



FONVCA AGENDA

THURSDAY February 19th 2009

Place: DNV Hall 355 W. Queens Rd V7N 2K6

Time: 7:00-9:00pm

Chair: Paul Tubb – Pemberton Heights C. A.

Tel: 604-986-8891 **Email:** petubb@hotmail.com

Regrets:

1. Order/content of Agenda

2. Adoption of Minutes of Jan 15th

<http://www.fonvca.org/agendas/feb2009/minutes-jan2009.pdf>

3. Old Business

Review of Feb 11th budget meeting with DNV staff.

4. Correspondence Issues

4.1 Business arising from 3 regular emails:

4.2 Non-Posted letters – 0 this period

5. New Business

Council and other District issues.

5.1 Council Open and Closed Meetings

- Letter to DNV Council by Corrie Kost
- Review of Community Charter requirements
- Leadership role of City of Ottawa
- US Open Records, Open Meetings and Ethics

http://www.fonvca.org/agendas/feb2009/Corrie_Kost_14feb2009.pdf

http://www.bclaws.ca/Recon/document/freeside/--%20C%20--/Community%20Charter%20%20SBC%202003%20%20c.%2026/00_Act/03026_04.xml#part4_division3

http://www.ottawa.ca/city_hall/mayor_council/accountability/meetings_en.html and a sample of an investigation

[http://www.ombudsman.on.ca/media/32583/fort%20erie%20closed%20meeting-final%20\(2\).pdf](http://www.ombudsman.on.ca/media/32583/fort%20erie%20closed%20meeting-final%20(2).pdf)

<http://www.wauwatosa.net/ImageLibrary/Internet/2008AgendasMinutes/052008COW.pdf>

http://www.azag.gov/Agency_Handbook/Ch7.pdf

Additional Material:

Supreme Court of Canada in City of London vs. RSJ Holdings Inc.

<http://www.fonvca.org/agendas/feb2009/2007scc29.pdf> or
<http://csc.lexum.umontreal.ca/en/2007/2007scc29/2007scc29.pdf>

5.2 Olympic Celebration Site / Torch Relay in North Van - LVCA rep.

6. Any Other Business

6.1 Legal Issues

(a) Issue: Freedom of Information - Good Advice from BC Freedom of Information & Privacy Association
http://fipa.bc.ca/government_records/

(b) Office of the Information & Privacy Commissioner

<http://www.oipcbc.org/>

(c) FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
[http://www.oipc.bc.ca/legislation/FIPPA/Freedom_of_Information_and_Protection_of_Privacy_Act\(May2008\).htm](http://www.oipc.bc.ca/legislation/FIPPA/Freedom_of_Information_and_Protection_of_Privacy_Act(May2008).htm)

(d) Landmark Court Rulings for Open Electronic Records
<http://www.fonvca.org/agendas/feb2009/Landmark-court-ruling-159814478830.pdf>

(e) US President Barack Obama Promotes FOI

http://www.whitehouse.gov/the_press_office/Freedom_of_informationact/

6.2 Any Other Issues (2 min each)

(a) RE: Local solutions for BC municipalities – brief report by Eric Andersen

(b) Building Character & Leadership

<http://wwwFOUNDATIONSmag.com/links.html>

brief comments by Corrie Kost

(c) George Washington's Rules of Civility & Decent Behavior

<http://wwwFOUNDATIONSmag.com/civility.html>

(d) Atmospheric CO₂ – a paper for Scientists

<http://www.fonvca.org/agendas/feb2009/2008%2520Hansen.pdf>

Note: normal cost of removing 20ppm of CO₂ is ~ \$20 trillion !

(e) Environmental Victory - a defeat for Science

<http://www.fonvca.org/agendas/feb2009/a-defeat-for-science.pdf>

<http://www.fonvca.org/agendas/feb2009/Perspectives-31oct2008.pdf>

(f) Comments on 2009 Draft Financial Plan

<http://www.fonvca.org/agendas/feb2009/Comments-by-kost-on-2009-draft-financial-plan.pdf>

(g) Smithers – nice 150page OCP example

<http://www.town.smithers.bc.ca/pdfs/ds/alison%20changes/OCP%20Draft.pdf>

7. Chair & Date of next meeting.

Thursday March 19th 2009

Attachments

-List of Email to FONVCA - **ONLY NEW ENTRIES**

OUTSTANDING COUNCIL ITEMS-Cat Regulation Bylaw;

District-wide OCP; Review of Zoning Bylaw; Securing of vehicle load bylaw; Snow removal for single family homes bylaw.

Correspondence/Subject Ordered by Date
12 January 2009 → 15 February 2009

LINK	SUBJECT
http://www.fonvca.org/letters/2009/12jan-to/Cristy_Goerzen_22jan2009.pdf	Capilano Library Re-opening 23 Jan
http://www.fonvca.org/letters/2009/12jan-to/Monica_Craver_28jan2008.pdf	BC Bike Race 2009 – not amused
http://www.fonvca.org/agendas/feb2009/Corrie_Kost_14feb2009.pdf	Closed meetings of Council

For details/history see

<http://www.fonvca.org/letters/index-letters-total-feb2009.html>

FONVCA MINUTES

THURSDAY January 15th 2009

Place: DNV Hall 355 W. Queens Rd V7N 2K6

Time: 7:00-9:00pm

Chair: Knud Hille – Norgate Park Community Association
Tel:604-980-9762 Email: kshille@yahoo.com

Members Present:

Dan Ellis	Lynn Valley C.A.
Corrie Kost	Edgemont C.A.
Paul Tubb	Pemberton Hts. C.A.
Eric Andersen (Notes)	Blueridge C.A.
Knud Hille (Chair)	Norgate Park C.A.
Del Kristalovich	Seymour C.A.
Val Moller	Lions Gate N.A.
Diana Belhouse	Delbrook C.A.
Cathy Adams	Lions Gate N.A.

Dave Stuart Guest – DNV C.A.O.

Regrets:

1. Order/content of Agenda

As printed in latest agenda

2. Adoption of Minutes of Dec 18th

<http://www.fonvca.org/agendas/jan2009/minutes-dec2008.pdf>

The minutes were approved (Dan/Eric) with the addition that the mediation (point 5.5) has in the meantime been completed.

3. Old Business

Presentation on DNV Financial Plan and Update on OCP Review and the role of the Community Planning Working Group with Q/A by DNV CAO David Stuart

OCP: The Community Planning Working Group was established as an advisory group. The ~ 21 members had diverse interest in the community and basically everyone, who applied to be on the Group, was accepted.

The task of the above Group is identifying issues in the OCP process as well as establishing a process for the OCP and the ensuing community engagement.

The intention is for a 'white paper' to be developed by a sub-committee, which will be reviewed by the public in ~ March and Council ~ April.

The time length is still TBA, but 18 months is the target (which may not be likely). The Group works independently from staff. A steering committee including Mayor Walton and Councillor Nixon has also been established.

An important part of the process is to determine what should be in the OCP.

A status report was to be given to Council at the end of January.

FONVCA requested that the minutes from the Community Planning Group be posted on the DNV's website.

21 parties applied to be on the committee (and all were approved). This was duly advertised, but evidently missed by most, if not all FONVCA members.

Looking at the North Shore as a whole, one might say that the City of North Vancouver is the core.

Most of the federal government's support will go to transportation projects.

Budget: The discussion included:

- The budget process usually starts as early as July.
- It was felt that there was no clear business plan regarding what the DNV needs.
- On Feb 02 a public meeting was to be held regarding both the budget and the business plan.
- The budget for 2009 will not show any decreases in service levels.
- There will be new Internet tracking tools, incl. various benchmarks.
- Service inventories have been requested by the CAO from all departments.
- The target is for the business plan and the budget to be better integrated
- Some of the budget issues include: the salaries have already been negotiated (i.e. cannot change), the infrastructure is a problem, all core services will remain
- The slow growth experienced by the DNV is not expected to change.
- A 3-year plan will be established to 'shape our future', but over all the issues remain the same over the years.
- The budget will contain lower increases than in past years, but the exact number cannot be communicated to the public till Council has been informed.

