

August 1, 2013

Mayor Rick Hamilton and  
CAO Rob deBortoli  
City of Elliot Lake  
45 Hillside Drive North  
Elliot Lake, ON P5A 1X5

Dear Mayor Hamilton and Mr. deBortoli,

**Re: Closed Meeting Complaint – June 4, 2013**

I am writing further to our conversation on July 31, 2013 regarding the outcome of our review of a complaint that third parties were permitted to attend a June 4, 2013 special closed meeting of Council and that the meeting notice did not identify the correct starting time for the meeting.

The complainant stated that two members of the public, George Farkouh and Richard Kennealy, attended a special closed meeting of Council at which Council was to receive an update on the status of negotiations with the Serpent River First Nation with respect to acquisition of Crown Land for Phase II of the Waterfront Development Project. The complainant also raised concerns that members of the public who wished to attend the public portion of the June 4, 2013 meeting may have been unable to as the publicly posted agenda erroneously listed 7:00 p.m. as the meeting start time although the meeting actually commenced at 4:30 p.m.

As you know, under the *Municipal Act, 2001* (the Act) 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 obtained and reviewed the meeting documents, including the agenda and open and closed session minutes, spoke with the Chief Administrative Officer, and considered the relevant sections of the City's Procedure By-Law and the *Municipal Act*.

## **Procedure By-Law**

The City's Procedure By-Law stated that, "public notice shall be given by posting the Agenda cover page on the City Hall Bulletin Boards."

In regard to Special Meetings of council, "where time does not permit delivery of the Agenda to meet the...deadline, the City Clerk shall attempt to inform each Council member and such other persons as the Mayor and/or the City Clerk deem advisable of the day, time, place and purpose of the meeting by telephone or otherwise. In such case, the City Clerk shall deliver the Agenda as soon as reasonably possible."

It is the City's practice to post notice of regular and special Council meetings on its website.

## **June 4, 2013 Special Closed Meeting**

The Agenda for the June 4, 2013 Special Council Meeting, posted on the City's website and bulletin boards, stated that Council would go into a closed meeting to receive a verbal report concerning Phase II of the Waterfront Development Project. It further stated that, "as this matter deals with negotiations and pending acquisition of land by the Municipality, it may be discussed in closed session under Section 239 (2) (c) of the *Municipal Act*."

The Agenda notes the meeting start time as 7:00 p.m. but the actual start time, as per the meeting minutes and confirmed by the Chief Administrative Officer, was 4:30 p.m. According to the information provided, this likely resulted from an administrative error. Regular council meetings normally start at 7:00 p.m. We were advised that at least one individual who contacted the municipality about the meeting, was informed of the 4:30 p.m. start and at least one member of the public attended the meeting.

Shortly after the start of the meeting, Council passed a resolution in the public session to proceed in camera as follows:

That the verbal update concerning Phase 2 of the Waterfront Development Project be discussed in closed session under section 239 (2) (c) of the Municipal Act as this matter deals with negotiations and pending acquisition of land by the Municipality.

All Council members were in attendance except for Councillor Patrie. Mary Bray, acting as Clerk Pro-tempore, Chief Administrative Officer (CAO) Rob deBortoli, and two members of the Joint Relations Committee (Negotiating Team) also attended the closed meeting.

The closed meeting record shows that the CAO and members of the Joint Relations Committee, including the Mayor, Mr. George Farkouh, and Mr. Richard Kennealy, provided information to Council about the status of confidential negotiations with the Serpent River First Nation for the proposed acquisition of Crown Land for the purpose of the Waterfront Development Project. The Serpent River First Nation has certain treaty rights with respect to the Crown Land and the City is required to negotiate an agreement with the First Nations prior to acquiring the land through the Ministry of Natural Resources.

Council discussed the City's position on the Committee's negotiation strategy and next steps.

Council returned to open session at 6:35 p.m. and reported that it had been briefed on the status of negotiations and that it supported the position of the Committee in its continued negotiations.

### **Analysis**

Council is permitted under s. 239 (2) (c) of the Act to consider the potential acquisition or disposition of land in a closed meeting.

Based on a review of the history and case law concerning this exception, its main purpose is to protect the bargaining position of the municipality in property negotiations.

The closed meeting record showed that the focus of discussions was on the City's negotiation with the Serpent River First Nation for the potential acquisition of Crown Land within the First Nation's ancestral territory. The Committee discussed its strategy for the ongoing negotiations. As such, the subject matter fits within the "acquisition or disposition of land" exception.

The third parties who attended the meeting are members of the negotiating team tasked with reaching agreement with the Serpent River First Nation who had specific information to share with Council about the negotiations.



In terms of the error in the Agenda pertaining to the meeting time, this appears to be an administrative error that occurred due to a staff oversight. At least one member of the public was given the correct time of the meeting by the City and was able to attend the public portion of the Special Closed Meeting. In future, Council should be careful to ensure that the meeting time is stated correctly on any meeting notice.

During our call on July 31, 2013 you expressed general agreement with our findings and confirmed that you would include this letter on the next public Council meeting agenda scheduled for August 12, 2013. A copy of the letter will also be available to the public on your website.

Thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie  
Early Resolution Officer  
Open Meeting Law Enforcement Team