



Revised Agenda

Council

September 8, 2022 – 10:00 AM

Council Chambers, Grey County Administration Building

1. **Call to Order**
2. **O Canada**
3. **Roll Call**
4. **Land Acknowledgement**
5. **Declaration of Interest**
6. **Adoption of Minutes**
 - a. County Council and Committee of the Whole minutes dated August 11, 2022
That the minutes of the County Council meeting and Committee of the Whole meeting dated August 11, 2022, and the resolutions contained therein, be adopted as presented.
 - b. Committee of the Whole closed meeting minutes dated August 11, 2022
That the Committee of the Whole closed meeting minutes dated August 11, 2022, be adopted as presented to County Council.
 - c. Long-Term Care Committee of Management meeting minutes dated August 23, 2022
That the Long-Term Care Committee of Management minutes dated August 23, 2022, be adopted as presented to County Council.
That the following resolutions contained therein be endorsed:
 - i. **That report LTCR-CM-14-22 regarding the Long-Term Care 2023-2032 Draft Ten-Year Capital Forecast be received; and**
That it be forwarded for inclusion in the 2023-2032 Corporate Ten-Year Capital Forecast for consideration by County Council; and
That the projects proposed in the first year of the 2023- 2032 forecast be used for planning purposes for the 2023 Budget; and

That correspondence be sent to the Minister of Long-Term Care in thanks for the discussion during Grey County's 2022 AMO Conference delegation and to reinforce the information presented by the County regarding the province's construction subsidy and the redevelopment project.

7. Closed Meeting Matters (If Required)

8. Reports

- a. Closed Meeting Investigation Report dated September 1, 2022

That the Closed Meeting Investigation report prepared by Cunningham Swan Lawyers, dated September 1, 2022, be received for information.

9. By-laws (None)

10. Good News and Celebrations

11. Adjournment

Council

August 11, 2022

Grey County Council met at the call of the Warden on the above date at 10:03 AM at the County Administration Building. The Clerk called Council to order, and Warden Selwyn Hicks assumed the Chair.

The Warden invited members of Council to stand for O Canada.

The Roll was called by the Clerk with all members present, except Councillors Mackey and Desai, whose alternate Councillor Little was in attendance.

Kim Wingrove, Chief Administrative Officer; Tara Warder, Clerk; and Sarah Goldrup, Deputy Clerk/Legislative Coordinator were also in attendance.

The following staff members were in attendance or participating virtually:

Randy Scherzer, Deputy CAO; Mary Lou Spicer, Director of Finance; Anne Marie Shaw, Director of Community Services; Pat Hoy, Director of Transportation Services; Kevin McNab, Director of Paramedic Services; Michael Letourneau, Director of Legal Services-County Solicitor; Savanna Myers, Director of Economic Development, Tourism and Culture; Tara Cockerill, Children's Services Manager; and Scott Taylor, Director of Planning Services

Land Acknowledgement

We acknowledge with respect, the history, spirituality, and culture of the Anishinaabek, Six Nations of the Grand River, Haudenosaunee, and Wendat-Wyandot-Wyandotte peoples on whose traditional territories we gather and whose ancestors signed Treaties with our ancestors. We recognize also, the Metis and Inuit whose ancestors shared this land and these waters. May we all, as Treaty People, live with respect on this land, and live in peace and friendship with all its diverse peoples.

Moment of Silence

The Warden called for a moment of silence to recognize recent losses in the community.

Declaration of Interest

There were no disclosures of interest.

Adoption of Minutes

CC71-22 Moved by: Councillor Robinson Seconded by: Councillor Milne

That the minutes of the County Council meeting and Committee of the Whole meeting dated July 28, 2022, and the resolutions contained therein, be adopted as presented.

Carried

CC72-22 Moved by: Councillor Bordignon Seconded by: Councillor Hutchinson

That the Committee of the Whole closed meeting minutes dated July 28, 2022, be adopted as presented to County Council.

Carried

Closed Meeting Matters

There was no closed meeting held.

