on local circumstances and on political preferences and objectives. Wards will be favoured by people who want to promote the representation of territorially-concentrated minority groups, build closer ties between local communities and individual councillors, and reduce campaign costs for council candidates. Those wanting to discourage territorial divisions and avoid the inevitable difficulties of creating wards with equal populations will favour at-large systems.

It is doubtful that discussions in Lambton Shores about choices between at-large and ward-based electoral systems will unearth any new arguments. It is significant, of course, that Lambton Shores contains four distinct concentrations of population which previously themselves constituted incorporated towns or villages: Grand Bend, Forest, Thedford, and Arkona. There are also significant populations along the shoreline in Port Franks and Ipperwash and throughout the inshore rural hinterland. Some will no doubt claim that such a configuration makes wards a necessity. The problem with this line of argument,

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<sup>22</sup> Bernard Grofman, *Voting Rights, Voting Wrongs: The Legacy of Baker v. Carr* (New York: Priority Press, 1990), p.5

<sup>23</sup> Jessica Trounstine and Melody E. Valdini, “The Context Matters: The Effects of Single-Member versus At-Large Districts on City Council Diversity,” *American Journal of Political Science* 52, no. 3 (2008): 554-69.

<sup>24</sup> *Englishman, Mancell and Gushter v. Brockton (Municipality)* (2002) O.M.B.D. No. 1767.

however, is that the distinct settlements are of varying population size, meaning that the principle of voter parity (rep-by-pop) will be grossly violated if each settlement automatically gets its own ward. The existence of distinct settlements within the same municipality will cause others to argue that the only way to avoid having councillors focus only on their own wards is to have all of them elected at-large.

#### **4. POPULATION DATA AND SEASONAL RESIDENTS: THE EXISTING WARDS**

Ontario law allows non-resident property-owners and long-term renters to vote in municipal elections. This is not the case in all other provinces. An examination of provincial websites for municipal elections shows that none of the four Atlantic provinces allow non-resident municipal voting. Neither does Alberta, except in a special category of municipalities known as “summer villages.” In Quebec, non-resident property owners and non-resident occupiers of business rental properties can vote in municipal elections. Non-resident property owners can vote in British Columbia, Manitoba, and Saskatchewan but in British Columbia there can only be one non-resident voter for each property, even if such property is jointly owned.

In at-large municipal voting systems, all eligible electors are treated the same way: each vote is counted equally. Potential problems emerge with the drawing of boundaries for wards. For federal and provincial elections in Canada, there is no non-resident voting. The boundaries of electoral districts are drawn using population data from the federal census, which counts all Canadian residents only once; they are considered to reside at the place of their “permanent” residence. Municipal ward boundaries are also often drawn using federal census data, usually supplemented by local information about locations of projected future development. In most Ontario municipalities it does not matter that seasonal (or non-permanent) residents are not accounted for because they are relatively few and likely to be scattered more-or-less equally across the municipality’s territory.

Lambton Shores is one of a number of Ontario municipalities where there is a relatively high proportion of seasonal residents who are not distributed equally across the municipality. Such a state of affairs greatly complicates the process of drawing ward boundaries because it is not obvious how population numbers for the different areas of the municipality should be determined. As has been described earlier in this report, there are two possible ways of including seasonal residents:

1. Use census figures only, as in the drawing of federal and provincial electoral districts. Such an approach counts *all* permanent residents, including children and non-citizens. This approach means that seasonal residents are *not* counted. Even if every effort is taken to create wards with equal populations using this method, residents could find themselves in a ward with many more voters than a ward without seasonal residents and could conclude that their votes are worth less than those of other voters. Fortunately, the census also counts “total private dwellings”

