

August 27, 2012

Ms. Janet Pilon
Acting Clerk
Regional Municipality of Niagara
2201 St. David's Road
P.O. Box 1042
Thorold, ON L2V 4T7

Dear Ms. Pilon,

Re: Complaint Regarding Improper Voting at Closed Meetings of Committees of Council

I am writing further to our conversation on August 24, 2012 regarding the results of the Ombudsman's review of a complaint that members of Regional Council improperly voted within closed Committee meetings.

The complaint received included general concerns that the voting requirements of the *Municipal Act, 2001* (the Act) were not followed at Committee meetings.

The Act (s. 239(6)) requires that votes be taken in open session unless a meeting is otherwise properly closed to the public, and the vote is for, "a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board."

The complaint identified three different meetings in which improper voting was alleged to have occurred:

Audit Committee Meeting – April 2, 2012
Public Works Committee – April 3, 2012
Corporate Services Committee – April 4, 2012

The Regional Municipality's Procedure By-Law confirms the open meeting requirements under the *Municipal Act*, including reference to the obligation to pass a resolution prior to moving in-camera and to refrain from voting unless the vote relates to a procedural matter and/or instructions to officers, employees, or agents of the municipality.

The *Act* requires that municipalities provide for public notice of meetings in the Procedure By-Law. The Regional Municipality of Niagara's Procedure By-Law does provide for public notice of Council and Committee meetings and states as follows:

the Clerk shall provide public notice of all meetings of Council and Committee by posting a notice on the website of the Region which includes the place, date, and time of the Meeting and the Meeting Agenda.

Public Notice of Advisory Committee Meetings

According to the former Clerk, agendas for meetings of the 20 advisory committees, including the Audit Committee, are not available to the public on the website. The Clerk stated that public notice of the advisory committee meetings is deemed to be provided by way of the annual calendar on the website which lists the meeting dates. The former Clerk stated that he generally provides Council/Committee members with a copy of the Agenda at the Council meeting preceding the Committee meeting.

Given the fact that the advisory committee meeting notice currently does not include the agenda, the Municipality's current notice practice for advisory committee meetings is not in keeping with its Procedure By-Law. Accordingly, the Municipality should take steps to amend the By-Law or include the meeting agenda with the notice.

Audit Committee Meeting – April 2, 2012

The Audit Committee is a nine member advisory committee that meets as required. Based on the annual meeting schedule on the Municipality's website, the Committee meets monthly on Mondays at 9:30 a.m. (with some exceptions). The complaint alleged that on April 2, 2012, the Committee voted improperly within the closed meeting.

The agenda provided to the Audit Committee members for the April 2, 2012 meeting indicated that a closed meeting would be held regarding a "Matter of Security of the Property of the Municipality – Specified Procedures on Payroll of the Regional Municipality of Niagara Recycling Program."

Based on the agenda and information from the Clerk, the closed meeting was held under the exception, “the security of the property of the municipality”, in that it related to security of the finances of the municipality.

The public minutes stated that Council passed a resolution to proceed *in camera* to receive a confidential report on the payroll procedures of the Niagara Recycling Program.

According to the record of the closed meeting, the only matter before the Committee was whether or not to receive the confidential report. Our Office obtained and reviewed a copy of the report and spoke with the Clerk in order to assess whether the exception relied on for closing the meeting was justified. The nature of the information in the report, including information regarding the security of the municipality’s finances and potential risk of loss, fell within the security of the property exception.

The meeting lasted ten minutes during which time Committee members voted to receive the report. As noted above, s. 239 (6) of the Act limits the types of votes that can occur in a closed meeting to those pertaining to procedural matters or directions to staff. The vote as described is procedural and, therefore, permitted within a closed meeting.

Following the 10 minute meeting, the Committee reconvened in open session without report. However, the public minutes reflect that the Committee received the report.

Public Works Committee – April 3, 2012

The Public Works Committee is a 20 member Standing Committee. The complaint to our Office alleged that the Committee improperly voted on approving recommendations to Regional Council regarding the Niagara Recycling Program and financial statements during the April 3, 2012 closed meeting.

The Agenda for the April 3 Public Works Committee meeting was posted on the municipality’s website. The Clerk advised that the meeting agenda is typically posted a week prior to the meeting.

The Agenda indicates that a closed meeting would take place regarding, “a matter of security of the property of the municipality – Approval of the 2011 Statement of Financial Activities and Specified Procedures on Payroll of the Regional Municipality of Niagara – Recycling Program.”