Reports

Public Health Grey Bruce Board of Health minutes dated June 24, 2022

Dr. Arra presented to the Council, noting that COVID-19 numbers remained stable. Further, Dr. Arra highlighted recent communications from Public Health related to rabies exposure and the ongoing opioid crisis.

CC73-22 Moved by: Councillor O'Leary Seconded by: Councillor Paterson

That the minutes of the Public Health Grey Bruce Board of Health meeting dated June 24, 2022, be adopted as presented.

Carried

By-Laws

There were no by-laws.

Good News and Celebrations

Councillor Clumpus expressed their thanks for the moment of silence in relation to recent loss in Meaford's community. Further, Councillor Clumpus shared an upcoming volunteer appreciation dinner with the Lieutenant Governor on August 24, 2022, including a community roundtable discussion regarding youth mental health.

Councillor Hutchinson noted the success of the Ayton Family Ball Tournament. A portion of the funding will go towards healthy meals for students at the Normanby Public School.

Councillor McQueen recognized the recent passing of Jim Harrold and spoke about his contributions to the community, including his tenure as a Councillor and Reeve of the former Artemesia Township.

Councillor Boddy also recognized the recent loss of Bill Twaddle and spoke about his contributions to the community, noting his involvement in public works and utility initiatives and role on Owen Sound Council.

Adjournment

On motion by Councillors Milne and Robinson, Council adjourned at 10:16 AM to the call of the Warden.

Selwyn Hicks, Warden

Tara Warder, Clerk

Committee of the Whole

August 11, 2022

Grey County Council met on the above date at 10:17 AM at the County Administration Building. Warden Selwyn Hicks assumed the Chair and called the meeting to order with all members present, except Councillors Mackey and Desai, whose alternate Councillor Little was in attendance.

Declaration of Pecuniary Interest

Councillors Soever and Bordignon declared a conflict of interest with the closed meeting item.

Business Arising From the Minutes

There was no business arising from the minutes.

Delegations

Francesca Dobbyn – United Way – Update on Community Support Initiatives

Francesca Dobbyn presented to the Committee regarding the Grey Bruce United Way and spoke about the organization's mandate, staffing, and 2021 finances. The presenter explained how guiding community committees and data inform the organization's grassroots efforts and funding to support the community. The presenter highlighted the Backpack Program, noting increased need, particularly among high school students, and challenges due to supply chain issues. The presenter described the Utility Assistance Program, the support provided beyond provincial programming, and advocacy to the Ontario Energy Board. Additionally, the presenter spoke to the Financial Literacy Program and 211 information phoneline and the unmet needs identified through the calls. Francesca Dobbyn also reviewed food security and other micro programs supported by United Way.

Kim Wingrove highlighted the upcoming Warden's Gala to be held on November 4, 2022, with funds raised to support the United Way.

In response to questions from the Committee, Francesca Dobbyn spoke about challenges around service boundaries and efforts to collaborate and connect residents with area service providers.

Determination of Items Requiring Separate Discussion

Councillor McQueen requested Item 5.a. be removed from the Consent Agenda and moved under Items for Discussion:

- a. **That the Agricultural Advisory Committee meeting minutes dated July 27, 2022, be adopted as presented to County Council; and,**

That the following resolutions contained therein be endorsed:

- i. **That the correspondence from the Municipality of Tweed, dated July 4, 2022, regarding the Ontario Wildlife Damage Compensation Program be received for information.**

Consent Agenda

CW120-22 Moved by: Councillor Soever Seconded by: Councillor Woodbury

That the following Consent Agenda items be received; and

That staff be authorized to take the actions necessary to give effect to the recommendations in the staff reports; and

That the correspondence be supported or received for information as recommended in the consent agenda.

i. That report PDR-CW-29-22 regarding an overview of plan of subdivision application 42T-2022-01 on lands described as Town Plot Park Part Lots 5 and; 6 N/E Alfred St. Plan 107 Pt; Lots 5 and 6, Reference Plan 16R10171; Parts 2 to 4; and Plan 107, Part Lot 6, Reference Plan 16R10171, Part 1, Part of Lot 33, Concession 10 (Geographic Township of Thornbury), in the Town of The Blue Mountains, be received for information.

ii. That the 2023 Response Time Performance Plan, as outlined in the report PSR-CW-04-22, be approved and submitted to the Ministry of Health.

