

May 6, 2020

Township of Alnwick/Haldimand Council
c/o Robin van de Moosdyk, CAO/Clerk
10836 County Rd 2, P.O. Box 70
Grafton, ON. K0K 2G0

Re: Closed Meeting Investigation Report
Meetings held March 19, 2020 & March 28, 2020

Pursuant to section 239.2 of the *Municipal Act*, Principles *Integrity* has been appointed as the Closed Meeting Investigator for the Township of Alnwick/Haldimand.

We are writing further to our investigation into a complaint received on March 30, 2020 and a further complaint received on April 2, 2020 that the Township has improperly conducted Council meetings in the absence of the public, amounting to the holding of unauthorized closed meetings. The complaints together raised several allegations:

1. that the Township of Alnwick/Haldimand did not provide public notice before holding a Special Council meeting on Saturday, March 28, 2020
2. that during the time the March 19, 2020 Council meeting was underway, the doors to the Municipal facilities remained locked, rendering the meeting effectively 'closed'.
3. that the 2020 Draft Budget made available to the public on March 19, 2020 indicated that Council budget decisions had already been made, whereas there had been no public notice of Council meetings with respect to the 2020 Budget.
4. that a member of a council-appointed committee was invited to present to Council Budget meetings on February 27, 2020 (cancelled due to weather) and then on March 5, 2020, whereas no notice of public Council meetings to consider the 2020 Budget was provided regarding such dates.

Closed meeting investigations

As of January 2008, the *Municipal Act, 2001*, gave citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act and the municipality's procedure by-law when closing a meeting to the public.

Municipalities may appoint their own investigator. In July 2018 the Township of Alnwick/Haldimand appointed Principles *Integrity* as its closed meeting investigator.

As part of our investigation, following receipt of the complaints and other documents, including screenshots and emails which we received from the complainant, we communicated with the CAO/Clerk of the Township, and obtained documents through the Clerk's office. We have

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reviewed this documentation along with the Township's Procedural By-law. In addition we conducted an interview with the Mayor, who was in the chair for the meetings in question.

It is important to note that the events under review in this investigation occurred during the COVID-19 pandemic. This period of uncertainty has presented municipal officials with unique challenges, to which the Province of Ontario has been forced to respond with swift amendments to legislation, enabling municipal councils to participate in virtual meetings. Some municipalities stumbled in the initial implementation of sudden changes to familiar practices. In this regard, there is a recognized learning curve. The complaint which initiated our involvement came a mere 10 days following the amendments to the Municipal Act.

We also note that beyond the circumstances of the pandemic, the Township of Alnwick/Haldimand has experienced its own challenges this winter, including unexpected departures from Council resulting in changes in roles and a new appointment; changes in leadership in the role of Treasurer; and migration to a new computer system.

1. Council meeting Saturday, March 28, 2020

The complaint alleged that Council did not provide any notice of a Special Council meeting held on Saturday March 28, 2020 as required by the Township's Procedure By-law, essentially holding a closed meeting.

Analysis of the Facts and the Legislative Requirements

As required by the *Municipal Act*, the Township of Alnwick/Haldimand has a Procedure By-law, Schedule A to By-law 03-2019. The Procedure By-law contains provisions for regular and special council meetings.

At approximately 2:30 pm on Friday March 27, 2020 the Agenda for the Council meeting of April 2, 2020 was published and posted. On that Agenda was a Notice of Motion to Eliminate Ice at the Haldimand Memorial Arena.

Alnwick/Haldimand Council holds regular meetings on the first and third Thursday of the month. The April 2, 2020 meeting was to have been a regular meeting of Council, but for the introduction of new practices to encourage social distancing. In particular, the April 2, 2020 Council meeting was to be the first 'virtual meeting', convened by calling in. As such, April 2, 2020 was noted on the Agenda as a Special Council meeting.

By April of 2020 Budget deliberations were underway. At the same time, requirements around social distancing were becoming more restrictive by the week. No deliberations around Budget having yet been considered by Council, the Notice of Motion to Eliminate Ice at the Arena was seen as hasty and poorly timed.

Almost immediately, concerned citizens raised that alarm, sharing their concerns on social media. By Saturday morning, the Mayor was anxious to calm the public disquiet around the issue. She decided to call a Special Council meeting, for the sole purpose of deferring the Notice of Motion until Council could resume regular public, in-person meetings.

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On Saturday March 28, 2020, the Mayor telephoned the Clerk to call a Special Council meeting.

