



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

January 9, 2014

Mayor Doug Martin and
Town Clerk Carolyn Kett
Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6

Dear Mayor Martin,

Re: Closed Meeting Complaint – November 19, 2013 Special Council in Committee Meeting

I am writing further to our discussion on December 18, 2013, regarding the outcome of our review of a complaint that Council in Committee improperly held a closed meeting to discuss granting an extension to a local developer to finalize the terms of an Agreement of Purchase and Sale.

As you are aware, the *Municipal Act, 2001* (the Act) requires that all meetings of Council, Local Boards, and their Committees be open to the public, unless the subject matter falls within one of the permitted exceptions under the Act and certain procedural requirements are followed.

In reviewing this complaint, our Office reviewed the meeting documents, including the agenda and publicly available minutes (which include a record of what transpired in the closed meeting), and considered the relevant sections of the Town's Procedure By-Law and the Act.

Procedure By-Law

Regular meetings of Council are held on the second and fourth Monday of the month at 6:00 p.m.

The Town's Procedure By-Law references the open meeting requirements and provides for public notice of meetings, as required under the Act.

Notice of meetings, including special meetings, is to be posted on the Town's website.

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November 19, 2013 Council in Committee Meeting

The Agenda for the November 19, 2013 Special Closed Council in Committee meeting was posted on the Town's website and stated that Council intended to hold a closed meeting to discuss the following:

***Property and Legal Matter** (Pursuant to Section 239 (2) (c) of the Municipal Act, 2001 – A proposed or pending acquisition or disposition of land by the municipality. Section 239 (2) (e) – Litigation or Potential Litigation, including matters before administrative tribunals...and Section 239 (2) (f) – Advice that is subject to solicitor-client privilege...*

Re: Crystal Beach Gateway Project – Land Titles Absolute Application and Time Frames Related to Completion of the Agreement of Purchase and Sale and Site Plan Agreement.

According to the meeting minutes, Council passed a resolution in the open session reflecting that it would go in camera to discuss the subject matter described above.

The public minutes indicate that all members of Council were in attendance at the closed meeting, along with the Interim Chief Administrative Officer, the Clerk, the Director of Financial Services, the Director of Infrastructure Services, Acting Director of Community and Development Services, and John Mascarin, a Solicitor from the law firm Aird and Berlis.

The public minutes that are posted on the Town's website describe what occurred in the closed session and indicate that the Chief Administrative Officer explained to Council that Solicitor John Mascarin was at the meeting as a result of questions that arose at a November 12, 2013 closed session on the topic of the Agreement of Purchase and Sale for the Crystal Beach Gateway Project. The minutes reflect that the Solicitor then responded to questions posed by Council members on the matter, following which Council provided direction to staff.

Clerk Carolyn Kett explained that Council referenced the "litigation or potential litigation" exception of the Act because there is a pending appeal before the Land Registry Tribunal with respect to Absolute Title on the property.

Analysis

Council's closed meeting discussion with its Solicitor to seek clarification and advice on the terms of an outstanding Agreement of Purchase and Sale is permitted under both the "solicitor-client privilege" exception and the "proposed or pending acquisition or disposition of land" exception of the *Municipal Act*.

Because the pending appeal before the Land Registry Tribunal was also discussed, the "litigation or potential litigation" exception, cited in Council's resolution to proceed in camera, would also apply.

Council passed a resolution in open session confirming the nature of the subject matter being discussed, and the public minutes provide additional information on what transpired in the closed session.

On December 18, 2013, I spoke with you to confirm our findings and provided you with the opportunity to provide feedback. You did not express any concerns about our review or findings.

You agreed to include this letter on the agenda for Council's next public meeting, to be held on January 20, 2014, and to make a copy available to the public as part of the agenda package.

Thank you for your co-operation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team