



Cunningham Swan

LAWYERS

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CONFIDENTIAL

February 20, 2024

SENT BY EMAIL TO: TDafoe@stratford.ca

Mayor and Members of Council
c/o Tatiana Dafoe, City Clerk
City of Stratford
1 Wellington Street
P.O. Box 818
Stratford, ON N5A 6W1

Dear Mayor and Members of Council:

**RE: Closed Meeting Investigations
Our File No. 36684-3**

Introduction

On May 31, 2023, the City of Stratford received a complaint with respect to all closed meetings that had been held in the City since September 2018. The Complaint alleged that, “Council routinely votes on substantive matters” in closed session, contrary to the *Municipal Act, 2001*, and asked the Closed Meeting Investigator to determine whether such votes had occurred in these meetings.

Our office was appointed to investigate this complaint. In total, 142 closed meetings occurred during the nearly five-year span targeted by the Complaint. Each of the votes taken in those meetings was reviewed for compliance with the *Municipal Act*

Overview of the Principles Applied to Closed Session Votes

For each vote taken in closed session, we considered two questions:

- 1) Was the vote procedural in nature, or otherwise only providing direction to staff?
- 2) Did the vote pertain to a topic that is covered by one of the closed session exceptions?

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Votes were only found to be properly held in closed session only where the answer to both of these questions was “yes”.

This test for determining whether a vote could be held in closed session comes from the *Municipal Act*. As we have outlined in previous reports, the default position of the *Municipal Act* is that meetings are open to the public, with certain exceptions. The same is true of votes; section 244 of the *Municipal Act* prohibits any vote being taken “in secret”; however, subsection 239(6) allows a vote to occur in closed session under certain circumstances. That section reads as follows:

Exception

- (6) Despite section 244, a meeting may be closed to the public during a vote if,
- (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
 - (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.

As with all legislation, subsection 239(6) must be interpreted in accordance with the modern principles of statutory interpretation, with the words given their ordinary and grammatical meaning in context. Accordingly, we interpret 239(6) as setting out two criteria, both of which must be met for a vote to be properly held in closed session.

The first such requirement is that “subsection (2) or (3) permits or requires the meeting to be closed to the public”. In our view, this should be interpreted as asking whether the subject matter of the vote falls within any of the exceptions established under 239(2) or (3). However, we note that this is distinct from the question as to whether a meeting was properly held within closed session, as that question pertains not only to the subject matter of a meeting, but also to the procedures followed. This is particularly pertinent given previous findings, by our office and others, that the City of Stratford was not following the correct procedures to resolve into closed session. While those procedural shortcomings may be fatal to the ability to hold the meeting in closed, they are not fatal to the actual holding of a vote. Therefore, to meet the first requirement, a vote has to be on a topic that *could* be discussed in closed session.

The second criterion is that the vote is “for a procedural matter or for giving directions or instructions”. Put simply, we understand this requirement as prohibiting substantive decisions from being made behind closed doors, while allowing municipalities to provide the necessary directions to staff and others to move forward a matter otherwise properly discussed in camera. The distinction between substantive decisions and instructions to staff can at times be a thin line, and in many cases may appear to be more academic than anything.

As a general rule, the second criterion can be understood to mean that Council cannot make final decisions or bind the City while in closed session.

It is important to note that subsection 239(6) applies when voting occurs, regardless of the outcome. Even if a motion or resolution was refused by Council, we considered whether the vote itself was properly held in closed session. On the same note, because the rules relate to the vote itself and not the individual decisions, where more than one instruction or decision was included in the same motion, under the same vote, we considered the vote as a whole. If some of the items addressed were properly voted on in closed but others weren't, the entire vote was considered improper.

Specific Topics

Unsurprisingly, during our review we saw many similar topics arise. Matters such as making appointments to boards or buying or selling land come up frequently in any municipality. Below, we discuss how some of those recurring items are dealt with in our analysis.

Receiving a Report for Information

Many of the votes taken during the meetings were merely to receive a report for information. On its own, this is a procedural vote, which can be held in closed session. However, in order to receive information in closed session, that information must pertain to subject matter that could be discussed in closed. Accordingly, where Council voted to receive a report for information, we considered whether the report pertained to a matter that was properly covered under one of the closed meeting exceptions.

Closed Meetings and the Decision-Making Process

Council cannot make substantive decisions in closed. It can use the closed session to receive or discuss information or topics that, for a variety of reasons, it would be justified in keeping out of public view. However, once the information is received and/or the discussion held, the actual decision making needs to be held in public.

The line between providing directions and making a substantive decision can be unclear, particularly on matters such as negotiations, litigation, or hiring. A helpful way to think of this is to remember that Council can provide directions for something that is ongoing, where the final decision will come back in open session for a final decision. Staff can be given a negotiating position, for example, or be asked to solicit applications. However, once the final agreement is reached, candidate selected, or decision made, this must occur in public. Put more simply, Council cannot do anything in closed session which would actually be binding on the City. It also cannot simply instruct staff to bind the City instead (delegation must be voted on in open session).

Council can also provide in camera direction to have staff place a specific topic on an open session agenda. This might include placing a resolution on the open session agenda that would have Council adopt a specific approach, or pass a by-law to authorize a specific decision. This is an appropriate way of moving decision making from closed session to open, as long as the actual decision is being made at the open session. What Council cannot do is vote on a substantive decision first, and then confirm that decision in open session. Put simply, Council cannot make its mind up in closed session, and then rubber stamp that decision in open.

A helpful example can be drawn from two separate meetings in which hiring for a Director-level position was considered. At its May 19, 2019, meeting, Council heard a report and recommendations from staff to hire a specific individual. Council did not make a decision at that meeting; rather, it voted to list the recommendation and a by-law implementing that recommendation for an upcoming public meeting. Contrast this with August 30, 2021, where Council considered another appointment of a director-level position. This time, Council voted to appoint a specific individual into that position, and to list by-laws confirming the appointment at a public session.

In the first example, Council had not, technically, made the final decision yet; rather, it heard the report and recommendations, and then voted to have a discussion on the final decision in public. In the second example, however, Council had made the actual decision of a particular candidate in closed session; the by-laws being listed for open session merely confirmed a decision already made.

This is not a distinction without a difference. Although the motion placed on an open session agenda might presuppose a certain decision, the public is present when that proposal is discussed and voted on, ensuring transparency in decision-making.

Binding vs Non-Binding Agreements

In various meetings reviewed during our investigation, Council considered letters of intent, memoranda of understanding, and other similar documents and agreements. These sorts of agreements are sometimes used by parties to negotiations to outline their various commitments. Typically, they are not a binding contract. However, in some of the meetings we reviewed, Council entered into “binding” letters of intent, with obligations on either or both parties. This was contrasted with meetings where letters of intent (or similar) were not referred to as binding.

Where Council considered itself to be entering into a binding obligation, we consider this to be a substantive decision. This is true whether those obligations were on the City or another party. In determining whether the City was entering into something seen as binding, if Council believed the agreement to be binding, we accepted this as fact. As stated elsewhere in our report, Council cannot bind itself in closed session.

Council Matters

In our October 20, 2022, Report, we considered the topic of whether Council can discuss matters such as Councillor salaries or Council appointments to committees and boards in closed session. On the basis of a number of other reports and decisions, we found that Council will rarely be permitted to discuss this kind of business in closed.

The same is true for voting on these matters. The public has a strong interest in being able to scrutinize the decisions Councillors make regarding themselves.

Appointments of Members of the Public to Boards and Committees

Council made a number of appointments of non-Council members to fill public seats in various boards, committees, etc. Appointing an individual to a committee is a substantive decision, and the same precautions referenced elsewhere apply here: Council can only vote to move the recommendation into open session and cannot do so merely to rubber stamp a decision it has already made. Additionally, as our 2022 Report detailed, an appointment to a board or committee is not, in and of itself, personal information. As such, when considering such appointments, we considered the process and form of the resolution voted on, but also whether the topic could be discussed in closed session to begin with.

Hiring Decisions

Another topic which arose with some frequency was decisions in hiring processes. Generally, this took the form of Council being asked to “confirm” a decision to make an offer of employment to a candidate. On several occasions, Council voted on the appointment of a particular person to a position, notably Chief Administrative Officer.

Hiring decisions touch on the subtle and nuanced difference between making decisions and directing staff. The Ombudsman’s Office, whose decisions are informative but not binding, has addressed this question in several decisions. In Baldwin (Township of) (Re), 2014 ONOMBUD 10, councillors conducted a ranked vote of candidates for a position; when votes were tallied, staff were instructed to hire the winner. This was found by the Ombudsman to be permissible, as it was an instruction to staff. However, in Sables-Spanish Rivers (Township of) (Re), 2020 ONOMBUD 5 (CanLII) the Office spoke critically of votes including setting wages and making an offer of employment to a specific individual. It indicated these were not instructions to staff or merely procedural.

We prefer the reasoning in Sables-Spanish Rivers, more so than Baldwin. A decision to offer a specific person a specific job, or to set wages, is substantive. If a distinction is to be drawn, it may be that Council could, in some circumstances, direct senior staff as to how to carry out hiring or wage increases in the same way staff are instructed on sale of properties – essentially, to set the terms of negotiation, with a final contract or offer to be approved in open session.

Procedure

Our Office received a copy of the confidential minutes for each of the 142 closed sessions identified in the Complaint. For each, we reviewed votes that were taken during the session, to determine whether said vote was improperly held in closed session.

