



Ombudsman Report

**Investigation into a complaint about
a closed meeting held by the Town of
Carleton Place on June 12, 2018**

**Paul Dubé
Ombudsman of Ontario
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Complaint

- 1 In June 2018, my Office received a complaint about a closed meeting held by the Policy Review Committee (the “committee”) for the Town of Carleton Place (the “town”) on June 12, 2018. The committee consists of all members of council for the Town of Carleton Place.
- 2 The complaint alleged that the committee held an illegal closed meeting on June 12 to discuss the sale of two municipally-owned properties in the town’s industrial park and the installation of water and sewer services under the road abutting the properties, known as Bates Avenue.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Town of Carleton Place.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.

Council procedures

- 7 The town’s procedure by-law (by-law no. 09-2015) states that all meetings shall be open to the public except as provided by section 239 of the Act. Prior to proceeding in camera, council and any committees must state by resolution the fact of holding a closed meeting and the general nature of the subject matter to be considered.

Investigative process

- 8 On June 21, 2018, we advised the town of our intent to investigate this complaint.
- 9 Members of my Office's staff reviewed relevant portions of the town's by-laws and policies, and the Act. We also reviewed the records from the open and closed sessions of the committee meeting on June 12, 2018.
- 10 We interviewed members of council, the clerk, and the Chief Administrative Officer (the "CAO").
- 11 My Office received full co-operation in this matter.

Background

Industrial park

- 12 Members of my open meeting team were told that the town has been engaged in a long-term strategic project to sell property within its industrial parks to generate economic development and growth for the municipality. Bates Avenue is located in one of the industrial parks.
- 13 In June 2018, the town had sold all but two of its parcels of land along Bates Avenue. According to the CAO, the two remaining properties are not serviced and cannot be sold until servicing is installed by the town because the town's development permit by-law (by-law no. 15-2015) requires that properties be serviced before development can occur.

The June 12 closed meeting

- 14 On June 12, 2018 during a regular meeting, the committee moved into closed session at 8:47 p.m. to discuss three items under the acquisition or disposition of land and personal matters exceptions found in subsections 239(2)(c) and (b) of the Act. The resolution to proceed in camera includes the general description of two of the items as the "sale of land related item (IC 129242 and IC 129243)" and that the acquisition or disposition of land exception applied to this item. According to the clerk, "IC 129243" refers to a confidential report prepared by staff about the Bates Avenue properties and the related topic of installing servicing under Bates Avenue.

- 15 All members of council, the clerk, the CAO, and two other staff members were present during the closed session.
- 16 We were told that the purpose of the closed session was for the committee to receive and consider the confidential staff report and provide direction to staff with respect to the sale of the Bates Avenue properties, and receive information about sharing the cost of the installation of services with third parties who also owned land along Bates Avenue.
- 17 According to those we interviewed, the focus of the committee's discussion was the sale of the Bates Avenue properties. The committee discussed initiating the sale of land process, which includes declaring the lands surplus. The committee also discussed, with staff input, an appropriate price per acre for the land, taking into consideration a number of factors including the cost to install services under Bates Avenue, and the fact that these properties were the last available vacant lots in this particular industrial park.
- 18 Part of this discussion involved the cost-sharing arrangement for the installation of services under Bates Avenue. The CAO told my Office that the cost of installing servicing is borne by the municipality and any other benefiting property owners. During the in camera session, the committee considered a cost-sharing matrix prepared by staff.
- 19 Staff also presented a proposal to the committee, which would permit a third-party property owner who owned property along Bates Avenue to complete work in exchange for his portion of the costs of installing services. The third-party property owner offered to break and remove rock along Bates Avenue to permit water and sewer servicing to be installed under the road. According to those we interviewed, during the closed session the committee considered this proposal and discussed the benefits of entering into such an agreement with the third party.
- 20 The committee also discussed adjusting the price of two additional municipally-owned properties on Roe Street and Costello Street in order to cover a portion of the expense of installing services under Bates Avenue. The CAO told my Office that at the time of the meeting, these properties were for sale.
- 21 We were told that during the closed session, a council member objected to the discussion being held in camera. The council member raised concerns that the committee was awarding a contract while in closed session and that the third party was not qualified to conduct rock breaking. Staff responded to the concerns and the committee advised staff that the town

should ensure that the third party was properly qualified and insured for the work before any agreement was brought before council.

