

December 22, 2020

Council for the Township of Stone Mills
c/o Bryan Brooks, CAO/Clerk
4504 County Rd 4
Centreville, Ontario
Canada K0K 1N0

Sent via email: bbrooks@stonemills.com

Dear Council:

Re: Complaints about council meeting practices

My Office received complaints regarding meetings held by the Township of Stone Mills (the “Township”) between August 10, 2020 and October 27, 2020. Specifically, the complainants disagreed with the municipality’s decision to hold in-person council meetings without providing members of the public with a way to watch or follow the meetings remotely, such as through video or phone conferencing technology. Instead, members of the public were given the option to attend council meetings in person in a socially-distanced manner.

I am writing to share the outcome of my Office’s review and to advise that we will not be taking further steps regarding these complaints.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act, 2001* gives citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act in closing a meeting to the public.¹ Municipalities and local boards may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. I am the closed meeting investigator for the Township of Stone Mills.

¹ SO 2001, c 25.

In addition to my Office's investigative authority under the *Municipal Act*, since 2016 the *Ombudsman Act* has granted my Office authority to review and investigate complaints about the broader administration of municipalities. In reviewing this complaint about the Township of Stone Mills, I also assessed whether the municipality's administrative conduct was consistent with its legal obligations and the principles of accountability and transparency.

Our Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of previous Ombudsman decisions can be found in the digest at www.ombudsman.on.ca/digest.

Review

My Office spoke with the complainants and reviewed the municipality's procedure by-law. We spoke with the municipality's CAO/Clerk, the local public health unit, and senior officials in the Ministry of Municipal Affairs and Housing and the Ministry of Infrastructure.

According to the CAO/Clerk, council for the Township of Stone Mills began holding electronic council meetings in early April 2020 in response to the COVID-19 pandemic gathering restrictions. Councillors and others participated via Zoom video conferencing technology and the Zoom feed was broadcast online to the public through YouTube. This meeting format continued through the majority of the summer.

As of August 10, 2020, the Township, in consultation with the local public health unit, decided to resume in-person council meetings where council and members of the public would be physically present and observe social distancing requirements. We were told these meetings were initially held in a large public works garage, which allowed more space for physical distancing. Once the weather became colder, council meetings returned to council chambers. We were told that the municipality has not been livestreaming these in-person meetings, but that all meetings from August 10 to October 27, 2020 have been open to the public and that no one has been turned away due to capacity or gathering restrictions.

When my Office asked the municipality why it stopped broadcasting council meetings, the CAO/Clerk said that the Township had looked into the matter, but that due to its rural location there was insufficient broadband infrastructure to support the broadcasts. He explained that when meetings were occurring over Zoom, the County of Lennox and Addington, which has better internet, was able to host the meeting but that poor local internet connections still meant that individual councillors often froze and it was very challenging to understand delegations. He also noted that Zoom broadcasts through YouTube were no longer an option once council returned to in-person meetings, as councillors would not be participating from their individual computers.

The CAO/Clerk indicated that council acknowledges the benefits of streaming council meetings online and in November 2020, council voted to invest in the technology necessary to broadcast video streams of in-person council meetings on a trial basis. We were told that the municipality remained concerned about internet quality issues and would be monitoring the success of the broadcasts. We also learned from municipal staff that council has again begun holding virtual Zoom council meetings and streaming them on YouTube due to the evolving COVID-19 restrictions in the area.

Analysis

Section 239(1) of the *Municipal Act, 2001* requires that all meetings of municipal councils be open to the public, subject to limited exceptions. The right of citizens to attend public meetings and view council proceedings in action is the foundation of the municipal open meeting requirement. As the Supreme Court of Canada determined in *London (City) v. RSJ Holdings Inc.*, the open meeting requirements set out in the *Municipal Act* demonstrate that the public has “the right to observe municipal government in process”.

In response to the COVID-19 pandemic, the province amended the Act's open meeting rules to permit municipalities to amend their procedure by-laws to permit council to hold electronic meetings (s. 238(3.1)). However, this did not change the Act's basic requirement that meetings be open to the public. Rather, the amendments gave municipalities the option to satisfy this requirement without requiring that they hold in-person council meetings.

In the Township of Stone Mills, council initially chose to satisfy the Act's requirement to hold open meetings by broadcasting virtual Zoom meetings on YouTube. As of August 2020, the Township changed its approach and decided to satisfy the Act's open meeting

requirement by holding in-person council meetings in consultation with the local public health unit. My Office's review confirms that the municipality provided public notice of its meetings from August 10 to October 27, 2020, and that members of the public were able to attend these meetings and see municipal decision-making in progress. We have not received any complaints or other information alleging that members of the public were prevented from attending council meetings during this period.

While broadcasting these in-person council meetings would undeniably increase the accountability and transparency of municipal decision-making, I acknowledge the systemic broadband infrastructure challenges facing rural and remote municipalities in Ontario, and I applaud the Township's decision to invest in video broadcasting technology on a trial basis.

Limited broadband internet access is a serious, complex issue, and both the provincial and federal governments have recently announced new initiatives that would see billions of dollars invested to improve broadband internet access.² My Office met with senior officials in the Ministry of Municipal Affairs and Housing and the Ministry of Infrastructure to emphasize the importance of these initiatives and to highlight how poor broadband infrastructure may prevent municipalities from adopting more open and transparent meeting practices. Even once the COVID-19 pandemic has subsided, ensuring municipalities have sufficient technological capacity to choose to broadcast council meetings will improve the public's access to municipal decision-making.

Various municipal associations in Ontario have developed best practices and practical advice to assist municipalities in the complex process of expanding local broadband access. The Ministry of Municipal Affairs and Housing told us that the Association of Municipalities of Ontario³, the Rural Ontario Municipal Association⁴, and the Municipal Information Systems Association⁵ have developed resources for municipalities that the Township may wish to access once it begins broadcasting in-person council meetings on a trial basis. It also indicated that the Ministry's regional municipal service office may be able to connect staff with nearby municipalities dealing with similar issues.

² Information about the Federal government's Universal Broadband Fund is available at: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00006.html. Information about the Province's "Improving Connectivity for Ontario Program" is available at: <https://www.ontario.ca/page/connecting-ontario-improving-broadband-and-cellular-access#section-1>.

³ <https://www.amo.on.ca/>

⁴ <https://www.roma.on.ca/>

⁵ https://www.misa-asim.ca/page/ON_Homepage

Conclusion

My review indicates that the Township of Stone Mills provided public notice of its in-person council meetings from August 10 to October 27, 2020, and that these meetings have been open to the public. My review did not identify any instances during this period where members of the public were prevented from attending any council meeting.

I would like to thank the Township for its co-operation during my review. The CAO/Clerk confirmed that this letter would be included as correspondence at an upcoming council meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Dubé". The signature is fluid and cursive, with a large initial "P" and a trailing flourish.

Paul Dubé
Ontario Ombudsman

cc: Mayor Eric Smith, esmith@stonemills.com