

October 29, 2013

Mayor Dean Backer and Clerk Wayne Belter
Town of Mattawa
160 Water Street
P.O. Box 390
Mattawa, ON P0H 1V0

Dear Mayor Backer and Mr. Belter,

Re: Complaint that Council held Closed Meeting re: Mayor Duties and Remuneration

I am writing further to our conversation on October 24, 2013 regarding the outcome of our review of a complaint that Council for the Town of Mattawa may have held a secret meeting to discuss a proposal to increase the Mayor's salary by \$18,000.00 to compensate him for additional economic development duties.

The complaint arose after a June 24, 2013 public Council meeting at which Council unanimously approved an expansion of the Mayor's duties to include economic development and authorized a salary increase of \$3,000 per month for a six-month period, based on a three-day work week.

The complaint alleged that Council members must have come together to discuss the matter prior to the public meeting.

We also received a complaint that Council held closed-door discussions about withdrawing funding from the Mattawa-Bonfield Economic Development Corporation.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of councils, local boards, and their committees be open to the public, with limited exceptions as listed in section 239 (2) of the Act. The subject of council remuneration does not qualify for closed meeting consideration under any of the permitted exceptions.

In reviewing this complaint, our Office spoke with the Mayor and the Clerk as well as Councillor Lorne Mick, who drafted the resolution to expand the Mayor's duties. In

addition, we reviewed the June 24, 2013 Council meeting documents and draft resolution, the June 17, 2013 Committee of the Whole meeting documents, as well as the Town's Procedure By-Law and relevant sections of the *Municipal Act*.

Background

The City's Procedure By-Law states that all regular Council and Committee of the Whole meetings shall be open to the public unless the subject matter falls within one of the exceptions listed in s. 239 of the *Municipal Act*.

Regular meetings of Council are held on the second and fourth Monday of the month starting at 7 p.m. The Town's practice is to post meeting agendas on the Town's website as notice of the meeting.

June 24, 2013 Regular Council Meeting

According to the agenda for the June 24, 2013 Council meeting, Council intended to review in the public session a draft resolution and report prepared by Councillor Mick with respect to extending the Mayor's duties and granting him a salary increase in recognition of the additional responsibilities.

The report prepared by Councillor Mick is available to the public as part of the agenda. It provides some of the history and rationale behind the proposed resolution. The report states that the Town of Mattawa has been facing economic challenges with the closure of major area employers. It acknowledges the work of the joint Mattawa-Bonfield Economic Development Corporation but proposes that more work is needed in order to advance local economic goals. Based on the assertion that staff workloads do not allow for additional duties, Councillor Mick puts forward the recommendation that the Mayor's role be expanded to include economic development responsibilities, including a focus on pursuing the establishment of a "light industrial park," a seniors' housing initiative, and re-development of the local ski hill.

The recommendation also sets out the proposed terms of the Mayor's expanded role, suggesting that it be a temporary six month expansion of duties with pay of an additional salary of \$3,000 per month for a three-day work week.

Our Office spoke with the Clerk, Councillor Mick, and the Mayor about how this recommendation was brought to Council and whether any discussions took place among Council members prior to the June 24, 2013 public meeting.

We received consistent information from those interviewed that the resolution to extend the Mayor's responsibilities was drafted by Councillor Mick in consultation with the Clerk and other staff. They told us that no closed-door council meetings or discussions took place on the matter.

Councillor Mick stated that Council has generally expressed concern and frustration over the last few years with the lack of progress in terms of economic development. Our Office received consistent information from the Clerk, Councillor Mick, and the Mayor that, over the past four years, the option of expanding the Mayor's role and decreasing the Town's contribution to the Mattawa-Bonfield Economic Development Corporation has been mentioned in the context of budget review meetings, including at the June, 2013 public budget meetings held by the Committee of the Whole.

Councillor Mick said that it has been an ongoing issue and he decided to finally bring the resolution forward. Council unanimously passed the following resolution at its public meeting on June 24, 2013:

That the Town of Mattawa authorizes the expansion of the Mayor's role for six months to include the Mayor's Office for Economic Development and authorizes the Mayor's salary to be increased by \$3,000.00 per month for a three-day work week for a six-month period to pursue economic development for the municipality.

At the next public Council meeting on July 8, 2013, Council passed a resolution "to contribute \$6,241.70 to the Mattawa-Bonfield Economic Development Corporation for 2013 and participate as an active member" but that economic development efforts would be "refocused through the Mayor's Office for Economic Development." This reduced the Town's contribution by approximately \$28,000.00.