Carried

Items for Direction and Discussion

The Committee recessed and reconvened at 10:55 AM.

CAOR-CW-07-22 Rising Construction Prices and Impacts on Development Charges

CW121-22 Moved by: Councillor Bordignon Seconded by: Councillor Boddy

That report CAOR-CW-07-22, which provides information with respect to rising construction prices and the potential impacts on Development Charges, be received; and

That staff be directed to continue to monitor the Development Charges Reserve and advise Council immediately should the Development Charges Reserve start approaching negative levels.

Carried

EDTC-CW-13-22 Tax Increment Equivalent Grant Agreement

CW122-22 Moved by: Councillor Bordignon Seconded by: Councillor Hutchinson

That report EDTC-CW-13-22 Tax Increment Equivalent Grant (TIEG) Agreement be received; and

That a by-law be brought forward to enter into an agreement with the Town of Hanover to participate in the Town's Tax Increment Equivalent Grant; and

That delegated authority to enter into future TIEG agreements with the member municipalities in Grey County be considered in a future update to the Delegation of Duties By-law.

Carried

SSR-CW-08-22 Home Child Care Agency Participation in the Canada-Wide Early Learning and Child Care System

CW123-22 Moved by: Councillor Burley Seconded by: Councillor Gamble

That report SSR-CW-08-22 be received; and

That staff be directed to proceed with having the Grey County Home Child Care Agency opt-in to the Canada-Wide Early Learning and Child Care system.

Carried

HDR-CW-15-22 396 14th Street Supportive Housing Project Request for Proposal Results

CW124-22 Moved by: Councillor Boddy Seconded by: Councillor Carleton

That report HDR-CW-15-22 regarding the 396 14th Street Supportive Housing Project request for proposal results be received; and,

That JP Commercial Contractors be awarded the project in the amount of \$3,743,000 exclusive of HST; and,

That action be taken prior to council approval as per Section 26.6 b of Procedural By-law 5134-22.

Carried

Agricultural Advisory Committee Minutes & Resolutions – July 27, 2022

CW125-22 Moved by: Councillor McQueen Seconded by: Councillor Bordignon

That the Agricultural Advisory Committee meeting minutes dated July 27, 2022, be adopted as presented to County Council; and,

That the following resolutions contained therein be endorsed, as amended by the Committee of the Whole:

- i. **That the correspondence from the Municipality of Tweed, dated July 4, 2022, regarding the Ontario Wildlife Damage Compensation Program be supported by the Council of the County of Grey.**

Carried

Closed Meeting Matters

Due to the declared conflict of interest, Councillors Soever and Bordignon left the meeting at this time and did not participate in any discussion or vote regarding the closed meeting item.

CW126-22 Moved by: Councillor Robinson Seconded by: Councillor Paterson

That Committee of the Whole does now go into closed session pursuant to Section 239 (2) of the Municipal Act, 2001, as amended to discuss an appeal to the Ontario Land Tribunal:

- i. **Litigation or potential litigation, including matters before administrative tribunals**
- ii. **Advice that is subject to solicitor-client privilege, including communications necessary for that purpose pursuant to Section 239 (2) of the Municipal Act, 2001 regarding; and**

That the following staff remain in attendance:

Kim Wingrove, Randy Scherzer, Michael Letourneau, Scott Taylor, Tara Warder, Sarah Goldrup, Katrina Peredun and Olivia Yale.

Carried

Council proceeded into closed session at 11:35 AM.

Council returned to open session at 11:57 AM.

The Warden confirmed that only the items stated in the resolution to move into closed session were discussed.

Other Business

There was no other business.

Notice of Motion

There were no notices of motion.

Adjournment

On motion of Councillors Milne and Hutchinson, Committee of the Whole adjourned at 11:57 AM to the call of the Chair.