The RCMP review was briefly discussed.

Snow removal was a passionate issue for some and it was ascertained that:

- call centers will be established in the future (to improve communication with residents)
- emphasis will be placed on improving school access routes
- more trucks will be equipped to handle snow-removal gear
- a complete review of snow clearing issues will be done by staff and presented to Council shortly.

4. Correspondence Issues

4.1 Business arising from 6 regular emails:

Contents of the letters were outlined. No action.

It was confirmed that no consent agenda items can involve a bylaw.

4.2 Non-Posted letters – 0 this period

5. New Business

Council and other District issues.

5.1 Snow and Ice

For DNV details and policies on this issue see:

<http://www.dnv.org/article.asp?c=288>

Experiences & lessons → possible recommendations

<http://www.fonvca.org/agendas/jan2009/snow-tips.pdf>

Suggestions for reducing impact from snow events (some from the 9th Jan Vancouver Sun was included in this month's FONVCA package.

5.2 Community Profile from Census Canada

Copies were provided of DNV community profile from the 2006 Census.

<http://www.fonvca.org/agendas/jan2009/community-profile-census-canada.pdf>

6. Any Other Business

6.1 Legal Issues –

Various legal cases were outlined. Likewise, references of where to find the most recent versions of the Local Government Act and the Community Charter were provided.

The province made an “Electrifying offer” to buy the 138 homes impacted by the Tsawwassen transmission lines despite Supreme Court of Canada win by government.
<http://www.vancouversun.com/Technology/electrifying+offer+from+provincial+government/1158131/story.html>
<http://www.vancouversun.com/Health/Powerlines+linked+leukemia+report/1169765/story.html>

The most recent (Dec 31/2008) of the **Local Government Act** (939 pages!) can be found at
http://www.bclaws.ca/Recon/document/freeside/--%20L%20--/Local%20Government%20Act%20%20RSBC%201996%20%20c.%20323/00_Act/96323_00.htm

The most recent version (Dec 31/2008) of the **Community Charter** can be found at:
http://www.bclaws.ca/Recon/document/freeside/--%20C%20--/Community%20Charter%20%20SBC%202003%20%20c.%2026/00_Act/03026_00.htm

BC's **Carbon Tax Act** is at
http://www.bclaws.ca/Recon/document/freeside/--%20C%20--/Carbon%20Tax%20Act%20%20SBC%202008%20%20c.%2040/00_08040_01.xml

Council MUST provide reasons why they adopted a bylaw – else it could be held null-and-void. See
<http://www.fonvca.org/agendas/jan2009/reasons.txt>

6.2 Any Other Issues (2 min each)

Cathy Adams informed group that Larco had, yet again, made a proposal to Council and the community. This new proposal was twice as big as the one, which had been turned down in 2004. It is including 8-10 storey-buildings and various townhouses, adding up to 360 units.

7. Chair & Date of next meeting.

Paul Tubb - Pemberton Heights C.A.

Tel: 604-

Email: petubb@hotmail.com

7pm Thursday, February 19th, 2009

The meeting was adjourned ~ 9:00 pm.

Subject: Closed Council Meetings
From: Corrie Kost <kost@triumf.ca>
Date: Sat, 14 Feb 2009 11:54:16 -0800
To: 'FONVCA' <fonvca@fonvca.org>

Dear FONVCA Members,

Attached is my input to DNV council on an issue of importance to all community associations.

More background material will be provided at the Feb 19th FONVCA meeting.

Yours truly,

Corrie Kost

closed-council-meetings.pdf	Content-Type: application/nappdf Content-Encoding: base64
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February 12/2009

Your Worship & Members of Council,

The public has a healthy suspicion of governments. Recently, this council has been holding a number of **unpublicized closed meetings**⁽¹⁾ – contrary to the spirit and the letter of the law on open meeting requirements of the Community Charter (sections 89-95). It is clear that all closed meetings of council **MUST** be preceded by a council declaration which provides the reason (ie. appropriate section or sections of section 90 of the Community Charter)

If this council wishes to hold such closed meeting then I suggest that they petition the Province by bringing the matter up at the annual UBCM (Union of BC Municipalities) for endorsement. Until such endorsement is obtained and the Province amends the Community Charter council should desist in holding any further such meetings.

At the very least the public should be notified of such closed [even though the public is currently not notified – calling them “secret” would convey the impression that something inappropriate was being discussed] **meetings – with a description of the scope/intent and a list of all parties participating in the meeting.**

Closed meetings tend to undermine the public trust of all decisions that council makes at their open meetings by giving the appearance that decisions have previously been formed in secret for reasons to which the public has been excluded.

In summary – one can't have a **general rule that meetings must be open to the public** – with very clearly defined exceptions – and then claim that there are other meetings not covered by the general rule!

(1) In this context the usual definition of “meeting” is:

Those gatherings of a quorum or more of members of a governing body, or a quorum of a committee, subcommittee, board, etc at which members **DISCUSS, DECIDE, or RECEIVE INFORMATION** as a group on issues relating to the official business of that governing body.

Any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat and instant messaging), or other means of contemporary interactive communication, of a majority of a quorum of the members of a public body held for the purposes of discussing public business.

Yours truly,

Corrie Kost
2851 Colwood Dr. North Vancouver, BC, V7R2R3
Tel: 604-988-6615

This Act is Current to February 4, 2009

COMMUNITY CHARTER

[SBC 2003] CHAPTER 26

Part 4 — Public Participation and Council Accountability

Division 1 — Elections, Petitions and Community Opinion

Election proceedings

- 81** (1) A general local election for the mayor and all councillors of each municipality must be held in the year 2005 and every 3 years after that.
- (2) By-elections for office on municipal council must be held as required under section 37 [by-elections] of the *Local Government Act*.
- (3) General local elections and by-elections must be held in accordance with Part 3 [Electors and Elections] of the *Local Government Act*.

Petitions to council

- 82** (1) A petition to a council is deemed to be presented to council when it is filed with the corporate officer.
- (2) A petition to a council must include the full name and residential address of each petitioner.

Council may seek community opinion

- 83** (1) A council may seek community opinion on a question that the council believes affects the municipality, by voting or any other process the council considers appropriate.
- (2) The results of a process under this section are not binding on the council.

Division 2 — Approval of the Electors

Approval of the electors

- 84** If approval of the electors is required under this Act or the *Local Government Act* in relation to a proposed bylaw, agreement or other matter, that approval may be obtained either by
- assent of the electors in accordance with section 85, or
 - approval of the electors by alternative approval process in accordance with section 86.

Assent of the electors

- 85** (1) If assent of the electors is required or authorized under this Act or the *Local Government Act* in relation to a proposed bylaw, agreement or other matter, that assent is obtained only if a majority of the votes counted as valid are in favour of the bylaw or question.
- (2) Part 4 [Other Voting] of the *Local Government Act* applies to obtaining the assent of the electors.

Alternative approval process

86 (1) Approval of the electors by alternative approval process under this section is obtained if

- (a) notice of the approval process is published in accordance with subsection (2),
- (b) through elector response forms established under subsection (3), electors are provided with an opportunity to indicate that council may not proceed with the bylaw, agreement or other matter unless it is approved by assent of the electors, and
- (c) at the end of the time for receiving elector responses, as established under subsection (3), the number of elector responses received is less than 10% of the number of electors of the area to which the approval process applies.

