



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

January 16, 2014

Mayor Wendy LeBlanc and
Clerk Duncan Rogers
175 Bridge Street
Town of Carleton Place
Carleton Place, ON K7C 2V8

Dear Mayor LeBlanc and Mr. Rogers,

Re: Closed Meeting Complaint Special Meeting of Council – July 23, 2013

I am writing further to our discussion on January 14, 2014, regarding the outcome of our review of a complaint that Council or a Committee of Council improperly met in closed session in midsummer to discuss a building permit for a local restaurant. The complaint alleged that Council made decisions on the permit in a closed meeting.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of council, local boards, and their committees are held in public, with limited exceptions and subject to certain procedural requirements.

In reviewing this complaint, our Office spoke with the Clerk who confirmed that a closed special council meeting took place on July 23, 2013, during which Council considered a legal matter with respect to a building permit for Thruway Restaurant. We then obtained and reviewed the agenda and minutes for the open and closed sessions of the meeting, as well as the Town's Procedure By-Law. We also considered relevant sections of the Act.

Regular meetings of Council are held on the second and fourth Tuesday of each month at 7:00 p.m. According to the Town's Procedure By-Law, "the Head of Council may at any time summon a special meeting of Council on 48 hours' notice in writing to the members of Council..." The Clerk advised us that, although the Procedure By-Law does not specifically provide for public notice of special meetings, the Town's practice is to post notice of special meetings on the Town's website and also on bulletin boards located in the Public Library and the Town Hall.

As discussed, Council should update the Procedure By-Law to confirm its public notice practice for special meetings in order to comply with the Act.

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July 23, 2013 Special Closed Meeting of Council

According to the Clerk, the Agenda for July 23, 2013 Special Closed Meeting of Council (6:00 p.m.) was posted on the Town's website as well as the bulletin boards in the Public Library and Town Hall on Friday, July 19, 2013.

The Agenda stated that Council would go into a closed session "in accordance with section 239 (2) (f) of the *Municipal Act* regarding Communication No. 11 06-13-3."

The meeting minutes state that all Council members attended the special closed meeting except for Deputy Mayor Ed Sonnenburg. The Town Solicitor, the Clerk, the Chief Administrative Officer and other senior staff also attended.

Council passed a resolution in the public session to move into a closed meeting at 6:02 p.m. to discuss "advice that is subject to solicitor-client privilege, including communications necessary for that purpose."

The closed meeting minutes indicate that, during the closed session, Council received advice from the Town's Solicitor with respect to a lawsuit filed against the Town by a development company, NuGlobe, which claimed that the Town provided preferential treatment to the Thruway restaurant by waiving certain standard conditions in the building permit. The Solicitor also provided advice to Council about an easement issue and on a draft resolution to address some of the issues raised in NuGlobe's statement of claim against the Town. We were advised that Council did not vote on the resolution during the closed session, but received advice about the substance of the resolution and what could be considered in public session.

Council adjourned the special closed meeting at 6:55 p.m. without reporting back in open session about what was discussed. However, at the regular public Council meeting that followed the special closed meeting, Council discussed and passed the draft resolution (12-124-20) that had been reviewed by the Solicitor at the closed meeting. The resolution stated that Council would reconsider a prior motion passed on June 25, 2013, which exempted Thruway restaurant from certain conditions in its building permit and set out certain requirements for both NuGlobe and Thruway.

Analysis

The *Municipal Act, 2001* permits Council to close a meeting to the public in order to seek and receive legal advice from its Solicitor and to discuss litigation or pending litigation.

Based on the information reviewed, the purpose of the July 23, 2013 closed session was to seek advice from the Town Solicitor about litigation filed against the Town regarding a development/permit dispute. The subject matter discussed falls within the solicitor-client privilege exception to the open meeting requirements, which Council cited as the reason for closing the meeting. The meeting could also have been closed under the “litigation or potential litigation” exception, because Council was discussing a response to active litigation.

We noted that Council only referenced the exception of the Act in its resolution to hold a closed session. As discussed, the *Municipal Act* requires Council, prior to moving to a closed meeting, to state “the fact of the holding of the closed meeting and the general nature of the matter to be considered...” On this subject, the Ontario Court of Appeal has stated that “the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.”¹

In this case, Council could have added that the closed session related to litigation filed against the Town with respect to a building permit issue, in order to provide more meaningful information to the public about what was being discussed.

On January 14, 2014, we spoke with you to explain our review and findings and provided you with the opportunity to provide feedback. You expressed appreciation for our review and did not have any concerns about our findings.

You agreed to include this letter on the January 28, 2014 Policy Review Committee public meeting agenda and stated that it would then be shared at the February 11, 2014 public Council meeting. A copy of this letter will also be included as part of the meeting agenda package posted on the Town’s website.

Thank you for your co-operation with our review.

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

¹ *Farber v. Kingston* [2007] O.J. No. 919, p. 151