- and “private dwellings occupied by usual residents”. The latter category is defined by the census as private dwellings “in which a person or a group of persons is permanently residing.”<sup>25</sup> The difference between the two numbers is the number of private dwellings *not* occupied by usual residents. Unfortunately for us, the census does not count the number of people who usually live in such dwellings on a non-permanent basis. However, we know from the census that, on average, 2.60 people live in each private dwelling in Ontario that is occupied by usual residents. For other purposes, including ward-boundary reviews, some consultants have used a much higher number to estimate the number of people living in non-permanent dwellings. The figure used has sometimes been as high as 3.74, but a more common one is 3.66. It seems that this number derived from a 2004 “Second Home Study”<sup>26</sup> in the District of Muskoka in which survey respondents were asked how many people lived non-permanently in their dwelling. Respondents were to count the owners, their children, and any extended family members who spend a minimum of 30 cumulative days at the seasonal property in one calendar year. We believe this number is too high, however, because only the owners (or renters), not other adults, can vote as seasonal residents. The same survey also asked owners to include only themselves and children under 18. For this question, the resulting response was 2.49. We believe this number is the appropriate multiplier to use for our work in Lambton Shores. We therefore will assume that each dwelling in the municipality not occupied by usual residents contains 2.49 persons.
2. Use lists of eligible voters as the measure of population. In Ontario such lists are initially prepared by the Municipal Property Assessment Corporation (MPAC) and are often considered, in their initial raw form at least, to be inaccurate. The list (in theory) comprises all residential property-owners and long-term renters. Children and non-citizens are not counted. In Lambton Shores in 2018, there were more non-resident eligible voters in Ward 3 (1317) than there were resident voters (1157).

Table 2 shows results for the current wards using each of these two methods. (For maps of these wards, see: <https://www.lambtonshores.ca/en/our-government/mayor-and-council.aspx#> )

Fortunately, the results for each are remarkably similar. In other words, for our purposes, whether we use census data or eligible-voters data, the relative results for each of the existing wards are the very similar (see the last two columns of Table 2). However, we are opting for census data (as described in 1 above) because, by using census “dissemination blocks”, we can manipulate relatively small territories to produce alternative boundaries for possible new wards.

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<sup>25</sup> <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=POPC&Code1=0285&Geo2=PR&Code2=35&SearchText=Forest&SearchType=Begins&SearchPR=01&B1=All&TABID=1&type=0>

<sup>26</sup> <https://muskoka.civicweb.net/document/4772>

The most important column of Table 2 is bolded. Using census data (adjusted to take account of seasonal residents as described in 1 above), the Table shows the percent by which the population of each of the existing wards is above or below the average. For the creation of federal and provincial electoral districts and for the drawing of ward boundaries in Ontario, it has been generally recognized (including by the OMB in Ontario) that, in order to promote voter parity that, except in the most unusual of circumstances, the population of each of the wards should be within plus or minus 25 percent of the average. Four of the seven wards (2,3,6, and 7) are outside this range, two of them (3 and 6) dramatically so.

It is our opinion that it is impossible to defend the existing ward system in Lambton Shores because the distribution of the population among the wards is too unequal. For this reason we are not presenting the status quo as an option for consideration. Instead, in the section that follows we present options that in our opinion are defensible.

**TABLE 2: Population and Elector Data for Current Wards in Lambton Shores**

Ward	2016 census population	2016 census population adjusted for seasonal residents	<b>Percent above or below average</b>	2018 number of electors who were permanent residents	2018 total number of electors	Proportion of total electors (%)	Proportion of population adjusted for seasonal residents (%)
1	1170	2672	<b>+16.2</b>	900	1753	15.6	16.6
2	1924	2981	<b>+29.7</b>	1306	2140	19.0	18.5
3	1331	3402	<b>+48.0</b>	1157	2474	21.9	21.1
4	1842	2272	<b>-1.2</b>	1141	1474	13.1	14.1
5	1822	1923	<b>-16.4</b>	1188	1269	11.3	11.9
6	1090	1129	<b>-50.9</b>	728	796	7.1	7.0
7	1444	1714	<b>-25.4</b>	1163	1373	12.2	10.7
TOTALS	10623	16093		7583	11279	100.2	99.9
Average	1518	2299		1083	1611		

Sources: 2016 Census of Canada and elector data provided by Clerk's Office, Lambton Shores

## 5. OPTIONS

As indicated earlier, during the consultation process we shall be open to any and all

suggestions that we believe would be defensible in any hearing held by LPAT. We present the following options primarily to focus discussion and debate, and possibly to provide the basis for different options that might combine elements of those that are presented here. After the consultation process is complete, we shall prepare our final report complete with our own recommendation about how the Lambton Shores Council should proceed.

We are mandated by Lambton Shores to propose a representation system that could be defensible through a number of elections, possibly as far in the future as 2030. In recent years, population numbers for much of the municipality have been relatively stable and it seems unlikely that this pattern will change dramatically. We have been provided with some information about planned future development. It appears that the current Wards 1 and 2 are likely to attract more than their share, much of it probably designed for seasonal residents. We hope to obtain more information about future population trends during the consultation process and will take account of such information in our final recommendation. The location of future development is not relevant for at-large elections, the subject of the first of our options.

