

September 21, 2011

Mr. Daniel Best, Chief Administrative Officer
The Municipality of Grey Highlands
P. O. Box 409
Markdale, Ontario
N0C 1H0

Dear Mr. Best:

Re. Our File No. 028672-002

I am writing further to our telephone conversation of September 21, 2011, regarding the results of the Ombudsman's preliminary review of a complaint received about a June 27, 2011 lunch gathering, involving members of Council and members of IPC Energy (IPC), a developer of commercial wind turbines. The complaint to our Office alleged that members of Council engaged in substantive discussions about Council business with IPC over lunch. Furthermore, the complaint alleged that these discussions had an impact on Council's vote later in the afternoon, pertaining to a wind turbine project in which IPC is involved.

As part of our Office's review of this complaint we spoke with you, as well as with members of Council. We also reviewed the meeting materials from the June 27 Council meeting, as well as relevant sections of the Municipal Act, 2001 (the Act).

The June 27 Council Meeting

The information provided to our Office indicates that the June 27 Council meeting was a full-day session, with a break for lunch. The agenda indicated that at 11:00 a.m. Council was available to hear "unscheduled delegations." During this portion of the meeting, a member of IPC appeared before Council to provide an update and clarification regarding a wind turbine project in which IPC was involved.

The agenda indicated that, later in the afternoon, a discussion would take place regarding "Industrial Wind Turbines Security Agreements and Entrance Permits".

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After lunch, Council considered a staff report regarding a dispute between a homeowner and IPC, pertaining to “turbine location #1”. Staff advised Council that there was no legal reason not to approve the agreements with IPC, other than for turbine location #1. After receiving this report, Council proceeded in camera to receive legal advice. Upon reconvening into open session, Council passed a motion to approve the agreements for entrance permits and building permits.

The Lunch Gathering

We understand that, during the lunch break, you went to a local restaurant with the Mayor; the Deputy Mayor; and one councillor. You advised our Office that, generally, Council tries to avoid informal gatherings that consist of more than three Council members, as four or more Council members would represent a quorum of Council. You noted that you were aware that it would be inappropriate for a quorum of Council to discuss Council business outside of a meeting.

According to the information provided to our Office, three members of IPC arrived at the same restaurant where you were having lunch, shortly after you arrived. They were invited to join you at your table. We understand that the discussions that took place over lunch were mainly casual in nature, but that some of the conversation may have involved general discussions about the wind turbine project. We also understand that the items that were on the agenda for the June 27 afternoon Council session were not discussed over lunch.

What is a meeting?

As you are aware, s. 239 of the Act requires that all meetings of council be open to the public, subject to specific exceptions outlined in s. 239(2), (3) and (3.1). In the Ombudsman’s report, *Don’t Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal*, the Ombudsman provided the following definition of a “meeting” for the purposes of determining whether a specific gathering is a “meeting” subject to the open meeting provisions 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.

Informal gatherings for social purposes generally are not considered to be “meetings” for the purpose of the Act. However, where the purpose of the gathering is to discuss council business and/or to make decisions, a gathering is more likely to be considered a “meeting” that is subject to the open meeting requirements.

In this case, we understand that only three of the seven members of Council were present for lunch; accordingly there was no quorum of Council. Our review also did not substantiate that discussions took place over lunch on June 27 that would have influenced Council's vote in the afternoon session, as alleged in the complaint to our Office.

Under the circumstances, we did not conclude that the lunch gathering constituted a "meeting" for the purpose of s. 239 of the Act. When we spoke on September 21, however, we noted that Council members meeting informally could attract speculation about the nature of the discussions taking place, particularly when those discussions take place in close proximity to official council meetings. Council members should be vigilant in ensuring that a casual social conversation does not drift into improper areas.

When we spoke with you on September 21, 2011, you expressed general agreement with our comments, and committed to publicly share the findings of our review with Council. We request that you notify our Office when this occurs. We also will be notifying the complainant of the results of our informal review.

I would like to take this opportunity to thank you for the cooperation our Office received during this review.

Sincerely,

Michelle Bird
Ombudsman Ontario