

January 14, 2014

Mayor Laurier Falldien and
CAO, Clerk Treasurer Robert Deschene
The Corporation of the Township of Nairn and Hyman
64 McIntyre Street
Nairn Centre, Ontario
P0M 2L0

Dear Mayor Falldien and Mr. Deschene,

Re: Complaint that Council may have met secretly to discuss a financial proposal from a mining company

I am writing further to our conversation on January 13, 2014, regarding the outcome of our review of a complaint that Council members met behind closed doors sometime between July and October 2013 to discuss a proposed financial investment in the community from a mining company.

The mining company, Consbec Inc. (“the company”), submitted an application to the Township in 2012, requesting that Council approve an amendment to the Official Plan to allow the development of a mobile explosives plant on Crown/rural land within the Township.

Council held public meetings on July 24, September 16, and October 7, 2013 to discuss the application and to allow for public feedback and questions. On October 7, 2013, Council approved the official plan amendment and also approved the company’s financial proposal for community investment – a proposal that came forward as a result of public concerns that a mobile plant would not generate sufficient tax revenue for the Township.

The complaint to our Office alleged that Council members must have met behind closed doors to consider the offer of a financial investment by the company, as the complainant was not aware of Councillors discussing any details of such a proposal at any of the public meetings held prior to October 7, 2013.

As you know, all meetings of council, local boards, and their committees must be open to the public, with limited exceptions, and subject to certain procedural requirements.

In reviewing this complaint, our Office spoke with the Mayor and members of Council as well as the Chief Administrative Officer (CAO). We also reviewed the minutes of the public meetings held on July 24, September 16, and October 7, 2013, at which Council discussed the proposed mobile explosives plant.

We received consistent information from the Council members and the CAO that no closed Council meetings were held regarding the mobile explosives plant and/or regarding the mining company's proposed financial investment in the community.

The July 24, 2013 public Council meeting minutes state that the Mayor raised concerns to the company that residents were reluctant to support a mobile plant that would not generate significant tax revenue for the Township.

The Mayor advised that at some point after the July meeting, he met with the owner of the company and raised this issue again, at which time the company introduced the idea of offering a lump sum community investment.

We received consistent information from Councillors Rod MacDonald, Brigita Gingras, and Charlene Martel that Council initially received and reviewed a financial proposal from the company at the September 16, 2013 public Council meeting. The minutes of the meeting show that the Mayor read the contents of a letter from the company, in which the company offered a community investment in the amount of \$12,000. The minutes state that the Mayor responded to the proposal at the public session, but do not confirm what the response was. The Councillors interviewed stated that Council briefly discussed the offer and determined that a higher sum would be sought, at which time the Mayor countered the offer with a proposed sum of \$20,000.

Council received and reviewed the company's final proposal at the October 7, 2013 public Council meeting, where Council resolved to accept a financial investment of \$18,000 plus \$1,000 for charity and \$1,000 for a community event, and also approved the amendment to the official plan.

Analysis

The Ombudsman applies the following definition to determine whether a Council gathering is subject to the open meeting requirements of the Act:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

In the course of our review, we did not uncover any evidence to suggest that Council members came together to discuss any aspect of the mobile explosives plant behind closed doors. All Council members and staff interviewed advised that all meetings on the topic were held in public. The information in the public meeting records was consistent with this. Although the mayor met separately from council with the company owner in order to relay council's proposal (which was discussed in public session), this meeting is not subject to the open meeting requirements of the *Municipal Act*.

On January 13, 2014, I spoke with you and explained our review and findings and provided you with an opportunity to provide feedback. You stated that you agreed with the information and findings.

You agreed to share this letter at the next public Council meeting, to be held on February 3, 2014.

Thank you for your co-operation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team