As outsiders, we are aware that, in drawing boundaries for proposed new wards, we may inadvertently have split important communities of interest that, under alternative boundary arrangements, could be kept together while still maintaining voter parity. Another important purpose of our consultation process is to learn about such communities of interest.

### *5.1 Option 1: 5 councillors elected at-large*

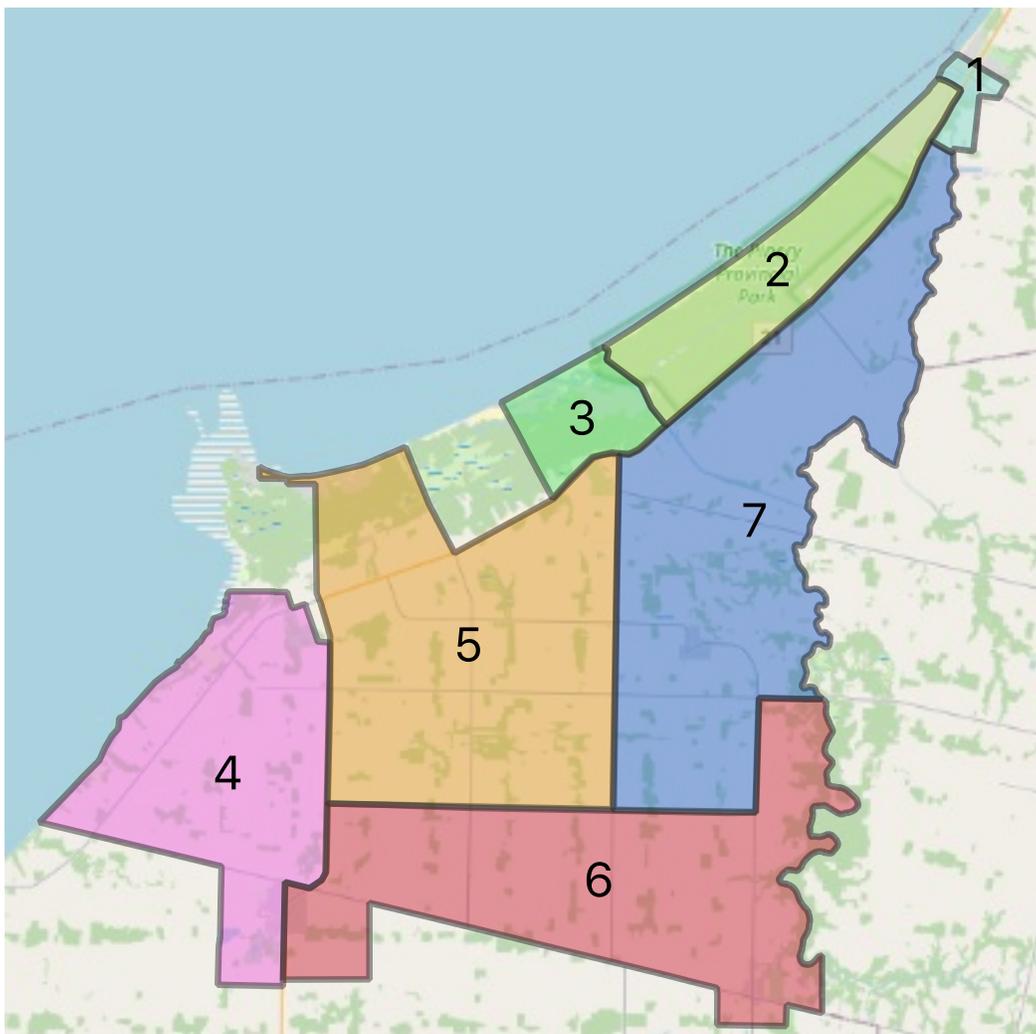
We discussed debates about at-large municipal representation earlier in this report. We have seen that many municipalities with populations in the same range as Lambton Shores have councils that are elected at-large. If Lambton Shores were to adopt an at-large system, it could choose to have a mayor, a deputy mayor, and as few as three at-large councillors. We suggest, however, that five would be the most reasonable number: three would be an exceptionally dramatic change from the status quo; more than five might defeat one of the purposes of adopting at-large elections in the first place, i.e., facilitating a move to a smaller council. More seriously, in the absence of organized slates of council candidates, voting for more than five councillors would place a considerable strain on the ability of voters to know for whom they are voting, especially when we consider that there would still be distinct “at-large” elections for the posts of mayor and deputy mayor.