Selwyn Hicks, Warden

Tara Warder, Clerk



Committee Minutes

Long-Term Care Committee of Management August 23, 2022 – 9:30 AM

The Committee met on the above date through electronic means with the following members participating:

Present: Warden Selwyn Hicks & Councillors Dwight Burley, Scott Mackey, Christine Robinson, Brian O'Leary, and John Woodbury

Regrets: Councillor Barb Clumpus

Staff

Present: Kim Wingrove, Chief Administrative Officer; Jennifer Cornell, Director of Long Term Care; Karen Kraus, Stacey Goldie and Shannon Cox, Executive Directors; Renate Cowan, Accreditation and Quality Specialist; Denna Leach, Clinical Specialist; Mary Lou Spicer, Director of Finance; Tara Warder, Clerk; Markus Hawco, Manager Finance, Long Term Care; and Sarah Goldrup, Deputy Clerk / Legislative Coordinator

Call to Order

Chair Mackey called the meeting to order at 9:30 AM.

Declaration of Pecuniary Interest

There were no declarations of pecuniary interest.

Delegations

There were no delegations.

Reports – Finance

LTCR-CM-14-22 2023-2032 Long-Term Care Ten Year Capital Forecast

Markus Hawco presented to the Committee and reviewed the report. The presenter

highlighted recurring capital projects shared by the long-term care homes, the projects recommended in the 2021 Building Condition Assessment, plans for reserves and future project funding, and the proposed changes to the ten-year capital forecast. Further, the presenter reported on each home's project sheets and spoke about sustainability, safety, legislation, and life cycle replacement considerations.

In response to questions from the Committee, staff discussed considerations for the sustainability of future capital projects, such as a future lighting audit for Lee Manor to identify energy-saving opportunities, potential grants, and inform the project's tender. Additionally, staff reported on the impacts of inflation, noting that annual reviews would allow the forecast to be adjusted where necessary. When asked about the effects of inflation and construction costs on the redevelopment project, Mary Lou Spicer described the project's anticipated costs and funding sources. It was confirmed the province's construction subsidy would provide approximately \$1,005,900 over 25 years, and the debenture term had also been calculated at 25 years to correspond to the provincial funding. Mary Lou Spicer further described the impact of borrowing rates and repayment on the levy, the proposed increases in taxation from 2023 to 2026 to support the project, and an annual expense of approximately \$5,370,000 funded by the levy from 2027 to 2032 for debt repayment.

The Committee heard comments from its members noting recent advocacy regarding the province's construction subsidy to the Minister of Long-Term Care during the 2022 Association of Municipalities of Ontario (AMO) Conference. Kim Wingrove also spoke to the work being undertaken by AdvantAge Ontario to understand the gaps in funding and what is needed to address them. The Committee discussed the need for further correspondence to the Minister to express their gratitude for the opportunity to delegate during the AMO Conference and reiterate concern for the impact of the levy increases required to support the redevelopment project, the importance of the initiative in providing health care for an aging population, and the need for greater support than that provided by the current construction subsidy.

Main Motion

Moved by: Councillor Burley

Seconded by: Councillor Woodbury

That report LTCR-CM-14-22 regarding the Long-Term Care 2023-2032 Draft Ten Year Capital Forecast be received; and

That it be forwarded for inclusion in the 2023-2032 Corporate Ten Year Capital Forecast for consideration by County Council; and

That the projects proposed in the first year of the 2023- 2032 forecast be used for planning purposes for the 2023 Budget.

Primary Amendment

CM17-22 Moved by: Councillor Robinson Seconded by: Councillor Burley

That the main motion, as outlined in report LTCR-CM-14-22, be amended to add the clause below:

That correspondence be sent to the Minister of Long-Term Care in thanks for the discussion during Grey County's 2022 AMO Conference delegation and to reinforce the information presented by the County regarding the province's construction subsidy and the redevelopment project.

Carried

Main Motion as Amended

CM18-22 Moved by: Councillor Burley Seconded by: Councillor Woodbury

That report LTCR-CM-14-22 regarding the Long-Term Care 2023-2032 Draft Ten Year Capital Forecast be received; and

That it be forwarded for inclusion in the 2023-2032 Corporate Ten Year Capital Forecast for consideration by County Council; and

That the projects proposed in the first year of the 2023- 2032 forecast be used for planning purposes for the 2023 Budget; and

That correspondence be sent to the Minister of Long-Term Care in thanks for the discussion during Grey County's 2022 AMO Conference delegation and to reinforce the information presented by the County regarding the province's construction subsidy and the redevelopment project.

