



J. Paul Dubé, Ombudsman

BY EMAIL

Mayor Joanne Savage and Council
Municipality of West Nipissing
101-225 Holditch Street
Sturgeon Falls, ON P2B 1T1

September 27, 2016

Dear Mayor Savage:

Re: Closed meeting complaint, July 21, 2016

My Office received a complaint that council for the Municipality of West Nipissing failed to provide notice to the public in advance of a July 21, 2016 special council meeting. West Nipissing has now amended its procedure by-law to provide for public notice of all meetings.

Authority of the Ombudsman

As of January 1, 2008, the *Municipal Act, 2001* gives citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. The Act designates the Ombudsman as the default closed meeting investigator for municipalities that have not appointed their own. The Ombudsman is the closed meeting investigator for the Municipality of West Nipissing.

My Office's Open Meeting Law Enforcement Team reviews closed meeting complaints to determine compliance with section 239 of the Act and the municipality's procedure by-law. More information about our jurisdiction and how the Open Meeting Law Enforcement Team investigates complaints is available in our guide to open municipal meetings, *The Sunshine Law Handbook*, available online at: <https://www.ombudsman.on.ca/Resources/Sunshine-Law-Handbook.aspx>

Steps taken by our Office

After speaking with the complainant, we spoke with the municipality's Chief Administrative Officer (CAO), who provided us with an overview of the events leading up to the special council meeting on July 21, 2016. We reviewed the municipality's procedure by-law, the agenda and minutes of the July 21 meeting, and the resolutions passed by council. Staff provided email records respecting the posting of public notice on the municipal website. We also reviewed a press release about the meeting issued by the municipality. We received full co-operation with our review.

Special council meeting on July 21, 2016

On July 20 at 12:24 p.m., the Clerk sent an email to all members of council, and some staff members, indicating that a special meeting would be held on July 21 at 6:30 p.m. regarding tenders for three municipal gravel contracts. She wrote that the matter could not wait until council's next meeting on August 9, as "work needs to commence as soon as possible". No public notice of the meeting was provided on July 20.

At 11:17 a.m. on July 21, approximately 7 hours before the council meeting, staff in the Clerk's office emailed the municipality's communications staff asking for the meeting agenda to be posted. A second email at 12:34 p.m. asked again for notice to be posted, because the municipality was "getting inquiries". At 1:09 p.m., communications staff replied that the agenda had been posted in the morning following the first email request.

At 6:30 p.m. on July 21, an open special meeting was held in council chambers. According to the meeting minutes, one member of council questioned the legitimacy of the meeting and left, indicating that proper notice had not been provided. A second member of council also left the meeting, indicating that he had not been provided supporting documents ahead of time. Council proceeded with the meeting, voting to award the three tenders. No other issues were discussed.

On July 22, a press release was issued by the municipality on its website, directing inquiries to Mayor Savage. The statement is titled "Municipality responds to allegation of 'illegal meeting'". It states that the municipality's "procedural by-law is silent on when the public notice is to be provided". The press release confirms that public notice was only posted on the municipality's website late in the morning on the day of the meeting.

Review

The *Municipal Act* does not specify how notice of meetings must be provided to the public. However, ss. 238(2.1) states that every municipality must pass a procedure by-law that provides for public notice of meetings.

The procedure by-law that was in force at the time of the July 21 meeting (2015/13) stated that regular meetings shall be held on the third Tuesday of every month at 6:30 p.m. in council chambers. The by-law only contemplated notice in the form of an agenda being provided to council or “such other persons” as the Chair or Clerk deem advisable. The by-law did not set a requirement for public notice of regular meetings, unless they were to be held at a different date or time, in which case notice was to be posted at the municipal office.

The by-law did not specifically set out a public notice requirement for special meetings, speaking only to notice for members of council or a committee. If a special meeting was called, the Clerk was to “provide notice of the special meeting immediately following receipt of the summons or petition”. Notice of a special meeting was required to specify the date, place, time and purpose of the meeting, and could be given by “telephone or personal contact”, rather than to the public generally.

The CAO told us that public notice is normally posted for a special meeting when an agenda and supporting documents are sent to councillors. Notice is usually posted on a bulletin board in the municipal building, as well as on the municipal website, but these practices were not provided for in the procedure by-law.

After speaking with our Office, the municipality amended its procedure by-law through by-law 2016/87, which was approved by council on September 20, 2016. The by-law now requires that notice of regular and special meetings be given to the public in the form of an agenda that includes the time, date, and place for the meeting. Notice of special meetings is to be provided “immediately following the receipt” of a summons or petition to hold such a meeting by the Clerk, which must be received at least 24 hours before the meeting is held.

Conclusion

The Municipality of West Nipissing did not violate the open meeting requirements in the *Municipal Act* or its procedure by-law at the special meeting on July 21, 2016. Recognizing that the procedure by-law failed to provide for public notice of

special meetings as required by the Act, the municipality amended the by-law. We encourage the Municipality of West Nipissing to ensure it provides public notice of all meetings in accordance with its amended by-law in the interest of transparency and accessibility.

We thank you for your cooperation during our review.

Yours truly,

A handwritten signature in black ink, appearing to read 'J. Paul Dubé', written over a large, light blue oval shape.

J. Paul Dubé
Ontario Ombudsman

CC: Clerk, Municipality of West Nipissing