



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

December 19, 2013

Mayor Bill Dowson;
CAO/Clerk Steve McAuley and
Deputy Clerk Charlene Overholt
Municipality of Bluewater
Box 250 Mill Avenue
Zurich, ON N0M 2T0

Dear Mayor Dowson and Ms. Overholt,

Re: Closed Meeting Complaints regarding August 27, 2013 Closed Session

I am writing further to our conversation on November 25, 2013 regarding the outcome of our review of complaints that during an August 27, 2013 Special Council Meeting to discuss a proposed building by-law addressing building fees for wind turbines, Council unexpectedly went into a closed meeting without providing information to the public about the general nature of the matter to be discussed. The complainants were also concerned that Council may have voted on the by-law during this closed meeting.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of council, local boards, and their committees are open to the public, with limited exceptions and subject to certain procedural requirements. For instance, prior to closing a meeting to the public, Council must pass a resolution confirming the general nature of the matter to be considered at the closed session.

In reviewing this complaint, our Office spoke with the Clerk and the Deputy Clerk and obtained and reviewed the meeting documents, including the meeting agenda and open and closed meeting minutes. We also considered the relevant sections of the municipality's Procedure By-Law and the *Municipal Act*.

Procedure By-Law

The Municipality's Procedure By-Law (No. 53-2001) states that regular meetings of Council are held every other Monday starting at 7:00 p.m.

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“The Head of Council may, at any time, summon a special meeting”, which may be held “as soon as practicable following receipt of a summons or petition.”

The Procedure By-Law does not specifically provide for public notice of special meetings but the Municipality’s practice is to post notice of special meetings on its website approximately one week in advance of the meeting.

August 27, 2013 Special Council Meeting

Responding to potential litigation by way of an application to the Ontario Superior Court by various wind energy companies, the municipality drafted a By-Law (titled A By-law respecting Construction, Demolition and Change of Use Permits and Inspection), which was aimed at resolving the dispute by amending the building fees charged for wind turbines. The By-law was intended to be discussed at the August 27, 2013 Special Council Meeting.

The Agenda for the August 27, 2013 Special Council meeting was posted on the Municipality of Bluewater’s website approximately a week prior to the meeting. The Agenda stated that Council intended to receive delegations from the Municipal Solicitor and the Bluewater Shoreline Residents Association on the proposed Building By-Law. The Agenda does not mention a scheduled closed meeting.

According to the minutes, the public meeting included a presentation by the Municipal Solicitor on the recent changes to the proposed by-law, following which a member of the Bluewater Shoreline Residents Association and other residents raised concerns about the provisions of the by-law and about wind turbines generally.

In the course of the public discussion a Councillor asked about what legal ramifications would result if Council imposed stricter regulations or deferred consideration of the By-Law to a later date. The Solicitor said that those questions should be dealt with in camera.

After hearing from a few more residents, Council passed a resolution to move into an in camera session “to deal with a potential litigation and advice that is subject to solicitor client privilege related to the Building Fees By-law”.

All of Council, except Deputy Mayor Klopp and Councillor Becker who were absent that day, attended the closed meeting along with the Chief Administrative Officer, Deputy Clerk, Chief Building Official, and Building Inspector.

The closed meeting lasted approximately thirty minutes. The record of the closed meeting shows that the Municipal Solicitor provided advice to Council and senior staff with respect to the proposed By-Law, as a means of resolving the litigation by the wind energy companies pending before the Court.

When Council returned to the open session, it passed a motion approving the Building By-Law. According to the Deputy Clerk and the meeting record, no votes were taken in the closed session.

Analysis

The *Municipal Act* permits Council to consider litigation or potential litigation in a closed session under s. 239 (2) (e) and/or to seek and receive legal advice in a closed session under the “advice that is subject to solicitor client privilege” exception to the open meeting requirements (s. 239 (2) (f))

Council’s August 27, 2013 closed-door discussion with the Municipal Solicitor during which the Solicitor provided advice about the provisions of a proposed By-Law, as they related to a resolution of the dispute with wind energy companies, falls within these exceptions. Council received information pertaining to the Solicitor’s interpretation of what the municipality was required to do by way of a By-Law in order to ensure that litigation by the wind energy companies did not proceed against the municipality.

Council’s resolution to proceed in camera confirmed the general nature of the matter to be discussed in closed session, as required under the Act.

However, as discussed on November 25, 2013 Council should amend the procedure by-law to specifically provide for public notice of special meetings, reflecting its current notice practice.

During our discussion we explained our review and findings with you and provided you with an opportunity to provide feedback.

You agreed to share a copy of this letter with Council at the next public meeting to be held on January 6, 2014 and to make a copy available to the public on your website.

Thank you for your cooperation with our review.

Sincerely,
Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team