

Response to preliminary report The Town of Amherstburg

To: Andre Marin, Ontario Ombudsman

From: Pamela Malott, Chief Administrative Officer at the Town of Amherstburg

November 28, 2011

Re: Town of Amherstburg Preliminary Report – Your File 238966

On November 2nd I met with members of your staff to review the preliminary report concerning your investigation of whether the Town of Amherstburg held multiple closed meetings in contravention of the Municipal Act. Also in attendance at this meeting were Mayor Wayne Hurst and Brenda Percy, Manager of Council and Legislative Services.

In accordance with s.18 (3) of the Ombudsman Act, I am providing written representation regarding the preliminary report.

January 7/11: First session- The independent Planning Consultant in attendance and presenting at the meeting will confirm in writing if required that this meeting gave education to Council members on the Planning Act and that there was no advancement of Town business. Specific properties discussed in examples did include property subject to litigation. There is conflict in the recollections no rationale expressed in the adoption of one account over the other.

Second session – The Committee discussion did involve education and training to Council members on, the Committee structure of the Town. Additionally, individual applications to the various Committees containing personal information were part of the meeting agenda. It is agreed that multiple exemptions should have been noted.

January 10/11: The Independent Water and Wastewater Consultants in attendance for the duration of the educational session on Harmonized Water Rates and will confirm in writing that no business was advanced and the meeting was for educational purposes only.

There is conflict in the accounts between the CAO and one member of Council as to the nature of the meeting. There is no rationale expressed in the adoption of one account over the other.

The reference to the Library Board discussion illustrates a fundamental misapprehension of the nature of the exemption. To say more in a public agenda would render the exemption meaningless.

January 20/11: The meeting involved “strategic planning” which is a matter for educational and training sessions. Further, litigation matters were discussed, which are an allowed exemption. It is agreed that multiple exemptions should have been listed. As this

was the first planning session for new Council members, it was held in-camera. Subsequent planning sessions have been held in open session.

January 24/11- An independent Consultant was in attendance for the duration of the educational session on Back Flow Prevention and will confirm in writing that no business was advanced and the meeting was for educational purposes only. The investigator was advised of the nature of the backflow presentation which is clearly educational in nature.

March 25, 2011: Budget Meeting- The times for all budget meetings are approximate. The budget meetings are based on Council discussion and agreement of items. The meeting was scheduled from 9:00 AM to 4:00 PM. However, Council concluded at 11:10 AM much earlier than anticipated. It would not have been in the public interest for Council and staff to remain at the meeting without items for discussion for the balance of the day.

Recommendation 5: I am unclear as to the items which did not receive prior notice which are referenced in this recommendation.

Additional comments:

Concerning the comments on introduction of ‘new business’ according to the Town’s Procedural By-Law, while we appreciate the objective for advance notice, the Ombudsman does not have jurisdiction to deal with the issue the discussion of items without advance notice. The Ombudsman has jurisdiction to deal with whether the provisions for closed meetings have been properly complied with.

With respect to the Broadband Internet grant, the Ombudsman recognized that the complaint was outside his jurisdiction. To proceed to comment further is not appropriate.

I would like it noted that some of the findings indicate issues related to ‘clerical error’. These errors were in part a result of a new staff member doing the agenda compilation as of January 1st, 2011 who had limited training due to a resignation over the holiday period. While this is not meant in any way to suggest clerical errors were acceptable, there is reality in the resources of a smaller municipality to make a smooth transition.

In closing, with all due respect to the opinion of the Ombudsman, the Municipal Act section 239 sets out the exemptions to the open meeting rule of council. The exemptions have been the subject of judicial consideration. Item 15 in the report identifies the judicial definition of “educational or training sessions” in section 239(3.1) to be broad. However, the report then concludes that the exemptions should be narrowly construed and relies on the Ombudsman definition of exemption. The evidence examined does not match the conclusions presented in the findings in all instances.

The recommendations of the Ombudsman are clearly understood with the exception of recommendation 5. It should be noted that throughout the 2011 year, changes have been implemented in the process and procedure for our In-Camera sessions and reporting out

from In-Camera which conform to all the recommendations set out in the preliminary report.

Yours truly,

Pamela Malott
Chief Administrative Office

cc: Michelle Bird, Ombudsman Ontario
cc: Mayor Wayne Hurst
cc: Brenda Percy