### *5.2 Option 2: 7 wards*

This option involves the least change from the current seven-ward configuration. Nevertheless, the territories of Wards 1, 2, 3 and 4 are all reduced, Ward 3 dramatically so, such that it would include only Port Franks (the area north of Highway 21 between

the Pinery and Outer Road). The boundary separating Wards 1 and 2 is shifted east from the Old Ausable Channel to Ontario Street South, and north to Lake Road. Ward 4 would lose the part of Forest that is east of Main Street to Ward 6, which would also gain the territory of the current Ward 5 that is south of Cedar Point Line. Ward 6 would lose the territory between Cedar Point Line and Thomson Line that is east of Army Camp Road. Ward 5 would gain Ipperwash Beach (the area north of Highway 21 between the two parts of the Kettle and Stony Point First Nation) and the area south of Highway 21 and north of Cedar Point Line that is between Army Camp Road and Northville Road. As already noted, the current Ward 5 would lose that part of its territory that is south of Cedar Point Line. The boundaries of Ward 6 (as already noted) are extended further into Forest, but it loses the territory between Cedar Point Line and Thomson Line to Ward 7, which also gains territory from the current Ward 2. As already indicated, Ward 7 loses territory to the proposed Ward 5.

**MAP 1: Option 2 (7 wards)**



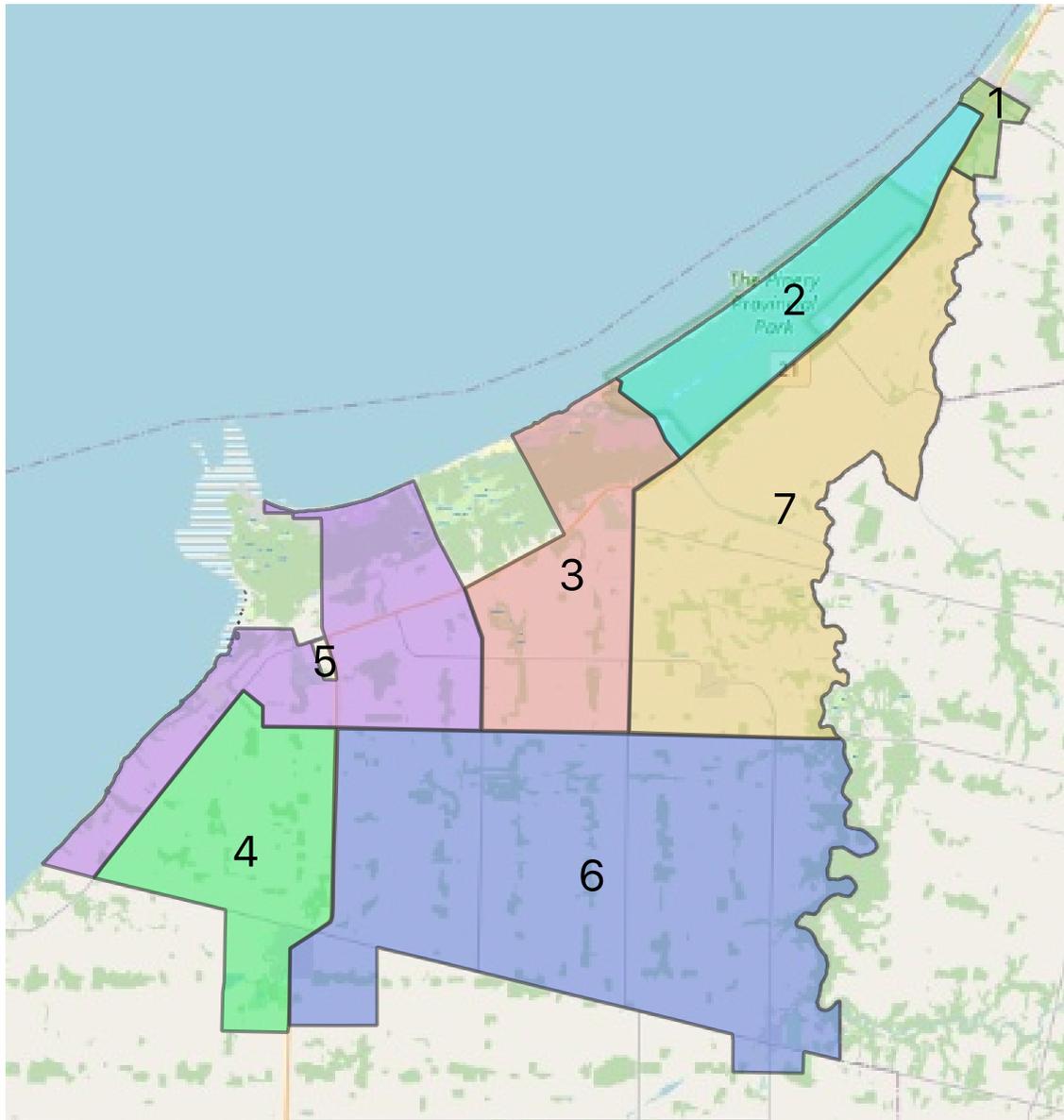
The population numbers for Option 2 are as follows:

