

December 9, 2011

Ms. Carol McKenzie, Clerk
The Municipality of Lambton Shores
7883 Amtelecom Parkway
Forest, ON
N0N 1J0

Dear Ms. McKenzie,

Re: Ombudsman Review of July 6, 2011 meeting

I am writing further to our telephone conversation of December 2, 2011 regarding the results of the Ombudsman's preliminary review of complaints made to our Office about a July 6, 2011 meeting involving 3 members of council as well as members of municipal staff; members of the community; and two representatives from a consulting firm that is leading a local sewage expansion project. The complainants alleged that the purpose of this gathering was to advance the business of the municipality behind closed doors, by discussing the management of wastewater.

As part of our Office's review we spoke with you and members of council present at the July 6 meeting, and reviewed relevant sections of the *Municipal Act, 2001* (the Act), and the municipality's procedure by-law. We also listened to a tape of the July 6 meeting that was made by one of the citizens in attendance.

Background

The information provided to our Office indicates the proposed expansion of the Grand Bend Area Sewage Treatment Facility is a contentious issue in the community. We understand that this is a "tri-municipal expansion project" involving Lambton Shores, Bluewater and South Huron. The project is being overseen by the Grand Bend Area Sewage Plant Board ("Sewage Board"), a tri-municipal board that consists of 3 council members from each of above-noted municipalities.

The information provided to our office indicates that the three municipalities entered into an agreement to establish the Sewage Board in 2010 pursuant to s. 202 of the *Municipal Act* ("Joint Municipal Service Boards"). According to the agreement the Sewage Board

operates as a local board for the purpose of the open meeting requirements of the Act, and is responsible for the control and management of the Sewage Treatment Facility.

The 2010 agreement also appoints Lambton Shores as the initial Administering Municipality of the Board. The initial Administering Municipality may execute certain agreements on behalf of the Sewage Board that are within its authority under s.11 of the agreement. Lambton Shores is also the “administrative lead” on the sewage expansion project. You advised our office that final decisions regarding the expansion project would have to be brought back to council for approval.

The council members from Lambton Shores who sit on the Sewage Board are Mayor Bill Weber, Councillor Doug Bonesteel, and Councillor Dave Maguire.

The July 6 meeting

We understand that the CAO of Lambton Shores called the July 6 meeting and invited the 3 members of Council who represent Lambton Shores on the Sewage Board; 3 members of the “Zone 3 Community Group”, a local group that raised concerns about the sewage treatment facility at a June 20 council meeting; members of staff involved in the sewage project; and two individuals from the consulting firm selected by the Sewage Board to lead the project (Dillon Consulting).

We understand that the Zone 3 Community Group had made public representations to the Board in the past, and disagreed with key aspects of the expansion project. You advised our Office that the purpose of the meeting was to ensure that a presentation that Dillon consulting would be making in the future adequately addressed the issues raised by the Zone 3 Community Group in their presentation.

The information provided to our Office indicates that Councillor Dave Maguire was unable to attend and that the Deputy Mayor, an alternate on the Sewage Board, attended the meeting in his place. It appears that general notice of this meeting was not provided to the public; there was no agenda; and no minutes were kept.

During the July 6 meeting, we understand that members of the Zone 3 community group raised concerns about the sewage project, and Dillon Consulting attempted to address those concerns. The meeting lasted nearly 4 hours in total. Dillon Consulting subsequently made a presentation to the Sewage Board in open session on July 15, and incorporated some of the concerns and responses that arose during the July 6 meeting into that presentation. Those we interviewed advised that no decisions were made during the July 6 meeting.

What is a “meeting”?

In this case, only 3 of the 9 members of council attended the July 6 meeting, and there was therefore no quorum of council present for the purpose of decision-making. There was also no quorum of the Sewage Board present at the meeting. When we spoke we discussed that quorum is not determinative in deciding whether a meeting took place for the purpose of the open meeting requirements.

We noted that the Ombudsman has provided the following definition of what constitutes a “meeting” for the purpose of the open meeting requirements:

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.

We understand that the purpose of the July 6 meeting was to allow for a discussion and exchange of ideas between the Zone 3 Community Group and Dillon Consulting, rather than to assist Council and Board members with future decision-making.

Under the circumstances, it does not appear that the open meeting requirements of the Act were violated.

As we discussed, however, such “informal” closed meetings and the lack of transparency that surrounds them run the risk of undermining public confidence and engendering suspicion in the eyes of members of the community, particularly when they involve issues that are controversial or of significant interest to the community. It is the responsibility of all members of council and local boards to ensure that they comply with their responsibilities under the Act and their procedure by-laws. We encourage all members of council and local boards to be vigilant in ensuring that their actions fulfill not only the requirements of the Act, but also its spirit.

When we spoke on December 2 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,

Michelle Bird
Ombudsman Ontario