(2) Notice of an alternative approval process must be published in accordance with section 94 [*public notice*] and must include the following:

- (a) a general description of the proposed bylaw, agreement or other matter to which the approval process relates;
- (b) a description of the area to which the approval process applies;
- (c) the deadline for elector responses in relation to the approval process;
- (d) a statement that the council may proceed with the matter unless, by the deadline, at least 10% of the electors of the area indicate that the council must obtain the assent of the electors before proceeding;
- (e) a statement that
 - (i) elector responses must be given in the form established by the council,
 - (ii) elector response forms are available at the municipal hall, and
 - (iii) the only persons entitled to sign the forms are the electors of the area to which the approval process applies;
- (f) the number of elector responses required to prevent the council from proceeding without the assent of the electors, determined in accordance with subsection (3);
- (g) other information required by regulation to be included.

(3) For each alternative approval process, the council must

- (a) establish the deadline for receiving elector responses, which must be at least 30 days after the second publication of the notice under subsection (2),
- (b) establish elector response forms, which
 - (i) may be designed to allow for only a single elector response on each form or for multiple elector responses, and
 - (ii) must be available to the public at the municipal hall from the time of first publication until the deadline, and
- (c) make a fair determination of the total number of electors of the area to which the approval process applies.

(4) The council must make available to the public, on request, a report respecting the basis on which the determination under subsection (3) (c) was made.

(5) For the purposes of this section, the electors of the area to which an alternative approval process applies are the persons who would meet the qualifications referred to in section 161 (1) (a) [*who may vote at other voting*] of the *Local Government Act* if assent of the electors were sought in respect of the matter.

(6) Elector responses may be made on an elector response form obtained under subsection (3) or on an accurate copy of the form.

- (7) For an elector's response to be considered for the purposes of this section, the elector must
- (a) sign an elector response form that includes
 - (i) the person's full name and residential address, and
 - (ii) if applicable, the address of the property in relation to which the person is entitled to register as a non-resident property elector, and
 - (b) submit the elector response form to the corporate officer before the deadline established for the alternative approval process.
- (8) After the deadline for an alternative approval process has passed, the corporate officer must determine and certify, on the basis of the elector response forms received before that deadline, whether elector approval in accordance with this section has been obtained.
- (9) A determination under subsection (8) is final and conclusive.
- (10) A person must not sign more than one elector response form in relation to the same alternative approval process, and a person who is not an elector for the area of the approval process must not sign an elector response form.

Matters requiring approval or assent may be combined

- 87** (1) If two or more related matters require approval of the electors or assent of the electors, instead of seeking that approval or assent in relation to each matter, the council may seek the approval or assent in relation to the related matters as if they were a single matter.
- (2) As a restriction, if any of the related matters referred to in subsection (1) requires the assent of the electors, approval of the electors under that subsection may only be obtained by assent of the electors.

Agreements requiring approval or assent

- 88** (1) If an agreement is in relation to a matter that requires approval of the electors or assent of the electors, the requirement also applies to an amendment to the agreement in relation to that matter.
- (2) As an exception, subsection (1) does not apply if the amendment is authorized by regulation or is made with the approval of the minister.

Division 3 — Open Meetings

General rule that meetings must be open to the public

- 89** (1) A meeting of a council must be open to the public, except as provided in this Division.
- (2) A council must not vote on the reading or adoption of a bylaw when its meeting is closed to the public.

Meetings that may or must be closed to the public

- 90** (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:
- (a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;
 - (b) personal information about an identifiable individual who is being considered for a municipal award or honour, or who has offered to provide a gift to the municipality on condition of anonymity;
 - (c) labour relations or other employee relations;
 - (d) the security of the property of the municipality;
 - (e) the acquisition, disposition or expropriation of land or improvements, if the council

considers that disclosure could reasonably be expected to harm the interests of the municipality;

(f) law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;

(g) litigation or potential litigation affecting the municipality;

(h) an administrative tribunal hearing or potential administrative tribunal hearing affecting the municipality, other than a hearing to be conducted by the council or a delegate of council;

(i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

(j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the *Freedom of Information and Protection of Privacy Act*;

(k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the council, could reasonably be expected to harm the interests of the municipality if they were held in public;

(l) discussions with municipal officers and employees respecting municipal objectives, measures and progress reports for the purposes of preparing an annual report under section 98 [*annual municipal report*];

(m) a matter that, under another enactment, is such that the public may be excluded from the meeting;

(n) the consideration of whether a council meeting should be closed under a provision of this subsection or subsection (2);

(o) the consideration of whether the authority under section 91 [*other persons attending closed meetings*] should be exercised in relation to a council meeting.

(2) A part of a council meeting must be closed to the public if the subject matter being considered relates to one or more of the following:

(a) a request under the *Freedom of Information and Protection of Privacy Act*, if the council is designated as head of the local public body for the purposes of that Act in relation to the matter;

(b) the consideration of information received and held in confidence relating to negotiations between the municipality and a provincial government or the federal government or both, or between a provincial government or the federal government or both and a third party;

(c) a matter that is being investigated under the *Ombudsman Act* of which the municipality has been notified under section 14 [*ombudsman to notify authority*] of that Act;

(d) a matter that, under another enactment, is such that the public must be excluded from the meeting.

(3) If the only subject matter being considered at a council meeting is one or more matters referred to in subsection (1) or (2), the applicable subsection applies to the entire meeting.

Other persons attending closed meetings

91 (1) If all or part of a meeting is closed to the public, the council may allow one or more municipal officers and employees to attend or exclude them from attending, as it considers appropriate.

(2) If all or part of a meeting is closed to the public, the council may allow a person other than municipal officers and employees to attend,

(a) in the case of a meeting that must be closed under section 90 (2), if the council considers

this necessary and the person

- (i) already has knowledge of the confidential information, or
- (ii) is a lawyer attending to provide legal advice in relation to the matter, and

(b) in other cases, if the council considers this necessary.

(3) The minutes of a meeting or part of a meeting that is closed to the public must record the names of all persons in attendance.

Requirements before meeting is closed

92 Before holding a meeting or part of a meeting that is to be closed to the public, a council must state, by resolution passed in a public meeting,

- (a) the fact that the meeting or part is to be closed, and
- (b) the basis under the applicable subsection of section 90 on which the meeting or part is to be closed.

Application of rules to other bodies

93 In addition to its application to council meetings, this Division and section 133 [*expulsion from meetings*] also applies to meetings of the following:

- (a) council committees;
- (b) a municipal commission established under section 143;
- (c) a parcel tax roll review panel established under section 204;
- (d) a board of variance established under section 899 of the *Local Government Act*;
- (e) an advisory body established by a council;
- (f) a body that under this or another Act may exercise the powers of a municipality or council;
- (g) a body prescribed by regulation.

Division 4 — Public Notice and Access to Records

Requirements for public notice

94 (1) If this section applies, the applicable notice must be

- (a) posted in the public notice posting places, and
- (b) published in accordance with this section.

(2) Subject to subsection (4), publication under subsection (1) (b)

- (a) must be in a newspaper that is distributed at least weekly
 - (i) in the area affected by the subject matter of the notice, and
 - (ii) if the area affected is not in the municipality, also in the municipality, and
- (b) unless otherwise provided, must be once each week for 2 consecutive weeks.

(3) The obligation under subsection (2) may be met by publication of the notice in more than one newspaper, if this is in accordance with that subsection when the publications are considered together.

(4) If publication under subsection (2) is not practicable, the notice may be given in the areas by alternative means as long as the notice

- (a) is given within the same time period as required for publication,
- (b) is given with the same frequency as required for publication, and
- (c) provides notice that the council considers is reasonably equivalent to that which would be

provided by newspaper publication if it were practicable.

(5) As an exception, subsection (4) (b) does not apply in relation to an area if the alternative means is by individual distribution to the persons resident in the area.

(6) If the same matter is subject to 2 or more requirements for publication in accordance with this section, the notices may be combined so long as the requirements of all applicable provisions are met.