The provisions for Special Council meetings are contained in Section 4 of the Procedure By-law.

Section 4.1 authorizes the Mayor to “summon a special meeting of Council by providing written direction to the Clerk stating the date, time and purpose of the special meeting”. As an alternative, Section 4.2 provides that a special meeting of Council can be summoned by a petition signed by a majority of the members of Council.

Section 4.3, regarding timing, and sections 4.4 regarding notice to Council members, require at least 24 hours before the meeting can be held. Section 4.3 also provides that a “special/emergency meeting” may be held as soon as practicable following receipt of indication that a special meeting has been summoned by the Mayor or by petition, so long as a super-majority of the members (2/3rds) vote to suspend the 24 hour requirement.

In any event, section 4.5 of the Procedure By-law provides that:

“Public Notices of special meeting of Council shall indicate a notice of the meeting to be posted at the Township office and on the Township website. Due to the nature of the special meeting, a 24 hour notice period shall apply, but will not restrict the conducting of Township operations under an emergency.

The by-law does not provide for a definition of what constitutes an “emergency”, and so we have given the word its plain meaning.

Section 4.6 of the Procedure By-law requires the Clerk, “when reasonably possible”, to cause an agenda for a Special Meeting to be prepared for the use of the members at the meeting. No business may be conducted except for the matters set out in the Agenda.

It is interesting to note that Section 4.8 of the Procedure By-law, provides as follows:

Notwithstanding this section, on urgent and extraordinary occasions, with the consent of two-thirds of all the Members of Council recorded in the minutes, an emergency special meeting of the Council may be called by the Chair and held to consider and deal with such urgent and extraordinary matters.

The intent of section 4.8 is not entirely clear to us, particularly since either the Mayor, or a majority of members by petition, may call a Special Meeting. In any event its silence with respect to Notice does not, in our view, eliminate the need to provide public notice of a meeting of Council, even if the notice out of necessity was to be abridged.

We find that there was no notice given respecting the Saturday March 28, 2020 Special Council meeting, and in particular, that no notice was posted as required. In fact, to the date of the writing of this report, the Township’s official on-line repository of Council agendas and minutes (alnewickhaldimand.civicweb.net) still fails to indicate that such Special Council meeting was held.

Nevertheless, the Township posted prominently on its main web site landing page that at the March 28th Special Meeting the motion respecting the Haldimand Memorial Arena ice removal

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was deferred. At the April 2, 2020 Special Council Meeting (conducted by video and telephone), the original motion was posted as Item 10.1 on the agenda. Item 10.2 read as follows:

“Be it resolved that the council of the Township of Alnwick/Haldimand defer the Notice of Motion – Elimination of Ice as illustrated on the April 2nd, 2020 Council Agenda until such time as the COVID-19 crisis allows for Regular Council sessions to be held. Carried”

The Mayor, in the chair for the April 2nd meeting, enquired of the Clerk as to the status of the motion, publicly referring to the Council meeting on the previous Saturday, mentioning that the same deferral motion had been passed there. The Clerk advised that nothing need be done, and indeed no action was taken by Council in respect of the motion at its meeting of April 2nd.

The failure to deal with the motion on April 2, 2020 is unfortunate. To the extent that there had been procedural deficiency in the calling of the March 28th meeting, and passing the deferral motion there, adoption of Item 10.2 on April 2nd could have had a curative effect.

In the result however we find that the meeting of Saturday March 28, 2020, having been deficient in giving notice to the public, constituted an unauthorized closed meeting of Council. Though there was no attempt to shield the *fact* of the meeting from public knowledge (in fact, the outcome of the meeting was prominently posted on the municipality’s web site, and there was reference to it in the agenda for the April 2nd meeting), the complete absence of a Notice and Agenda for the meeting undermines foundational principles of democratic process.

2. Doors locked during March 19, 2020 Council meeting

The complaint alleged that during the time the Council meeting was underway on March 19, 2020, the doors to the Municipal facilities remained locked, rendering the meeting effectively ‘closed’.

Analysis of the Facts and the Legislative Requirements

Section 239(1) of the *Municipal Act* requires that except where there is a specific statutory exception, “all meetings shall be open to the public.”

The March 19, 2020 Council meeting was the last regularly scheduled Council meeting held in-person in the Spring of 2020, prior to the implementation of virtual Council meetings to comply with social distancing requirements.

Restrictions imposed for social distancing purposes increased in incremental steps through the month of March. Most municipalities closed their community facilities in early March, cancelled recreation activities and discouraged the public from attending parks. Municipalities also restricted public access to their town halls, and suspended providing some services.