Closed Meeting

According to the public minutes, Council resolved in open session to move *in camera*, stating as follows:

...that this Committee do now meet in Closed Session for the purposes of receiving information of a confidential nature relating to a matter of Security of the Property of the Municipality – Specified Procedures on Payroll of the Regional Municipality of Niagara – Recycling Program.

The meeting commenced at 11:57 a.m. and ended at 11:58 a.m. The record of the closed meeting shows that the Committee voted to receive the confidential report and ended the meeting. This was the same confidential report received by the Audit Committee and, as noted above, the subject matter falls within the ‘security of the property’ exception to the open meeting requirement. The vote to “receive” the report was a procedural vote, as permitted by s. 239(6).

The public minutes confirm that the Committee voted to receive and to recommend approval of the 2011 Niagara Recycling Program financial statements (separate from the Confidential Report) in the public session. The Regional Council then approved the recommendation from the Committee at an April 12, 2012 public meeting.

Corporate Services Committee – April 4, 2012

The Corporate Services Committee is a 19-member Standing Committee. The complaint alleged that the Committee voted improperly within the closed meeting to recommend that the Region execute a lease agreement and purchase a particular property. The complaint alleged that although the vote was described as a direction to staff, the direction to staff included purchasing property and, therefore, use of public funds. On this basis, the complaint suggested that the decisions should be made in public.

The agenda for the April 4 Corporate Services Committee meeting is posted on the municipal website and includes notice that a closed meeting would take place to consider three separate matters under s. 239 (2) (c) – a proposed or pending acquisition or disposition of land by the municipality:

- land lease agreement, Highway 2, Thorold
- replacement of Burgoyne Bridge
- progress update on potential disposition of land



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The agenda also included three labour relations issues.

According to the closed meeting record, the Committee voted *in camera* on a recommendation that the Regional Chair and Regional Clerk “Be Directed to execute a lease agreement” in relation to an identified property and for a specified term. The closed meeting record also indicates that the Committee voted on a recommendation “that staff be directed to purchase” a particular property.

When the Committee reconvened in the open session after approximately an hour and a half, it did not report back on what was discussed in the closed meeting.

The Clerk advised our Office that the Committee votes on recommendations only and does not have any decision-making authority. The Committee recommendations must then be referred to Council for final approval.

According to the Clerk, Council considered the April 4, 2012 Committee recommendations at the April 12, 2012 Council meeting within a closed meeting. Based on the public minutes of the April 12, 2012 meeting, the closed session lasted one minute. Following the meeting, Council passed a resolution to approve the closed session minutes of the Corporate Services Committee meeting of April 4, 2012 and the recommendations contained in the report of that meeting. No additional detail is provided in the public minutes about the nature of the recommendations being approved by Council.

You advised our Office that you amended this procedure in May, 2012 and you now provide more detail about the nature of the recommendations that are being considered by Council for approval.

Analysis

Notice of the April 4, 2012 closed Committee meeting was provided and the general nature of what was to be considered in the meeting was disclosed.

The Committee’s consideration of the lease agreement and the proposed purchase of land falls within the cited exception (proposed or pending acquisition or disposition of land).

The April 4 votes on recommendations to staff to take certain actions with respect to the lease and purchase of particular properties, fell within the exception set out in s. 239 (6) which permits voting in a closed meeting for procedural matters or for giving instructions to officers, employees or agents of the municipality.

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Council and the Corporate Services Committee could have been more transparent however in their consideration of the land acquisition matters reviewed at the April 4, 2012 Corporate Services Committee meeting and the subsequent April 12, 2012 Council meeting. It is noted that the Committee did not report back in open session following the closed committee meeting and, when Council approved the recommendations at an open meeting on April 12, 2012, it did not provide any detail about the nature of the recommendations being passed. As such the amount of information, even of a general nature, available to the public with respect to council's decision was extremely limited.

As discussed, the Ombudsman encourages municipalities to report publicly in open session on what transpired in closed session, at least in a general way. In some cases, public reporting might simply consist of a general discussion in open session of subjects considered in closed session, similar to the information in the resolution authorizing the session together with information about staff directions, decisions and resolutions. In other cases, however, the nature of the discussion might allow for considerable information about the closed session to be provided to the public.

When we spoke, we asked that you share this letter at the next open meeting of Council on September 13, 2012 and make a copy available to the public on your website.

We would like to thank you for your co-operation during this review.

Sincerely,

Yvonne Heggie
Early Resolution Officer

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