

November 20, 2013

Mayor Doug Martin and
Town Clerk Carolyn Kett
Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6

Dear Mayor Martin and Ms. Kett,

Re: Closed Meeting Complaint – 2010 Councillors Elect

I am writing further to our discussion on November 15, 2013 regarding the outcome of our review of a complaint that incumbent Councillor Robert Steckley and Councillors-elect John Hill, Paul Collard, Don Lubberts, and Stephen Passero, held a secret closed meeting with lawyer, Eric Gillespie, on October 31, 2010, to discuss the new Council's position on a zoning by-law related to the proposed Bay Beach condominium development.

Complaint Background

By way of background, Council serving the 2006-2010 term passed By-Law No. 26-10 on March 1, 2010, which amended the Town's Comprehensive Zoning By-Law to allow the Bay Beach condominium development to proceed. The Fort Erie Waterfront Association, represented by Mr. Gillespie, appealed this by-law to the Ontario Municipal Board. The first hearing date was scheduled for November 1, 2010.

The complaint to our Office alleged that Councillor Steckley and three of the Councillors-elect, who attended the October 31, 2010 meeting, signed affidavits seeking a 90- day adjournment of the Ontario Municipal Board hearing in order for Council to have time to reconsider the by-law. The Board rejected the adjournment request, partly based on the fact that the Councillors-elect had no authority to bind Council.

The Councillors-elect were sworn in on December 6, 2010.

Ombudsman's Review

The *Municipal Act, 2001* requires that all meetings of council, local boards, and their committees be open to the public, with limited exceptions and subject to certain procedural requirements.

When the Ombudsman receives a complaint alleging an illegal closed meeting has been held, he has the authority to consider whether the municipal body in question has complied with the open meeting requirements of the *Municipal Act* and the relevant procedure by-law. The Ombudsman's authority does not extend to reviewing the substantive decisions and business conducted by municipal bodies.

In reviewing this complaint, our Office spoke with Councillor Steckley and obtained and reviewed the affidavits that were submitted to the Ontario Municipal Board. We also obtained and reviewed a copy of an affidavit signed by Councillor Passero that describes the October 31, 2010 gathering and was filed with the Ontario Superior Court in connection with a recent conflict of interest complaint against Councillors Hill, Collard, Lubberts, and Steckley.

Findings

Our review confirmed that one serving Councillor and four Councillors-elect met on October 31, 2010, with the lawyer for the Fort Erie Waterfront Association to discuss the Town's position before the Ontario Municipal Board with respect to the Bay Beach Condo Development.

Analysis

Based on a review of court decisions and the principles that inform the open meeting requirements, the Ombudsman has developed the following definition to determine whether a gathering is subject to the open meeting requirements of the *Municipal Act*:

Members of council (or a 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.

Only one of the individuals at the meeting on October 31, 2010, was serving on the Town's seven member Council. Under the circumstances, the meeting participants had no authority to conduct council business or to make decisions that would bind Council. Accordingly, the gathering was not a meeting subject to the open meeting requirements of the *Municipal Act*.

We discussed our review and findings with you on November 15, 2013 and provided you with an opportunity to provide any additional information and feedback. You stated that you had no concerns with the findings.

You agreed to share this letter with Council at a public Council meeting to be held on November 25, 2013 and to make a copy of the letter available to the public on your website as an attachment to the meeting agenda.

Thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team