

Pursuant to a request made regarding Waterfront Toronto's open meeting procedures, a motion was passed at the March 25, 2015 Board meeting directing that the open meeting procedures of the Corporation as reflected in the most recent three meetings of the Corporation be reviewed by the Corporation's Open Meeting Investigator, the Honourable Mr. Coulter Osborne with a report to be presented to the Board.

Enclosed please find Mr. Osborne's report to the Board regarding this matter. Mr. Osborne will attend the Board meeting on June 24, 2015 to respond to any questions pertaining to his report.

Report to the Board of Directors of the Toronto Waterfront Revitalization Corporation re Waterfront Toronto Meetings Closed to the Public

In October 2013 I was appointed as Investigator in relation to complaints regarding Waterfront Toronto meetings closed to the public. It was in my capacity as Investigator that I was asked by Waterfront Toronto's Board of Directors on March 25, 2015 to review the meeting procedures, open and closed, of the corporation.

Material Reviewed

In preparing this report I have reviewed the following documentation relevant to Waterfront Toronto's open/closed meeting practices:

1. Memorandum re Waterfront Toronto's meeting practices;
2. Toronto Waterfront Revitalization Corporation Act, 2002;
3. City of Toronto Act (Sections 190 to 194);
4. Waterfront Toronto Bylaws 1 and 2;
5. Waterfront Toronto Governance Committee meeting memoranda relevant to meeting practices;
6. A letter from Allan Leibel, counsel to Waterfront Toronto, dated September 26, 2013 concerning "in-camera" board meetings;
7. Memoranda re closed board meetings dated September 19, 2014 and January 20, 2015;
8. Closed meeting memorandum concerning Waterfront Toronto Planning Session of February 8, 2015;
9. Memorandum re closed segment of board meeting held on February 18, 2015;
10. Closed board meeting materials re February 18, 2015 meeting;

11. Memorandum with rationale for closed meeting agenda re board meeting on February 25, 2015;
12. Closed meeting materials re February 25, 2015 board meeting;
13. Memorandum with rationale for closed meeting agenda re May 4, 2015 board meeting;
14. Closed meeting materials relevant to May 4, 2015 board meeting.

In addition to the above material I was provided with, and reviewed, parts of the Ontario Ombudsman's Annual Report of 2010/2011 concerning the use of closed meetings by municipal corporations; Ministry of Education memorandum re closed meetings; Local Authority Services' commentary about closed meetings; a City of Toronto Clerk's Office Secretariat's commentary on holding closed meetings; and categories of exemptions under Freedom of Information Legislation.

The Statutory Requirements

The legal requirements in relation to open/closed board meetings are relatively straightforward. It is the application of these legal requirements that causes problems and criticism from such sources as the Ombudsman's Annual Report 2010 – 2011.

Section 6(4) of the Toronto Waterfront Revitalization Act (TWRA) provides that s. 190 of the City of Toronto Act applies to Waterfront Toronto meetings with "necessary modifications". What this means in real world terms is that Waterfront Toronto's board's meetings must be open, unless one or more of the exceptions listed in s. 190 (2) are applicable. These exceptions are:

190 (2) 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 City or local board;
- b) personal matters about an identifiable individual, including a city employee or a local board employee;
- c) a proposed or pending acquisition or disposition of land by the City or local board;
- d) labour relations or employee negotiations;
- e) litigation or potential litigation, including matters before administrative tribunals, affecting the City or local board;
- f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose; or
- g) a matter in respect of which the city council, board, committee or other body may hold a closed meeting under another Act. 2006, c.11, Sched. A, s. 190 (2).

Assuming an exception is engaged, before holding a meeting that is closed to the public, the board is to state by resolution:

- a) the fact of the holding of the closed meeting and general nature of the matter to be discussed 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...

Waterfront Toronto Board/Committee Meeting Practices

The material that I reviewed included references to Waterfront Toronto board or committee meetings held on February 8, 2015, February 18, 2015, February 25, 2015, and May 4, 2015. In addition to reviewing the above meeting focused material I spoke with Waterfront Toronto's Board Chairman, Mark Wilson, to confirm the extent to which there is consultation in relation to the allocation of meeting agenda items to a closed meeting status. As I understand it, Waterfront Toronto's practice is for its Corporate Secretary, Ann Landry, to prepare and review meeting agendas. Ms. Landry will make a preliminary assessment of those agenda items that engage one or more of the exceptions listed in the City of Toronto Act, imported into the TWRA through the City of Toronto Act. Closed meeting agenda items are also reviewed by Waterfront Toronto's President and CEO, John Campbell. In the end, with that input, Ms. Landry prepares the meeting agenda indicating on its face what agenda items are to be discussed on a closed to the public basis. I am satisfied on my review of all of the material with which I have been provided and my discussions with Waterfront Toronto staff that every effort is made to limit the extent to which particular agenda items are to be discussed in meetings closed to the public. Given the nature of Waterfront Toronto's commercial undertakings, there will inevitably be agenda items that will engage the open meeting exceptions listed above.

Conclusion

The four meetings that I examined in particular reasonably illustrate the kind of agenda items with which Waterfront Toronto's Board has to deal. I can see no basis upon which to recommend changing the process that is followed in identifying agenda items or issues that may be heard at a meeting closed to the public. Care has

to be taken to avoid what I refer to as “slippage”. By that I mean including agenda items at meetings closed to the public at the end of a closed meeting as a matter of convenience, in circumstances where the added item does not come within any of the exceptions listed above. A useful example of that is my appointment by Board motion to undertake this review and report on it to the Board. This appears to have been addressed in the “Other Business” section of a meeting closed to the public held March 25, 2015. I see no reason why the circumstances relevant to this review should have been dealt with a meeting closed to the public.

Lastly, so that the vocabulary of Board and Committee minutes will be consistent with relevant statutory provisions, the designation “closed to the public”, should be used in place of the older term of reference, “in-camera”.

Before concluding this report I should note that in my capacity as investigator in relation to meetings closed to the public I have received no complaints requiring any investigative action. This provides some evidence that suggests an absence of public concern about agenda items wrongly being dealt with at meetings closed to the public.

Dated at Toronto this 17th day of June 2015



Coulter A. Osborne