

BY EMAIL

October 20, 2021

Council for the Town of Fort Erie
c/o Carol Schofield, Clerk
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6

Dear Council for the Town of Fort Erie:

Re: Closed meeting complaint

My Office received a complaint about a closed meeting held by council for the Town of Fort Erie (the "Town") on July 26, 2021. The complaint alleged that the topic discussed by council did not fit within the closed meeting exception cited by the Town under the *Municipal Act, 2001* (the "Act").

I am writing to share the outcome of my review. For the reasons set out below, I have concluded that the exception did apply and that council for the Town did not contravene the open meeting requirements.

Ombudsman's role and authority

As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.¹ Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the Town.

My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues

¹ *Municipal Act, 2001*, SO 2001 c 25, s 239.1.

related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

Review

My Office reviewed documentation related to the July 26, 2021 closed meeting, including a PowerPoint presentation delivered during the meeting, the meeting agenda, and the meeting minutes. We reviewed relevant portions of the Town's procedural by-law, sale of land policy, land committee minutes, capital budget documents, and funding strategy documents. We also spoke with the Clerk and her Legislative Assistant, who attended the meeting on her behalf.

Meeting on July 26, 2021

At 5:30 p.m. on July 26, 2021, council held a special meeting of the Committee of the Whole.

Council passed a resolution to proceed into closed session to discuss proposals received in relation to the Town's impending disposition of Fire Station 6. In doing so, council cited the exception for proposed or pending acquisition or disposition of land.

According to information we reviewed, the Town's Chief Administrative Officer (CAO) delivered a presentation about the proposals and sought council's direction on the Town's negotiating strategy. Council discussed its strategy and bargaining position with respect to selling the property, but did not pass any resolutions during the discussion.

Council rose from closed session at 6:41 p.m.

Applicability of the exception for discussions pertaining to the acquisition or disposition of land

Per s. 239(2)(c) of the Act, a meeting or part of a meeting may be closed to the public if discussion pertains to a proposed or pending acquisition or disposition of land by a municipality.

This exception covers discussions relating to an actual land transaction that is either pending or proposed.² The purpose of the exception is to ensure that the municipality's bargaining position is protected with respect to a specific property.³ As council

² *Norfolk (County of) (Re)*, 2021 ONOMBUD 6 at para 33, online: <<https://canlii.ca/t/jdr8d>>.

³ Ombudsman Ontario, Letter to the Town of Orangeville (2014), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2014/town-of-orangeville>>.

discussed the value of the land and how much it expected to receive for the sale of Fire Station 6, the Town's bargaining position would have been adversely impacted if this information was made public.

Conclusion

Council for the Town of Fort Erie did not contravene the open meeting requirements on July 26, 2021, when meeting in closed session to discuss the disposition of Fire Station 6. The discussion fit within the exception in s. 239(2)(c) of the *Municipal Act, 2001* for discussions pertaining to the acquisition or disposition of land.

I would like to thank the Town of Fort Erie for its co-operation during my review. The Clerk confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Carol Schofield, Clerk, Town of Fort Erie