

August 10, 2012

City Clerk Lesley Sprague &
Executive Assistant Mary Bray
City of Elliot Lake
45 Hillside Drive North
Elliot Lake, ON P5A 1X5

Dear Ms. Sprague and Ms. Bray,

Re: Closed Meeting Complaints – April 16, 2012 Meeting of the Elliot Lake Residential Development Commission; April 26, 2012 Meeting of the Nuclear Waste Management Organization

I am writing further to my telephone conversation with Executive Assistant Mary Bray on August 7, 2012 regarding the results of the Ombudsman's review of two closed meeting complaints.

The first complaint alleged that Council attended a closed meeting of the Elliot Lake Residential Development Commission (the Commission) on April 16, 2012 during which Council reportedly received a "pre-presentation" of the Commission's budget.

The second complaint alleged that Council attended a presentation by the Nuclear Waste Management Organization (NWMO) on April 26, 2012, which was arranged by the General Manager of the Elliot Lake and North Shore Corporation for Business Development (ELNOS) on an invite-only basis.

The complaint stated that the two meetings involved discussion of Council business on topics of interest to the public and, therefore, should have been open to the public.

The Ombudsman is the closed meeting investigator for the City of Elliot Lake. Our Office reviewed the complaints to assess whether the meetings were meetings of Council and, therefore, subject to the open meeting requirements.

Bell Trinity Square
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9
483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) M5G 2C9
Tel./Tél. : 416-586-3300
Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

Facebook : facebook.com/OntarioOmbudsman Twitter : twitter.com/Ont_Ombudsman YouTube : youtube.com/OntarioOmbudsman

Read at
Meeting Held
Aug. 27/12
Resol. 378/12

As you know, the *Municipal Act, 2001* (the Act) requires that meetings of Council be open to the public, subject to the limited exceptions outlined in s. 239. Council must also observe certain procedural requirements in order to close a meeting to the public.

April 16, 2012 Elliot Lake Residential Development Commission Meeting

In reviewing this complaint our Office spoke with the Clerk, Mayor Hamilton, and the Chair of the Elliot Lake Residential Development Commission. In addition, we obtained and reviewed the Commission's minutes of the meeting.

Background:

The Elliot Lake Residential Development Commission, also known as Lakeshore Properties, was established under *the Elliot Lake (City of) Act, 2001*, and is authorized as an agent of the City to manage the development of shoreline lands for residential purposes.

The Commission's Board of Directors is comprised of two members of Council and five appointees from the community. The Commission's Board holds regular monthly meetings and Councillors are generally invited to attend. Councillors are also permitted to observe any closed meeting discussions.

The Commission presents its business plan and budget at a regular meeting of Council each year. This year, it was presented at the May 14 Council meeting, according to the public minutes.

The meeting:

Council was invited by e-mail to attend the April 16, 2012 Commission meeting in order to provide feedback on the Commission's business plan before it was finalized and presented to Council on May 14. Council must approve the business plan before the Commission can proceed to implement the plan.

The Mayor and five of the six Councillors attended, two of whom are also members of the Board.

The information received from the Mayor and the Clerk was that this meeting was closed to the public. There was no public notice of the meeting. However, the

Commission Chair stated that the business plan was discussed in an open session. The agenda provided by the Chair also indicates that the draft business plan would be discussed in what was considered the open portion of the session.

The minutes of the meeting indicate that the Commission approved the 2012 Business Plan and recommended that it be presented to Council for final approval. There are no additional details in the minutes about what was discussed. However, the Mayor stated that Council members provided feedback on the proposed business plan.

Analysis:

Under the *Municipal Act* all meetings of Council must be open to the public with limited exceptions and subject to certain procedural requirements. For the purposes of the open meeting requirements, a meeting is defined as any “regular, special or other meeting of a council, of a local board or of a committee of either them.”

As discussed, based on a review of court decisions and the principles that inform the open meeting requirements, the Ombudsman developed the following definition to determine whether a Council gathering is subject to the open meeting requirements of the Act:

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 six of seven members of Council attended the April 16, 2012 Commission meeting and reviewed and gave feedback on the proposed business plan. As such, Council came together for the purpose of exercising its authority and laid the groundwork for future council business, and, therefore, this gathering constituted a “meeting” of Council. Although the meeting was arranged by a third party, this does not waive Council’s obligation to comply with the open meeting requirements of the Act.

