**REPORT**

**TO**

**THE COUNCIL OF THE TOWN OF WHITCHURCH-STOUFFVILLE**

**REGARDING THE INVESTIGATION TO DETERMINE IF THE NORTH SHORE ROADS COMMITTEE IS SUBJECT TO THE OPEN MEETINGS PROVISION OF THE MUNICIPAL ACT**

**Complaint**

The Town of Whitchurch-Stouffville (“Town”) received a complaint on April 8, 2011 regarding a closed meeting of the Preston Lake North Shore Roads Committee that may have taken place .

The complainant also seeks an opinion on whether the Preston Lake North Shore Roads Committee (“Committee”) is a body subject to the open meeting provisions of the Municipal Act 2001, Section 239 or By-law 2008-013-MLS in respect of a meeting or part of a meeting that was closed to the public.

The complaint was forwarded to the offices of Amberley Gavel Ltd. for investigation.

**Jurisdiction**

The Town of Whitchurch-Stouffville appointed Local Authority Services (LAS) as its closed meeting investigator pursuant to section 239.2 of the Municipal Act 2001 as amended by Bill 130 (Municipal Act). LAS delegated its powers and duties to Amberley Gavel Ltd. to undertake the investigation and report to the Council of the Town of Whitchurch-Stouffville.

Section 239.1 provides that the role of the closed meeting investigator is to report to council on “whether a municipality or local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public”.

**Background**

Section 239 of the Municipal Act provides that all meetings of a municipal council, local board or a committee of either of them shall be open to the public. This requirement is one of the elements of transparent local government. The section does set forth exceptions to this open meeting rule. It lists the reasons for which a meeting, or a portion of a meeting, may be closed to the public.

Section 239 reads in part as follows.

*Meetings open to public*

[***239.****(1)*](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm#s239s1)*Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).*

*Exceptions*

[*(2)*](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm#s239s2)*A meeting or part of a meeting may be closed to the public if the subject matter being considered is,*

*(a) the security of the property of the municipality or local board;*

*(b) personal matters about an identifiable individual, including municipal or local board employees;*

*(c) a proposed or pending acquisition or disposition of land by the municipality or local board;*

*(d) labour relations or employee negotiations;*

*(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;*

*(g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act. 2001, c. 25, s. 239 (2).*

*Other criteria*

[*(3)*](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm#s239s3)*A meeting shall be closed to the public if the subject matter relates to the consideration of a request under the Municipal Freedom of Information and Protection of Privacy Act if the council, board, commission or other body is the head of an institution for the purposes of that Act. 2001, c. 25, s. 239 (3).*

*Educational or training sessions*

[*(3.1)*](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm#s239s3p1)*A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:*

*1. The meeting is held for the purpose of educating or training the members.*

*2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee. 2006, c. 32, Sched. A, s. 103 (1).*

Section 239 also requires that before a council, local board or committee moves into a closed meeting, it shall pass a resolution at a public meeting indicating that there is to be a closed meeting. The resolution also must include the general nature of the matter(s) to be deliberated at the closed meeting.

No matter or item other than the matter(s) expressly referred to in the public resolution may be discussed or otherwise dealt with at the closed meeting.

Subsections 239 (5) and (6) limit the actions that the council, committee or local board may take at the closed meeting. Votes may be taken only for procedural matters or for giving direction to staff or persons retained by the municipality.

**Investigation**

The investigation into the complaint began on May 3, 2011 and the Town Clerk was so advised. The Town Clerk, Michele Kennedy, was interviewed on May 31, 2011 and the former Chair of the Committee, Janice Aaltink, was interviewed by telephone on May 31, 2011. The complainant was contacted and declined the opportunity for an interview indicating there was no added information to provide.

Documents provided by the Town and reviewed during the course of the investigation include a By-law to Establish Terms of Reference for the Committee, By-law to Govern Town Committees, By-law to Govern the Proceedings of Council Meetings, Committee Minutes , 2011 Orientation Meeting for the Committee, excerpts from Municipal Property Assessment Commission records, and correspondence. The Town’s website was also reviewed.

**Observations**

1. **Preston Lake North Shore Roads Committee**

Properties located on the north shore of Preston Lake have been developed and improved during a period consisting of many years with ingress and egress being provided by a private road network. Ownership of the roads rests with a third party, being a numbered company. The property owners have requested that the Town assume ownership of the private road network, however, the Town has refused primarily because the roads cannot meet municipal standards.