On March 19, 2020 the Province enacted legislative amendments facilitating Councils to conduct virtual meetings. Bill 187, the *Municipal Emergency Act, 2020*, which took effect on March 19, 2020 allows municipalities to make changes to their procedure by-law, should they wish to do so, to permit:

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- Members of a council or of a local board who are participating electronically in a meeting to be counted towards quorum; and
- Members participating electronically to participate in a closed session.

These changes apply only when an emergency has been declared under the *Emergency Management and Civil Protection Act*. While these amendments permit quorum to be attained through electronic participation, they did not create any new exceptions to the open meetings rules.

By late March, most municipalities had closed their municipal offices to the public. Rapid implementation of these adjustments resulted in some confusion.

On March 19, 2020, when Council for Alnwick/Haldimand held its regular meeting in the Council Chambers in Grafton, a Notice on the doors to the Municipal Office (see Appendix 1 for the full text of the Notice) indicated the building remained open, although citizens were discouraged from attending. The Notice contained the following text:

As of Friday, March 13, 2020 all programs and events at all municipal facilities will be postponed and/or cancelled, effective immediately and continue to April 5th, 2020.

At this time, the Municipal Office will remain open, however, citizens are discouraged from attending or gathering there. Council, together with Senior Management staff, will continue to monitor the situation and provide updates with respect to these closures.

The doors to the Municipal Office were locked, but staff maintained vigil and monitored the door, to allow entry for any member of the public who wished to attend the Council meeting or conduct other Township business.

We find that the March 19, 2020 Council meeting was not illegally closed; posting a member of staff at the door to allow entry for any member of the public wishing to attend the Council meeting provided public access, which minimally complied with the open meeting requirements. Though the text of the Notice could have given more specific instructions with respect to public attendance at Council meetings, the lack of that specificity did not render the meeting of March 19, 2020 to be a closed meeting.

3. Public Participation in the 2020 Budget Process

The complainant alleged that there were irregularities occurring in the annual Budget process, which suggest that budget deliberations may have taken place out of the public view, resulting in illegal closed meetings. As evidence of this, communications between Township staff and members of the public were provided to us. These included written communications indicating that the 2020 Draft Budget, made available on March 19, 2020 as part of the Regular Council meeting Agenda, identified the status of certain Grants and Donations as “granted”, suggesting decisions had already been made. In addition, while emails between staff and a member of the

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public suggested that Council would be considering Budget matters on February 27 and March 5, 2020, no Council Budget matters were on the Agenda for the February 27 date (which was scheduled as a Planning meeting but cancelled due to snow) or the March 5 Regular Council meeting.

We understand that the referenced dates were simply dates being canvassed by staff to determine availability of members of the public to participate. We are satisfied that proper notice of the 2020 Budget as an Agenda item would have been provided if Council had had the budget before them for consideration.

We also are advised that the reference on the Grants and Donations portion of the 2020 Draft Budget did not in actuality mean that Council had already granted the amount specified; only that the amounts indicated could, in the view of staff, be accommodated. The text reflected staff's assumption that the grants would be approved. While we find that identifying these amounts as 'granted' in a draft Budget is confusing to the public, we are satisfied that this does not constitute evidence that Council had conducted budget deliberations or made budget decisions in the absence of the public.

4. Invitation to Member of a Council-appointed committee to Participate in February 27 and March 5 Budget Deliberations

A member of a Council-appointed committee was invited to present to Council Budget meetings on February 27, 2020 (cancelled due to weather) and then on March 5, 2020, whereas no notice of public Council meetings to consider the 2020 Budget was provided regarding such dates.

As noted above we understand that these were simply dates which staff were canvassing with the committee member, to determine availability. We understand that these dates coincided with previously scheduled meetings of Council, and the thus it was the intention to coordinate such Budget presentation for one of these dates.

Neither of these dates ended up having Budget presentations scheduled. We are satisfied that had the presentation materialized, there would have been an indication on the Council Agenda reflecting its occurrence. Nevertheless, it is our observation that the Township might benefit from a more structured approach to Budget meetings. For example, establishing an anticipated timeline with pre-scheduled Council Budget meeting dates, and communicating this at the outset, would assist to provide the public with the opportunity to participate more meaningfully in the process. Once established, dates can be changed or re-scheduled, if needed (due to inclement weather for example), however having a base budget public consultation timeline set out in advance would minimize uncertainty about the budget process.

