

# INVESTIGATOR'S REPORT

Investigation of Closed Meetings of the Council of the  
Municipality of North Perth

Gregory F. Stewart, May 7, 2013

1. The Municipality forwarded to the investigator a request for investigation of closed meetings by the Municipality of North Perth. The complainant requested an investigation of any closed meetings conducted by Council during the period from December 9, 2012 to the date of the complaint, which was March 5, 2013. The request was to determine whether Council had discussed any issues the complainant had with the Municipality related to issues the complainant had raised with the Municipality, property issues and issues related to permits for work on the complainant's properties.
2. I have been appointed by the Council for the Municipality of North Perth to conduct investigations requested by individuals concerning closed meetings conducted by Council.
3. During the course of the investigation, I received and reviewed all of the relevant documents, which included motions, agendas, minutes, the Municipality's procedural by-law and other relevant legislation.

### **Council Procedures**

4. The Municipality has a Procedural By-law (By-law 24-2012). The Procedural By-law states that Council holds its regular meetings on the first, second and third Monday of each month with the exception of July and August when there are two meetings.
5. The Procedural By-law states that a copy of the agenda for each Regular Council Meeting is posted for public viewing on the Municipal website no later than the Friday preceding the scheduled meeting.
6. The Procedural By-law sets out the process for closed meetings. It provides that all meetings of Council are to be open to the public except as provided for in Section 239 of the *Municipal Act*. With respect to closed meetings, the Procedural By-law states, in Section 5.6(a) that meetings will be open to the public unless they deal with the following matters:
  - the security of the property of the Corporation;
  - personal matters about an identifiable individual, including Municipal or local Board employees;
  - a proposed or pending acquisition or disposal of land by the Corporation;
  - employee negotiations of labour relations;
  - litigation or potential litigation, including matters before Administrative Tribunals affecting the Corporation;

- advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
  - a matter in respect of which a Council, Board, Committee or other body may hold a closed meeting under any other Act.
7. The Procedural By-law also provides for closed meetings if the subject matter relates to the consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act*.
  8. The wording of the Procedural By-law follows the wording outlined in Section 239 of the *Municipal Act* for closed meetings.

### **Investigative Procedures**

9. In conducting this investigation, I received the documents referred to earlier in this report along with the Meeting Agendas and other Minutes of the regular Council meetings. I also received and reviewed the closed meeting agendas and minutes of closed meetings which were provided to me. In addition to this, I conducted interviews with the complainant, the clerk and all members of Council.

### **Comments of the Complainant**

10. I interviewed the complainant with respect to the concerns that led to her requesting the investigation. She stated that her requested for an investigation was based upon her past experience. She stated that she had made various enquiries of the Municipality concerning her issues but felt that she had not been given satisfactory answers. When asked, she indicated that her request for an investigation was based on wondering whether any discussion regarding her issues to place in closed meetings during that period. She said that her request was not based on any specific information that these matters might have been discussed during those closed meetings.

### **Findings**

11. During the period of the investigation request, Council held eight regular meetings on December 10, 2012; December 17, 2012; January 7, 2013; January 14, 2013; January 21, 2013; February 4, 2013; February 11, 2013; and March 4, 2013. The sequence of Council meetings according to the Procedural By-law would normally call for a regular Council meeting on February 18, 2013. The clerk advises, however, that as a result of the Family Day holiday and the Good Roads Convention each year, Council does not hold a

third regular meeting in February as they have found it is difficult to obtain a quorum for such a meeting.

12. During the period in question, Council went into closed session on four occasions:

December 20, 2012; January 21, 2013; February 11, 2013; and March 4, 2013.

**Meeting of December 10, 2012**

13. The meeting agenda for the regular Council meeting for that date announced that Council would be going into a closed session and the category under which it would go into closed session:

“The receiving of advice that is subject to solicitor-client privilege”.

It also stated the general nature of what would be discussed as “regarding Industrial Wind Turbines”. The minutes of the regular Council meeting properly moved, seconded and voted to go into the closed session. Proper closed minutes were kept.

14. The Minutes of the closed session indicate that the CAO advised Council regarding a legal opinion received by the Municipality from their solicitor on an issue pertaining to building permits related to the siting process for Industrial Wind Turbines. Council directed that they proceed in accordance with the advice given.

**Meeting of January 21, 2013**

15. The regular meeting agenda indicated Council would move into closed session. The agenda and the motion to go into closed session mentioned the category under the Act as “litigation or potential litigation, including matters before Administrative Tribunals affecting the Municipality or local Board”. The agenda also mentioned the general nature of what would be discussed as “regarding Ronald Michael Scott”.