It is important to note that this is not the first report our office has completed with respect to many of these same meetings. In 2022, we investigated complaints with respect to a large number of closed sessions of Stratford City Council. That report was delivered October 20, 2022, and focused on whether the meetings were properly held in closed session. In the below report, we rely on our conclusions in the October 20, 2022, report.

Because the *Municipal Act* prohibits voting on a matter in closed, regardless of the outcome of the vote, we considered all votes, including those that were unsuccessful or were deferred. The one exception to this is the purely procedural votes passed to adopt in camera agendas and accept minutes of previous in camera sessions, as well as votes to adjourn into open session. Because of their purely procedural nature, we presumed that each of these votes was properly held.

For each vote held in closed session, we applied the analysis framework discussed above, and decided whether the vote was properly held in closed session. We note that both Council and Committee of the Whole meetings were considered; for ease of reference, the term “Council” was used with respect to both.

September 10, 2018

Agenda

4.1 Council Code of Conduct Complaint

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.2 Request to purchase [Redacted]

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

5.1 Agreement to Lease Space to the Canadian Opera Company

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

6.1 Sale of [Redacted] Wright Business Park

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

6.2 MOU with [Redacted]

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

7.1 To declare Surplus – City Owned Lands fronting Forman Avenue

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

6.3 Added – Company X Manufacturer Inquiry

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

Analysis

4.1 Council voted to direct staff to list for open session a resolution regarding the outcome of an investigation report into allegations of violations of the Code of Conduct. It is important to note that this meeting occurred prior to the establishment of the existing integrity commissioner regime. In line with decisions of the Ombudsman's Office from the same period, we find that discussions of allegations of misconduct against specific, named Councillors constitutes personal information. As such, this vote was properly held in closed session, as it was both sufficiently procedural and pertained to subject matter that fit within an exception.

4.2 Council voted to direct staff to initiate intent to declare a City property surplus, and provided instructions regarding that process. This was properly voted on in closed session, as it pertained to the disposal of City property and consisted of direction to staff.

5.1 Council voted to instruct the Mayor and CAO to engage in negotiation of agreements that were to be brought back for Council consideration. This was sufficiently procedural and pertained to negotiations. Accordingly, this vote was appropriately held in closed session.

6.1 Council voted to list by-laws authorizing the sale of City property at an open session of Council. This was appropriate for an in-camera vote.

6.3 No vote was held on this topic.

6.2 Council voted to receive legal advice. This was an appropriate vote in camera.

7.1 Council voted to instruct staff to initiate the process for declaring City-owned lands surplus and directed that the lands be disposed of through direct negotiations with adjacent property owners. This was sufficiently administrative, being instructions to staff, and pertained to matters appropriately discussed in closed session. Accordingly, this vote was properly held in closed session.

October 9, 2018

Agenda

4.1 [Redacted] Lease Negotiations
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years, and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.2 Negotiations Update with [Redacted]for [Redacted] Project
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))]; and

5.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Transit Division)
[Labour relations or employee negotiations (section 239.(2)(d))].

Analysis

4.1 Council voted to defer a decision on entering into a non-binding letter of intent regarding certain municipal property. This pertained to instructions in a negotiation and was procedural in nature. Accordingly, this was appropriately discussed in closed session.

4.2 Council voted to receive legal advice and list a by-law for open session. This was appropriately voted on in closed session.

5.1 Council voted to receive for information a report on collective bargaining outcomes. This pertained to labour relations and was procedural in natural. Accordingly, this topic was properly voted on in closed session.

November 13, 2018

Agenda

4.1 Canadian Opera Company Proposed Non-Binding Letter of Intent

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))]

4.2 Added – LPAT Appeal Stratford East

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))]

5.1 Contribution Agreements for the Britannia Street Affordable Housing Project

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

6.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Transit Division)

Labour relations or employee negotiations (section 239.(2)(d));

Analysis

4.1 Council voted to receive a report for information, and to authorize the CAO to enter into a non-binding letter of intent regarding the lease of municipal property. Given the non-binding nature of this letter of intent, we do not understand this as a final or substantive decision. Accordingly, this vote was properly held in closed session.

5.1 Council voted to instruct staff to execute and enter into an agreement between the City and a specific department of the City. While entering into an agreement would typically be a substantive decision, in this case the agreement was essentially without effect, as it was not, legally speaking, between two different parties. However, while the vote may not have been substantive, we can identify no exception applicable to taking this vote in closed session. The agenda cites the exception for legal advice; however, Council's vote was not simply to accept legal advice, but to provide specific instructions to staff. While those instructions may not have been substantive, they also were not related to legal advice. Accordingly, this was not properly voted on in closed session.

6.1 Council voted to receive a report on collective bargaining for information. This was properly voted on in closed session.

4.2 Council provided the City Solicitor with instructions to negotiate an ongoing litigation matter. This was properly voted on in closed session.

November 21, 2018

Agenda

3.1 Appointments to the Accessibility Advisory Committee
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.2 Appointments to the Active Transportation Advisory Committee
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.3 Appointments to the Stratford City Centre Business Improvement Area (BIA) Board
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.4 Appointments to the Energy and Environment Committee
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.5 Appointments to the Heritage Stratford Committee
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.6 Citizen Appointments to the Stratfords of the World-Ontario Committee
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.7 Appointments to Board of Park Management
(Personal matters about an identifiable individual(s) including

municipal employees or local board employees) (section 239.(2) (b));

3.8 Appointments to Committee of Adjustment
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.9 Appointments to the Communities in Bloom Committee
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.10 Appointments to the Stratford Police Services Board
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.11 Appointments to the Upper Thames River Conservation Authority (UTRCA) Board
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.12 Appointments to the Stratford Public Library Board
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.13 Appointments to the Stratford Youth Advisory Council
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.14 Appointments to the Stratford Town and Gown Committee
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b));

3.15 Appointments to the Ad-Hoc Citizen's Committee on Council Remuneration
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))

Analysis

Each of the topics discussed during this meeting related to appointments to various boards or committees.

For agenda items 3.3, 3.9, and 3.13 Council voted to re-advertise the position, to attract further candidates. In our opinion, this decision was substantive, in that it materially changed the application process, and opted to seek new candidates rather than accept existing candidates. As such, these votes were not properly held in closed session.

With respect to the remaining twelve agenda items, each one followed the same process of voting to recommend the appointment of specific candidates; they did not, however, purport to actually make said appointments. Personal information about the applicants was included on each agenda item. Accordingly, these votes were all properly held in closed session.

December 4, 2018

Agenda

3.1 Proposed Stratford South Industrial Expansion

Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years and, A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i));

4.1 [Redacted]

Proposed Minutes of Settlement to be submitted Local Planning Appeals Tribunal (“LPAT”) Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e));

5.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Transit Division) Labour relations or employee negotiations (section 239.(2)(d)).

Analysis

3.1 This agenda item pertained to ongoing negotiations with a third party considering establishing facilities within the City. The vote was to authorize the CAO and the City Solicitor to advance discussions with that third party, but also with the Province, the County, a neighbouring Township, and certain property owners. The stated goal of the negotiations was to move toward entering into binding agreements for Council's consideration.

In our opinion, this vote was properly held in closed session. The motion clearly states that staff are to negotiate binding agreements for Council consideration; those agreements are largely related to negotiating with a variety of actors.

4.1 Council voted to accept settlement of a matter before what was then known as the LPAT. In this case, the deal Council voted to accept was to approve an Official Plan amendment. Nothing in the resolution indicates that this was in any way non-binding or otherwise being put forward in open session. While Council can provide instructions in closed with respect to negotiations or litigation, in this case it exceeded that authority when it voted to amend its Official Plan. Accordingly, this vote was not properly held in closed session.

5.1 Council provided the Director of Human Resources instructions on the City's position in labour negotiations. This vote was properly held in closed session.

December 10, 2018

Agenda

3.1 Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years and, A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)).

Analysis

3.1 Council voted to provide authorization for staff to negotiate a binding agreement to be presented to Council, and to "prepare to initiate" a variety of related processes. In both cases, we understand these as instructions to undertake preparations, rather than the final decision on entering into an agreement or commencing certain processes. Both related to ongoing

negotiations between the city and a third party. For this reason, we consider these votes to be properly taken in closed session.

December 17, 2018

Agenda

3.1 Counter Offer for City Owned Lands on [Redacted] Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years).

4.1 Proposed Stratford South Industrial Expansion Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years and, A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i));

5.1 CAO Performance Review Committee

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2) (b)).

Analysis

3.1 Council provided staff with instructions to make counter-offers with respect to the sale of certain City-Owned properties. This was a procedural instruction provided in the context of disposition of property, and therefore was properly voted on in closed session.

4.1 No vote was taken on this item.

5.1 This appears to have been an internal vote to determine which members of Council would determine the process for evaluating the CAO. While this vote was sufficiently procedural in nature, it did not pertain to subject matter properly discussed in closed session. As we have noted, information about an individual in their professional capacity does not, generally, constitute personal information within the meaning of the Act. While it is certainly possible that specific personal information can arise in discussions about an individual in their professional capacity, based on the minutes it would appear that, in this case, the subject matter

was merely setting up a process for a performance review of the CAO, rather than addressing any specific situation. As such, this vote was not properly held in closed session.

