



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

July 26, 2011

Ms. Genevieve Scharback, Clerk
Mr. Art Versteeg, Reeve
Township of Howick
PO Box 89, 44816 Harriston Road
Gorrie, Ontario
N0G 1X0

Dear Ms. Scharback and Reeve Versteeg:

Re. Our File No. 233479-002

I am writing further to our telephone conversation of July 25, regarding the results of the Ombudsman's preliminary review of complaints received about a May 9, 2011 gathering of Council members. The complaints to our Office involved allegations that a quorum of Council improperly met with members of the Farmers' Market Steering Committee (the Steering Committee) in the absence of the public to discuss changes to a proposed contract between the Township and the Agricultural Society.

As part of our Office's review we spoke with you both as well as the members of Council and of the Steering Committee who attended the May 9, 2011 meeting. We also reviewed relevant sections of the *Municipal Act, 2001* (the Act), the Township's Procedure By-law (05-2006), and other documents related to the Farmers' Market and the May 9 meeting.

The information provided to our Office indicates that the Steering Committee was established by the Howick Agricultural Society, a local volunteer organization, for the purpose of facilitating the establishment of a Farmers' Market in the Township. The Steering Committee is made up of eight members, one of whom is a member of Council. As discussed on July 25, the Act provides that all meetings of council, local boards and committees shall be open to the public. For the purpose of the open meeting requirements, the Act defines a committee as "any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards." (ss. 238(1)). Because the Steering Committee was established by the Agricultural Society rather than by Council, and because only one Councillor is a member of the Committee, the Committee is not subject to the open meeting requirements.

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We understand that at an open meeting in November 2010, Council approved a request from the Steering Committee to allow the Farmers' Market to be held in the community centre parking lot for the summer of 2011. Township staff prepared a draft agreement between the Township and the Agricultural Society, which was discussed in open session at the May 3 Council meeting.

The information provided to our Office indicates that the Steering Committee had some concerns regarding the draft agreement. Accordingly, the Chair of the Steering Committee requested a meeting with Reeve Versteeg to discuss these concerns, and to provide suggestions for amendments. In addition to the Reeve and the Chair of the Steering Committee, we understand that the Deputy Reeve, Bob Clarkson; Councillor Linda Henhoeffler, who is also a member of the Steering Committee; and the President of the Agricultural Society attended this meeting. Neither municipal staff nor members of the public were in attendance or were provided with notice of this meeting. We understand the meeting lasted approximately 45 minutes, and that the agreement between the Township and the Agricultural Society was the only issue discussed.

The individuals with whom we spoke advised that there were no votes taken or decisions made at the May 9 meeting. Immediately after the meeting, however, we understand that Reeve Versteeg asked the Clerk to amend the draft agreement. This revised document was sent to members of Council in the package of materials for the May 17, 2011 Council meeting. According to Reeve Versteeg, the decision to amend the Farmers' Market agreement was made by him alone on May 9, 2011, after the 10:00 a.m. meeting.

The revised Farmers' Market agreement was discussed in open session at the May 17, 2011 Council meeting. According to the meeting minutes:

Reeve Versteeg brought forward the matter of the agreement with the Agricultural Society for the Farmers' Market's use of the Community Centre property. The Clerk amended the agreement as per direction from the Reeve following a meeting with Agricultural Society and Farmers' Market Steering Committee representatives on May 9, 2011. Reeve Versteeg requested the Agricultural Society to review the agreement, with any requests for further amendments brought forward by the Agricultural Society to be addressed by Council. The Agricultural Society forward the agreement they had created for Council's approval... The Clerk was directed by Council to amend the agreement prepared by the Agricultural Society.

The meeting minutes also note that Council passed the following motion at the May 17, 2011 meeting: "That the Council of the Corporation of the Township of Howick accepts the agreement as forwarded by the Agricultural Society, as amended."

In his 2008 report regarding an investigation into the City of Greater Sudbury’s Council, the Ombudsman provided the following definition of “meeting”:

For a meeting to occur, members of council or a committee must come together for the purpose of exercising the power or authority of the council or committee or for the purpose of doing the groundwork necessary to exercise that power or authority.

The information provided to our Office indicates that three of the five members of Council attended the May 9 meeting to discuss the Township’s contract with the Agricultural Society. Following this meeting, the decision was made to amend the agreement, for consideration at the next meeting of Council. It therefore appears that on May 9 a quorum of Council came together for the purpose of laying the groundwork for future Council decision-making. As such, the May 9 meeting constituted a meeting of Council, which was improperly closed to the public.

Furthermore, we noted that the fact that a quorum of Council met behind closed doors with community members would likely create suspicion in the eyes of the public. We suggested that, in the future, Council should ensure that meetings between Council and such groups are conducted in accordance with the requirements of the *Municipal Act, 2001*, including providing notice to the public.

During our conversation you both expressed general agreement with the comments and suggestions made by our Office. We requested that you share our comments with Council publicly, and that you notify our Office when you have had the opportunity to do so. We will also provide the complainant with the outcome of our review.

I would also like to take this opportunity to thank you for the cooperation our Office received during this review.

Sincerely,

Trish Coyle
Ombudsman Ontario