Carried

Correspondence

There was no correspondence.

Other Business

Jennifer Cornell stated the need to postpone the Committee's tours of the County's long-term care facilities due to ongoing outbreaks and the transmissibility of the new COVID variants.

Further, Jennifer Cornell provided a verbal report on two ongoing outbreaks at Rockwood Terrace and confirmed that prevention and control measures were being

diligently followed. Jennifer Cornell shared recent information from Public Health that noted increased levels of COVID-19 circulating in the community, the increased transmissibility of the new variants, and that multiple index cases could complicate outbreaks.

Jennifer Cornell thanked the long-term care staff, care partners, residents and their families for their understanding and support.

Councillor Robinson requested that the proposed next meeting date of September 21, 2022, at 9:30 AM, be reviewed to facilitate the participation of all members, where possible.

Next Meeting Dates

To Be Confirmed

On motion by Councillor O'Leary, the meeting adjourned at 10:21 AM.

Scott Mackey, Chair



Cunningham Swan

LAWYERS

• EST 1894 •

Tony E. Fleming
Direct Line: 613.546.8096
E-mail: tfleming@cswan.com

CONFIDENTIAL

September 1, 2022

Delivered by email: Tara.Warder@grey.ca

Mayor and Members of Council
c/o Tara Warder, Clerk
Grey County
32 Mill Street East
Box 310
Thornbury, Ontario
N0H 2P0

Dear Mayor and Members of Council:

**RE: Closed Meeting Investigation
Our File No.: 37274-1**

This public report of our investigation is being provided to Council in accordance with Section 239.2(1) of the *Municipal Act*. We note that Section 239.2(11) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Closed Meeting Investigator is prepared to attend at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. Council does not have the authority to alter the findings of the report, only consider the recommendations. Per section 239.2 (12), if the report contains a finding that all or part of a meeting was held in

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TEL: 613-544-0211
FAX: 613-542-9814
EMAIL: INFO@CSWAN.COM
WEB: WWW.CSWAN.COM

closed session contrary to the *Act*, then Council is required to pass a resolution stating how it intends to address the report.

The Closed Meeting Investigator has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Investigator is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Investigator the duty to conduct investigations in response to complaints under the *Municipal Act*, and that the Investigator is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Investigator's final decision in this matter.

PRELIMINARY REVIEW

On July 8, 2022, our office was referred a closed meeting complaint which was made to Grey County on June 28, 2022. The complaint pertains to two meetings; an item in the Committee of the Whole's closed session held June 9th, 2022, added to the public agenda by amendment; and Committee of the Whole's closed session held June 23, 2022.

The *Municipal Act* provides the Closed Meeting Investigator with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the preliminary review, our process included:

- Reviewing the relevant provisions of the *Municipal Act*;
- Correspondence with the complainant; and
- Reviewing agendas, closed session resolutions, and similar documentation.

During the preliminary review we assume that the facts as set out in the complaint are true. We do this not for purposes of finding a breach, but to test the merit of the complaint. In other words, would the allegations, if true, amount to an illegally closed meeting? If so, we undertake a full investigation to determine whether the allegations are true. If the allegations, even if true, would not constitute an illegally closed meeting there is no reason to undertake a full investigation. It is important to understand that we make no finding of fact during the preliminary review - we simply assume the facts are true as a method to assess the merit of the complaint at this stage.

Our initial review of the materials provided indicated that, even if all of the facts alleged in the complaint were true, both meetings were properly held in closed session. That is to say, none of the allegations made in the complaint would result in a finding that either matter ought not have been discussed in closed session. For that reason, this matter was concluded without further investigation.

FACTS:

The facts in this matter are quite simple and pertain to two meetings of the County's Committee of the Whole.