January 14, 2019

Agenda

4.1 Sale of [Redacted], City of Stratford, Wright Business Park to [Redacted]

Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years;

5.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) Transit Division, Local 636

Labour relations or employee negotiations (section 239.(2)(d));

6.1 Additional Applications for Communities in Bloom Advisory Committee

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

6.2 Additional Applications for Energy and Environment Committee

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

6.3 Additional Applications for Stratford City Centre Business Improvement Area (BIA) Board of Directors

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

6.4 Additional Applications for Stratford Town and Gown Committee

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

6.5 Additional Applications for Stratford Youth Advisory Council

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))

Analysis

4.1 Council voted to list by-laws for the sale of City-owned property at an open session meeting. This vote was properly held in closed session.

5.1 Council voted to ratify a Memorandum of Settlement with a union with respect to contract negotiations. The decision to ratify the agreement was a substantive one which could not be made in closed session. As a result, this vote was improperly taken in closed session.

6.1 Council voted to consider a candidate's nomination to a board at an upcoming meeting. Personal information of the applicants was discussed. In our opinion, this vote was properly taken in closed session.

6.2 Council voted to list an appointment to a board for an upcoming meeting. While this is the proper approach procedurally, our review of the minutes indicates no reason why this topic fell within a closed meeting exception. It appears from the minutes that all discussions of the candidate were of his professional background or existing participation in the organization. For that reason, this vote was not properly held in closed session.

6.3 Council voted to list four appointments to the BIA for consideration on an upcoming agenda. Personal information about the candidates was discussed. This vote was properly held in closed session.

6.4 Council voted to defer appointment of a student representative to the Town and Gown Committee, to allow for the Committee to discuss that position. Absent discussion of a specific candidate, there was nothing in this agenda item that allowed for discussion in closed session. As such, this vote was not properly held in close session.

6.5 Council voted on a motion to refer the terms of reference for the Stratford Youth Advisory Council to the Community Services Sub-Committee for review. The decision to review the Advisory Council's terms of reference, or even to request that the Sub-Committee do so, is not a matter that fits within any of the closed meeting exceptions. Although Council was within its rights not to appoint any applicants, the decision to have a sub-committee review the terms of reference ought to have been made in public.

January 28, 2019

Agenda

4.1 Identifiable Employee

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 Applicants for Energy and Environment Committee Representatives on ATAC

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))

Analysis

4.1 Council voted on a motion to instruct staff to dismiss a certain staff member, to begin negotiations of that staff member's severance, and to appoint an individual to fill the role on an interim basis. All three pertained to labour relations and personal information about the employee. However, of the three instructions provided, only those pertaining to negotiating severance could actually be voted on in closed session. Both the decision to dismiss a staff member, and the decision to fill the vacant role were substantive decisions which could not be made in closed session.

5.1 Council voted to list nominations for the Energy and Environment Committee's representative on the Active Transportation Advisory Committee for consideration at Council. When asked, City staff candidly admitted that no personal information was discussed at this meeting. We thank staff for their candor and cooperation on that point. As no personal information was discussed, the vote itself did not fit into any of the Closed Meeting Exceptions. Therefore, this vote was not properly held in closed session.

February 11, 2019

Agenda

4.1 CAO's Report – Overview Organizational Assessment of the City of Stratford

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)) and Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Valuation of [Redacted]

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years]

Analysis

4.1 Council voted to receive for information a lengthy report by the CAO regarding organizational assessment and staff development priorities. When we inquired with the City, we were advised that no personal information was contained in this report or discussed on this agenda item. Accordingly, this vote was not properly conducted in closed session.

5.1 Council voted to provide instructions, including a minimum sale price, in the context of ongoing negotiations to sell municipal property. This matter was appropriately voted on in closed session.

February 25, 2019

Agenda

4.1 Contract Negotiations – Stratford Professional Firefighters (SPFFA) Local 534.

[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Response to City's Counter Offer for City Owned Lands on [Redacted]

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

6.1 [Redacted] – response to Planning & Heritage Committee's Request for Additional Information

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))]

Analysis

4.1 Council voted to receive a report on labour negotiations, and to provide direction on the City's position in said negotiations. This matter was properly voted on in closed session.

5.1 Council voted to accept offers made on several City-owned properties, to reject two offers and respond with counter offers, and to attach certain conditions to the sale of the lands in question. All of these decisions related to disposition of land. While Council was permitted to provide instructions to make counter offers and instructions to include certain conditions of sale, Council was not permitted to vote in closed on accepting offers. That decision must be made in open session, as it is substantive.

6.1 No vote was held on this matter

March 4, 2019

Agenda

4.1 Disposal of [Redacted] Wright Business Park
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 Festival Hydro Restructuring Proposal
[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)) and, A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i))];

5.2 ADDED - Resolution of Outstanding Shared Services Matters with the County of Perth
[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)) and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

6.1 Request to [Redacted]
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)].

Analysis

4.1 Council voted to list by-laws authorizing the sale of City-owned lands at a public Council meeting. This vote was properly taken in closed session.

5.1 Council voted to “file” documentation restructuring a municipally owned corporation. This included creation of new corporations and restructuring within. There is no authority in the Municipal Act for Council to vote on corporate creations and restructuring in closed session. This vote was improperly held in closed session.

5.2 Council voted to provide instructions with respect to settling an ongoing contentious/litigious matter. This was properly conducted in closed session.

6.1 Council voted to provide staff instructions to start the process to declare municipal property surplus, and provided various instructions to be used in negotiations for sale of same. These votes were procedural in nature, in that they only provided instructions to staff, and did not provide final binding decisions. The subject matter – disposal of municipal lands and positions in negotiations – was properly discussed in closed session. Accordingly, this vote were properly held in closed session.

April 25, 2019

Agenda

3.1 Consent Application [Redacted] – appeal received for Local Planning Appeal Tribunal (LPAT)

[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)) and, Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2) (f)]

4.1 Added – Cyber Security

Security of municipal property of the municipality or local board (section 239.(2) (a)) and, Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2) (f)).

Analysis

3.1 Council voted to provide staff and the City Solicitor instructions relating to an ongoing legal matter. This vote was properly held in closed session.

4.1 No vote was held on this agenda item.

April 29, 2019

No votes were held during this closed session.

May 9, 2019

Agenda

3.1 New City of Stratford Director of Social Services

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))

Analysis

3.1 Council voted to consider recommendations for appointment of a new Director of Social Services at open session. This vote was properly held in closed session. What separates this vote from many others we analyzed is that the in-camera portion pertained only to reviewing staff recommendations; Council's vote was to then move those recommendations into open session for discussion. This is an appropriate approach because the actual substantive decision – in this case, who to hire – was not made in closed.

May 13, 2019

Agenda

4.1 Cyber Security Update

[Security of municipal property of the municipality or local board (section 239.(2)(a)) and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.1 Appointment of Director to Stratford Economic Enterprise Development Corporation

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 Proposed [Redacted] Project Direction to Proceed

[A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))];

7.1 Appointment to Active Transportation Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

7.2 Appointment to Stratford Town and Town Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

5.1 Council voted to list a recommendation for a board appointment for consideration at public session. As with the May 9, 2019, hiring decision, this was the correct approach – Council heard a recommendation, and voted to consider it openly. This vote was properly held in closed.

May 28, 2019

Agenda

4.1 Grand Trunk Community Hub/Canadian Opera Company - Consolidated Update Report [Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years, Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239.(2)(h)), A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))];

5.1 Municipal Representative on Thames Sydenham Drinking Water Source Protection Committee
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 Fire Department Shift Trials Report
[Labour relations or employee negotiations (section 239.(2)(d))]

Analysis

4.1 Council voted on a single motion to provide four sets of instructions.

First, Council voted to instruct the Mayor and CAO to advance discussions regarding certain funding opportunities. Staff assert that this was protected by the negotiations exception. We accept this explanation.

Second, instructions were provided to draft a binding letter of intent with a third party, to be provided for Council's consideration. Our review indicates that this letter related to ongoing negotiations with that third party.

Third, instructions were provided to draft term sheets and agreements with further third parties. Again, this was properly conducted in closed session.

Fourth, Council instructed staff to undertake a broad economic review of an ongoing project, including costs associated going forward. Read generously, that review appeared to have been for the purposes of informing negotiations, and on a balance of probabilities we find that it did relate to negotiating.

Per the above, we find that the entirety of this vote was properly held in closed session.

5.1 Council voted to instruct staff to add a motion to an open session agenda; that motion endorsed a specific nomination for a regional board. This was the appropriate approach, as Council did not make a substantive decision but merely, procedurally, set itself up to make such a decision in open session. However, nothing in the minutes indicates that such an appointment was a topic that could be discussed in closed session. To the contrary, the individual was already a member of said board, which is a highly technical and specialized board, and the Minutes only reveal discussions pertaining to him in his professional capacity. The City has taken the position that education experience, work experience, and volunteer experience were considered. However, our review of the minutes indicates that these aspects were only discussed in the context of the individual's professional background. Accordingly, this vote was not properly held in closed session.

6.1 Council voted to defer consideration of a report, in order to allow time for questions to be answered. Based on the Minutes, the report was voluminous and covered many topics; however, the overall purpose of the report was to consider specific staffing arrangements. In our opinion, this was sufficiently within the cited exception to be discussed in closed session, and the vote itself was procedural in nature. As such, this vote was properly held in closed session.

May 31, 2019

Agenda

3.1 CAO Retirement

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)); and

3.2 Cyber Security Update

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

3.2 No vote was held on this agenda item.

3.1 Council voted to accept a staff member's letter stating they would be retiring. Although employment does not generally fall within the personal information exception, we accept that a letter from a staff member to Council advising that they were terminating their employment is personal in nature and can be received in closed session.

