

J. Paul Dubé, Ombudsman

June 28, 2019

Council for the Township of Wollaston
c/o Dylinna Brock, Administrator
90 Wollaston Lake Road
P.O. Box 99
Coe Hill, ON K0L 1P0

Via email

Dear Council:

Re: Closed meeting complaint investigation

My Office received a complaint regarding the attendance of three councillors at an April 30, 2019 public proceeding of the Local Planning Appeal Tribunal (“LPAT”). The complaint alleged that the councillors’ attendance amounted to a “meeting” under the *Municipal Act* and was therefore subject to the Act’s open meeting rules.

I am writing to advise that my investigation has determined that the councillor’s attendance at the LPAT proceeding was not a “meeting” under the *Municipal Act* and did not contravene the Act’s open meeting requirements.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act, 2001* (the Act) 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 and local boards that have not appointed their own. The Ombudsman is the closed meeting investigator for the Township of Wollaston.

To assist municipal councils, staff, and citizens we have developed an online digest of open meeting decisions that contains summaries of the Ombudsman’s open meeting

¹ *Municipal Act*, SO 2001, c 25, s 239.1.

cases. This searchable repository was created to provide interested parties with easy access to the Ombudsman's past 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 a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of all previous Ombudsman decisions may be consulted in the digest at www.ombudsman.on.ca/digest.

Review

On May 31, 2019, my Office informed the Township of our intent to investigate this complaint. We interviewed the Township's Administrator, who is currently fulfilling the Clerk's duties, and the three councillors who attended the LPAT proceeding. We also reviewed the LPAT website for additional information about the proceeding.

April 30, 2019 LPAT proceeding

Those we interviewed confirmed that on April 30, 2019, three councillors attended an LPAT proceeding held at a local church. The proceeding was open to the public and the municipality provided notice of its time and location. Although everyone we spoke with referred to this as a "hearing", the LPAT website indicates that it was a case management conference.² A case management conference allows the adjudicator to bring parties and other interested persons together to define and narrow issues in dispute and discuss opportunities for mediation or settlement. We were told by the Administrator that the proceeding was brief, with the adjudicator asking the parties whether further mediation was possible and scheduling another case management conference.

According to those we spoke with, the tables in the room were arranged in a "U" shape, with the adjudicator at the head and opposing parties on each of the remaining sides. Members of the public sat at the open end where there were no tables. We were told that two councillors sat next to each other in the audience, while a third sat in a different area of the audience. The councillors all advised that they did not speak with the other councillors, municipal staff, or other parties to the proceeding about the matters under consideration. Everyone we interviewed told us that there was a very noisy heater near

² <https://www.omb.gov.on.ca/ecs/CaseDetail.aspx?n=PL180634>

the audience chairs that made it nearly impossible to hear the proceeding or converse informally. We were told the councillors did not participate in the LPAT proceeding in any fashion.

When we asked the councillors why they attended, each indicated that the matter being considered was important to the community and that they were hoping to learn more about the LPAT process. Every councillor said that they independently made the decision to attend the proceeding without any direction from council or discussion amongst themselves. The councillors indicated that no one reported back to council about their attendance and that the matter under appeal has not been brought before council for an extended period.

Analysis

The *Municipal Act* defines a meeting as:

any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with a matter in a way that materially advances the business or decision-making of the council, local board, or committee.

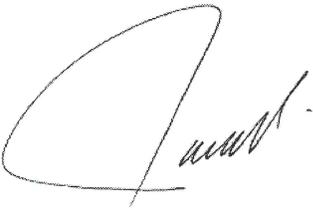
All three council members told my Office that they did not discuss the subject matter of the LPAT proceeding with any of the councillors, municipal staff, or other parties in attendance. The Administrator told my Office that she did not observe any discussion among the councillors and confirmed that the councillors did not speak with her about the proceeding.

Accordingly, the councillors' attendance at the April 30, 2019 LPAT proceeding did not materially advance the business or decision-making of council and was not a "meeting" subject to the *Municipal Act's* open meeting rules.

Conclusion

I would like to thank the Township for its co-operation during my investigation. You indicated to us that this letter would be included as correspondence at the next council meeting.

Sincerely,



Paul Dubé
Ontario Ombudsman

cc: Reeve Shaw, bshaw@wollaston.ca