

September 2, 2011

Ms. Ginette Bertrand, Clerk
Township of Russell
717 Notre-Dame Street
Embrun, ON
K0A 1W1

Re: Ombudsman Review of May 16 meeting of the Minor Variance Committee

I am writing to confirm our telephone conversation of September 1, 2011 with you; Ms. Dominique Tremblay, Planning Director; and Mr. Marc Labrosse, Legal Counsel, in which we discussed the results of the Ombudsman's preliminary review of a complaint received about a May 16, 2011 meeting of the Minor Variance Committee (the Committee). The complaint alleged that the Committee failed to provide notice to the public of this meeting.

During the course of our review we spoke with you and with Ms. Tremblay. We also obtained documentation relating to the meeting complained of, and reviewed relevant provisions of the *Municipal Act, 2001* (the Act).

We understand that the Minor Variance Committee is a committee of adjustment, constituted under the *Planning Act*. Section 44 of the *Planning Act* permits a municipal council to appoint a committee of adjustment in circumstances where Council has passed a zoning by-law. The Minor Variance Committee is comprised of 3 members of the public who were appointed by Council to review minor variances. We also understand that the mayor is an "ex-officio" member of all council committees. The Committee meets as required, according to the needs of the Planning Department.

Ms. Tremblay advised our Office that adjacent property owners received notice of the May 16 Committee meeting 10 days prior to the meeting. She provided our Office with a copy of the letter that was sent to the adjacent property owners, and

also with a copy of a document entitled "Request for Minor Variance", which provided the date, time, and location of the May 16 meeting and information regarding the proposed minor variance. She advised that this document was posted on the property in

question 10 days prior to the meeting. Ms. Tremblay explained that this notice was provided in accordance with subsection 45(5) of the *Planning Act*, which states:

Notice of hearing

(5) The committee, before hearing an application, shall in the manner and to the persons and public bodies and containing the information prescribed, give notice of the application.

Section 3 of Ontario Regulation 200/96 (Minor Variance Application) outlines the notice requirements for applications under s. 45(5):

3. (1) At least 10 days before the day of the hearing on an application for a minor variance or permission under subsection 45 (5) of the Act, notice shall be given in compliance with subsection (2) or (4) but need not be given in compliance with more than one of those subsections.

(2) Notice under subsection (1) may be given by doing both of the following:

1. Giving notice by personal service or prepaid first class mail to every owner of land within 60 metres of the area to which the application applies. However, if a condominium development is located within 60 metres of the area, notice may be given to the condominium corporation, according to its most recent address for service or mailing address as registered under section 7 of the *Condominium Act, 1998*, instead of being given to all owners assessed in respect of the condominium development.

2. Posting a notice, clearly visible and legible from a public highway or other place to which the public has access, at every separately assessed property in the area to which the application applies or, where posting on the property is impractical, at a nearby location chosen by the secretary-treasurer...

(4) Notice under subsection (1) may be given by publication in a newspaper that, in the opinion of the secretary-treasurer, is of sufficiently general circulation in the area to which the application applies to give the public reasonable notice of the hearing.

It therefore appears that notice was provided to the public in accordance with the *Planning Act*. It also appears that notice of the Committee meeting was posted on the Municipal Calendar on the Township's website on April 27.

When we spoke on September 1 we noted that, under s. 239 of the *Municipal Act*, all meetings of Council, committees, and local boards are required to be open to the public, subject to specific exceptions. The Act also sets out procedural requirements for these bodies. We discussed that the Act defines "local board" as a "municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority."

Section 238 provides that, for the purpose of ss. 238 and 239, “local board” does not include police services boards or library boards. The minor variance committee falls within the definition of “local board” for the purpose of the open meeting provisions of the Act.

Because the Committee is considered a “local board” for the purpose of s. 239 of the *Municipal Act*, it must hold meetings in accordance with the open meeting requirements. This would include providing notice of meetings to the public; holding open meetings unless the subject matter to be discussed falls within one of the exceptions outlined in subsections 239(2), (3), or (3.1); and passing a resolution before proceeding into closed session. In accordance with ss. 238(2) and (2.1), the Committee also is required to have its own procedure by-law, which provides for public notice of meetings.

Although our review did find that notice of this meeting was provided to the public, you also advised our Office that the Committee does not have its own procedure by-law. We recommended that Council implement a procedure by-law for the Committee, which would provide for public notice of meetings in accordance with s. 238 of the *Municipal Act*. We suggested that it may be helpful for municipal staff review the open meeting requirements of the Act with the members of the Committee and its staff, and also noted that our Office is available to do presentations on the open meeting rules. In addition, I have enclosed three copies of our Sunshine Law Handbook for distribution to the Committee members.

We also wish to refer you to a March 2009 report of the closed meeting investigator for the City of Vaughan, in which the investigator reviewed a November 2008 meeting of Vaughan’s Committee of Adjustment. The investigator noted that a member of the Ontario Association of Committees of Adjustment (OACA) executive advised that the training provided by the OACA recommends that all hearings and deliberations of a committee of adjustment be held in public. The investigator recommended that members of Vaughan’s committee and the secretary-treasurer undertake the OACA training. We noted that members of Russell’s Minor Variance Committee might also benefit from this training.

We requested that you discuss our review and suggestions publicly with Council and with the Committee, and notify our Office when you have had the opportunity to do so. We will also be notifying the complainant of the results of our informal review.

I would like to take this opportunity to thank you for the cooperation our Office received during this review.

Sincerely,

Michelle Bird
Ombudsman Ontario