16. The agenda for the closed meeting properly described the reason and the nature of the business.

17. The minutes of the closed session indicate that the CAO related information to Council concerning their legal counsel’s request and direction with respect to Mr. Scott’s litigation with the Municipality.

18. At this meeting, a motion was also made and past concerning approval of minutes of prior closed meetings of Council.

**Meeting of February 11, 2013**

19. The minutes of the regular Council meeting stated the general category for going into closed session and the general nature of what would be discussed:
  - “the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose regarding Industrial Wind Turbines”
  - “a proposed or pending acquisition/sale of land for Municipal or local Board purposes regarding Davidson Avenue – Listowel Ward”
20. During the meeting, Council received and discussed a legal opinion from their lawyer pertaining to a by-law and industrial wind turbines. Council was also provided with an update from the CAO concerning ongoing negotiations related to the potential purchase of land.

**Meeting of March 4, 2013**

21. The agenda for the regular Council meeting indicates that Council would proceed into closed session. The reason listed for going into a closed session:
  - “labour relations or employee negotiations”.The agenda also states the general nature of what would be discussed as “regarding North Perth Animal Control Officers”.
22. The minutes of the closed meeting state that the clerk briefed the Council on the status of negotiations and options with respect to animal control services for the Municipality.

**Comments**

23. The investigation indicates that the Municipality appears to have a comprehensive and complete procedure to be followed with respect to Council conducting closed meetings. In all cases reviewed, the items to be considered in the closed meeting were disclosed appropriately in a general fashion in a regular Council agenda and the category for going into the closed meeting was also disclosed. Proper motions were made and passed to go into the closed meeting and in all cases, Council indicated the category under which they were proceeding into a closed session and the general nature of the matters to be discussed.
24. In all cases, with the exception of the meeting of December 10, 2012, there was a Closed Meeting Agenda. However, in that case, the purpose for going into Closed Session was

clearly stated in the Regular Council Agenda. One would have to conclude that the Closed Meeting Agenda for December 10, 2012 was either omitted by oversight or left out when the documents were produced for this review. In any event, each of the closed meeting agendas fully and accurately set out what was to be discussed in the closed meeting. Proper motions were taken and passed to come out of the closed session.

25. Interviews were conducted with the Clerk and members of Council which interviews indicated that Council and the Clerk scrupulously adhere to the procedures with respect to closed meetings. All interviewed stated that they follow the agenda and during the closed meetings, if anyone attempts to discuss items not on the agenda, whether appropriate for closed meetings or not, they are immediately stopped and are asked to speak to the Clerk in order to have the matter put on an agenda for a subsequent meeting when it can be dealt with properly. A number of councillors commented on the strict manner in which the Clerk advised them to comply with the closed meeting requirements of the Act.

### **Opinion**

26. My review of the minutes of the closed meetings in question indicate that only those items listed on the closed meeting agenda and the regular meeting agenda for each closed meeting were discussed during the closed meeting. Based on my review of the documents and my discussions with the Clerk and members of Council, I have no reason to conclude that the closed meeting minutes provided to me do not accurately reflect what was discussed during those closed meetings.
27. The investigation also showed that Council carefully follows its procedures for closed meetings. My review of the minutes of the closed meetings in question indicate that no discussion occurred with respect to any matters related to the complainant during these meetings. The only matters discussed during these meetings were those disclosed and listed on the regular meeting agenda and the closed meeting agenda.

### **Recommendation**

28. Having reviewed this matter, I would make only one procedural recommendation, which Council may wish to consider. I wish to be clear that this is not in the nature of a criticism or an indication that Council is not proceeding properly.
29. The minutes of the Council meetings indicate that Council does not report back during the open session regarding what had occurred in the closed session. Many Councils have adopted the practise of reporting back in a general manner regarding what occurred in the session in such a manner that it does not reflect the detail of what was discussed in the

meeting. For example, if direction was given to staff during the meeting, Council may wish to state, in reporting back, “staff are directed to proceed as instructed in the closed session”. If, as a result of the closed session, Council has given no direction, you might just wish to say that the reporting was received on the issues discussed in the closed session.

30. There may be some circumstances in which, during the closed session, Council decides to proceed in such a fashion that requires passage of a by-law or a resolution that would become a public document and you may wish to indicate that. Again, this is only a recommendation and certainly is not a mandatory requirement in any way, shape or form.

### **Conclusion**

31. Therefore, in conclusion, after reviewing the relevant documents and interviewing the appropriate parties, I have determined that there is no evidence of the Council for the Municipality of North Perth having inappropriately discussed any matters in the closed meetings for which investigation was requested.

All of which is respectfully submitted, this 7<sup>th</sup> day of May, 2013.



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Gregory F. Stewart