

December 21, 2012

Clerk Carol McKenzie  
Municipality of Lambton Shores  
7883 Amtelecom Parkway  
Forest, ON N0N 1J0

Dear Ms. McKenzie,

**Re: Closed Meeting Complaint: Oversight Committee Meetings and October 4, 2012 Meeting with Stakeholders re: Sewage Treatment Plant**

I am writing further to our discussion on December 20, 2012 about the outcome of our review of two closed meeting complaints.

The first complaint alleged that the Municipality of Lambton Shores' "Oversight Committee", established to oversee and consider cost-effective alternatives to a proposed waste water treatment facility, was holding meetings without public notice and that no meeting minutes were publicly available.

The second complaint concerned a meeting on October 4, 2012, at which members of Council reportedly met with some community stakeholders to discuss a proposed alternative sewage treatment option.

In considering these complaints, our Office spoke with you, Mayor Weber, and the Director of Community Services (Brent Kittmer), and reviewed the available meeting documentation, as well as the Municipality's Procedure By-Law and the relevant sections of the Act.

***Municipal Act***

As you know, the *Municipal Act, 2001* (the Act) requires that meetings of council, local boards, and their committees be open to the public, with limited exceptions. The Ombudsman is the closed meeting investigator for the Municipality of Lambton Shores.

## **Procedure By-Law**

The Municipality's Procedure By-Law references the open meeting requirements of the Act.

In regard to notice of meetings, the Procedure By-Law states that the Clerk will prepare, prior to December 1, the annual calendar of meetings.

With respect to record-keeping, section 14 of the By-Law states as follows:

14.1 A municipality or a committee shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

14.2 The record required by 14.1 shall be made by

- a) The clerk, in the case of a meeting of council; or
- b) the appropriate employee, in the case of a committee meeting

## **The Oversight Committee**

### ***Background***

Based on the information provided, Lambton Shores Council approved a motion on February 21, 2012, to establish an "Oversight Committee" to gather information on cost effective alternatives to a previously proposed sewage treatment plant.

The Committee was comprised of the Mayor, Councillor Doug Bonesteel (Chair), Deputy Mayor Elizabeth Davis-Dagg, Councillor Dave Maguire, and the Director of Community Services, Brent Kittmer (as Project Manager).

At a March 5, 2012 public Council meeting, Council passed a resolution to move forward with a Tri-Municipal Working Group to review the alternatives for a sewage treatment plant, but the Oversight Committee was not disbanded.

You confirmed that, since its establishment, the Oversight Committee has only held two meetings, on July 6, 2012 and August 28, 2012. You explained the meetings were not closed to the public and if people wished to attend the meetings they were not turned away. However, you confirmed public notice of these meetings was not provided and the meetings were not included on the annual calendar of meetings.

You advised that terms of reference were never issued for the Committee and, although not formally disbanded, it is now essentially inactive.

### ***July 6, 2012 Meeting***

During the July 6, 2012 meeting, the Oversight Committee met with representatives of a consultant company, Stantec Consulting Limited, to discuss and review its report and findings on sewage flow projections and required capacity for any new wastewater treatment project.

The consultant recorded the July 6<sup>th</sup> meeting in minutes, which were not publicly available.

At a July 9, 2012 public council meeting, the Director of Community Services presented a summary of the consultant's findings. Following this discussion, Council passed a motion to reduce the flow capacity of the facility.

### ***August 28, 2012 Meeting***

On August 28, 2012, the Oversight Committee (Councillor Maguire was absent) met with the Lambton Shore's Chief Administrative Officer to discuss the terms of a defunct Tri-Municipal Agreement involving the municipalities of Lambton Shores, South Huron, and Bluewater. The Agreement set out the parameters and administrative accountabilities regarding the formerly proposed sewage treatment project. The Agreement is publicly available. The municipalities are in the course of negotiating a new agreement to reflect the change in accountabilities and scope.

You confirmed that no formal meeting minutes were kept.

Following this meeting, a report was prepared by the Director of Community Services and presented at the September 4, 2012 public Council meeting.

### ***Analysis***

The Act defines a "committee" for the purpose of the open meeting requirements as

“ any advisory or other committee, sub-committee, or similar entity of which at least 50% of the members are also members of one or more councils or local boards.”

The Oversight Committee was comprised of four Lambton Shores council members and one staff member. The Committee's composition and the nature of its mandate fall within the *Municipal Act's* definition of a "committee." It is, therefore, subject to the Open Meeting requirements of the Act and obliged to hold its meetings in public, unless the subject matter falls within one of the permitted exceptions under the Act. It must also

follow the procedural requirements for meetings set out in the Act and the municipality's Procedure By-Law.

On July 6, 2012, the Oversight Committee reviewed information that would shape the scope of operation for any sewage treatment plant planned for the area. At the August 28, 2012 meeting, the Committee discussed the proposed terms of a Tri-Municipal Agreement to be negotiated with South Huron and Bluewater. Clearly, these were meetings in which committee business was considered.