(7) A council may provide any additional notice respecting a matter that it considers appropriate, including by the Internet or other electronic means.

Public access to municipal records

95 (1) In addition to the public access provided by the *Freedom of Information and Protection of Privacy Act*, a council may, by bylaw, provide for public access to its records and establish procedures respecting that access.

(2) If an enactment requires that a municipal record be available for public inspection, that obligation is met by having the record available for public inspection at the municipal hall during regular office hours.

(3) If a municipal record is available for public inspection, a person may have a copy made of all or part of the record on payment of any applicable fee established by the council under section 194 [*municipal fees*].

(4) A person inspecting a record of a municipality must not, without authorization, remove the record from the place where it has been provided for inspection.

(5) An obligation or authority under this Act to provide public access to a municipal record does not apply to records that must not be disclosed under the *Freedom of Information and Protection of Privacy Act*.

Agreements that require elector approval or assent

96 If an agreement is proposed or made in relation to a matter that requires approval of the electors or assent of the electors,

(a) the agreement, and

(b) all records relating to the agreement that are in the custody or under the control of the municipality

must be available for public inspection at the municipal hall during the time when the approval or assent process is underway.

Other records to which public access must be provided

97 (1) The following municipal records, or copies of them, must be available for public inspection:

(a) all bylaws and all proposed bylaws that have been given first reading;

(b) all minutes of council meetings, other than a meeting or part of a meeting that is closed to the public;

(c) all minutes of meetings of bodies referred to in section 93 [*application of rules to other bodies*], other than a meeting or part of a meeting that is closed to the public;

(d) the annual municipal report under section 98;

(e) all disclosure statements under section 106 [*disclosure of gifts*];

(f) the report under section 168 [*council remuneration, expenses and contracts*];

(g) the written disclosures referred to in section 6 (1) [*disclosures by council members and nominees*] of the *Financial Disclosure Act*;

(h) any applicable agreements under section 9 (5) [*concurrent authority agreements*].

(2) The obligation under subsection (1) is met if the record is made available at the municipal hall within 7 days after it has been requested.

Division 5 — Reporting

Annual municipal report

98 (1) Before June 30 in each year, a council must

- (a) prepare an annual report,
- (b) make the report available for public inspection under section 97, and
- (c) have the report available for public inspection at the meeting required under section 99.

(2) The annual report must include the following:

- (a) the audited annual financial statements referred to in section 167 (4) for the previous year;
- (b) for each tax exemption provided by a council under Division 7 [*Permissive Tax Exemptions*] of Part 7 [*Municipal Revenue*], the amount of property taxes that would have been imposed on the property in the previous year if it were not exempt for that year;
- (c) a report respecting municipal services and operations for the previous year;
- (d) a progress report respecting the previous year in relation to the objectives and measures established for that year under paragraph (f);
- (e) any declarations of disqualification made under section 111 [*application to court for declaration of disqualification*] in the previous year, including identification of the council member or former council member involved and the nature of the disqualification;
- (f) a statement of municipal objectives, and the measures that will be used to determine progress respecting those objectives, for the current and next year;
- (g) any other information the council considers advisable.

Annual meeting on report

99 (1) The council must annually consider, at a council meeting or other public meeting,

- (a) the annual report prepared under section 98, and
- (b) submissions and questions from the public.

(2) The annual meeting must occur at least 14 days after the annual report is made available for public inspection under section 97.

(3) The council must give notice of the date, time and place of the annual meeting in accordance with section 94 [*public notice*].

Division 6 — Conflict of Interest

Disclosure of conflict

100 (1) This section applies to council members in relation to

- (a) council meetings,
- (b) council committee meetings, and
- (c) meetings of any other body referred to in section 93 [*application of open meeting rules to other bodies*].

(2) If a council member attending a meeting considers that he or she is not entitled to participate in the discussion of a matter, or to vote on a question in respect of a matter, because the member has

Open and Closed Meetings

[Holding open meetings](#)

[Matters considered in closed meetings](#)

[Review of the appropriateness of a closed meeting](#)

[Meetings investigator](#)

[Request for Investigation](#)

The City of Ottawa is a leader in the province in open meetings and already has many best-practice open meeting procedures in place. These practices include: advertising meetings; publishing agendas and reports seven days in advance of the meeting; stating the specific reason for moving *in camera* and providing "reporting out dates" for confidential reports once decisions have been finalized.

According to the *Municipal Act, 2001*, all municipal councils and local boards, with some exceptions, must hold meetings that are open to the public with the exception of a few specific matters. Further, those meetings closed to the public may now be subject to an investigation regarding its appropriateness. City Council has gone beyond the provisions in the *Act* for openness by directing staff to incorporate the specific subject matter to be discussed *in camera* in addition to the reason under [Section 239](#) of the *Municipal Act, 2001*.

Open meetings

The *Municipal Act, 2001*, as amended by Bill 130, requires that local boards as well as municipal councils hold meetings that are open and accessible to the public. The Act does not have one single definition of a local board and various boards are exempt from certain parts of the Act. City staff have begun a review of [Ottawa's Agencies, Boards, Committees and Commissions](#) in order to try and clarify which local boards are subject to *Municipal Act* requirements.

The following are not local boards under the Municipal Act. These boards, therefore, are not subject to the City of Ottawa's meeting provisions and Meetings Investigator but are governed by their own legislation:

- Conservation Authorities;
- Police Services Boards;
- School Boards; and
- Public Library Boards.

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Matters that can be considered in closed meetings

The City of Ottawa holds the vast majority of its Standing Committee and City Council meetings in open session as a matter of course. In those cases where Committee or Council has gone *in camera*, the subject matter fell under one of the seven discretionary exceptions in Section 239 of the *Municipal Act, 2001*.

Bill 130 amended Section 239 of the *Municipal Act, 2001* with respect to reasons for holding closed meetings as well as increased notice and records requirements for closed meetings.

Section 239 of the *Municipal Act, 2001* **permits closed meetings of City Council, a local board or a committee of either, to discuss the following:**

1. The security of the property of the municipality or local board
2. Personal matters about an identifiable individual, including municipal or local board employees
3. A proposed or pending acquisition or disposition of land by the municipality or local board
4. Labour relations or employee negotiations
5. Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board
6. Advice that is subject to solicitor-client privilege, including communications necessary for that purpose
7. A matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.

Further, meetings of City Council, a local board or a committee of either may be closed to the public if:

1. The meeting is held for the purpose of educating or training the members
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the

business or decision-making of the council, local board or committee.

In order to close a meeting to the public, City Council or the local board must state by resolution that a closed meeting will be held and state the general nature of the matter to be considered at the closed meeting. As previously noted, City Council goes further to incorporate the specific subject matter to be discussed *in camera* as part of the resolution. Public notice of a meeting is also required.

City Council and local boards are also required to record, without comment, all resolutions, decisions and other proceedings of both open and closed meetings.

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Investigation of closed meetings

Prior to January 1, 2008, if someone felt that a meeting of City Council, a local board or committee was closed to the public contrary to the *Municipal Act* or the City's Procedure By-law, that person's only recourse to question the appropriateness of the procedure was through the courts. City Council has now provided a means by which such questions may be investigated much more quickly and at no cost to the citizen.

The newly appointed Meetings Investigator can investigate closed meetings of:

- Municipal councils;
- Municipal boards, including boards of health or planning boards;
- Transportation commissions;
- 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.

Anyone wishing to question the appropriateness of a meeting of one of the above bodies that was closed in full or in part to the public may now simply complete and submit a [Request for Investigation of a Closed Meeting form](#) to the City Clerk. Upon receipt of the form from the City clerk's office, the Meetings Investigator will decide whether an investigation is warranted and if so, conduct his investigation and submit his findings and recommendations to an open meeting of City Council or the local board.

