



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

October 7, 2014

Mayor René Berthiaume
Clerk Christine Groulx
Town of Hawkesbury
600 Higginson Street
Hawkesbury ON K6A 1H1

Re: Closed Meeting Complaint – August 18, 2014

Dear Mayor Berthiaume and Ms. Groulx:

I am writing further to your discussion of October 7, 2014 with Jean-Frédéric Hübsch of the Open Meeting Law Enforcement Team, regarding the outcome of our review of a complaint about a closed meeting held on August 18, 2014 by council for the Town of Hawkesbury. The complaint alleged that council went into closed session to discuss the disposition of a vacant lot in contravention of the *Municipal Act, 2001* (the Act).

As you know, the Act requires that meetings of council, local boards, and committees be open to the public, with limited exceptions and subject to certain procedural requirements.

In reviewing this matter, my office reviewed the relevant documentation, including the Township's procedural by-law, the meeting agenda and the open and closed meeting minutes.

Procedure By-Law (By-law No. 20-2005, as amended)

The Town of Hawkesbury's procedure by-law contemplates that regular council meetings are held in Council Chambers on the second and last Mondays of each month at 7:00 p.m. Meetings are suspended during July and August, except for a regular meeting that may be held on the third Monday of August at 7:00 p.m. Notice of regular meetings is posted on the town's website in the form of a calendar; notice of meetings not in the calendar are posted on the website. Special meetings require at least 48 hours notice, though no specific provision is made in the by-law for public notice of such meetings. The by-law also says that to have a closed session, a resolution to go *in camera* should be made in the public session of the council meeting that sets out the general nature of the matters to be discussed.

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The meeting of August 18, 2014

The agenda for the regular council meeting on August 18, 2014 listed the following matters that would be considered at a closed session within the meeting, at item 14:

- 14.1 Litigation, Re: Recreation and Culture Services
- 14.2 Land disposal, Re: Christ-Roi
- 14.3 Land disposal, Re: Vacant lot on Main Street East
- 14.4 Litigation

An additional item for consideration in closed session was added at the outset of the meeting:

- 14.5 Personnel

The open meeting minutes indicate that a resolution was introduced to hold a closed meeting to discuss the items listed in the agenda. The closed meeting minutes noted, in general terms, the exceptions cited for each item on the agenda, and provided a description of what was discussed. The minutes provide little information about the discussions relating to the complaint (item 14.3). However, a staff recommendation report accompanying the closed session minutes explains the matter of the vacant lot in detail.

After the closed session, the meeting was reopened and various motions relating to the closed session items were introduced. The open meeting minutes state that council received a letter of interest and declared the vacant lot surplus, having considered a staff recommendation and discussed the requirements for the sale of the lot *in camera*.

Analysis

Based on the information we gathered, it appears that council for the Town of Hawkesbury entered into the closed session on August 18 in accordance with the Act and the town's procedural by-law. The closed session was on the agenda for the meeting, the meeting was closed by public resolution of council, the items discussed fall within the exceptions cited, and the closed session items were reported back in open session after completed.

With specific regard to the complaint we received, the vacant lot at Main Street East under item 14.3 of the agenda was discussed under the "acquisition or disposition of land" exception ("Land disposal" per the agenda and minutes). It was discussed under this exception in order to consider a letter of interest for the purchase of the lot and to discuss the terms that would need to be included in any potential agreement to sell the lot. Among these terms is the registration of an easement over the lot in favour of the municipality in order to maintain access to underground

municipal infrastructure. In open session, council received the letter and declared the lot surplus, in accordance with the recommendations made in the staff report.

Although we are not bound by the determinations of the Information and Privacy Commission, the Commission in its decision MO-2468-F stated that the application of the “acquisition or disposition of land” exception allows the municipality to protect its bargaining position in the sale and purchase of land. I recently found in another case that consideration of an easement, as a form of property right, meets the requirements of the exception.¹ Council was entitled to consider the sale of the vacant lot and the need for an easement over the lot in closed session under the “acquisition or disposition of land” exception.

Conclusion

Our review found that the closed meeting held by the Council for the Town of Hawkesbury on August 18, 2014 was not in violation of the *Municipal Act, 2001*.

On October 7, 2014, we shared our review and findings with you and provided you with an opportunity to provide feedback. You responded that you had nothing to add. You agreed to share our Office’s findings at the next public council meeting on October 14 and to make a copy of our letter available to the public.

Thank you for your cooperation with our review.

Sincerely,

André Marin
Ontario Ombudsman

¹ Township of Russell – Ombudsman Letter of August 8, 2014. Online: <[https://ombudsman.on.ca/Resources/Reports/Township-of-Russell-\(1\).aspx](https://ombudsman.on.ca/Resources/Reports/Township-of-Russell-(1).aspx)>.