As discussed, in relation to these two meetings, the Oversight Committee failed to follow the open meeting requirements of the Act, in the following respects:

1. No general public notice of the meetings was provided. Accordingly, not all members of the public could know that the meetings were taking place and that they could attend, if they wished. A meeting without public notice is not considered to be open to the public and contravenes s. 239 of the *Municipal Act* as well as the municipality's Procedure By-Law.
2. As these meetings were not open to the public, the Committee also breached s. 239(4) of the Act by failing to pass a public resolution to proceed *in camera*.
3. In addition, the subject matter discussed at both meetings, did not qualify for closed meeting consideration under any of the exceptions to the open meeting requirements.
4. Finally, the record of the July 6, 2012 meeting was prepared by the consultant (rather than a municipal employee), and no record of the August 28, 2012 meeting was kept, contrary to article 14 of the Procedure By-Law and s. 239(8)(b) of the Act.

We understand that, although not formally disbanded, the Oversight Committee is no longer active. However, the municipality should be cautious in future to ensure that meetings of any body that falls within the *Municipal Act's* definition of a committee, respects the open meeting requirements of the Act and the municipal Procedure By-law.

#### **October 4, 2012 Meeting with Stakeholders re: Alternative Sewage Treatment Plan**

Our Office received two separate complaints that members of Lambton Shores Council met behind closed doors with stakeholders on October 4, 2012, to discuss the plans for the new waste water treatment facility. You advised that attendance at the meeting was by

invitation only, but that four individuals, who arrived without invitation, were allowed to participate.

### ***Background***

The Grand Bend Area Sewage Treatment Board is a tri-municipal local board composed of three council members from each of the participating municipalities (Lambton Shores, South Huron and Bluewater). In March 2012, the Board established a “Sewage Working Group.”

The Sewage Working Group had a similar mandate to the Oversight Committee. It was responsible for reviewing the sewage project design options and providing recommendations to the Board on a preferred option. The Working Group hired the consultant, Stantec Consulting Limited, to provide technical expertise on the various sewage treatment options.

The Working Group was comprised of Lambton Shores Deputy Mayor Elizabeth Davis-Dagg, South Huron Mayor George Robertson, Lambton Shores Director of Community Services, Lambton Shores Environmental Services Director, two Stantec Consulting staff, and a representative from the Ontario Clean Water Agency.

In the summer of 2012, the Working Group provided its recommendations on the preferred sewage treatment option to the Grand Bend Area Sewage Treatment Board as well as Lambton Shores and South Huron Councils. A report of the Working Group’s work and recommendations was publicly available on Lambton Shores’ website on July 25, 2012. The Grand Bend Area Sewage Treatment Board identified the preferred option at an August 17, 2012 public meeting and disbanded the Working Group, as it had fulfilled its mandate.

Unlike the Oversight Committee, less than 50% of the Working Group’s members were also council or local board members. Only two of the seven Working Group members were also municipal councillors. Accordingly, the Working Group did not meet the definition of a “committee” under the Act and thus, was not required to follow the open meeting requirements set out in Act.

### ***October 4, 2012 Meeting***

Stantec Consulting and staff from Lambton Shores, South Huron and Bluewater, arranged the October 4, 2012 meeting, which took place at the Grand Bend Legion. We understand that the meeting was held to satisfy obligations for stakeholder consultation under the

environmental assessment process and enabled the three municipalities to reach out to seasonal residents through their community associations.

The Director of Community Services in Lambton Shores sent invitations to local interest groups and stakeholders, while staff in the neighbouring municipalities were responsible for inviting interest groups from their respective areas. The Director said that members of Lambton Shores Council were not specifically invited, but they were aware that the meeting was taking place.

At the meeting, the consultant presented information about the Working Group's mandate, history, recommendations and the proposed new sewage treatment project.

The meeting and attendance records confirm that 13 representatives of local associations and businesses attended. We were advised that the only Lambton Shores council members present at the meeting were the Mayor and Councillors Bonesteel and Scott.. We were advised that the Mayor and Councillors answered some questions relating to the new project that were asked at the meeting. Councillor Maguire confirmed that he attended the last ten minutes of the meeting but he did not participate in the meeting presentation.

### ***Analysis***

As stated above the Working Group does not meet the definition of a committee under the *Municipal Act* nor does it qualify as a local board. In addition, only four of the nine members of Lambton Shores Council attended the October 4 stakeholder meeting. Collectively, these Council members did not have the legal authority to bind Council or to conduct Council business. It is also noted that the meeting was called on behalf of the consultant Stantec and staff from three municipalities, not by Lambton Shores Council. Although some of the members of Lambton Shores Oversight Committee attended the meeting, we understand that by that point, that Committee was essentially inactive.

While quorum is an important consideration, there are circumstances where the Ombudsman has found that even where a quorum of council was not present, a meeting attended by councillors may still be subject to the open meeting requirements of the Act, if the group comes together to exercise the power or authority of council.<sup>1</sup>

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<sup>1</sup> Ombudsman Report "Investigation into whether Council for the City of London held an improper closed meeting at Harmony Grand Buffet on February 21, 2012", André Marin, August 2012

It does not appear that the members of Council that attended the October 4 meeting gathered for the purpose of exercising the authority of council or for the purpose of laying the groundwork to exercise council's authority. As a result, the October 4 meeting was not a meeting of Council that was subject to the open meeting requirements of the Act.

During our conversation on December 20, 2012 you said that you would add this letter to the next public council meeting agenda to be held on January 14, 2013 and that you would make a copy of the letter available to the public.

We would like to thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie  
Early Resolution Officer  
Open Meeting Law Enforcement Team