

ISSUE DATE:

**September 20, 2013**



MM130053

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 222(4) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended

Appellant: Kevin Wiener; Sydenham District Association and Alma Mater Society of Queen's University  
Subject: By-law 2013-83 to dissolve existing wards  
Municipality: City of Kingston  
OMB Case No.: MM130053  
OMB File No.: MM130053

**APPEARANCES:**

**Parties**

**Counsel**

City of Kingston

Tony Fleming

Alma Mater Society of Queen's University

J. Michael Hickey

Sydenham District Association

J. Michael Hickey

Kevin Wiener

**MEMORANDUM OF ORAL DECISION DELIVERED BY SYLVIA SUTHERLAND ON SEPTEMBER 9, 2013 AND ORDER OF THE BOARD**

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[1] This was a Pre-hearing Conference ("PHC") held in relation to the establishment of 12 re-divided electoral districts by the City of Kingston ("City") pursuant to the provisions of s. 222(1) of the *Municipal Act* ("Act").

[2] The Board received three appeals of the City's decision: the Alma Mater Society of Queen's University, the Sydenham District Association, and Kevin Wiener. The appeals were generally based on the principle that the City failed to properly address the principles of "effective representation" when configuring the new electoral district boundaries.

[3] At the PHC, 17 individuals and/or associations identified themselves as participants at the hearing. They are listed in the Procedural Order ("PO") set out in Attachment 1 to this order.

**ORDER**

[4] The Board approves the PO and orders its issuance.

[5] Five days have been set aside for a hearing on this matter commencing at **10 a.m. on Monday, October 21, 2013** at:

**Council Chambers, City Hall  
216 Ontario Street  
Kingston ON, K7L 2Z3**

[6] No further notice shall be given.

"Sylvia Sutherland"

SYLVIA SUTHERLAND  
MEMBER

**ATTACHMENT 1**

**ONTARIO MUNICIPAL BOARD**

IN THE MATTER OF subsection 222(4) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended

Appellants: Alma Mater Society of Queen's University, Sydenham District  
Association, Kevin Wiener  
Subject: By-law No. 2013-83  
Municipality: City of Kingston  
OMB Case No.: MM130053  
OMB File No.: MM130053

**PROCEDURAL ORDER**

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

**Organization of the Hearing**

2. The hearing will begin on October 21, 2013, at 10 a.m. in the City of Kingston at the Council Chambers, City Hall, 216 Ontario Street, Kingston, Ontario, K7L 2Z3.
3. The length of the hearing will be 5 days. The Board member may arrange for an evening session to hear the evidence of the participants at the discretion of the Board at a time to be established at the commencement of the hearing.
4. The parties and participants identified at the prehearing conference are listed in Attachment 1 to this Order.
5. The Issues are set out in the Issues List attached as Attachment 2. There will be no changes to this list, save and except such additional issues as may be approved by the Board. A party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible. Any such person who will be retaining a representative must advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

***Requirements Before the Hearing***

7. In addition to the list of expert witnesses that a party proposes to call, a party who intends to call any other witnesses, whether by summons or not, and a participant who proposes to give evidence, shall provide to the other parties and to the Clerk a list of the names of such witnesses. This list must be delivered on or before September 23, 2013.
8. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 12. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
9. A witness must provide to the parties a summary of the evidence to be provided as in section 12, or the witness may not give oral evidence at the hearing.
10. A participant must provide to the parties a participant statement as in section 12, or the participant may not give oral evidence at the hearing.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence in accordance with section 12.
12. On or before October 1, 2013, the parties shall provide copies of their reports, witness summaries and expert witness statements to the other parties and to the Clerk of the municipality. Participants must provide a copy of their participant statement to all parties and to the Clerk on or before October 1, 2013.
13. On or before October 7, 2013, the parties shall provide copies of their visual

evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 7 days after the evidence is received.
15. A person wishing to change written evidence, including witness summaries, must make a written motion to the Board.
16. A party who provides a witness's written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board and the other parties at least 7 days before the hearing that the written evidence is not part of their record.
17. Documents may be delivered by personal delivery, facsimile, email or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules 26 to 31 on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.
19. No further notice of this hearing will be provided.
20. The hearing will be conducted in the Order of Proceeding set out on Attachment No. 3.

**This Member is not seized.**

**So orders the Board.**

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**Attachment No. 1**

**Parties**

1. The Corporation of the City of Kingston

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## Participants

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**Attachment No. 2**

**Issues in Dispute – By-Law 2013-83**

1. Does by-law 2013-83 provide effective representation?
2. By failing to include students in the total population counts, does By-law 2013-83 fail to provide effective representation;
3. Does By-law 2013-83 result in fragmentation of traditional communities of interest within the Municipality?

***Attachment No. 3***

***ORDER OF PROCEEDING***

- 1. Municipality's witnesses**
2. Appellants' witnesses
3. Reply by Municipality

Participants will be scheduled at the discretion of the Board, said determination to be made at the commencement of the hearing.