June 10, 2019

Agenda

4.1 CAO Transition Plan

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)) and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.2 Cyber Security Update

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

4.1 Council voted on a single motion containing three decisions: to appoint a specific individual as interim CAO, to appoint members of a recruitment committee, and a third matter pertaining to legal advice regarding the recruitment process. The third item is, in our opinion, properly voted on in closed. However, neither appointment of an interim CAO nor appointment of a recruitment committee – which included members of Council – could be done in closed. The first was a substantive decision which required proper consideration in open session. The second was not a topic that could be discussed in closed session; as both this report and our October 2022 report found, appointment of Council members to various roles is not a matter that can be discussed in closed session. Accordingly, this vote was not properly held in closed session.

5.1 No vote was held on this item.

June 19, 2019

Agenda

3.1 Comprehensive Zoning By-law Review

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

3.1 Council voted to receive legal advice for information. This vote was properly held in closed session.

June 24, 2019

Agenda

4.1 Asphalt Resurfacing 2019

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 Mid-term Appointment to Festival Hydro Inc.

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

6.1 Council and Staff Representatives on Community Grants Evaluation Team

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

7.1 Wage and Benefit Adjustments – Administrative Employees

Labour relations or employee negotiations (section 239.(2)(d)).

Analysis

4.1 Council voted to receive for information a report on asphalt resurfacing. The report pertained to bids received in a public tendering process. We accept that this relates to matters of negotiations, and potentially trade secrets, and as such can occur in closed session.

5.1 Council voted to list a motion at a public session to consider a recommended appointment to the Board of Festival Hydro. As discussed elsewhere in this report, this is the appropriate approach procedurally.

6.1 Council voted to appoint members of a committee for reviewing grant applications. The appointed members included members of Council and staff. This was not a vote properly held in closed session; the decision was substantive (appointing specific members of the committee) and there is nothing to suggest the cited exception – personal information – or any other exception applied.

7.1 Council voted on a motion that contained two parts: a 1.5% annual economic adjustment to wages for certain staff, which the motion says is to be implemented via resolution in open session, as well as a “benefit adjustment to improve mental health supports.” Staff compensation is a topic that can be discussed in closed session per the labour relations exception. However, Council’s motion made substantive decisions. It is not enough to attach a clause saying that the decision will be incorporated into a resolution; at that stage, the decision itself has been made in the absence of the public. As stated throughout this report, public session votes cannot be rubber stamps of something Council has already decided. Accordingly, this vote was improperly held in closed session.

July 15, 2019

Agenda

4.1 Proposed South End Industrial Expansion

Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years and, A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i));

4.2 Arbitration with [Redacted]

Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2) (e)) and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2) (f));

5.1 Nominations for Senior of the Year Award and for Ontario Senior Achievement Award

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 Appointment to Ad-Hoc Transit Committee
(Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))

Analysis

4.1 Council voted to provide staff with instructions relating to ongoing negotiations with a third party. This was properly held in closed session.

4.2 Council voted to instruct the City Solicitor to bring a contentious matter to arbitration, and to provide regular updates. This vote provided directions and pertained to litigation, and as such was properly held in closed session.

5.1 Council voted to nominate a specific individual for a provincial seniors' award, while also bestowing a second seniors' award on that individual. This was a substantive decision made in closed session; further, nothing in the minutes indicates that any personal information about the recipient or the others considered was discussed. As such, this vote was not properly held in closed session.

6.1 Council voted to instruct staff to list the consideration of specific committee appointees at public session. The appointments are from members of the public, and the information shared in closed session included addresses and other information properly considered personal information within the meaning of the Act. This vote was properly held in closed session; indeed, it is an example of the correct approach Council should follow when considering an appointment in closed session.

July 22, 2019

Agenda

4.1 Grand Trunk Expropriation Update
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)) and Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e))];

4.2 Grand Trunk Property – Student Residence Request for

Proposals

[Security of municipal property of the municipality or local board (section 239.(2)(a)) and, Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 Release from Agreement of Purchase and Sale [Redacted]
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.2 Council Representative Appointments to Ad-Hoc Transit Committee
[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))];

5.3 [Redacted]
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

Analysis

4.1 Council voted to receive for information a report on ongoing litigation. This vote was properly held in closed session.

4.2 Council instructed City staff to initiate a request for proposals. This vote was properly held in closed session.

August 12, 2019

Agenda

4.1 Appointment to the Town and Gown Advisory Committee
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.2 Nominations for Council Award of the College of Physicians and Surgeons of Ontario Outstanding Ontario Physicians
[Personal matters about an identifiable individual(s) including

municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Council voted to instruct the Acting City Clerk to list a motion for the open session agenda, appointing a specific individual to the Town and Gown Committee. This was procedural in nature, and personal information was discussed. Accordingly, this vote was properly held in closed session.

4.2 Council was considering nominations for an award for physicians; they voted to refer the decision to the Hospital for their consideration. The vote did not pertain to any specific physician, nor was any personal information discussed; as such, this matter was not properly voted on in closed session.

August 26, 2019

Agenda

4.1 Proposed [Redacted] Project Unanimous Shareholders Agreement
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)) and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality of local board (section 239.(2)(k))];

5.1 Contract Negotiations – [Redacted]
[Labour relations or employee negotiations (section 239.(2)(d))].

Analysis

4.1 Council voted to defer consideration of certain documents, and seek more information, relating to ongoing negotiations pertaining to a project undertaken by the City. These were procedural decisions relating to a topic that could be discussed in camera, and as such were properly taken in closed session.

5.1 Council voted to receive a report for information and invite a specific individual to attend a future in camera session. These decisions pertained to ongoing labour negotiations. As such, this vote was properly taken in closed session.

September 9, 2019

Agenda

4.1 Contract Negotiations – [Redacted]
[Labour relations or employee negotiations (section 239.(2)(d))] and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 Festival Hydro property matter
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.2 Inter-Community Transportation Program Update
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.3 Cyber Update
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.4 Housing Corporation
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.5 Appointment of Council reps to CAO Hiring Committee
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 Appointment to Stratford Town and Town Advisory Committee
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Council voted to accept a report for information and seek updates in the future. This pertained to ongoing labour negotiations and was properly held in closed session.

5.1 Council voted to receive legal advice from the City Solicitor. This was properly held in closed session.

5.2 Council voted to accept a report for information, which included a draft agreement, and instructed the solicitor to circulate that draft agreement to the other parties who were to sign it. Circulating a draft agreement is an integral part of negotiations, as wording and framing of agreements are integral parts of negotiations. It is also administrative in nature, as this was merely a draft, rather than a final decision. As such, this vote was properly held in closed session.

5.3 Council voted to release information to the public, pending necessary approvals. This was discussed in closed under the banner of solicitor-client privilege. However, in our opinion, the exception for protection of property of the municipality may be more appropriate, as the information in question related to a security incident. We find that voting on what information can be released to the public without compromising security further is a proper matter for consideration in closed session.

5.4 Council voted to provide instructions to the City Solicitor. These instructions naturally would include the provision of legal advice, and as such, this vote was properly held in closed session.

5.5 Council voted to appoint two councillors to the CAO hiring committee. As discussed elsewhere in this report, and building on our previous report, decisions involving Council roles and responsibility will rarely, if ever, be proper topics for closed session. Councillor's roles are not considered personal information. Further, this was a substantive decision – the actual appointments to the committee were made in closed. As such, this vote was improperly held in closed.

6.1 Council voted to instruct staff to list a motion appointing two representatives to the Town and Gown committee. Personal information about the proposed representatives was shared in closed. Accordingly, this vote was properly held in closed session.

September 16, 2019

Agenda

3.1 Request to conduct a review and analysis on [Redacted]
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))]

Analysis

The subject of this meeting involved certain concerns that had been raised to the City, and were the subject of an independent report. Council received legal advice on those concerns; additionally, when asked, the City advised that those concerns also related, in whole or in part, to identifiable individuals.

The actual vote held by Council was to provide instructions to staff concerning a number of recommendations which had been made with respect to those concerns. On their own, those recommendations would not have met the requirements for discussion in closed session, and we disagree with the City's position that they were sufficiently related to information pertaining to an identifiable individual. However, in the specific context of this meeting, we find that those instructions to staff were covered by the exception for solicitor-client privilege. As such, we find that this vote was properly held in closed session.

October 8, 2019

Agenda

4.1 [Redacted]Project Update

[A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)) And Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.2 Waste Collection Contract 2019 -2026

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality of local board (section 239.(2)(k))].

Analysis

4.1 Council voted to confirm its continued interest in a project, and to commit to proceed to a public meeting on the topic before making a final decision. The project was one involving negotiation with third parties and, as such, the vote pertained to a matter which could be discussed in closed session. As the decision to release information and hold a public meeting was not final or substantive, we find that this vote was properly held in closed session.

4.2 Council voted to receive information regarding its position in an ongoing negotiation with a third party. This vote was properly held in closed session.

October 15, 2019

Agenda

4.1 Human Resources Matter

[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4. 2 Contract Negotiations – [Redacted]

[Labour relations or employee negotiations (section 239.(2)(d))] and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 Proposed Assignment of the Lease Agreement between the City of Stratford & [Redacted]

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 Council voted to receive a report for information. The report pertained to an ongoing matter before a tribunal. This vote was properly held in closed session.

4.2 Council voted to accept a report for information and provide instructions regarding the City's negotiating position. This pertained to ongoing labour negotiations. As such, this vote was properly held in closed session.