There is no fee required for submitting a Request for Investigation.

The investigative process is as follows:

1. Investigations are initiated by the completion and submission to the City Clerk of [Request for Investigation](#) form.
2. The Request for Investigation form is logged and forwarded to the Meetings Investigator together with an initial collection of Council/Committee information relating to the meeting.
3. The [Meetings Investigator](#) will review the request to determine whether a further investigation is warranted.
4. If the Investigator decides to pursue the request, he will inform City Council via a memo (as per the current MFIPPA process) and launch an investigation and collect all the relevant information required. Upon completion of the investigation, the Investigator will report his findings and recommendations to Council and/or the local board.
5. The investigation will be completed and reported on within **30 calendar days** of the initial request.

It should be noted that the investigation provisions only apply to meetings held on or after January 1, 2008.

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CON029831



“Enlightening Closed Council Sessions”

**Investigation into
Fort Erie Town Council
Closed Meeting of January 7, 2008**

**André Marin
Ombudsman of Ontario
February 6, 2008**

Complaint

- 1 On January 7, 2008, my Office received a complaint concerning a meeting scheduled by the Fort Erie Town Council for that evening. The meeting was to be closed to the public and held at an off-site location for the purposes of “education and training.” On January 16, my Office received a second complaint about the same meeting. This complaint focused on the lack of detail provided to the public about the nature of the education and training provided at the January 7 session. In addition, it was suggested that council may have engaged in the planning and discussion of town business during the closed meeting.

Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001*, municipalities and local boards are required to pass bylaws setting out the rules of procedure for meetings. The law requires that public notice be given that a meeting will be held, and that all meetings be open to the public unless they fall within prescribed exceptions. Until recently, the only way to enforce compliance with the open meeting provisions was to bring a court challenge against the municipal council or board.
- 3 As of January 1, 2008, legislative changes came into effect, giving citizens the right to request an investigation into whether a municipality that has closed a meeting to the public has complied with the law. The Act allows municipalities to choose who will investigate such complaints – they may appoint their own investigator or use the services of my Office. It also designates my Office as the default investigator for the more than 100 municipalities across the province that have yet to appoint one.
- 4 On December 10, 2007, Fort Erie Town Council voted to appoint the Ombudsman of Ontario as its investigator for closed meeting complaints.

Closed education and training sessions

- 5 Section 239 of the *Municipal Act, 2001* sets out a number of exceptions to the open meeting requirements. On January 1, 2007, an exception was added to the Act: A meeting of a council may be closed to the public if it is held for the purposes of educating or training council members, provided that members do

not discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council.¹

- 6 Before holding a closed meeting for the purposes of education or training, a council is required to pass a resolution stating that such a meeting will be held, as well as the general nature of its subject matter and the relevant legislative provision.²

Fort Erie Town Council's rules

- 7 The Corporation of the Town of Fort Erie's *Rules of Procedure*³ provide that a special meeting of council, including a closed meeting, may be called and that notice of such a meeting must state the business to be considered. As a general rule, no other business can be considered by council except that which has been disclosed.⁴ Public notice of the meeting must be posted on the website, "for accountability and transparency purposes."
- 8 With proper notice and a majority vote, council has the authority to hold meetings outside of its chambers.⁵

Investigative Process

- 9 On January 17, 2008, following preliminary inquiries by my Office, the complainants and the Town Solicitor of Fort Erie were notified of my intention to pursue an investigation into the complaints concerning the closed education and training session held on January 7.
- 10 Our investigators interviewed 11 individuals, including all seven members of council, as well as the Town Clerk, Town Solicitor, the town's Chief Administrative Officer, and the independent facilitator who developed the training materials and facilitated the closed session. In addition, documents from the municipality were obtained and reviewed including minutes, memoranda,

¹ s.239 (3.1), *Municipal Act, 2007*, as amended

² s.239(4)(b), *Municipal Act, 2007*, as amended

³ Bylaw No.145-06

⁴ s.3.3.2 of *Rules of Procedure Bylaw No.145-06*

⁵ s.239(3), *Municipal Act, 2001*, Bylaw No. 145-06

training materials and handouts, personal notes made by the participants at the session, municipal and procedural bylaws and applicable legislation.

- 11 This was the first investigation regarding a closed meeting that my Office has conducted since the new legislative provisions came into force. The exceptional co-operation of Fort Erie’s council and municipal staff contributed in large measure to its successful and timely completion.

Investigation Facts/Evidence

The need for education and training

- 12 During our investigation, we learned that the Mayor had informally discussed the possibility of training with council members in November 2007 and they had agreed it would be useful. Such a meeting would explore how they might better work towards the continued fulfillment of their mandate by strengthening interpersonal relationships and communication.
- 13 In a November 13, 2007 inter-office memorandum to council members, the Mayor explained the purpose of the proposed training as a chance to *“reflect on our past year in order to improve our performance as a Council by an exchange of views on how to strengthen Council-to-Council and Council-to-Staff relationships.”*
- 14 Given the nature of the contemplated training, the facilitator recommended that it take place in a closed session where the participants would likely feel more comfortable openly discussing their thoughts.
- 15 One council member expressed concern that some of the issues identified for discussion during the training might give rise to discussion of council business. The Town Solicitor and Town Clerk, who were consulted about the session from the outset, reviewed the proposed training agenda and determined there was nothing on it that could be considered a “business” item.

Resolving to go into closed session

- 16 The first public reference to the January 7, 2008 meeting occurred on December 10, 2007, when council passed a resolution to hold an education and training session in closed session under s.239 of the Act.

- 17 The agenda for the December 10 meeting referenced the item under ‘New Business’ as follows:
- a. *“(a) Closed Session Meeting – Monday January 7, 2008 at Peace Bridge Authority Conference Room. Re: Education and Training Session”.*
- 18 The minutes of the December 10, 2007 meeting contain the following resolution:
- “Resolution: “THAT: the Municipal Council of the Town of Fort Erie hereby authorizes the holding of a Closed Session Meeting on Monday January 7, 2008, commencing at 6:00 pm at the Peace Bridge Authority Conference Room in order to conduct an Education and Training Session on Council/Council-Staff Relations.”*
- 19 Both the December 10, 2007 agenda and minutes were posted on the Town of Fort Erie website. The agenda for the January 7 meeting was issued to council a few days before the meeting and was also posted to the website. It similarly referred to an “Education and Training Session on Council/Council-Staff Relations” to be held in closed session at the Peace Bridge Authority Conference Room. Although the education and training session was to be closed to the public, certain standard portions of the meeting were technically open, including the call to order, roll call, disclosures of pecuniary interest and general nature, and adjournment.

The January 7 closed session

- 20 The education and training session at the Peace Bridge Authority Conference Room started 20 minutes earlier than planned, at the request of the facilitator.⁶ It concluded at 9:03 p.m.
- 21 The closed session was attended by Mayor Douglas Martin, Councillors Ann-Marie Noyes, Bob Steckley, Tim Whitfield, Martha Lockwood, Richard Shular and Sandy Annunziata; Chief Administrative Officer Harry Schlange; Town Clerk Carolyn Kett; and the training facilitator, Beverley Carter. The Town Clerk also attended in her capacity as clerk to record the session and to provide advice on procedural matters.

⁶ Section 3.3 of Council Rule of Procedure Bylaw No.145-06, as amended, was waived to permit the meeting to commence at 5:40 p.m., instead of the scheduled 6 p.m. This is standard procedure.