On June 9th, 2022, Committee of the Whole resolved to move into closed session. Prior to doing so, an amendment was passed as follows:

That the Committee of the Whole agenda dated June 9, 2022 be amended to add an additional closed meeting matter subject to Section 239 (2) of the Municipal Act, 2001 regarding a potential planning litigation matter:

- i. Advice subject to solicitor-client privilege, including communications necessary for that purpose
- ii. Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board

The minutes of the closed session indicate that the discussion related to recently completed litigation before a statutory board. Additionally, Committee of the Whole considered correspondence relating to the position taken by the County during said litigation.

On June 23rd, 2022, Committee of the Whole resolved to move into closed session. The resolution read as follows:

That Committee of the Whole does now go into closed session pursuant to Section 239 (2) of the Municipal Act, 2001 as amended to discuss:

- i. Personal matters about an identifiable individual, including municipal or local board employees (compensation); and

That the following staff remain in attendance: Kim Wingrove, Jennifer Moreau and Tara Warder.

Municipal Act

239 (1) Except as provided in this section, all meetings shall be open to the public.

Exceptions

- (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

[...]

- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
 - (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,
- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
 - (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

ANALYSIS:

Under the *Municipal Act*, the default position is that meetings of Council and similar bodies are open to the public. This is an important rule, as it reinforces principles of open and responsible government. However, there will, naturally, be circumstances in which Council must address issues that should not be discussed in public; for this reason, the *Act* includes a number of exceptions.

The scheme of the *Act*, and previous decisions of closed meeting investigators, make clear that for a meeting to be properly closed to the public, the following requirements must be met:

1. The meeting must begin in open session, and a resolution must be passed to move into closed session;
2. The resolution to move into closed session must cite the section of the *Act* relied upon and must give a general description of the matters to be discussed; and
3. The content of the meeting must actually fall within the cited exception.

Even where an exception applies which permits a meeting to be held in closed session, the *Municipal Act* still imposes certain restrictions to ensure the possibility for a level of public scrutiny.

First, the motion to proceed into closed session must itself be held in open session. That is to say, a member of the public must be able to enter or log-in to the meeting as it is called to order, and as the motion to move to closed session is moved and voted on. Only once the motion passes can the public be excluded.

Second, the motion to move into closed session must provide the “general nature” of what is to be discussed. In *Farber v. Kingston (City)* 2007 ONCA 173, the Ontario Court of Appeal described the contents of this requirement as follows:

I think that the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.

A member of the public, not having been permitted to be present during the closed session, must nevertheless be able to review the motion and have a general idea as to what was discussed. This is important, not least of all because, without this step, the public has no way to otherwise hold its Council accountable with respect to the closed meeting.

Did Committee of the Whole Pass an Appropriate Resolution in Open Session to Move into Closed Session

June 9th

The minutes, reproduced above, indicate that Committee of the Whole began in open session, and later passed a motion to move into closed session. Early in the minutes, Council moved to add the discussion in question to the closed session agenda. Strictly speaking, the minutes do not reflect that change, and show only the motion as was originally planned. That being said, all of the elements required of a closed session motion are contained in the moved amendment to the agenda.

The amendment provides a brief description of the topic to be discussed, and the reason it will be discussed in closed session. The description is, in our opinion, sufficient to provide a member of the public with a general idea of what is being discussed, while maintaining the intent of the closed meeting. Accordingly, we find that Committee of the Whole met the requirements to move into closed session.

June 23rd

The motion to move into closed session, as reproduced above, contains the cited exception under the Municipal Act, and provides a brief description of the reason for doing so. It was passed in open session, prior to excluding the public. Accordingly, Committee of the Whole passed an appropriate resolution to move into closed session.

Did the Meeting Actually Fall within the Cited Exception

Having determined that the resolution to move into closed session met the necessary form requirements, we must now consider the substance of the meetings.

June 9th

We have had the opportunity to review the agenda and minutes used in closed session. As noted above, the meeting was closed under two sections. The question before us, is whether the discussion included information subject to privilege, or addressed litigation.

In our opinion, the discussion in question clearly meets the requirements of the litigation exception. Committee of the Whole was provided updates on the position taken by the County and the reasons for it.