We received conflicting information about whether this meeting was considered open or closed. However, the Commission’s meeting agenda is not publicly available

and, according to the Commission Chair, members of the public can only find out about meeting dates and matters to be discussed at the meetings by inquiring with the municipality and arranging to attend.

Given that there was no public notice of the meeting and no members of the public attended, the meeting cannot be considered an open meeting for purposes of the *Municipal Act*. Further, the subject matter discussed – the Commission’s proposed business plan – does not qualify for closed meeting consideration as it does not fit within any of the exceptions listed in the Act.

As discussed with Ms. Bray, in the future the City should ensure that meetings between Council and the Commission are conducted in a manner that respects the requirements and intent of the *Municipal Act*.

April 26, 2012 Meeting with the Nuclear Waste Management Organization:

In reviewing this complaint our Office spoke with the Clerk, Mayor Hamilton, and the General Manager of the Elliot Lake and North Shore Corporation for Business Development (ELNOS).

Background:

The Nuclear Waste Management Organization (NWMO) is a national corporation established in 2002 under the *Nuclear Fuel Waste Act* to investigate and implement approved methods to manage nuclear waste generated from nuclear power plants. The organization is governed by a Board of Directors.

The NWMO is currently seeking a location in Northern Ontario for a deep geological repository project. We understand that Council for the City of Elliot Lake held public meetings on October 11 and November 28, 2011 and March 12, 2012, to discuss the NWMO’s deep geological repository project. Council initially passed a resolution in open session to confirm the municipality as a contender for the project in October 2011.

The municipality must undergo screening for site suitability and provide a formal public consultation process before the site location can proceed to next steps.

The NWMO Presentation:

According to the information received, on April 16, 2012 the General Manager of ELNOS sent an e-mail to Council in Elliot Lake advising that the organization was arranging for a regional presentation by the NWMO, tentatively set for April 26, 2012.

In addition to the Council of Elliot Lake, Council from North Shore, Blind River, Spanish, and Serpent River First Nation were also invited to attend.

The General Manager of ELNOS arranged the meeting in order to provide a forum for the five interested communities to obtain further information about the steps involved in locating a deep geological repository, including the screening process and overview of public consultation processes.

The General Manager acknowledged that the NWMO was willing to attend Council meetings to give the presentation and had done so for at least one of the municipalities that expressed interest.

Mayor Hamilton confirmed that he and four other members of Council attended the meeting. He was not aware of any public notice of the meeting. He confirmed that the NWMO presented information to an audience of approximately thirty to forty invitees, including representatives of the other municipalities noted above.

The Mayor acknowledged that typically the NWMO would present this type of information at a Council meeting but the meeting was arranged this way in order to allow the five different municipalities an opportunity to receive the information at one gathering in a central location.

Analysis:

As discussed on August 7, 2012, the information obtained confirms that a quorum of Council came together to receive information that would inform the future decision-making of Council. As such, this gathering would be considered a meeting of Council that is subject to the open meeting requirements of the *Municipal Act*.

Given that there was no public notice of the meeting, it was a closed meeting for all intents and purposes. There is no indication that Council followed the mandatory

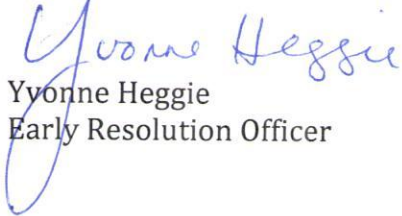
requirements for holding a closed meeting. Further, the information discussed in the meeting – general information about the initial steps for locating a deep geological repository – does not fit within any of the legislated exceptions to close a meeting to the public.

Again, the fact that the meeting was arranged and hosted by a third party does not relieve Council of its obligations under the Act. As indicated on August 7, 2012 Council must ensure, in future, that meetings with the NWMO or any third parties adhere to the requirements of the Act.

We asked that you share this letter at the next open meeting of Council on August 27, 2012 and make a copy available to the public on your website.

In closing, we would like to thank you for your co-operation during this review.

Sincerely,


Yvonne Heggie
Early Resolution Officer