Discussions during the closed session

- 22** According to those we interviewed and our review of the notes and training materials, the main issues discussed during the closed session were: Stages of group development, guiding principles for conducting skilled conversations, trust-building and trust-depleting behaviour, and how to develop effective groups. Participants were asked to discuss their own interpersonal skills, to imagine council performing at its optimum, and to consider how optimal functioning might be achieved.
- 23** The personal notes taken by the participants during this session, the official records of the session, and our discussions with the training facilitator, suggest that previous council business was only referred to in passing, to illustrate points being discussed, and no new council business was discussed.
- 24** My investigation confirmed that no resolutions were passed during the meeting, with the exception of the resolution to go into closed session and the resolution for the council to rise without report. This was also confirmed by the minutes. Our conclusion is that no council business was advanced during the closed session.

Public access to the 'open' portions of the meeting

- 25** The citizens who contacted my Office expressed concern about the location of the January 7 meeting. It was suggested that as the Peace Bridge Authority Conference Room is privately owned, members of the public were effectively prevented from attending even during the brief "open" portion of the meeting.
- 26** The Town Clerk confirmed that prior to the meeting she received inquiries from the public concerning the reason the training was being held outside of the town hall, and how they could access the open portions of the meeting. She said she responded to all of these inquiries.
- 27** The training facilitator told our investigators that she had recommended the training be conducted outside of council chambers, in an environment that would be conducive to open, frank discussion and would not replicate the atmosphere in which council normally did business. She also required a location with separate rooms for smaller group discussions. Council had used the Peace Bridge Authority Conference Room in the past, and determined it to be the most suitable venue.

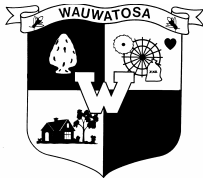
Opinion

- 28** While municipalities in this province have long been required to hold open meetings, enforcement through investigative oversight is a brand new venture. It is a significant step forward in reinforcing the democratic legitimacy of municipal decisions. Any attempt to close doors to the public is likely to be met with considerable concern from citizens and requires careful scrutiny to ensure public confidence in local government is sustained.
- 29** After examining all the available evidence, I am satisfied that the January 7 closed session held by the Fort Erie council was focused on improving communication and team-building skills, and that it came within the education and training exception provided for under the *Municipal Act, 2001*.
- 30** Council had the authority to meet off-site for the purposes of engaging in education and training, provided its bylaw was followed. While a private meeting location might present an obstacle to public attendance in some instances, I am satisfied that had citizens wished to attend the open portions of the special meeting at the Peace Bridge Authority Conference Room, they could have done so.
- 31** The whole purpose behind the legislative drive to allow an avenue of complaint if council meets in a closed session is to enhance democracy by empowering citizens to hold municipalities to account for their decision to meet privately. The new provisions of the law require a broad and generous interpretation based on principles of openness and transparency. The “education and training” exception is a new addition to the list of permissible exceptions to the open meeting requirements, and concern about its use is understandable. These exceptions must be read restrictively with a corresponding obligation on municipalities to issue meaningful and informative notices that enlighten the public on the reasons for the closed meeting. The more information available about a closed session, the less room there is for conjecture.
- 32** In addition, how are citizens to make an informed decision to complain about a closed meeting if the notice of the meeting is bereft of meaningful information? The situation is akin to asking a citizen to navigate unknown territory without a map. Providing a few more details about a planned meeting is like raising the blinds in a dark room – it is not an arduous task, and is well worth the effort because the sunlight benefits everyone.

- 33** I believe that, in this case, to a significant degree, public concern and criticism would have been avoided had council chosen to provide more information about the nature of the training when it first gave notice of the meeting. As our investigation found, the actual substance of the meeting clearly fell within the ambit of the exception. Why not provide, then, greater clarity and include more specifics in the notice? To do so would not only meet the legal letter of the legislation but would fulfill its spirit. In response to our Preliminary Report, the Town of Fort Erie has agreed to provide greater explanation the next time it embarks on an education and training session in closed session.
- 34** I would like to thank the Town of Fort Erie for its co-operation during the investigation.



André Marin
Ombudsman of Ontario



CITY OF WAUWATOSA
MEMORIAL CIVIC CENTER
7725 WEST NORTH AVENUE
WAUWATOSA, WI 53213
Telephone: (414) 479-8917
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COMMITTEE OF THE WHOLE

Tuesday, May 20, 2008 – 6:00 p.m. – Council Chambers

PRESENT: Alds. Birschel, Hanson, Herzog (7:02 p.m.), Jay, Krol, Maher (6:45 p.m.), McBride, Meaux (7:07 p.m.), Nikcevich, Purins, Walsh – 11

EXCUSED: Ald. Donegan, Treis

ABSENT: Alds. Ewerdt, Stepaniak

ALSO Mayor J. Didier; J. Archambo, City Admin.; A. Kesner, City Atty.; B. Aldana

Ald. Krol in the Chair called the meeting to order at 6:05 p.m.

Review of the Legal Issues surrounding Open Records, Open Meetings Ethics and Meeting Procedure for Common Council Members

Open Meetings Laws

Mr. Kesner gave the committee an overview of the Open Records, Open Meetings and Ethics laws as well as meeting procedures. He referred to what are known as “Sunshine Laws” in other parts of the country. Wisconsin has its own version. In fact, Wisconsin was one of the leading states to create Sunshine Laws. He noted that the City of Wauwatosa has taken further steps to follow the Open Meetings, Open Records laws. He cited examples such as many of the committee meetings being broadcast and posting the agendas and minutes on the city web site which are not required under the Open Meetings laws. These things have been done to make information more accessible to the public. He stressed that it is important for the public to know that decisions are being made in public and are based on public information.

Mr. Kesner acknowledged that sometimes it feels hard to get things done as a Council when the members have to be careful about who they talk to and what they talk about outside of the official meetings. He stressed that the law is designed to have all of the government’s business done in public. He further stressed that all meetings are subject to Open Meetings law. Even small gatherings and walking quorums which might not be thought of as official meetings are subject to Open Meetings law. Some Council members may also be appointed to other groups such as the Wauwatosa Economic Development Corporation (WEDC). There is debate as to whether these meetings are subject to the Open Meetings law as well.

He reiterated that all meetings must be publicly held and accessible to the public. There must also be Americans with Disabilities Act (ADA) accessibility. He pointed out that language informing the public of ADA compliance is included on the agendas. He added that off site meetings are not always encouraged especially if they are outside of the jurisdiction of the Council members and not accessible to the public. Meetings should be held in the public buildings of the City of Wauwatosa. These meetings must be open to all the citizens at all times except if they contain a notice for a possible closed session.

Mr. Kesner stressed that in accordance with Open Meetings law any public meeting has to have an agenda and only the agenda items can be discussed. In some communities, there have been complaints that agenda items are too broadly worded. Agenda items have to portray clearly what is being discussed.

Agendas must also be posted in 3 different places. He noted that the internet is not considered an official posting location because there are still people that don't have computers. Agendas are required to be posted 24 hours in advance of the meeting scheduled to be held. The city posts preliminary agendas on Fridays for the Tuesday Common Council and Council committees. Final agendas for these committees are posted on Monday before 5:00 p.m. Other meetings are usually posted about a week in advance. Minutes do not have to be verbatim; however they are required to contain the names of those attending, the motions and the votes at a minimum. The City of Wauwatosa tries to go above and beyond the minimum by summarizing any discussion during the meeting. This is with the exception of discussion that is held in closed session.

Ald. Walsh asked if the televised meetings are stored off site. He also asked why some meetings are taped while others are not and who determines that. Mr. Kesner noted that the DVD copies of the televised meetings are stored in the Library. He explained that the Employee Relations Committee is not televised because it is in a room that has no equipment and that committee tends to deal with union negotiations, employee issues and closed session work. The Legislation, Licensing & Communications Committee meetings are not taped while the Operator licenses are being discussed because of the personal nature of those discussions. Other public legislative issues are televised. These decisions were made by the Common Council in the past. He stressed that cities are not required to video tape under the Open Meetings law; however, in the City of Wauwatosa televising of committee and Council meetings is done as much as possible.

