

October 3, 2013

Mayor David Bolton and  
Clerk Fran Urbshott  
Township of Adelaide Metcalfe  
2340 Egremont Drive, R.R. #5  
Strathroy, ON N7G 3H6

Dear Mayor Bolton and Ms. Urbshott,

**Re: Closed Meeting Complaint – January 25, 2012 Meeting with *wpd* Canada**

I am writing further to our conversation on October 2, 2013 regarding the outcome of our review of a complaint that, on January 25, 2012, members of Council improperly met behind closed doors with representatives of a wind energy company, *wpd* Canada (the Corporation).

The complaint arose based on information contained in the Corporation's December 2012 Napier Wind Project Consultation Report that described meetings held between the company and municipal representatives.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of Council, Local Boards, and their Committees be open to the public, with limited exceptions. The focus of our review in this case was to assess whether the January 25, 2012 gathering was a meeting of Council that was subject to the open meeting requirements.

In reviewing this complaint, our Office spoke with the Clerk, and obtained and reviewed the Corporation's consultation report, e-mails between the Corporation's staff and the Township, as well as the January 25, 2012 meeting agenda and minutes prepared by the Corporation's staff.

## **Background:**

### ***wpd* Canada Corporation's Napier Wind Project Consultation Report <sup>1</sup>**

The provincial Renewable Energy Approvals process requires wind energy companies to consult with the community. In regard to the Napier Wind Project, the Corporation hired Stantec Consulting Inc. to prepare a consultation report that forms part of the Renewable Energy Project application to be submitted to the Ministry of the Environment for consideration.

Appendix F4 of the report includes a "Municipal Consultation Summary" outlining all meetings and communications with the Township of Adelaide-Metcalfe and Middlesex County with respect to the energy project. It states that on January 25, 2012 representatives of the Corporation met with four of the five Adelaide-Metcalfe Council members, including Mayor Bolton, Deputy Mayor Adrian deBruyn, and Councillors Nick Stokman and Kurtis Smith. It also shows that Township staff, including the Clerk, Road Supervisor, Chief Building Official, and Fire Chief attended. In addition, the Manager of Planning and County Engineer from Middlesex County attended on behalf of the County.

### **Information from Township**

The Clerk advised that the Corporation requested to meet with municipal representatives to provide information about a proposed wind energy project. Since the meeting was being arranged by the company and was described as informational only, the Township did not consider it a meeting of Council and, as such, public notice of the meeting was not posted and the Township staff did not record the meeting minutes.

The Clerk provided our Office with a copy of a January 6, 2012 e-mail addressed to the Clerk, copied to Mayor Bolton and the Clerk of Middlesex County, from the Corporation's Director of Renewable Energy Approvals requesting to meet "directly with the Mayor and key staff to introduce the project, discuss any immediate considerations, and plan for working together moving forward." The e-mail further states that such a meeting "tends to include the Mayor, Director of Planning, Director of Public Works, Chief Building Officer and Roads Supervisor...."

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<sup>1</sup> ***wpd* Canada Corporation & Stantec Consulting Inc.'s Napier Wind Project Consultation Report, Dec 2012:** [http://canada.wpd.de/fileadmin/pdfs/napier/20121201%20NAP%20\(1-41-022\)%2013%20Consultation%20Report.pdf](http://canada.wpd.de/fileadmin/pdfs/napier/20121201%20NAP%20(1-41-022)%2013%20Consultation%20Report.pdf)



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However, we were informed that the Mayor wanted to invite members of Council that were interested and three of the four Councillors decided to attend the meeting along with the Mayor. The Mayor advised our Office that he opened the invitation to other members of Council so that they would receive the project information directly from the Corporation but he did not view the gathering as a meeting of Council, at the time.

### **The January 25, 2012 Meeting**

The meeting was arranged for 1:00 p.m. at the Township office. The meeting Agenda, which was prepared by the Corporation's staff, stated that the purpose of the meeting was "to connect directly with the key municipal staff to introduce the project, discuss any immediate considerations, and plan for working together moving forward."

The Agenda shows that the President, and other representatives of the Corporation, intended to provide a presentation to the attendees, including a description of the project, a wind turbine siting demonstration, an overview of the Renewable Energy Approvals process, and an opportunity for open discussion.

The meeting minutes, also prepared by the Corporation's staff, reflect that the four members of Council and the staff identified in the Consultation Summary attended the January 25, 2012 meeting.

The minutes show that introductions were made and Corporation staff then presented an overview of the project and approvals process, as described in the meeting Agenda.

An open discussion followed, during which the Mayor and Councillor Stokman commented on aspects of the project. One of the topics discussed was about how hydro wires may be connected to the proposed turbines. The Mayor commented that there are no hydro lines on municipal roads, but rather on Hydro One easements.

The Mayor also suggested that the three wind energy companies in the area coordinate their approaches to road use agreements and 'risk and safety' management plans to improve efficiency.

The minutes reflect that some discussion continued following the end of the meeting.

### **Analysis**

The Ombudsman developed the following definition to determine whether a Council gathering is subject to the open meeting requirements of the Act.



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*Members of Council (or committee) must come together for the purpose of exercising the power or authority of the Council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.*

The fact that the meeting was arranged and hosted by a third party does not relieve Council of its obligations under the Act. The information provided, including the third party meeting minutes shows that a quorum of Council attended the January 25, 2012 meeting and discussed aspects of a proposed wind energy project, a topic that has been of significant public interest and controversy. Council members asked questions of the company's staff and made comments and suggestions about how the project should proceed. In doing so, Council came together for the purpose of laying the groundwork for future Council decision-making. In addition, the subject matter discussed does not fall within any of the permitted exceptions to the open meeting requirements defined in the *Municipal Act*.

Given the above, we determined that the January 25, 2012 gathering was a meeting of Council that was held in contravention of the open meeting requirements. In future, Council should be careful to ensure that such gatherings are held in accordance with the open meeting provisions of the Act.

As discussed, since our review of this complaint was initiated in July 2013, we received additional complaints about meetings hosted by wind energy companies that were attended by members of Council, which occurred in 2011 and 2012. For instance, we received a complaint that Council members met with NextEra Energy on July 21, 2011 to receive background information and a project proposal overview. Given the time that has passed since the meetings took place and the fact that the substance of the meeting is similar to that of the January 25, 2012 meeting, the same findings would apply. As such, we will not be pursuing those specific complaints further.

During our discussion on October 2, 2013 we explained our review and findings and provided you with the opportunity to provide feedback and any additional information. You stated that, at the time the meeting took place, Council was fairly new and did not view the gathering as a meeting of Council that was subject to the Act. You noted that, in the almost year and a half that has passed since the January 25, 2012 meeting was held, you have had the opportunity to receive feedback from our Office with respect to the open meeting requirements and have made amendments to your meeting practices.



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You advised that a copy of this letter would be included on the next Council meeting agenda to be held on October 21, 2013 and a copy made available to the public on your website.

We appreciate your cooperation with our review.

Sincerely,

Yvonne Heggie  
Early Resolution Officer  
Open Meeting Law Enforcement Team