5.1 Council voted to receive a report for information, and to provide instructions with respect to assignment of a lease it held. Those instructions included specific conditions under which the City would consent to the lease being assigned, and instructions to bring a by-law authorizing assignment to an open session, once said conditions had been met. These instructions all related to matters that could be discussed in closed, including lease of City property and negotiations.

Whether this vote was a substantive one is a nuanced question. Although the instructions included bringing a by-law forward once the conditions were met by the third party, Council also clearly voted to consent to the assignment once the conditions were met. While Council could have accomplished this same goal in closed using only a slightly different procedure – for example, instructing staff to negotiate an agreement containing those provisions, for Council consideration – this distinction is important. Had Council voted for a lease assignment to be negotiated and then brought back to Council, the final substantive decision would not yet have been made. In this case, however, Council affirmatively provided its consent. As such, this was an improper vote

October 28, 2019

Agenda

4.1 Agreement Amending Option to Purchase Agreement / Agreement of Purchase and Sale with GreenSeal Cannabis Co. for [Redacted] in the Wright Business Park.

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

4.2 Industrial Land & [Redacted]

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.1 [Redacted] Update and Revised Costing Estimates

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), AND Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years, AND A trade secret or scientific, technical, commercial,

financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)), AND A trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value (section 239.(2)(j)), AND A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

6.1 McCarthy Road W Extension

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), AND Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

7.1 Agreement of Purchase and Sale – [Redacted]

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

7.2 Council Appointments – Huron Perth Health Unit

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

7.3 Appointment to the Energy & Environment Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))].

Analysis

4.1 Council voted to provide the Acting CAO authorization to execute an agreement amending an option to purchase and agreement of purchase and sale, and to list the by-law authorizing this amending agreement at open session. As discussed elsewhere in this report, Council cannot make a substantive decision in closed, and then rubber stamp it with a by-law

in open. By voting to provide the CAO with authority to enter into an agreement – one with substantive impacts on an existing agreement – Council made a substantive decision, contrary to the *Municipal Act*.

4.2 Council accepted a report for information, provided instructions regarding negotiating servicing agreements with certain third parties, and provided instructions to the Acting CAO to “complete the reports required for a Ministerial Zoning Order.”

The report accepted for information pertained to ongoing negotiations with a third party and was therefore properly voted on in closed session. Similarly, the instruction to negotiate agreements for servicing was an instruction to be used in negotiations with a third party, and was properly given in closed session.

However, the balance of the motion was improper in closed session. This includes instructions to staff to “explore a servicing strategy” for certain lands and develop a financing plan for a certain parcel of land. It also includes instructions to “complete the reports required for a Ministerial Zoning Order”.

In analyzing this agenda item, it is necessary to understand the contours of negotiating positions. The exception for negotiations applies to bargaining positions, but it does not apply to taking steps and making decisions necessary to carry out those positions. Simply put, Council can go into closed to discuss whether it is willing to do “XYZ” actions, as part of a negotiation. But when it comes time to actually do “XYZ”, the meetings, discussions, and resolutions necessary to do so cannot shelter under the negotiation exception.

Accordingly, while discussions about servicing or a Ministerial Zoning Order may have formed part of the City’s negotiations, actually undertaking that servicing or obtaining the MZO are not instructions or plans applied to a negotiation; they are ordinary municipal business which the public has a right to follow and scrutinize. As such, these portions of the vote were improperly taken in closed session.

5.1 Council voted on two motions. First, a motion – which was defeated – would see Council take no further action on a matter pertaining to use of City property. This was properly voted on in closed session, as it was not substantive, and pertained to a matter that could be discussed in closed session.

Next, Council voted to enter into a binding letter of intent with a third party. Binding letters of intent are a substantive decision, and Council cannot vote on a substantive decision in closed session.

6.1 Council provided staff instructions on negotiations to acquire land and negotiate other matters. This was properly voted on in closed session.

7.1 Council voted to authorize staff to sign agreements of purchase and sale with a number of individuals, and then to list by-laws approving those agreements. As noted elsewhere in this report, this is not the correct approach; by authorizing signature before those by-laws were passed, Council effectively made the substantive decision to enter into those agreements in closed session, contrary to the *Municipal Act*. Accordingly, this vote was not properly conducted in closed session.

7.2 Council voted to list for open session the appointment of two of its members to the Huron Perth Health Unit. Although the procedure was correct – voting to list the by-law in open session before making a final decision – appointment of Councillors to a board does not fall within any of the exceptions provided by the *Municipal Act*. Accordingly, this vote was improperly held in closed session.

7.3 Council voted to list for open session the appointment of a member of the public to an advisory board. Based on the minutes, it is clear that personal information about the member was included for discussion. This vote was properly held in closed session.

November 12, 2019

Agenda

4.1 Chief Administrative Officer (CAO) Recruitment
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 Industrial Land & [Redacted]
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 This item pertained to the search for a new CAO. Council voted to receive a report on the search for information, to conclude the search, and to advise the candidates of that decision.

A difficulty with analyzing this vote is that there is a subtle difference between what was discussed – the suitability of candidates interviewed – and what was voted on, being a

conclusion of the process. The cited exception for personal information may fit the discussion, but it does not fit portions of the vote that were held. The vote may, however, fit within the labour relations exception; the Ombudsman's Office, whose decisions are informative but not binding on us, has found that discussions of specific candidates for a position are permitted in closed, while discussions about creating new positions are not (see, for example, Baldwin (Township of) (Re), 2014 ONOMBUD 10 for the former, and St. Catharines (City of) (Re), 2019 ONOMBUD). The present vote was somewhere in the middle, as it related to a vacant existing position, but did not concern a specific candidate.

Given that the vote held was the result of discussions about specific candidates and flowed from that, we find that it is covered by the labour relations exception. Had the decision to conclude the process been made without a consideration of candidates, or in other circumstances, this may have been different. Similarly, we find that, in the circumstances, concluding the process was a procedural instruction to staff, because it came as the result of a hiring process that produced no recommendations. Again, however, we note that this was related to the circumstances, and this reasoning may not apply in all cases where a hiring process is stopped.

5.1 Council voted to receive a report for information, provide direction regarding a draft binding letter of intent, and provide the Acting CAO authorization to sign said binding Letter of Intent. Receiving a report for information and providing direction on drafting an Letter of Intent are procedural decisions; however, authorizing the Acting CAO to sign a binding Letter of Intent on behalf of the City was substantive, not procedural. Put simply, Council has no authority to bind the City to anything in closed session.

December 9 2019

Agenda

4.1 Contract Negotiations – [Redacted]
[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Tender – Pruning, Removal and Disposal of Trees and Stumps
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

6.1 Citizen Appointments to the Accessibility Advisory Committee
[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))];

6.2 Citizen Appointments to the Active Transportation Advisory

Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))];

6.3 Appointments to Energy and Environment Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))];

6.4 Appointments to Heritage Stratford Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))];

6.5 Appointment to Stratfords of the World - Ontario Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))];

6.6 Appointments to Communities in Bloom Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b))];

6.7 Appointments to Stratford Town and Gown Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b)).

Analysis

4.1 Council voted to receive a report for information and provide instructions, both pertaining to upcoming labour negotiations. This was properly conducted in closed session.

5.1 No vote was held on this matter.

Items 6.1 through 6.7 were all considerations of appointments of citizens to various boards and committees. Each of the appointment votes consisted of instructions to list the appointment for open session, with a few also containing instructions to staff to advertise again. For each of these, personal information of the candidates appears to have been discussed. However, we note one exception; the vote for item 6.5 also included instructions to staff to list a by-law changing the composition of the relevant committee. Committee composition is not properly covered by any of the closed meeting exceptions and making changes to a committee structure is a substantive decision.

Therefore, items 6.1 to 6.4 and 6.6 to 6.7 were properly voted on in closed session, while the vote on item 6.5 was improperly held in closed session.

December 20, 2019

Agenda

3.1 [Redacted] Update

Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2) (b); and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

3.2 Update on Health Unit Merger

Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years; and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

No votes were held during this meeting.

January 9, 2020

Agenda

3.1 Follow up – Annexation Public Meeting

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

In our October 20, 2022, report, we found that this meeting was properly held in closed session. The meeting minutes indicate that the only decisions made were to receive a report for information and provide direction to staff to finalize another report.

January 13, 2020

Agenda

4.1 Planning Justification Report for Proposed Annexation

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f), and

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality of local board (section 239.(2)(k));

5.1 Additional Information for the Proposed Renewable Natural Gas Project

[Advice that is subject to solicitor-client privilege including communication necessary for that purpose (section 239.(2)(f)), and

Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239.(2)(h))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive the report for information.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive the report for information.

January 27, 2020

The agenda used in closed session reads as follows:

4.1 Municipal Modernization Service Review

[Security of municipal property of the municipality or local board (section (239.(2)(a))].

Analysis

4.1 The only decision made at this meeting was to list a resolution on open session. However, while this type of decision is permitted in closed session, our October 20, 2022, report found that this item was not properly in closed session. Accordingly, decisions made at this meeting cannot meet the requirements of the Act.

February 4, 2020

The agenda used in closed session reads as follows:

3.1 Proposed Municipal Boundary Adjustment

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

3.1 4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive the report for information.

February 10, 2020

The agenda used in closed session reads as follows:

4.1 Grand Trunk Expropriation Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)) and Litigation or potential litigation, including matters before administrative tribunals affecting that municipality or local board (section 239.(2)(e))];

4.2 Appointment of Evaluation Team

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 Health Unit Merger – Cost Sharing Agreement with the City, St. Marys, County of Perth and adding County of Huron

[A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))];

6.1 Appointment to Festival Hydro Inc.

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive the report for information.