A July 4, 2013 news article in the *North Bay Nugget* reported on the Town's reduced contribution to the Mattawa-Bonfield Economic Development Corporation. The Mayor told us that the information in the article was based on discussions that took place at the

June 17, 2013 budget meeting held by the Committee of the Whole, where the issue of reducing the contribution was discussed.

June 17, 2013 Committee of the Whole Meeting

Our Office requested the minutes of the June 17, 2013 Committee of the Whole Meeting to assess what was discussed publicly on the topic of extending the Mayor's duties and reducing contributions to the Mattawa-Bonfield Economic Development Corporation.

Unfortunately, the meeting record is extremely limited, consisting only of the meeting agenda and a copy of a resolution to proceed *in camera* to discuss "personal matters," during which we were told that Council discussed personal matters regarding municipal employees.

The Clerk advised our Office that the Town does not keep detailed minutes of Committee of the Whole meetings with respect to budget review, as it is generally a line-by-line examination of budget estimates for the year.

According to the Town's website, budget review meetings also took place on June 10, 11, and 12, 2013 but, again, there are no minutes available for these meetings.

Analysis

In the course of this review, our Office did not uncover evidence to support the allegation that Council met behind closed doors to discuss extending the Mayor's duties. The Mayor, Councillor Mick, and the Clerk all advised that the resolution to increase the Mayor's economic development responsibilities and grant an associated salary increase was prepared by Councillor Mick in consultation with the Clerk and other staff. As noted, we also received consistent information from the Clerk and Council members interviewed that Council was considering reducing its monetary contribution to the Mattawa-Bonfield Economic Development Committee for some time. We were told the issue was discussed at a number of budget review meetings, including the June 17, 2013 Committee of the Whole meeting, before being brought to Council as a formal resolution on July 8, 2013.

However, because the Town does not keep a record of the Committee of the Whole meetings, it is difficult to verify what discussions took place at those meetings.

Under s. 239 (7) of the *Municipal Act, 2001*, municipalities are required to “record without note or comment all resolutions, decisions and other proceedings at a meeting ... whether it is closed to the public or not.”

This is not the first time our Office has dealt with this issue in Mattawa. In the Ombudsman’s December 2010 report to Mattawa Council on our investigation of closed meetings of Council and the Town’s Ad Hoc Heritage Committee, we found that Council had not kept a formal record of at least two closed meetings. At the time, the Clerk said that since no resolutions were passed, he did not have anything to record, and pointed to the phrase in the Act that a record should be kept “without note or comment.”

In his report on that investigation, the Ombudsman found the Town’s interpretation of the record-keeping provision of the Act to be “overly narrow and inaccurate.” His December 2010 report cited our Office’s position on record keeping (first explained in our 2008 report *The ABC’s of Education and Training*, regarding the City of Oshawa):

The requirement to keep a meeting record should be interpreted in a manner that is consistent with the intent of the open meeting provisions, which are directed at enhancing the openness, transparency and accountability of municipal government. While extraneous notes and comments not germane to the actual proceedings ... should be excluded, the minutes should reflect what actually transpired, including the general nature of the subjects discussed.

As there is no meaningful record of the June 2013 Committee of the Whole budget meetings, neither our Office, as closed meeting investigator, nor members of the public are able to verify what was discussed at these meetings with respect to the Mayor’s role or other important budget issues. Given the lack of information, members of the public who contacted our Office were left with the impression that the issue of extending the Mayor’s role was discussed by Council in secret prior to the June 24, 2013 public Council meeting, where it passed unanimously.

In the interest of transparency, we again encourage you to maintain a meeting record that accurately and meaningfully captures the substance of all Council/Committee discussions. As a best practice and to ensure a complete and reliable meeting record, the Ombudsman recommends that Council consider audio or video recording all Council and Committee meetings, including closed ones.



When we spoke on October 24, 2013, I explained our review and findings and provided you with an opportunity to provide comment and feedback. You stated that keeping detailed records of all Council and Committee meetings was difficult due to limited resources (personnel and financial), but said that Council would certainly consider the recommendations put forward, including the recommendation to audio or video record meetings.

You agreed to share this letter with Council at the next public Council meeting on November 11, 2013 and to post a copy of the letter on your website.

Thank you for your co-operation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team