The complaint raised two reasons why this ought not have been discussed in closed. First, the complaint referenced the fact that litigation was complete, and that the positions being discussed were contained in a published decision. We disagree with the proposition that the litigation exemption ceases to apply when litigation is complete or a when the County's position is made public. This interpretation would mean that a municipality can never have a post-litigation debrief or discussion in closed session, and would preclude discussion on how the litigation strategy was or was not effective. The *Act* does not specify that the litigation must be ongoing, only that it must be real or potential.

Second, the complaint alleged that certain correspondence considered by Committee of the Whole during this discussion ought not have been discussed in closed session. Having had the opportunity to review the correspondence in question, we disagree. The correspondence clearly references the litigation and the positions the County took therein. Discussion of the correspondence, therefore, properly constitutes discussion of the litigation itself.

Having determined that the subject matter was appropriate for discussion in closed session under the litigation exception, this matter was determined at the preliminary stage and no investigation was conducted. Accordingly, we have not considered whether the solicitor-client privilege exemption applies as, even if it does not, the meeting was nonetheless properly closed.

June 23rd

We reviewed the minutes of this closed session, and particularly the report submitted by staff, in order to consider whether the subject matter properly related to personal matters of identifiable individuals.

Subsequent to commencing our review, the County chose to publicly release the report discussed in closed session. For this reason, we are considering the entirety of the contents of this report to be public. Nonetheless, our analysis considers whether the meeting was properly closed to the public at the time it was held. We note, in the interest of clarity, that even if a matter is properly held in closed session, the Municipality is not *required* to do so. Therefore, there is no consequence, for the purposes of this analysis, created by the fact that the contents of the meeting were later made public.

The report presented to Committee of the Whole during the June 23rd meeting provided recommendations regarding salary increases for senior County management, along with justifications to support these increases. This was not an abstract discussion; the report specified particular positions and the proposed increased salaries for those positions.

Decisions of other closed meeting investigators are not binding on us. However, they are useful in considering how the closed meeting exceptions should be interpreted. Whether salaries are covered under the personal matters exception has been considered by both the Ontario Ombudsman and Local Authority Services on numerous occasions. In *Brighton (Municipality of) (Re)*, 2015 ONOMBUD 28, at paras 29-32, the Ombudsman's Office provides references to several decisions where salaries of individual staff members have been treated as personal information, which in turn resulted in meetings being properly within closed session.

We are in agreement with the conclusion in the *Brighton* decision, and others that it references. Discussion of the salaries of identifiable individuals is a discussion of those employees' personal information. In this case, Committee of the Whole had before it a report that contained specific salary recommendations for specific positions. In our view, this was enough to warrant that the matter be discussed in closed session.

The complainant raised a particular concern regarding this meeting: prior to Committee of the Whole resolving to go into closed session, it was stated that staff wished to "have a fulsome discussion" regarding the report. Our jurisdiction is limited to considering whether the meeting is properly closed – which, in our opinion, it is – and does not, strictly speaking, include considering whether the reasons for holding a discussion in closed session are otherwise appropriate. However, in the event I am wrong, and we are required to consider whether a "fulsome discussion" is an appropriate reason to move into closed, I would find that it is.

Published closed meeting investigator reports have considered the purpose of other sections, but not that of the personal information exception. The use of the legal advice exception has been found, on numerous occasions, to be to enable staff to speak freely, while the purpose of the labour relations exception was described as “to protect discussion relating to the relationship between a municipality and its employees”. That same report found that discussion of remuneration falls within the labour relations exception. In my opinion, the particular use of the personal information exception – to share details regarding the salaries of particular staff and reasons for increasing them – has parallels to the labour relations and legal advice exceptions, in that, at its core, it is meant to allow council to have a thorough discussion containing the personal information of an identifiable individual, without fear that such information would become public. To that extent, moving into closed session in order to have a “fulsome discussion” in this context is permitted under the exception.

CONCLUSION AND RECOMMENDATIONS

We determined during our preliminary review of the complaint that the allegations of the complainant, even if true, would not result in a finding that either discussion was improperly closed. All of the facts alleged by the complainant, and the supporting documentation that they provided, supported a finding that the meetings were properly closed.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
Anthony Fleming Professional Corporation

TEF:jm