4.2 Our October 20, 2022, report found that this item was not properly in closed session. Further, the meeting minutes indicate that, at the meeting, Council voted to form a “team” for certain municipal purposes, which consisted of both councillors and staff, and to list the

same direction for the open session of Council. As discussed elsewhere in this report, Council cannot vote to create committees in secret, nor can it move items to open session as a rubber stamp. This vote was improperly held in closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. Council voted on a resolution to consider certain decisions at the open session. This was the correct procedure to be followed and was therefore properly voted on in closed session.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list matters on an upcoming regular agenda.

February 24, 2020

Agenda

4.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Parallel Transit Division)
[Labour relations or employee negotiations (section 239.(2)(d))];

4.2 Living Wage
[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Renewable Natural Gas Project Next Steps

[A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality of local board (section 239.(2)(k))];

6.1 Community Transportation Pilot Project – Recommended Service Provider and Local Partnership Agreement
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)) AND

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality of local board (section 239.(2)(k)).]

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive the report for information.

4.2 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that multiple motions were voted on, with one motion defeated and the subsequent motion being amended before finally being passed.

First, Council voted on a motion to receive a preliminary report on an employment matter. Although this motion was defeated, it was a vote within the meaning of the *Municipal Act*. This was a procedural vote on a matter – labour relations – that could be discussed in closed. Accordingly, this vote was properly held in closed session.

Next, a motion was proposed to direct that the City become a living wage “supporter in principle”. This was amended to also direct staff to bring back a report on “hard to fill positions and student leadership roles”. The motion passed in its amended form.

In our opinion, this vote was not properly taken in closed session. With respect first to the report on “hard to fill positions and student leadership roles”, although procedural in nature, this direction to staff does not fit any of the closed meeting exceptions. As noted earlier in this report, the Ombudsman’s Office has found that discussion of actual candidates for a position fits the labour relations exception, while discussion of potential positions does not. This discussion was somewhere in between; however, as presented, it appears to be more akin to discussing new positions, or positions in the abstract.

Additionally, the decision to become a “living wage supporter in principle” is, in our opinion, sufficiently substantive in nature to require an open session vote. The question here is essentially whether the vote purports to do anything that is binding upon the City. Earlier in the minutes, staff clarify that becoming a supporter would bind the City to meeting certain benchmarks, which would also have budgetary impacts as increases in wages would be required for some positions. We find that this was substantive, and not properly within closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive the report for information.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to direct that staff negotiate a service agreement with a third party. This was properly held in closed session.

March 9, 2020

The agenda used in closed session reads as follows:

4.1 Appointment to Festival Hydro Inc.
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.2 Appointment to Accessibility Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.3 Appointment to Heritage Stratford Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.4 Appointment of Energy & Environment Committee Representative to the Active Transportation Advisory Committee for one year.

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 Ontario Senior of the Year Award

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.2 Bronze Star Recognition Program

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 Annexation Lands/Ministerial Zoning Order

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f), AND

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list a resolution making appointments for the next open session.

4.2 Our October 20, 2022, report found that this item was not properly in closed session. The meeting minutes indicate that the only decision made was a direction to City staff to re-advertise a remaining vacant position. However, such a vote ought not have been taken as the matter was not properly in closed.

4.3 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list a resolution making appointments for the next open session, which was proper.

4.4 Our October 20, 2022, report found that this item was not properly in closed session. The meeting minutes indicate that the only decision made was to list a resolution making appointments for the next open session. However, such a vote ought not have been taken as the matter was not properly in closed.

5.1 Our October 20, 2022, report found that this matter was not properly in closed session; therefore, no decision could properly be made with respect to this matter. The minutes indicate that Council voted to nominate an individual for Senior of the Year Award and 2020 Ontario Senior Achievement Award. This is not an appropriate decision in closed session.

5.2 Our October 20, 2022, report found that this matter was not properly in closed session; therefore, no decision could properly be made with respect to this matter. The minutes indicate that Council voted to award “Bronze Star” awards to two specific individuals. This is not an appropriate decision in closed session.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council received a report on an ongoing negotiation matter for information and provided staff instructions to seek a negotiated extension to one of the deadlines in an existing binding Letter of Intent relating to the same negotiations. Both of these pertained to ongoing negotiations, and so fell under the exceptions. With respect to the extension request, we do not find the particular circumstances to indicate that this request was substantive. The substantive commitment to taking certain steps had already been made; the request was merely to extend the timeframe in which to comply. We find this to be procedural, while noting that extension to timelines may not always be procedural in nature, depending on the facts. As such, this vote was properly held in closed session.

March 30, 2020

The agenda used in closed session reads as follows:

4.1 Annexation Lands/Ministerial Zoning Order - Update
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.2 Acting CAO’s Update – COVID-19
[Security of municipal property of the municipality or local board (section 239.(2)(a)),
And
Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 COVID-19 Pandemic Workforce Planning Considerations
[Labour relations or employees negotiations (section 239.(2)(d))];

6.1 COVID-19 Financial Position of the City

[Security of municipal property of the municipality or local board (section 239.(2)(a)),
And

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to provide direction to the acting CAO. That direction was to authorize staff to submit a joint letter, with specified partners, to a provincial ministry seeking a specific ministerial decision. The matter was undoubtedly within the negotiation exception; the only question is whether it was substantive or procedural.

As this matter was properly discussed in closed session, we will provide a simplified version of the facts for purposes of explaining our analysis. The City had previously requested two items from a ministry – items “A” and “B”. The Ministry had advised that it was prepared to grant item A but not item B, and asked the City to confirm if it still wanted one without the other. The instructions provided were to confirm the City still wanted item A.

Although the question before us is on the vote alone, and not the discussions held, those are still helpful in understanding what Council believed it was deciding. In this case, Council discussed the implications of receiving item A without item B, as well as the implications of not pursuing item A at all. To that end, we consider the decision to proceed with item A alone to be substantive, as the discussion is a clear indicator that Council was making a decision on what it would and would not accept or pursue, rather than simply responding to a question posed by the Province. This conclusion is also supported by the fact that the asks in both items A and B were undeniably substantive. Therefore, the vote should not have been taken in closed.

4.2 The meeting minutes indicate that no direction was given.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council accepted a report for information. However, it also provided direction to implement certain recommendations and engage in specific labour negotiations. An amendment was further made to that motion, to include directions to staff regarding information to be gathered for a report. These were not substantive decisions but procedural ones, and they pertained to labour and other negotiation matters. Accordingly, these votes were properly taken in closed session.

6.1 Council passed a singular lengthy resolution.

The first several instructions were somewhat vague, and appeared to be aspirational or general instructions regarding how Covid was to be handled, from a financial perspective. While these were procedural, they did not pertain to anything that actually fell within an exception, and were, therefore, improperly voted on in closed session.

Following these general instructions were approximately 14 more specific instructions. Many of these were substantive decisions: for example, Council voted to waive penalty and interest for certain payments due to it, re-assign certain staff, pursue layoffs, and cancel cost of living increases. All of these substantive instructions were improperly voted on in closed session.

Finally, following the numbered points were another set of instructions. These were largely instructions to staff that would otherwise have been permissible, except that, again none of them pertained to matters within an exception under the Act.

As a result, all of the myriad decisions voted on in this agenda item were improper for a closed session vote.

April 1, 2020

The agenda used in closed session reads as follows:

3.1 COVID-19 Temporary Council Remuneration Reduction
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And
Security of municipal property of the municipality or local board (section 239.(2)(a))];

4.1 COVID-19 Pandemic Workforce Planning Considerations
[Labour relations or employee negotiations (section 239.(2)(d))].

Analysis

3.1 Our October 20, 2022, report concluded that this subject was not appropriate for an in camera discussion. Votes were taken to receive a report for information, and to consider a reduction in council remuneration in a future phase. These votes were improperly taken in closed, as the subject matter could not be discussed in closed.

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information and provide instruction to staff. Those instructions were to seek volunteers for temporary layoff as a result of the Pandemic. In our opinion, those instructions were sufficiently procedural in nature. As such, this vote was properly taken in closed session.

April 14, 2020

The agenda used in closed session reads as follows:

4.1 Recommended approach to regulating Shore Term Rental Accommodations
[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), And
Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 COVID-19 Financial Position Update
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And
Security of municipal property of the municipality or local board (section 239.(2)(a));

6.1 COVID-19 Pandemic Workforce Planning Considerations
[Labour relations or employee negotiations (section 239.(2)(d));

7.1 Project Status Update
[A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i));

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decisions made were to list a resolution on an upcoming agenda, and direct staff to prepare a draft by-law amendment; all proper votes at a closed session.

5.1 Our October 20, 2022, report found that this matter was not properly in closed session. Accordingly, no votes could properly have been taken at this meeting. Additionally, the minutes show two votes. The first was on a multi-faceted resolution, which included both permissible matters such as receiving a report for information and directing budget reviews, but also included resolutions accepting budget changes for outside boards. The second resolution granted a deferral of loan principal payments to a third-party debtor to the City. Owing to both the improper subject matter and improper nature, these votes were not permitted to be held in closed session.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to approve a draft Memorandum of Agreement

and advise the bargaining party of said approval. City Staff have confirmed that this was not final approval for the draft, and indeed that the proposed Memorandum of Agreement was not entered into. Accordingly, this matter was properly voted on in closed session.

