**A REPORT TO THE COUNCIL OF THE TOWNSHIP OF SOUTHGATE REGARDING THE INVESTIGATION OF A COMPLAINT REGARDING ALLEGED CLOSED MEETINGS OF THE ECONOMIC DEVELOPMENT COMMITTEE OF THE TOWNSHIP OF SOUTHGATE HELD BETWEEN DECEMBER 1st, 2010 AND MARCH 12TH, 2012**

**A. THE COMPLAINT**

Pursuant to Section 239.1 of the Municipal Act (“the Act”) relating to closed meetings of council and committees of council, the Township of Southgate received a letter of complaint dated March 12, 2012. The complainant asked for an investigation of all of the meetings of the Economic Development Committee of the Township of Southgate held between December 1st, 2010 and the date of the complaint, March 12th, 2012. Through the research and interview process for this report it has been determined that the Economic Development Committee held ten meetings between these dates:

December 9, 2010

January 28, 2011

February 25, 2011

March 18, 2011

June 27, 2011

September 14, 2011

October 21, 2011

November 9, 2011

November 29, 2011

February 9, 2012

The complainant alleges that proper public notice was not given of these meetings which meant that “the municipality has effectively held closed meetings” contrary to the provisions of the Municipal Act. The complainant further alleges that proper minutes were not kept of these meetings contrary to the Act.

**B. JURISDICTION**

The Township of Southgate has appointed Local Authority Services (LAS) to act as its closed meeting investigator pursuant to Section 239.2 of the Act. LAS has, in turn, delegated its powers and duties to Amberley Gavel Ltd. to

undertake the investigation and report to the Council of the Township of Southgate.

Since it became clear on perusal of the documents provided to the investigator that most of the facts in this case were not in dispute, it was determined that telephone interviews would suffice rather than face to face interviews. Accordingly, on May 3rd, 2012 the investigator conducted three telephone interviews and a fourth was conducted on the following day.

**C. LEGAL BACKGROUND**

Closed Meetings:

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 is one of the elements of transparent, open government that the Act encourages. However the Act also provides for a limited number of exceptions that allow a local council or committee of council to meet in closed session.

Section 239 reads, in part, as follows:

[**239.** (1)](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm%20\%20s239s1) Except as provided in this section, all meetings shall be open to the public.

**Exceptions**

[(2)](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_01m25_f.htm%20\%20s239s2) 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.

Finally, subsections 239(5) and (6) limit the actions that may be taken by the Council at the closed session. Votes may be taken at the closed session only

for procedural matters or for giving direction or instructions to staff or persons retained by the municipality.

The role of an investigator of a complaint filed under Section 239.1 is fairly narrow. The investigator’s role is to determine “whether the municipality…has complied with section 239 or a procedure by-law under section 238(2) in respect of a meeting or part of a meeting that was closed to the public and to report on the investigation”. Accordingly, the role of the investigator is to examine the *process* followed and not the substance of any particular issue.

**D. FACTUAL BACKGROUND**

Under a change in practice that commenced in 2008 the Township began to operate with “a committee system”. Since that date six or seven committees have been established. Most of these committees are composed of three members of the seven member council plus two staff members. The inclusion of staff members on committees of council is an anomaly among municipalities in Ontario. *(See Recommendation 5below for correction)*

The Economic Development Committee is one of these committees of council and it is composed of three members of council, the Chief Administrative Officer and the Economic Development Officer. The Economic Development Committee, like other committees of council, reports directly to the Township Council.

Since this committee structure is fairly new for the municipality the procedure to be followed by such committees is not specifically dealt with in the Procedure By-law of the Municipality which focuses on procedure for the Township Council and the “Committee of the Whole”.

Over the 25 month between December, 2009 and the end of 2011 the Economic Development Committee met only nine times. Neither the Township Clerk nor any member of her staff would normally attend the committee meetings. The practice was for the Economic Development Officer to act as the secretary for the committee. He would take “notes” at the committee meeting and then report, for the most part orally, on the discussions and recommendations of the Committee at the next meeting of Council. His “notes” were not distributed to members of Council. In fact, in a corollary proceeding under the Municipal Freedom of Information Act, the Economic Development Officer refused to provide his “notes” to the Township Clerk (save for notes of two meetings). This Economic Development Officer, a contract employee, left the employ of the municipality at the end of 2011 for personal reasons not directly related to this issue.

Since, as indicated above, the committee system was fairly new, notice of most of these meetings was not given. If a member of the public somehow became apprised of a meeting he or she was welcomed to attend and to make representations on any issue. But members of the public rarely attended meetings of the Economic Development Committee for the obvious reason that the meetings were not advertised.

However all of this changed as of late 2011. As a result of criticism received from a number of citizens and as a result of a growing recognition that the municipality had to become more “open and transparent” all committee meetings are now posted on the Township’s website a minimum of two business days prior to the meeting. This new “practice” also became applicable to meetings of the Economic Development Committee. This committee now meets monthly (unless there is a lack of items on the agenda) and the agendas are advertised on the Township’s website. Further, any member of the public who so wishes can now be added to an email list to receive what is known as “an agenda package”. These subscribers (which now number seventy-seven) automatically receive not only all committee agendas but also any supporting documents. This email notice also is distributed at least two days prior to the meeting.