Mr. Kesner stressed that convening the members of the governing body for the purpose of exercising duties and responsibilities does not include social gatherings or conferences. The number of members present is sufficient to determine the governmental body's action. Members of the body should not go out drinking and socializing and continue to talk about city business. If the members are meeting for something other than official business it must be noted that a majority of the Common Council may be present, but they do not intend to conduct a meeting or take action. He added that if all the Council members always attend the Plan Commission meetings and listen to the discussion during the meeting there would be no need to discuss the item at the Council meeting. He stressed that on a regular basis a majority of Council members showing up at meetings that are not specific to their duties and responsibilities is not allowed.

Ald. Maher asked if Council committees fell into this category. Mr. Kesner responded that Council committees are subject groups of the Common Council, but there still needs to be some care brought in that regard as long as attendance is not on a routine basis and interfering with the work of that committee.

Mr. Kesner cautioned that just being involved in a gathering could be a violation such as a "walking quorum". The Attorney General's definition was a series of gatherings less than quorum size whose attendees agree to act uniformly. Lining up votes and planned systematic communication results in a "walking quorum". In the end, a controlling number of people have been lined up. This should be avoided. This kind of meeting can also happen through phone calls and emails.

Mr. Kesner described a controlling body or negative quorum. This is when more than half the body gets together to vote against something. Back and forth communications between members creates meetings. Members need to be very careful about using email. Emails are a public record. A one way message or memo is okay. The city of Wauwatosa saves every email. Any time members are using emails for interactive conversations this takes on the form of a meeting. He stressed the importance of creating meetings that are open to the public.

Ald. Purins asked if blogs and new web tools would be considered public. Mr. Kesner responded that some are like that, but using them could be opening a Pandora's Box. It would be easy to get into a lot of forum issues and first amendment issues and could get out of control as has happened in other places.

Ald. Krol asked if all the emails were archived. Mr. Kesner responded that they were; however if a Council member chooses to use a different email address from the city's email address, that Council member is the custodian of their own records and responsible for archiving them.

Mr. Kesner cautioned against whispering in meetings. The Milwaukee County Corp. Counsel is the local enforcement agency for Open Meetings law in Milwaukee County. Council members should refrain from whispering and passing notes because these activities could generate a complaint from the public. If the members are starting to reach a quorum in number or a negative quorum and not talking to the public this would be in violation of the Open Meetings law.

Mr. Kesner noted that closed sessions may only be held for specific purposes. The fact that there will be a possible closed session needs to be noted on the agenda in advance. Closed sessions require specific subsections of the state statute and also require a record of the votes. A majority vote is needed to go into closed session and only the specific item can be discussed. The members must come back into open session to vote on the item and they can only convene into open session if it is noted in the motion.

Mr. Kesner noted that there is one exception that has been approved by the Attorney General's office. The members may go into closed session without notice when talking about national or homeland security. Members may not go into closed session for the ratification of a collective bargaining agreement. The penalties for these violations are not less than \$25 and up to \$300 not reimbursable by the community.

Mr. Archambo cited the example of a developer who wants to talk to each of the Council members. Mr. Kesner stressed that a developer is not a member of the governing body. It is alright if the developer wants to talk to a small enough group of Council members, but passing messages back and forth can become a walking quorum. He advised that members call him to ask for legal advice if they have any questions. Mr. Archambo added that a negative quorum of a committee can potentially block an item. Mr. Kesner cautioned that the committees make recommendations and they have to be careful with that, but committees are not decision making bodies.

Open Records Laws

Mr. Kesner commented that with regard to Open Records law, the city has good systems in place to be able to respond to open records requests. The public policy is similar to Open Meetings law. All persons are entitled to the greatest access to their government and it is an essential function of government. Sometimes the law is abused, but it is an integral part of the job of the employees of the City of Wauwatosa. Open records requests do not have to be made in writing and the requestor does not have to identify themselves. They do have to be specific as to what they want and the request cannot be overly burdensome. If a requestor wants to have a court action then they need to submit a written request. Even though the person does not have to identify themselves, it is helpful in case the department needs to get in touch with the person about any particulars regarding the request. City staff is good about helping people with this.

Mr. Kesner stressed that city officials are the legal custodians for maintaining their own records. Even though everything might be saved that does not mean they are all open records. Public records are the records of public business and public records have to have a custodian. Elected officials have to find a way to preserve letters members receive, emails, etc. Public records also have to be in their original format. Each elected official is not responsible for the records of any other elected official. A public record is any material that is created or kept about the official function of the governmental duties. Drafts, preliminary notes, video or audio recordings are not considered public records and do not have to be preserved forever. Public records need to be provided in their original format. Published material available for sale is not considered a public document.

Mr. Kesner noted that the custodian must respond to the public records request. A denial of the public records request must be specific and must be legally correct. Electronic records are different from paper records. Enforcement of these laws will be made by the District Attorney and penalties for non-compliance will be not less than \$100 and if the request is intentionally ignored the penalty would be \$1,000.

Ethics

Mr. Kesner commented that the issue of ethics in government has a long history. Governing ethically strengthens the citizens' confidence in public officials and makes sure public officials will not profit from being in public office. The city follows the state statutes in this regard. The use of public office for private benefit is a violation. Public officials cannot solicit anything of value that could be seen as a reward for political action. They cannot accept gifts that are related to holding public office. This is a conflict of interest. A county employee or retiree does not have to vote on anything that involves the county.

Ald. Herzog asked about a Council member that has a client appearing before a committee. Mr. Kesner noted that there is a difference between active clients and former clients. He cautioned members not to accept items or services because of their position and don't accept money. The penalties for these violations is a \$1,000 fine.

Ald. Krol asked what if a member of a church was coming before a committee for approval of an item. Mr. Kesner answered that generally church members would not be required to recuse themselves unless they are involved in that particular issue.

Meeting procedures

Mr. Kesner noted that there are two sources of procedural rules. One is Section 2.02.050 of the municipal code with the fall back being Robert's rules of order. Using Robert's rules of order exclusively is usually designed for much larger bodies. The other source is the order of precedence of motions within that same section of the municipal code. He noted that a motion to adjourn or table an item is not open for discussion and there can be no debating a motion to close debate. He added that these procedural rules should be used by both the committees and the Council with the Chair setting the tone.

Ald. Maher asked about a committee's ability to prevent an item from going to the Council floor. Mr. Kesner replied that committees have the ability to place an item on file, but it still goes to the Council.

As his closing remarks, Mr. Kesner read from George Washington's Rules of Civility and Decent Behavior.

The meeting adjourned at 7:34 p.m.

Carla A. Ledesma, City Clerk

svh



SUPREME COURT OF CANADA

CITATION: London (City) v. RSJ Holdings Inc., [2007] 2
S.C.R. 588, 2007 SCC 29

DATE: 20070621
DOCKET: 31300

BETWEEN:

Corporation of the City of London
Appellant
and
RSJ Holdings Inc.
Respondent

CORAM: Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

REASONS FOR JUDGMENT: Charron J. (Binnie, LeBel, Deschamps, Fish, Abella and
(paras. 1 to 43) Rothstein JJ. concurring)

london (city) v. rsj holdings

Corporation of the City of London

Appellant

v.

RSJ Holdings Inc.

Respondent

Indexed as: London (City) v. RSJ Holdings Inc.

Neutral citation: 2007 SCC 29.

File No.: 31300.

2006: November 15; 2007: June 21.

Present: Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

on appeal from the court of appeal for ontario

Municipal law — By-laws — Validity — Open meeting requirement — Municipality discussing and approving interim control by-law at closed meetings contrary to open meeting statutory requirement — Whether meetings properly closed because interim control by-laws may be passed without prior notice or hearing under provincial planning legislation — If open meeting requirement breached, whether Court of Appeal properly exercised its discretion to quash by-law for illegality —

Municipal Act, 2001, S.O. 2001, c. 25, ss. 239, 273 — Planning Act, R.S.O. 1990, c. P.13, s. 38.