7.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to accept a report for information and provided direction to staff to pause work on a specific project. These matters were properly voted on in closed.

April 17, 2020

The agenda used in closed session reads as follows:

4.1 Appointment of Chief Administrative Officer

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.2 Appointment of Acting Director of Corporate Services and Treasurer

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.3 COVID-19 Update

[Labour relations or employee negotiations (section 239.(2)(d))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to appoint a Chief Administrative Officer, and to list a by-law authorizing the appointment on an upcoming agenda. However, Council also voted to set the salary of the CAO, including benefits and other allowances, and to make said salary retroactive. All of these were substantive decisions that could not be made in closed.

4.2 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to appoint an Acting Director of Corporate Services and Treasurer, and to list the by-law authorizing this appointment on an upcoming agenda. As discussed elsewhere in this report, while Council may, at times, be able to discuss a specific candidate for a position in closed, hiring decisions are substantive and must be made in open. Council could have passed a motion to consider appointment of the individual in open; however, by voting to make the actual hiring decision and then list the by-law in open, Council made the actual substantive decision in closed, and was merely using the open session as a rubber stamp. This was not proper.

4.3 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to accept a report for information. It then voted on a wage reduction for certain staff, including the amount and duration of said reduction. This is a substantive decision and was not properly made in closed session.

April 27, 2020

The agenda used in closed session reads as follows:

4.1 Appointment of Directors to Stratford Economic Enterprise Development Corporation

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 Stratford Transit COVID-19 Service Reduction

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 Proposed Reimbursement for Land acquired for Quinlan Road Sanitary Pumping Station

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

7.1 Appointment of City Clerk

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

8.1 ADDED – Appointment of Chief Administrative Officer Follow-up

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list a recommendation to appoint members of a board of directors for the next council meeting. This vote was properly taken in closed session.

5.1 Our October 20, 2022, report found that this item was not properly discussed in closed session. Council voted on two motions. First, it voted on a motion providing for detailed service reductions to Stratford Transit. In addition to not falling within a closed meeting exception, this was not a vote that could be made in closed session. Second, Council voted for a motion which would appear to call on staff to provide more information on potential service reductions. This type of motion can be voted on in closed session; however, the subject matter

fell outside of the exceptions in the *Municipal Act*, and therefore this vote was also improperly held.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to purchase a piece of property, and to fund said purchase from its Development Charge Reserve. Although the subject matter – acquisition of property – can indeed be discussed in closed, a vote to actually purchase property and to allocate development charge reserve funds cannot be held in closed session.

7.1 Our October 20, 2022, report found that this item was not properly discussed in closed session.

8.1 No vote was taken on this matter.

May 11, 2020

The agenda used in closed session reads as follows:

4.1 Stratford Transit COVID-19 Service Reduction Follow-up
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 ADDED – Appointment of The University of Waterloo/Festival Hydro seat to the Stratford Economic Enterprise Development Corporation Board of Directors
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report noted that only portions of this meeting were properly in closed session. The minutes indicate that the motion voted on pertained to scheduling for Stratford Transit, and that this motion was defeated. The scheduling for Stratford Transit does not properly fall within any of the closed meeting exceptions, and the vote taken was on a substantive decision. Accordingly, although the motion was defeated, the vote in question was not properly held in closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list a recommendation to appoint members of a board of directors for the next council meeting. This vote was properly taken in closed session.

May 25, 2020

The agenda used in closed session reads as follows:

4.1 COVID-19 Financial Relief Measures

[Security of municipal property of the municipality or local board (section 239.(2)(a)),
AND

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

5.1 COVID-19 Pandemic Workforce Planning Update For Gradual Staged Recovery

[Labour relations or employee negotiations (section 239.(2)(d))].

Analysis

4.1 Our October, 2022, report found that this item did not meet the requirements to be discussed in closed session. The only vote taken with respect to this item was to list a number of proposals for financial relief for businesses on the next open session agenda. Although listing on the next open session agenda is procedurally proper, the subject matter did not meet any of the closed meeting exceptions, and accordingly this vote ought not have been taken in closed.

5.1 Our October 20, 2022, report found that this item did not meet the requirements to be discussed in closed session. The only vote taken was to receive a report for information. While this is the type of vote that may occur in closed session, the subject matter did not meet any of the closed meeting exceptions, and accordingly this vote ought not have been taken in closed.

June 8, 2020

The agenda used in closed session reads as follows:

4.1 Sale of Lots 1 and 2, Plan 44M-38, City of Stratford, Wright Business Park to 2742051 Ontario Ltd. (Industrial Contracting Solutions/Tri-Mach Group of Companies)

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 Blue Box Transition to Full Producer Responsibility Contract Implications

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), AND

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

6.1 Ontario Ombudsman Complaint

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list by-laws for sale of property for the next council meeting. This vote was properly taken in closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. This vote was properly taken in closed session.

6.1 No vote was taken on this agenda item.

June 22, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. Additionally, insufficient details were provided regarding other items; we have provided supplementary details in italics. It reads as follows:

4.1 COVID-19 Pandemic Workforce Planning Update

[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Request for Consent from Huron Perth Public Health for Property Acquisition

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.2 CAO's Update – COVID-19

[Security of municipal property of the municipality or local board (section 239.(2)(a)),
AND

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), AND

Labour relations or employee negotiations (section 239.(2)(d))];

5.3 Project Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.4 *Investigation Report Update*

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. This vote was properly taken in closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to receive a report for information and consider adopting a resolution at a future Council meeting regarding the matter discussed. These votes were properly taken in closed session.

5.2 Our October 20, 2022, report found that this agenda item was not properly discussed in closed session. The minutes indicate two votes were held: the first to receive a report for information, and the second to set an end date for wage reductions that had been applied to certain City staff. A vote to determine wage reductions, including determining the end date of wage reductions, does not meet the requirements to be held in closed session.

5.3 Our October 20, 2022, report found that this item was properly in closed session. Council voted twice during this meeting. The first vote simply received a report for information – this was an acceptable vote to be held in closed session. The second vote provided the Chief Administrative Officer with authorization to enter into certain binding agreements on behalf of the City. This was a substantive decision, effectively amounting to a delegation of authority, and was not properly conducted in closed session.

5.4 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information, and to provide certain directions to staff with respect to who that report should be discussed with. This vote was properly taken in closed session.

June 29, 2020

No vote was held during this meeting.

July 6, 2020

The agenda used in closed session is provided below. In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 Compensation – Environmental Services

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.2 *Property* Sanitary Servicing

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality of local board (section 239.(2)(k))].

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to move a City employee to a higher level on the relevant pay grid. That was a substantive decision, and therefore the vote was not properly taken in closed session.

3.2 Our October 20, 2022, report noted that this agenda item saw a wide-ranging discussion. Several votes were taken during this portion of the meeting.

Council's first vote provided instructions to investigate a proposal made by a developer. This was procedural in nature and pertained to a matter being negotiated with the developer. Therefore, it was properly voted on in closed session.

Second, Council voted to provide instructions to decline offers presented to purchase a specific property, and not to proceed with sale of that property until further information is received regarding another City project. In our opinion, this was an acceptable direction to staff that furthered the negotiation and possible sale of City property.

Third, questions regarding sewer expansion and the development of lands by the City were referred to staff. It was not clear from the minutes why these questions should be discussed in closed session. Any connection between these questions and the matters properly discussed in closed session was tangential at best. As such, this vote was not properly held in closed session.

July 13, 2020

The agenda used in closed session reads as follows:

4.1 Human Resources Matter

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), AND

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

4.1 No vote was taken on this agenda item.

July 20, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 Economic Recovery Task Force – Patio Boardwalk Program, Legal Opinion
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.1 *Discussion of an industrial development project*
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.2 Rezoning of 265 St. David Street
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

4.2 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

July 27, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

4.1 Industrial Land Prices Policy & Real Estate Commissions Policy Amendments
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 39 George Street West, Stratford
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

6.1 265 St. David Street - Zoning By-law Update
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

6.2 *Discussion of a local organization*
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And
Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 Our October 20, 2022, report found that there were, in fact, two discussions held during this meeting, one pertaining to land pricing, and the other pertaining to naming of certain lands. A single vote was taken, in which Council voted to rename certain lands, set land pricing policies, conduct some housekeeping to remove land from the policies that was no longer available, rescind sections of its Industrial Land Prices Policy regarding option fees, rescind portions of its Real Estate Commissions Policy, and instruct staff to undertake certain annual reviews.

As these items were ultimately dealt with as a single vote, we must make one singular decision on the propriety of this vote being held in closed. Neither of the requirements of the test has been met. First, a number of the topics addressed in this vote, including renaming of lands, were not proper subsections of an in camera discussion. Further, many of the decisions made were substantive – including setting prices for land, rescinding portions of City policies, and renaming lands. Accordingly, this vote in its entirety was improperly held in closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to provide instructions to staff to negotiate a lease. This was properly held in closed.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list matters for discussion at an open session. Accordingly, this vote was properly taken in closed session.

6.2 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

August 10, 2020

The agenda used in closed session reads as follows:

4.1 Grand Trunk Expropriation Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and
Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e))];

4.2 Boundary Adjustment Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.1 Development Charges By-law Legal Advice

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

6.1 585 Douro Street

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), And
Labour relations or employee negotiations (section 239.(2)(d))];

7.1 Job Evaluation and Compensation Review (Administrative Employee Group)

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

4.2 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to receive a report for information, and authorized staff to retain a consultant and commence a planning application process. These were connected with ongoing negotiations, and procedural in nature. As such, they were properly discussed in closed session.

