

August 20, 2012

Clerk Cathy Saunders  
City of London  
P.O. Box 5035  
London, ON N6A 4L9

Dear Ms. Saunders:

**Re: Closed Meeting Complaint Regarding Proposed Development at 940 Springbank Drive**

I am writing further to our telephone conversation of August 20, 2012 regarding the results of our review about a complaint that Council held improper closed sessions in September 2011, and on May 1, 2012, relating to a proposed apartment development.

As you know, the Ombudsman is the closed meeting investigator for the City of London. In reviewing these complaints, our Office spoke with you and reviewed the meeting agendas and minutes as well as the City's Procedure By-Law and relevant sections of the *Municipal Act, 2001* (the Act).

**Built and Natural Environment Committee Meeting – September 19, 2011**

The complaint alleged that, in September 2011, Council came to an agreement while in closed session to rescind the Planning Department's authority regarding site plan approval for the proposed apartment development at 940 Springbank Drive and to delegate approval authority to itself.

You advised that there were no closed sessions in September 2011 during which this subject was discussed. Our review confirmed that, on September 19, 2011, the Built and Natural Environment Committee (now the Planning and Environment Committee), held an open meeting to discuss the site plan application for this development.

According to the public minutes, during this meeting, the Committee prepared recommendations to be considered by Council at a public meeting later that evening. The recommendations suggested that Council temporarily revoke the delegated

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

authority of the planning staff and designate Council as the approval authority for the site plan application.

According to the minutes of the September 19, 2011 Council meeting, Council considered and approved the Committee's recommendations in open session.

### **Closed Meeting - Committee of the Whole – May 1, 2012**

The complaint also alleged that Council held an improper closed meeting on May 1, 2012, following which it approved the site plan for the development project.

The public agenda for the May 1, 2012 Council meeting included reference to consideration in open session, of a Report of the Planning and Environment Committee concerning the property located at 940 Springbank Drive.

At the open meeting, after discussion about the Planning and Environment Committee report and recommendation, Council considered a motion based on the Committee's recommendations. The motion included three sections:

- a) the plans as Schedule "A" for the development of a twelve-storey apartment building with 165 units, BE APPROVED;
- b) that the Executive Director of Planning, Environmental & Engineering Services BE DIRECTED to formalize the approval, including the execution of the development agreement, substantially in the form as Schedule "B", that includes a requirement that the owner accept the risks and costs of the development, including slope stability;
- c) the Civic Administration BE REQUESTED to meet with the applicant to discuss the potential for the purchase of the land or the potential for a land swap...

In accordance with its procedure by-law, which enables it to suspend requirements relating to the late addition of agenda items, Council then unanimously resolved to:

" go into Committee of the Whole, in camera for the purpose of considering a matter pertaining to advice that is subject to solicitor-client privilege, including communications necessary for that purpose, with respect to the site plan application for the property located at 940 Springbank Drive."

All Council members, as well as the Clerk and the City Solicitor attended the closed meeting.

The closed meeting record indicates that the City Solicitor provided advice to Council regarding the site plan application and Council returned to the open session.

According to the public minutes, Council then passed a resolution to defer section (c) of the motion (concerning the land swap) to later in the meeting, "to provide for the opportunity to receive further information from the Civic Administration."

Council then approved parts a) and b) of the motion in the open session by a vote of ten to five.

Later in the meeting, Council resolved to proceed in camera as Committee of the Whole to discuss a number of closed meeting items, which had been set out on the public agenda. In accordance with its procedure by-law, it also unanimously voted to add two items relating to the proposed development. Council described the discussions relating to the development as follows in its resolution authorizing the closed session:

- a proposed acquisition of land and advice that is subject to solicitor-client privilege (regarding property at 940 Springbank Drive),
- a matter pertaining to advice that is subject to solicitor-client privilege, including communications necessary for that purpose (relating to property located at 940 Springbank Drive).

Our review confirmed that council considered legal advice relating to these two matters as well as a proposed acquisition of land.

Upon returning to the open session, Council considered and passed a recommendation to amend item (c) of the motion above to state:

"that NO ACTION BE TAKEN with respect to the potential for the purchase of the land or the potential for a land swap."

## **Analysis**

The *Municipal Act* permits Council and Committees of Council to meet in camera to receive "advice that is subject to solicitor-client privilege, including communications

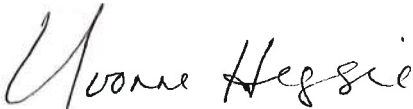
necessary for that purpose" (s.239(2)f)). The Act also permits closed session consideration of a proposed or pending acquisition or disposition of land by the municipality (s.239(2)(c)).

The information we reviewed, including the closed meeting records, confirmed that the closed session discussions on May 1, 2012, relating to the development proposal fit within the permitted exceptions to the open meeting requirements.

As discussed, we asked that you share this letter with Council at the next public Council meeting. You stated that the letter would be added to the September 4, 2012 Finance and Administration Committee open meeting agenda and the public council meeting agenda for September 18, 2012.

We would also like to thank you for your cooperation with our review.

Sincerely,



Yvonne Heggie  
Early Resolution Officer