

**INVESTIGATION INTO MUNICIPALITY OF  
NORTH PERTH CLOSED MEETINGS  
REQUESTED BY SHERRI McTAGGART**

The Request

This investigation is as a result of a request by Sherri McTaggart regarding an in-camera session of Council held on July 21, 2009. A review of the documents relevant to the request seemed to indicate that the actual date of the meeting was July 20, 2009. After having spoken to Ms. McTaggart regarding her concerns, I am satisfied that it was the July 20, 2009 meeting for which she was requesting the investigation.

Ms. McTaggart, in her written request, stated the reason for the request as follows:

“The reason for the request is with regards to the refund of money charged to connect to another Municipal Well for the property known as 199 Main Street, Atwood, Ontario and whether this fee should have been charged under the circumstances.”

Investigation Jurisdiction

The jurisdiction to conduct this investigation is found in Section 239.1 of the *Municipal Act*, 2001, which came into effect on January 1, 2009. Pursuant to Section 239.1, a person may request an investigation of whether a Municipality or local Board has properly closed a meeting to the public pursuant to Section 239 of the *Municipal Act*. This section of the Act

states that the investigation is to be conducted by (a) an investigator referred to in Section 239.2(i) of the Act or the Ombudsman if an investigator has not been appointed. Section 239.2(i) of the *Municipal Act* authorizes the Municipality to appoint an investigator “to investigate in an independent manner, on a complaint made to him or her by any person whether the Municipality or a local Board has complied with Subsection 239 or a procedural By-law under Subsection 238(2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation. On December 10, 2007, by Municipality of North Perth By-law Number 159-2007, I was appointed by the Council as an investigator for the Municipality to conduct investigations pursuant to Section 239.1 of the *Municipal Act*.

#### Provisions for Closed Meetings

Section 239 of the *Municipal Act*, 2001 states that except as specifically provided in the Act, all meetings of a Municipal Council are to be open to the public. Section 239(ii) sets out certain exceptional situations in which a meeting or part of a meeting may be closed to the public:

- (a) the security of the property of the Municipality or local Board;
- (b) personal matters about an identifiable individual, including Municipal or local Board employees;

- (c) a proposed or pending acquisition or disposition of land by the Municipality or local Board;
- (d) labour relations or employment negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the Municipality or local Board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and
- (g) a matter in respect of which a Council, Board, Committee or other body may hold a closed meeting under another Act.

The Subsection goes on to outline certain requirements before going into a Closed Session:

“239(4) Before holding a meeting or part of a meeting that is to be closed to the public, a Municipality or local Board or Committee of either of them shall state by resolution,

- (a) the fact that the holding of a closed meeting and the general nature of the matter to be considered at the closed meeting.”

The Act also states that with certain exceptions, the meeting shall not be closed to the public during the taking of a vote. The Act states that a meeting may be closed to the public during a vote if the Act permits or requires the meeting to be closed to the public and the vote is for

a procedural matter or for giving direction or instructions to officers, employees or agents of the Municipality.

The Municipality has adopted By-law 33-2007 which is a procedural By-law passed pursuant to Section 238 of the *Municipal Act*, 2001. Subsection 18 of the Procedural By-law outlines the requirements for conducting a Closed Meeting. That section of the By-law conforms with and repeats the provisions of Section 239 of the *Municipal Act* concerning meetings that are not open to the public.

Section 239(7) of the *Municipal Act* states that a Municipal Council shall record, without vote or comment, all resolutions, decisions and other proceedings at a meeting of the body whether it is closed to the public or not.

#### Investigation Process

During the investigation, I conducted a telephone interview with Ms. McTaggart. I also reviewed the various documents provided to me by the Municipality concerning the meetings which include the Council Agenda, the Minutes of the July 20, 2009 Council Meeting, the In-Camera Minutes for the July 20, 2009 Council Meeting and documentation relevant to issues discussed at the closed meeting. I further reviewed the relevant By-laws and legislation.

### Findings

I should first state that from the request by Ms. McTaggart and the reason for request as quoted above, it appears that she is requesting an investigation as to whether the fee for which she was requesting a refund should have been charged under the circumstances. I must state, at the outset, that my authority under the *Municipal Act* does not authorize me to investigate whether or not the fee was justified or indeed whether or not her request was justified. My authority under the *Municipal Act* is solely confined to conducting an investigation as to whether the matter in question was properly discussed in the closed meeting.

My review of the minutes indicate that there were three items discussed during the in-camera meeting on July 20, 2009. One of these items dealt with a report from the Municipal lawyer concerning an employment-related litigation. A second matter dealt with the location of a proposed new fire hall. The third matter of discussion involved a request from Ms. McTaggart to the Municipality for the refund of \$3,500.00 previously paid for a water hook-up.

In my interview with Ms. McTaggart, she expressed her concern that her request for reimbursement of the \$3,500.00 was discussed in closed session when it should not have

been. By way of background, she stated that their property had been hooked into a Municipal Well that turned out to be contaminated. She had to be hooked into another Well. She had submitted a request for reimbursement of the cost of the hook-up, which was \$3,500.00. She understands that the request was discussed during the closed session held on July 20, 2009. She felt this was not a proper matter for discussion during a closed session.

The minutes of the closed session indicate discussion pertaining to an email from Ms. McTaggart in which she requested a refund of \$3,500.00 previously paid for a water hook-up. The Council was informed that the Well in question was the property of the Ministry of Transportation and not of the Municipality. Council agreed that when it came out of closed session, it would pass a resolution denying the request for a refund.

When Council rose from closed session, the following resolution was passed:

“That Council for the Municipality of North Perth dismissed the request to refund Municipal water connection fees as requested and that Council directs the Director Finance/Treasurer to respond in writing.”

After reviewing the minutes of the closed meeting, as will be discussed below, I did not feel that it was necessary to engage in further discussion or investigation with Council.

The matter discussed in the meeting was clear and concise.

Opinion

It is my opinion as investigator that the item concerning Ms. McTaggart's request for reimbursement of funds was not a matter that should have been considered and discussed in closed session. This request does not fall under any of the categories listed in Section 239 of the *Municipal Act* which outline the matters for which discussion and debate can occur in closed session. The request for refund does not properly fall under security of the property of the Municipality nor does it fall under the category of litigation. There had been no legal action by Ms. McTaggart with respect to the refund.

In a 2007 decision, the Supreme Court of Canada, in *RJS Holdings v London*, distinguished between litigation and potential litigation. The fact there may be a potential for litigation regarding a matter does not, in and of itself, bring the matter under the category provided for in the Act. Any matter that comes before Council has the potential for litigation. There must be something more than that possibility before the matter properly could be discussed in a closed session.

The emails accompanying the Minutes of the closed session seemed to indicate that there was some difference of views or controversy surrounding Ms. McTaggart's request. However, the fact that a matter is controversial, or that discussing the matter in public may be awkward, does not justify discussing the matter in closed session.

In order for the matter to be considered “potential litigation”, there should be some formal clear notice to the Municipality of the intent to launch litigation, such as a letter from a lawyer on behalf of the party, putting Council on notice. I am not aware of such specific notice having been provided in this particular situation.

#### Recommendation

In future, Council should ensure that matters are not discussed in closed session on the basis of potential litigation unless some clear notice has been received by Council from a representative of the complainant formally putting Council on notice of the potential for litigation.

#### Report

The Council of the Municipality of North Perth is required to make this report public in accordance with Section 239.2(11) of the *Municipal Act*.

April 9, 2010

GFS/jbr