Conclusions and Recommendations

We acknowledge the extraordinary circumstances of the COVID-19 pandemic and the resulting adjustments to normal practices that had to be made by municipalities, their elected officials and administrative staff. The safety of meeting participants is a clear priority.

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Amendments to the Act now permit municipalities to hold meetings electronically during a declared emergency. However, open meeting rules continue to apply to such meetings. The requirement to hold meetings that are open to the public is not suspended in an emergency. It is important for municipalities to remain vigilant in ensuring public transparency around municipal decisions, notwithstanding that there may be an overarching focus on public safety.

There was no public notice provided of the Special Council meeting held Saturday, March 28, 2020. In the result, we find that it was not in compliance with the Township's Procedure By-law, and was improperly held in the absence of the public in contravention of the *Municipal Act*, 2001 requirement that all meetings of Council be open, unless a specified exemption is invoked by resolution (none of the open meeting exemptions set out in s. 239 of the Municipal Act are at all relevant to the Notice of Motion contemplated that day, and so they are not canvassed here).

Notwithstanding the existence of provisions that would allow for the abridgement of notice, there is no provision in the Procedure By-law, or authorized by the *Municipal Act*, that would allow for the holding of a meeting in the absence of any notice. In any event, the deferral of a Notice of Motion to eliminate ice surfaces could hardly be considered urgent, extraordinary or an emergency, particularly when the matter appeared on an agenda for a Council meeting mere days later. While the Township admirably responded to a groundswell of concern in the community, that was to remedy a public relations problem. The fundamental democratic rights of residents to observe and participate in the decisions of their local government should not be diminished or extinguished even where the goal is to respond to a public outcry. We therefore recommend that proper notice of meetings be given in every instance.

With respect to the March 19, 2020 meeting, while the attempt to limit public access to the Municipal Office resulted in some confusion, we are not aware of any member of the public who wanted to attend the Council meeting occurring in Council Chambers that day was denied access.

We recommend that the Township take steps to ensure that the public is aware of how they can observe and participate in electronic meetings. We encourage Council and the administration to be as transparent as possible in its actions, so that public trust is maintained. To the extent restrictions on public participation become necessary in order to accommodate open government in the midst of a pandemic, those restrictions must be carefully considered, and implemented only to the extent reasonably necessary, and only for as long as necessary.

Council should be aware that pursuant to Section 239.2 of the *Municipal Act* it is obliged to make this report available to the public. Further, pursuant to Subsection 239.2(12),

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local

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board, as the case may be, shall pass a resolution stating how it intends to address the report.

We would appreciate you facilitating the necessary Council resolution when this report and its recommendations are considered at Council. To that end, please place this report on the agenda for the Council meeting of May 21, 2020. We will be available to answer any questions raised.

As is our practice we are concurrently providing a copy of this report to the complainant.

We thank you for your co-operation during our review.

Sincerely,

Principles *Integrity*
Closed Meeting Investigator for
the Township of Alnwick/Haldimand

Notice – Effectively Immediately

Issue date: Friday, March 13, 2020

RE: The Township of Alnwick/Haldimand Cancelling all programs and events amid COVID-19 Pandemic

Good morning,

The Council of the Township of Alnwick/Haldimand has made a difficult but necessary decision to cancel all programs and events at all municipal facilities, based on the announcement of the World Health Organization (W.H.O.) declaring the spread of COVID-19 a pandemic and advice of multiple Health authorities in Ontario, as well as, the announcement of the Provincial Minister of Education to close all publicly funded school for an extended two week period after the March Break.

While the risk to our area remains low, we need to remain focused on our obligation to protect the health and safety of our citizens and the public. Given the latest developments, the following action will be taken:

As of Friday, March 13, 2020 all programs and events at all municipal facilities will be postponed and/or cancelled, effective immediately and continue to April 5th, 2020.

At this time, the Municipal Office will remain open, however, citizens are discouraged from attending or gathering there. Council, together with Senior Management staff, will continue to monitor the situation and provide updates with respect to these closures.

Council would like to thank you for your understanding and co-operation during this time and remind you that good hand hygiene and self-monitoring remains your best defence.

Keep Informed:

The most up-to-date information on COVID-19 is available on the Haliburton Kawartha Pine Ridge District Health Unit's website www.hkpr.on.ca 1-866-888-4577

Ontario Minister of Health update are also available at www.ontario.ca

Public Health Agency of Canada www.canada.ca/coronavirus