Ward No.	Population	Percentage above or below
1	2187	-3.6%
2	2484	9.5%
3	2013	-11.3%
4	2315	2.0%
5	1854	-18.3%
6	2697	18.9%
7	2543	12.1%
TOTAL	16093	

Note: Population numbers are from the 2016 Census of Canada adjusted to account for seasonal residents as explained earlier.

### 5.3 Option 3: 7 wards

This option maintains 7 wards but involves somewhat more radical changes to boundaries than in Option 2. The proposed Wards 1, 2, and 7 remain as proposed in Option 2. The other wards are reconfigured such that Ward 3 (Port Franks) includes territory south of Highway 21 and north of Thomson Line between Army Camp Road and Northville Road. Ward 5 becomes a waterfront ward, including Ipperwash Beach and all of the territory north of Highway 7 between the Kettle and Stony Point First Nation and the boundary with Plympton-Wyoming. Ward 4 loses its waterfront territory but takes in all of that part of Forest that is west of Highway 21. Compared to Option 1, Ward 6 takes in a smaller portion of Forest but extends further north to Thomson Line, which is its current boundary with Ward 7.

**Map 2. Option 3 (7 wards)**

The population numbers with respect to voter parity are superior to those in Option 2, but there might be problems about communities of interest about which we are not yet familiar. The population numbers are as follows:

