

February 14, 2013

Clerk Caroline Hallsworth  
City of Greater Sudbury  
2<sup>nd</sup> Floor – 200 Brady Street  
Sudbury, ON P3A 5P3

Dear Ms. Hallsworth,

**Re: Complaint regarding Closed Meeting of Council held November 10, 2010**

I am writing in relation to a complaint our Office received on November 28, 2012 alleging that Council may have improperly voted within a closed meeting on November 10, 2010 to reverse a prior decision to deny a property severance application that would create an additional seventeen lots on a local lakefront property.

As you know, the *Municipal Act, 2001 (the Act)* requires all meetings of Council, Local Boards, and their committees to be open to the public with limited exceptions. Voting is prohibited in a closed meeting unless the subject matter qualifies for closed meeting consideration under one of the legislated exceptions to the open meeting requirements, and the vote is for a procedural matter or a direction to staff, officer, or agent of the municipality.

In reviewing this complaint our Office spoke with you, obtained and reviewed the agenda and minutes of the November 10, 2010 meeting, and considered the relevant sections of the Procedure By-Law and the *Municipal Act*.

**Procedure By-Law**

The *Municipal Act* requires municipalities and local boards to provide for public notice of meetings in the Procedure By-Law.

The City of Greater Sudbury's Procedure By-Law states that regular meetings of Council are held on two Tuesdays each month, with some exceptions (summer, December).

The Clerk is required to post the meeting agendas on the municipality's website prior to the meetings.

## **November 10, 2010 Council Meeting**

The Agenda for the November 10, 2010 Council meeting was posted on the website and stated that a closed meeting would be held prior to the regular Council meeting, *“to deal with: one solicitor-client privilege matter regarding 1211250 Ontario Inc., one Litigation or Potential Litigation matter regarding an OMB appeal and one Security of the Property matter.”*

Council’s resolution to proceed in camera provided the general nature of the matters to be considered in the closed meeting, as described above.

In addition to Council, the Chief Administrative Officer, the Clerk, a number of senior staff, including the Director of Planning Services and the City Solicitor, attended the meeting.

A more detailed closed meeting agenda was circulated to Council members and it confirmed that the matter to be considered under the “litigation or potential litigation” exception was a property owner’s appeal of a 2009 decision to deny a severance application for an identified waterfront lot. The appeal was before the Ontario Municipal Board and heard on October 25, 2010, with a scheduled date to continue the hearing in January.

The closed meeting record shows that during the meeting Council reviewed a presentation by the Director of Planning Services and considered a confidential report prepared by the Manager of Community and Strategic Planning in relation to the pending appeal before the Ontario Municipal Board (OMB). The Director of Planning Services’ presentation set out the the history of the severance application, and the reasons why the application was initially denied, including the fact that the Ministry of the Environment felt at that time that the lake on which the property was located was “at capacity”.

The Director of Planning Services brought to Council’s attention that the Ministry had changed its position and this may impact the City’s response to the appeal. The City received a communication from the Ministry of the Environment on October 22, 2012 indicating that the Ministry could no longer confirm the number of lots that the lake in question could support. Given the Ministry’s change in position, the Planning Department was seeking instruction from Council on how to proceed with the OMB appeal.

Council then voted on how to direct staff in terms of the appeal – either to attend the next scheduled hearing at the OMB in January to support the decision to deny the application or to attend the hearing and withdraw opposition to the application.

Council voted to direct staff to attend the hearing and withdraw opposition to the severance application.

When Council returned to open session it confirmed that it considered the matters identified in the resolution.

### **Analysis**

The “litigation” exception of the Act permits Council to discuss and prepare for pending litigation, including matters before administrative tribunals, in a closed meeting. Council’s consideration of new information affecting an ongoing appeal before the OMB, fits within the “litigation or potential litigation” exception.

As indicated, the Act prohibits voting in a closed meeting unless the subject matter falls within one of the legislated exceptions to the open meeting requirements and the vote is for a procedural matter or a direction to staff, officers, or agents of the municipality.

Since the subject matter discussed at the November 10, 2010 closed meeting fell within the “litigation” exception to the open meeting requirements and the vote taken was in relation to directing staff in how to respond to the appeal at the next scheduled hearing, the vote was permitted in the closed meeting.

We ask that this letter be included on the next public Council meeting agenda and a copy made available to the public on your website.

Thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie  
Early Resolution Officer  
Open Meeting Law Enforcement Team