The Town is assisting the property owners by creating the Committee and imposing a levy on fifty-one properties to provide funding for the Committee. The Town also provides liability insurance for the activities of the Committee. The Committee prepares an annual budget and work programs to maintain the private rights-of-way on the north shore of Preston Lake.

1. **The Town's By-law Number 2007-169-AP (Committee)**

The Town enacted this By-law on August 14, 2007 to establish terms of reference for the Committee. The By-law provides a mandate and composition. The mandate is conveyed in the previous paragraph and composition is a minimum of five members but not more than eight members one of which is a member of Council and the others are chosen from property owners of the North Shore Community of Preston Lake. The Committee appoints a Secretary, a Treasurer, a Road Commission and Beaches & Parks Manager all of whom are volunteer members of the Committee. Currently, the Committee is comprised of eight members. Meetings are held quarterly or at the call of the Chair.

1. **The Town's By-law Number 2011-014-MS (Town Committees)**

The Town enacted this By-law on February 15, 2011 to govern the organization, operation, proceedings and administration of Town committees and appointees. It repeals a by-law passed in 2008.

Clause 4 provides that the actions and recommendations of Town Committees and appointees are subject to the policies and administrative practices of the Town of Whitchurch-Stouffville.

Clause 15 provides that all meetings of Town Committees shall be open to the public, unless closed for those reasons outlined in The Municipal Act, 2001, Section 239 (2) where applicable.

Clause 16 provides that a quorum shall be a simple majority of the total number of Committee members and non-quorum meetings shall not be permitted.

1. **The Town's By-law Number 2008-112-MS (Council Procedural)**

The Town enacted this By-law on August 19, 2008 to govern the proceedings of Council meetings and to repeal **By-law 2008-013-MS**.

1. **Town's Orientation Meeting for the Committees**

The Town conducts an annual orientation meeting for members of the Committee. The material for the May 9, 2011 meeting contains a Council organization chart depicting the Committee as being one of several committees of Council.

The section on meeting procedures provides that a quorum is five members (simple majority) and non-quorum meetings are not permitted.

The section on Notice confirms that meetings are open to the public and identifies past methods of providing notice of meetings. Generally, notice options are electronic conveyance, public postings in the community and a community newsletter.

The section on agendas provides that the Chair and Secretary develop an agenda with input from members.

**Findings**

1. It appears the complaint was submitted due to four members of the Committee meeting prior to the public budget meeting scheduled for April 4, 2011.
2. Traditionally and in accordance with the Orientation instructions, the Chair and Secretary have consulted on the preparation of the agenda for Committee meetings. In this instance, two additional committee members were included, being the Chair of the Road Commission and the Treasurer, primarily because the 2011-2112 roads work plan and budget were the main topics for the April 4th public meeting. During the consultation, preparation and distribution of meeting notice as well as materials for the meeting were considered in addition to agenda content. No decisions were made other than those regarding agenda preparation.

3. A quorum is a simple majority of the members of the Committee, being five or more members. Four members does not constitute a quorum.

**Conclusion**

Amberley Gavel Ltd. has reached the following conclusions:

 a) The North Shore Roads Committee is a committee of the Council,

subject to the open meeting legislation and municipal by-laws;

b) The pre-meeting consultation between four members of the

Committee did not constitute a meeting;

 c) In the absence of a meeting of the Committee being held, there is no determination regarding compliance with Section 239 of the Municipal Act.

d) The North Shore Roads Committee has acted in compliance with the Town's policies and procedures.

**Recommendations**

1. To ensure conformity with Town policies and procedures, it is recommended that more professional support be provided by the Town to the North Shore Roads Committee.
2. It is recommended that the Town provide specific direction for adequate notice of North Shore Roads Committee meetings to ensure compliance with provisions of the Municipal Act.

**Public Report**

We received full cooperation from the Town Clerk and the former Chair of the North Shore Roads Committee and we extend our thanks to both of them.

This report is forwarded to the Council of the Town of Whitchurch-Stouffville. The Municipal Act provides that this report be made public. It is recommended that this report be included on the agenda of the next regular meeting of Council or at a special meeting called for the purpose of receiving this report prior to the next regular meeting.

August 2011,

Closed Meeting Investigator

AMBERLEY GAVEL LTD.

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_