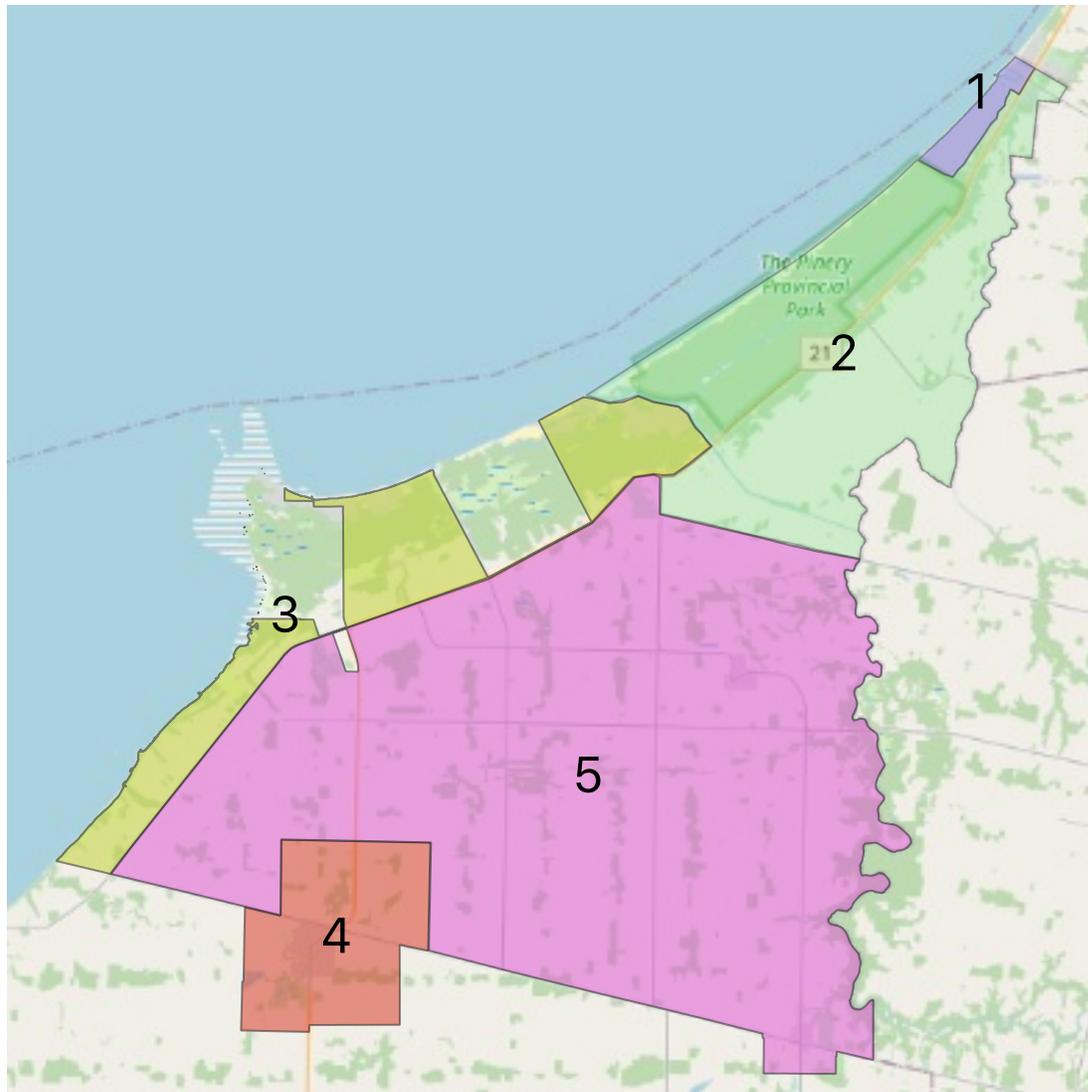
Ward No.	Population	Percentage above or below
1	2187	-4.9%
2	2484	8.0%
3	2134	-7.2%
4	2015	-12.4%
5	2236	-2.7%
6	2494	8.5%
7	2543	10.6%
TOTAL	16093	

Note: Population numbers are from the 2016 Census of Canada adjusted to account for seasonal residents as explained earlier.

#### 5.4 *Option 4: 5 wards*

We decided to explore the possibility of a five-ward option, with one councillor being elected from each ward. Our best effort is shown below:

#### **Map 3. Option 4 (5 wards)**



This option has some quite obvious attractions: there are two waterfront wards (1 and 3) whose southern boundaries are Lakeshore Road (Highway 21 and County Road 7). They are separated from each other by the Ausable River. Wards 2 and 5 are separated by Northville Road and Bog Line (County Road 79 and County Road 18). Ward 4 contains all of Forest and its immediate surrounding area. The population numbers are below. In our view, the high number for the proposed Ward 3 would be entirely defensible because it is only very slightly above the 25 percent mark and because this number is greatly affected by the somewhat arbitrary calculations relating to seasonal residents.

Ward No.	Population	Percentage above or below
1	3197	-0.6%
2	3038	-5.5%
3	4044	25.7%
4	3126	-2.8%
5	2688	-16.4%
TOTAL	16093	

Note: Population numbers are from the 2016 Census of Canada adjusted to account for seasonal residents as explained earlier.

## 6. NEXT STEPS

As soon as possible after the presentation of this interim report the consultants will conduct informal interviews with council members and the municipality's senior management team. The object of these interviews will be to obtain their reactions to the options we have presented.

This stage will be followed by two public meetings during the early autumn. Due to the pandemic it is not now possible to specify whether these meetings will be virtual or in-person. If the latter there will doubtless have to be mechanisms in place to insure that the meetings do not violate provincial rules by having too many people in the same room at the same time.

For information about these meetings as decisions are made, residents can consult the page of the municipality's website that is dedicated to the ward-boundary review process. See [www.lambtonshores.ca/en/our-government/council-composition-and-ward-boundary-review.aspx](http://www.lambtonshores.ca/en/our-government/council-composition-and-ward-boundary-review.aspx) .

We will present their Final Report to Council in December. This report will contain a recommendation for a particular course of action. Readers are reminded again that we will be pleased to consider proposals that offer variations on one or more of any of the options we have presented. The purpose of these options is to help launch a discussion, not to limit it. The final decision, subject any appeals to LPAT, rests with the Council.