- 22 Following the closed session, the committee passed the following resolution in public (according to the recorded vote, the Mayor voted against the motion):

“THAT staff work with Volundur Thorbjornsson to finalize a cost sharing agreement for the extension of Bates Avenue that requires him to break all of the rock required for the project and the Town to install services and construct the road; and

THAT the finalized cost sharing agreement be presented to Council in open session for approval; and

THAT the two new lots on Bates Drive, identified as B2 and B3 on the sketch, be declared surplus to the requirements of the Town; and

THAT the price for industrial property be adjusted as follows:
Bates Avenue \$115,000/Ac

Roe Street \$130,000/Ac (effective January 1, 2019)

Costello Drive \$140,000/Ac”

Analysis

Applicability of the “acquisition or disposition of land” exception

- 23 The town cited the “acquisition or disposition of land” exception when it moved into closed session to discuss the sale of the Bates Avenue properties and the installation of servicing under Bates Avenue.
- 24 Under the Act, council is permitted to discuss matters pertaining to a proposed or pending acquisition or disposition of land by the municipality or local board in closed session (s. 239(2)(c)).
- 25 The acquisition or disposition of land exception is intended to protect a municipality’s bargaining position and financial interests during a pending or proposed land transaction by allowing in camera discussions related to the

negotiation.¹ For example, under the exception, during a negotiation, a municipality can discuss an offer to purchase or sell municipal property without the effect of increasing the market value of the property or alerting the other party to the amount at which the municipality is willing to buy or sell.

- 26** The exception does not apply to discussions that involve speculation about a land transaction or discussions about land transactions that may or may not happen in the future.² Speculative discussion about future land transactions the municipality may carry out does not engage the protections of the acquisition or disposition of land exception because there is no bargaining position to protect.
- 27** In 2016, my Office reported on a closed session held by council for the Town of Russell where council considered a business plan for the installation of water and sewer services generally throughout the municipality. The discussion involved the cost sharing that various businesses would be responsible for under the plan. At the time of the closed session, the municipality was also in the process of buying and selling land in its industrial park and felt that the decision to install services would affect the value of the land. My Office found that the discussion did not fit within the acquisition or disposition of land exception because the focus of council's discussion was not the purchase or sale of land, but rather the business plan itself.
- 28** In the present case, the focus of the committee during the closed session discussion was the disposition of the Bates Avenue properties. While those properties had not yet been listed for sale, the discussion focused on their impending sale, including setting a price per acre based on a number of factors.
- 29** Unlike the meeting held by the Town of Russell where the focus of the discussion was a plan to install water and sewer services, in this case the committee's discussion about the installation of services under Bates Avenue was inextricably linked to the sale of the Bates Avenue properties and the town's future bargaining position. The committee considered and discussed financial information related to the installation of services that would impact the town's future bargaining position, including the pricing

¹ See *Report of the Provincial/Municipal Working Committee on Open Meetings and Access to Information*, Toronto: The Committee, July 1984; S. Makush & J. Jackson, *Freedom of Information in Local Government in Ontario*, Toronto: Commission on Freedom of Information and Individual Privacy, 1979, as cited in Final Order MO-2468-F, *Re: City of Toronto*, [2009] O.I.P.C. No. 171.

² *Niagara Falls (City of) (Re)*, 2016 ONOMBUD 17 (CanLII)

strategy for the Bates Avenue properties and two additional properties on Costello Street and Roe Street that were currently on the market.


- 30 When the committee moved back into open session, it passed a motion declaring the Bates Avenue properties surplus in preparation for their eventual sale. The committee also established a sale price for the properties and modified the sale price for the Costello Street and Roe Street properties.
- 31 Accordingly, the committee's closed session discussion fit within the acquisition of disposition of land exception.

Opinion

- 32 The Policy Review Committee for the Town of Carleton Place did not contravene the *Municipal Act, 2001* and the town's procedure by-law when it discussed the sale of two municipally-owned properties located on Bates Avenue and the installation of services under Bates Avenue on June 12, 2018.

Report

- 33 My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting.



Paul Dubé
Ombudsman of Ontario