

January 31, 2013

Christine Broughton
Director of Council and Information Services/Clerk
Township of Woolwich
24 Church Street West
P.O. Box 158
Elmira, ON N3B 2Z6

Dear Ms. Broughton,

Re: Closed Meeting Complaint – November 12, 2012 Special Meeting

I am writing further to our conversation of January 31, 2013 regarding the results of our review of a complaint about a November 12, 2012 closed meeting concerning a proposed aggregate pit (“Jigs Hollow Pit”) and an allegation that Council may have violated the open meeting requirements by voting in the closed session on a substantive matter.

The complainant stated that on June 25, 2012 Council voted in open session to exclude the issue of recycling of concrete and asphalt from items to be considered by the Ontario Municipal Board in respect to the proponent of the pit’s zoning application and appeal. The complainant alleged that Council voted during the November 12, 2012 closed meeting to reverse that decision and that such a vote was not permitted in a closed meeting and should have been made in the public session.

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. Further, the Act prohibits voting in a closed meeting unless the meeting is closed under one of the permitted exceptions and the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality.

The Ombudsman is the closed meeting investigator for the Township of Woolwich. In reviewing this complaint, our Office spoke with you and obtained and reviewed the meeting agenda and minutes, in addition to considering the relevant sections of the *Municipal Act* and the Township’s Procedure By-Law.

The Procedure By-Law

The *Municipal Act* requires municipalities to provide for public notice of meetings in the Procedure By-Law.

The Township's Procedure By-Law (No. 54-2012) states that Council meetings are held according to an Annual Schedule that is posted on the website. In regard to public notice of regular Council meetings, the By-Law states that, "Agendas shall be published in advance of the meeting by Friday at noon and posted on the Township website."

The Mayor may summon a special meeting by providing at least 24 hours notice to members. Public notice of special meetings, "shall be given by posting the agenda on the Township website."

November 12, 2012 Closed Meeting

The Agenda for the November 12 Special Council meeting that was posted on the website stated a closed meeting would be held at 6:00 p.m. but did not identify the subject matter to be considered in the closed meeting.

The public minutes show that Council passed a resolution in the open session to proceed in camera under s. 239 (2) (e) of the Act "for the purpose of litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board." No additional detail about the nature of the matter to be considered is provided.

Four of the five Council members attended the meeting. Staff present included the Chief Administrative Officer, the Clerk, the Director of Engineering, and the Township Solicitor.

The closed meeting record indicates that the Solicitor provided an update to Council on the status of the mediation before the Ontario Municipal Board (OMB) concerning the Jig's Hollow Gravel Pit/Zoning Application. In addition, Council considered the draft minutes of settlement and posed questions to the Solicitor and the Director of Engineering about the provisions. The Solicitor also provided advice about the overall settlement package.

In terms of voting, the minutes show that Council considered and passed a motion to direct the Solicitor to attend the November 15, 2012 OMB hearing and execute the agreement.

Although Council did not report publicly following the closed meeting on what transpired, a November 15, 2012 media release issued by the Township sets out the reasons why Council directed the Solicitor to execute the settlement agreement. Council responded to community concerns about the decision to proceed with the settlement, despite public opposition, at a November 20, 2012 public Council meeting.

Analysis

Section 239 (2) (e) of the *Municipal Act* permits Council to discuss in a closed meeting, “litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.” Council’s discussion of the terms of a proposed settlement agreement with the Township Solicitor in relation to an active zoning appeal and mediation before the Ontario Municipal Board, falls within this exception. The meeting could also have been closed under s.239 (2) (f) of the Act, as the Township’s Solicitor was providing legal advice during the course of the closed meeting.

As previously stated, voting is only permitted in a closed meeting if the subject matter falls within a permitted exception to the open meeting requirements and the vote is for a procedural matter or for giving instructions to officers, employees or agents of the municipality.

In regard to the vote that took place in the closed meeting on November 12, 2012, the meeting record shows that Council voted on whether to direct the solicitor to execute the proposed agreement at the November 15, 2012 OMB hearing. Therefore, because the subject matter discussed qualified for closed meeting consideration and Council voted solely on instructions to an agent of the municipality, this vote was permitted in the closed meeting.

However, we did note a procedural error in that the resolution to proceed in camera only referenced the exception relied on to close the meeting to the public. As discussed, the Act specifically requires that the resolution to proceed in camera include “the general nature of the matter to be considered at the closed meeting.”

Further, while notice of the November 12, 2012 Special Meeting was provided in accordance with the Procedure By-Law, the agenda did not identify the topic or topics to be discussed in the closed session or the exception under which the meeting was being closed. As a best practice and in the interest of transparency, the Ombudsman encourages municipalities to list all items on the agenda, including a general description of the subject(s) to be considered in a closed meeting. You stated that Council has already begun implementing this practice.



When we spoke you agreed to share this letter with Council at the next public Council meeting on February 19, 2013 and to make a copy available to the public on your website.

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

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team