Finally, there has also been a change in the practice of taking minutes of meetings. The new Economic Development Officer, a full time employee of the Township now takes more formal minutes of the meetings (although they are still referred to as “notes”). These minutes now include a list of those in attendance, correspondence received, discussion items, action items, new business and the time of adjournment.

**E.THE ISSUES:**

***Lack of Notice***

It is the view of Amberley Gavel Ltd. that it has the jurisdiction to consider the appropriateness of *the notice* given of the meetings of the Economic Development Committee. Under Section 239.2 (1) of the Municipal Act the role of the investigator includes an examination of the issue whether the municipality has complied with a procedure by-law under Section 238(2) of the Act. Such a procedure by-law must include provisions relating to proper notice of *meetings*.

Further, under Section 238(1) of the Act a “committee” of council is defined to mean “any advisory or other committee…of which 50 percent of the members are also members of one or more councils…” By this definition, the Economic Development Committee is such a committee. The same subsection in the Act also defines “meeting”to include any meeting of a committee of council.

The complainant has argued that the failure of the Township to give notice of these meetings has meant that the Township “has effectively held closed meetings”. In short, Amberley Gavel Ltd. concurs in this argument.

Proper notice is recognized as one of the hallmarks of natural justice. There is no doubt that both the Council and staff in the Township fully endorse the principle of public participation in the decision-making process. However the recognized right to make representations on issues of public interest is a hollow one if a member of the public is not given adequate notice of the meetings where these issues are being debated and voted upon by their elected representatives.

In fact, it became clear during the interview process that both the member of council interviewed and staff recognized the deficiency in the process followed in the past. Their only defense to this part of the complaint was to state that the deficiency was self-recognized by the end of 2011 and that remedial measures were taken at that time to rectify the deficiency. As indicated above, the Township, as of late 2011 commenced to give notice of meetings of the Economic Development Committee by placing the Agenda on the Township’s website a minimum of two business days prior to the meeting and emailing the agenda to all “subscribers” to their “agenda package program”.

Amberley Gavel Ltd. recognizes and commends the municipality for instituting this new process but now recommends that the new practice be formalized by amending the Township’s Procedure By-law to incorporate the new process.

As required under the Municipal Act the Township has a Public Notice Policy (“Policy #15”) and the chart that forms part of the policy includes the following:

|  |  |  |
| --- | --- | --- |
| 238  Procedural By-law | Notice of Intent not required. Procedural by-law must have meeting notice provisions. | 2+3 [ 2+3 refers to “notice levels” - two days prior notice and publication in the media] |

However if one then turns to the Procedure By-law of the Township – Bylaw 85-2008 – the notice provisions are noticeably absent. This should be corrected by the Township.

***Lack of Minutes of the committee meetings***

Subsection 239(7) of the Municipal Act states as follows:

A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether closed to the public or not.

Accordingly, the Act mandates that minutes be taken at all committees of Council. Until the beginning of the current year this was either not done or was done in a very informal and haphazard manner at the Economic Development Committee meetings. But again, as indicated above, this requirement has now, admittedly belatedly, been implemented by the Township.

**F. FINDINGS**

1. Amberley Gavel Ltd finds that the complaint filed has validity for the period December, 2009 through December, 2011. During that period notice of meetings of the Economic Development Committee was not given and consequently the meetings could be deemed to have been held in closed session contrary to the provisions of the Act.

2. Amberley Gavel Ltd. finds that minutes of the Economic Development Committee were not properly taken, as required by the Act during the period December, 2009 through December, 2011.

3. Amberley Gavel Ltd. finds that since January, 2012 the Township has taken steps in practice to bring themselves into compliance with the Act in regard to both the giving of notice of meetings of the Economic Development Committee and the taking of minutes of such meetings.

**G. RECOMMENDATIONS**

1. It is recommended that the Township incorporate notice requirements for both council meetings and committee meetings in its Procedure By-law.

2. It is recommended that the Township Clerk specifically appoint and train the Economic Development Officer or an alternate to take minutes of the Economic Development Committee.

3. It is recommended that the minutes of the Economic Development Committee be regularly placed on the Township’s website prior to the next subsequent council meeting.

4. It is recommended that the Clerk obtain what notes exist from the Economic Development Committee meetings held during the period December, 2009 through December, 2011and retain them as if they were minutes.

5. It is recommended that members of staff not be appointed to advisory or standing committees of Council. The role of staff is to provide analysis and advice directly to Council and through Committees, but not to vote on whether or how that advice goes forward to Council.

*(Note: Subsequent to this report being issued, and considered by Council , Amberley Gavel was informed that it had been erroneously advised that staff were members of the Economic Development Committee, and other Committees, but were in fact in attendance to advise duly appointed Committee members.)*

Finally, Amberley Gavel Ltd. would like to thank the Township for their co-operation during the course of this investigation. The Clerk was very diligent in the provision of required information. As noted above, there has been a notable change in the practice of the Township relating to notice of meetings which is a pre-requisite of having open and transparent meetings. Amberley Gavel Ltd. encourages the Township to continue along the path that they have now charted.

This report is provided to Council in accordance with the requirements of the Municipal Act. We recommend it be placed on the agenda of the next regular meeting of Council, or on the agenda of a special meeting called earlier for the process of receiving it.

May 2012

AMBERLEY GAVEL LTD.

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