The City appellant passed an interim control by-law which effected a one-year freeze on all land development along a particular corridor. RSJ, one of the affected land owners, applied for an order quashing the by-law for illegality on the ground that the City discussed, and then effectively decided to pass the by-law at two closed meetings, contrary to the City's statutory obligation under s. 239(1) of the *Municipal Act, 2001*, to hold council and committee meetings in public. The Ontario Superior Court of Justice dismissed RSJ's application, but the Court of Appeal set aside that decision and quashed the by-law. The City's argument before this Court was that its meetings fell within the exception in s. 239(2)(g) of the *Municipal Act, 2001* because, under s. 38 of the *Planning Act*, an interim control by-law may be passed without prior notice and without holding a public hearing. Alternatively, the City argued that the Court of Appeal erred in quashing the by-law in the absence of any prejudice to RSJ.

Held: The appeal should be dismissed.

The interim control by-law provisions contained in the *Planning Act* in no way obviate the statutory requirement to hold public meetings under s. 239 of the *Municipal Act, 2001*. It cannot be implied from the dispensation with any notice and hearing requirements under s. 38(3) of the *Planning Act*, that s. 38 authorizes the holding of a closed meeting within the meaning of the exception found in s. 239(2)(g). The City's duty to give advance notice and to hold a public meeting at which interested citizens have the right to make representations is entirely distinct from its

obligation to hold its meetings in public. Dispensing with notice and a hearing as permitted under s. 38(3) enables a municipal council to act expeditiously in passing an interim control by-law whenever circumstances may require that it do so and, as such, this is consistent with the nature of this extraordinary zoning tool. However, the discussions on the interim control by-law must still be conducted in open public session. The open meeting requirement set out in s. 239 concerns a citizen's rights to observe municipal government in process and reflects a clear legislative choice for increased transparency and accountability in the decision-making process of local governments. [4] [30-32]

The Court of Appeal properly exercised its discretion in quashing the by-law for illegality under s. 273 of the *Municipal Act, 2001*. In exercising its discretion, the court cannot act in an arbitrary manner, and the discretion must be exercised judicially and in accordance with established principles of law. On the question of deference, municipalities do not possess any greater institutional expertise on the issue of "illegality" than the courts. Furthermore, when a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision, and such decisions, even when *intra vires*, are less worthy of deference. In this case, the City acted within its jurisdiction in passing the interim control by-law, but illegality under s. 273 is not strictly confined to matters of jurisdiction. The failure to comply with statutory procedural requirements may also provide sufficient grounds for quashing. The City's conduct in closing the two meetings in question was neither inadvertent nor trivial and the short public session during the course of which the interim by-law was passed without debate or discussion along with several other by-laws did nothing to cure the defect. While RSJ did not have the right to notice of the City's intention to pass the by-law nor any right to make representations at a public

hearing, it did have the right, along with other citizens, to a transparent and open process. In these circumstances, the contention that RSJ suffered no prejudice cannot be accepted. The Court of Appeal was correct to conclude that the potentially draconian effects of interim control by-laws accentuate the need for the courts to jealously require that the meeting in which an interim control by-law is discussed be open to the public as required by s. 239(1) of the *Municipal Act, 2001*. In the circumstances, quashing the by-law was an entirely appropriate remedy. [4] [37-43]

Cases Cited

Referred to: *Country Pork Ltd. v. Ashfield (Township)* (2002), 60 O.R. (3d) 529; *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231; *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13; *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326.

Statutes and Regulations Cited

Emergency Management and Civil Protection Act, R.S.O. 1990, c. E-9, s. 2.1(1), (3), (7).

Municipal Act, 2001, S.O. 2001, c. 25, ss. 150, 238(1), 239, 273.

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56.

Ontario Municipal Board Act, R.S.O. 1990, c. O.28, s. 36.

Planning Act, R.S.O. 1990, c. P.13, ss. 34(12), (13), 38.

Planning and Municipal Statute Law Amendment Act, 1994, S.O. 1994, c. 23.

Authors Cited

Doumani, Robert G., and Patricia A. Foran. *Ontario Planning Act and Commentary*, 2004/2005 ed. Markham, Ont.: LexisNexis Butterworths, 2004.

O'Connor, M. Rick. *Open Local Government 2: How crucial legislative changes impact the way municipalities do business in Canada*. St. Thomas, Ont.: Municipal World, 2004.

Ontario. Commission on Freedom of Information and Individual Privacy. *Public Government for Private People*. Toronto: The Commission, 1980.

Ontario. Legislative Assembly of Ontario. *Hansard – Official Report of Debates*, No. 162, 3rd Sess., 35th Parl., November 28, 1994.

Ontario. Ministry of Municipal Affairs. *Open Local Government*. Toronto: Queen's Printer, 1992.

Ontario. *Report of the Provincial/Municipal Working Committee on Open Meetings and Access to Information*. Toronto: The Committee, July 1984.

APPEAL from a judgment of the Ontario Court of Appeal (Labrosse, Rosenberg and Gillese JJ.A.) (2005), 205 O.A.C. 150, 16 M.P.L.R. (4th) 1, [2005] O.J. No. 5037 (QL), setting aside a decision of Rady J. (2005), 10 M.P.L.R. (4th) 88, [2005] O.J. No. 252 (QL), dismissing an application to quash a by-law. Appeal dismissed.

George H. Rust-D'Eye, Barnet H. Kussner and Kim Mullin, for the appellant.

Alan R. Patton and Analee J. M. Fernandez, for the respondent.

The judgment of the Court was delivered by

Landmark court ruling hailed by Commissioner Cavoukian as upholding openness and transparency of electronic records

TORONTO – A ruling handed down by the Ontario Court of Appeal today is “a landmark decision that upholds the principles of openness and transparency as applied to electronic records,” said Ontario Information and Privacy Commissioner Ann Cavoukian.

The Court allowed appeals by the IPC and a Toronto Star reporter from a Divisional Court ruling and restored the IPC’s Order applying the definition of “record” in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act* to electronic databases maintained by the Toronto Police Services Board. In that Order, the IPC held that the need to develop a computer program to anonymize personally identifiable information held in the databases would not result in the creation of new records outside the scope of Ontario’s freedom of information legislation.

In its ruling today, the Court directed the Toronto Police Services Board to respond to the Star’s requests immediately and to pay the newspaper’s legal costs.

The Star originally filed two freedom of information requests with the Toronto Police, seeking information from the police databases of arrests and occurrences, with personal identifiers removed, for its series of articles on racial profiling. When the Star was not able to obtain the information it sought, it filed an appeal with the IPC. The position taken by the police – that the information sought was not a “record” – was rejected by the IPC, which ordered the police to make a decision on access to the information.

The police then challenged the IPC Order and applied for judicial review to Ontario’s Divisional Court, which overturned the IPC’s Order, holding that the need to develop new software takes the request outside the statutory definition of “record.”

Today, the lower court decision was reversed. In its far-reaching decision, the Court of Appeal, Ontario’s highest court, agreed with the IPC’s submissions that the definition of record must be read “subject to the regulations,” which contemplate that institutions may be required to develop new computer programs to respond to requests. Because the Toronto Police Services Board had the technical expertise to develop an algorithm using its current software to create the requested records, the request satisfied the definition of record and upheld the IPC’s initial decision.

“This case,” said Commissioner Cavoukian, “represents a victory for openness and transparency in the context of electronic records – welcome to the 21st Century!”

Here is a direct link to the Court of Appeal ruling:

<http://www.ontariocourts.on.ca/decisions/2009/january/2009ONCA0020.htm>

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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Freedom of Information Act

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the Federal Register. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the Federal Register.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA

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