5.1 Council voted on two motions, making a total of three decisions on this agenda item.

First, Council voted to receive a legal opinion. This was a proper vote in closed session. It then voted to proceed with a construction project it had cancelled, and to list the matter for consideration on an open session agenda. As discussed elsewhere in this report, this was not the proper procedure to follow, as Council had already substantively made a decision – in fact, had given direction to proceed with the project – before discussing it in open. Further, we can identify no reason why this specific topic, re-considering a cancelled project, would be discussed in closed.

Next, Council voted to provide instructions to the City Solicitor. These instructions would have required the provision of legal advice and as such were properly given in closed.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to accept an offer to purchase and the associated price, and to list the necessary by-laws for an open meeting. This was, ultimately, a final decision, rather than a procedural one and, as such, not properly made in closed session.

7.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to implement a job evaluation system and complete a compensation review for certain positions. On their own, these actions would not be procedural. Council also voted to include an implementation date for the results of the compensation review, or to phase it in, depending on the costs. In our opinion, voting to implement the results of the compensation review is substantive in nature, because it commits the City to the expenditure of whatever funds are identified in that review. However, the decision made here does not appear to be final, given the reference to a phase-in option. This opens the door to Council discussing implementation once the report is complete. As such, we find that this vote was properly held in closed session.

August 24, 2020

The agenda used in closed session reads as follows:

4.1 Heritage Designation for 265 St. David Street Update
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And
Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e))];

5.1 Hiring of a Deputy Clerk – Update
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list an appointment by-law for a staff position on a subsequent open session agenda. Accordingly, this vote was properly taken in closed session.

August 31, 2020

The agenda used in closed session reads as follows:

3.1 Human Resources Matter

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And
Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), And
Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to provide the City Solicitor instructions regarding settlement negotiations. Accordingly, this vote was properly taken in closed session.

September 14, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 Renesas Test Track Update

[Security of municipal property of the municipality or local board (section 239.(2)(a));

4.2 *Industrial Development Project* Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.3 Human Resources Matter Update

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And
Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e))].

Analysis

4.1 Our October 20, 2022, report found that this item did not meet the subject matter requirements to be discussed in closed session. According to the minutes, the only votes taken were to accept a report for information and to provide further instruction, presumably to staff

The further instructions provided to staff were, in fact, on a topic properly discussed in closed session – pursuing leasing opportunities for City owned lands. However, Council made one single vote, and portions of what was voted on in that single vote were not properly in closed. Accordingly, the entirety of the vote was improperly held in closed session, although we note some portions may have been acceptable in closed session, had they been separated out.

4.2 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

4.3 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

September 21, 2020

The agenda used in closed session reads as follows:

3.1 Community Transportation Pilot Project – Service Agreement and Local Partnership Agreements

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And
A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality of local board (section 239.(2)(k))].

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. A singular resolution was voted on, which both accepted a report for information, but also referenced direction to staff. Upon request, the City clarified that direction was provided to execute several agreements, including partnerships and a service agreement, substantially as drafted. A resolution in open session was completed at a future meeting.

As discussed elsewhere in this report, this amounts to a substantive decision in closed, contrary to the requirements of the *Municipal Act*. Providing direction to execute agreements in the present form is substantive. While we appreciate that the appropriate by-laws and resolutions were later passed in open session, they merely amount to a rubber-stamp of a decision that had already been made. The regime under the *Municipal Act* requires that the actual substance of the decision be made publicly.

September 28, 2020

However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 *Proposed By-Law*

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.2 Appointment of Youth Representative to Energy & Environment Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.3 Appointment of a Citizen Representative to the Committee of Adjustment

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

4.2 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list an appointment to a committee on an upcoming Council agenda. Accordingly, this vote was properly taken in closed session.

4.3 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list an appointment to a committee on an upcoming Council agenda. Accordingly, this vote was properly taken in closed session.

October 13, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Parallel Transit Division)
[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 McCarthy Road W Extension and Birmingham Property Sanitary Servicing
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years, And Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

6.1 *Discussion of a local organization*
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council voted to enter into and execute an Agreement of Purchase and Sale and Minutes of Settlement. These were substantive decisions that should not have been made in camera. Accordingly, these votes were not properly taken.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

October 19, 2020

The agenda used in closed session reads as follows:

3.1 Contract Negotiations – Stratford Professional Firefighters Association (SPFFA) Local 534

[Labour relations or employee negotiations (section 239.(2)(d)), And
Advice that is subject to solicitor-client privilege including communications necessary
for that purpose (section 239.(2)(f))];

4.1 Boundary Adjustment and Additional Lands Servicing, Financing and Next Steps

[Advice that is subject to solicitor-client privilege including communications necessary
for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations
carried on or to be carried on by or on behalf of the municipality or local board (section
239.(2)(k)).

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that a report was received for information, and direction was given to staff and the City solicitor. Accordingly, these votes were properly taken in closed session.

4.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that Council received a report and provided direction to prepare certain documents. These votes were properly taken in closed session.

October 21, 2020

The agenda used in closed session reads as follows:

3.1 Hiring of a Director of Corporate Services

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to list a by-law for an upcoming open session agenda. Accordingly, this vote was properly taken in closed session.

October 29, 2020

The agenda used in closed session reads as follows:

3.1 Contract Negotiations – International Brotherhood of Electrical Workers (IBEW) – Local 636 (Parallel Transit Division)

[Labour relations or employee negotiations (section 239.(2)(d))].

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. Council voted to ratify a Memorandum of Settlement with a union. This was a substantive decision that could not be made in closed session. Accordingly, this vote was not properly taken.

November 9, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 *Industrial* Development Agreement Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

4.2 Community Hub Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.3 Cyber Security and Claim Update

[Security of municipal property of the municipality or local board (section 239.(2)(a)), And

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 IT Division Restructuring

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), And

Labour relations or employee negotiations (section 239.(2)(d));

6.1 Lease of 39 George Street West – Update

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years];

Analysis

4.1 No vote was taken on this matter.

4.2 Our October 20, 2022, report determined that the subject matter of this item did not meet the requirements to be discussed in closed session. The minutes indicate that the only vote taken was to provide direction to seek grants and investigate funding sources relating to a specific issue. However, as the subject matter was not properly in camera, the vote was not properly taken.

4.3 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

5.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to receive a report for information. Accordingly, this vote was properly taken in closed session.

6.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to refer questions to the solicitor and City staff. Accordingly, this vote was properly taken in closed session.

Items 6.2-6.8 of the agenda were not dealt with during this meeting.

November 13, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 Discussion of an industrial development

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))]

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. The meeting minutes indicate that the only decision made was to provide instructions regarding negotiations. Accordingly, this vote was properly taken in closed session.

November 15, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 Update on *an industrial development project*

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

3.1 Our October 20, 2022, report found that this item was properly in closed session. Per the meeting minutes, votes were held to refer agreements to Council – as this meeting was held as a committee of the whole – and to provide negotiating instructions. This was an appropriate vote in closed session.

November 17, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 *Update on an industrial development*

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

3.1 This matter pertained to an ongoing negotiation with a third party. Our October 20, 2022, report found that this discussion was appropriately in closed session. The report specified that some elements were not, but that Council could not be expected to move in and out of closed. In terms of the vote held, Council voted to seek an extension to an existing binding agreement and provided a number of instructions to staff with respect to information to be collected and presented to Council. In our opinion, the topics voted on were all sufficiently related to the ongoing negotiations and were procedural in nature. As such, this vote was properly held in closed session.

November 19, 2020

The agenda used in closed reads as follows:

3.1 Request to Extend Binding Letter of Intent Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))].

Analysis

Our October 20, 2022, report noted that this meeting discussed a singular agenda item, which in fact entailed a lengthy and wide-ranging conversation. That conversation included multiple motions.

The first motion sought to reject an extension to existing negotiated time limits, request that an existing Minister's Zoning Order be revoked, and invite a company to apply for a zoning by-law amendment. That motion was defeated.

The second motion agreed to an extension of the same time limits. That motion passed.

The third motion provided direction to the City solicitor and staff. That motion also passed.

The subject matter of all three motions related to ongoing negotiations, and therefore was appropriate for in camera discussion. The third motion was appropriately administrative, as it simply provided staff direction. However, the first two motions sought to take substantive and final positions on questions in negotiation. These votes were not properly held in closed session.

November 23, 2020

4.1 to 4.7 These items were considerations of appointments of members of the public to various boards and committees. The motions for each of these were correctly formulated to ask staff to place a formal motion on the agenda at an upcoming meeting. Personal information also appears to have been discussed each time. We find that these votes were properly held in closed session, with the exception of items 4.1 and 4.6, where staff were instructed to re-advertise for vacant positions. Instructions to re-advertise would not, in our opinion, be covered by a closed meeting exception.

5.1 Although several motions were made, voting was deferred. Accordingly, this item is not before us.

November 24, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 *Industrial Development* Cost Sharing Agreement Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

4.1 Appointment of Deputy Mayor

[Personal matters about an identifiable individual(s) including municipal employees or local board employees) (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report noted that this agenda item in fact addressed a wide ranging number of topics. The only vote taken was to provide the City Solicitor with instructions regarding draft negotiation materials. Accordingly, this vote was properly taken in closed session.

4.1 Our October 20, 2022, report concluded that this item, in which Council discussed appointment of a Deputy Mayor, was not properly discussed in closed session. Although the motion passed was of a procedural nature, listing an appointment by-law for an open session, we find that the subject matter of the discussion was improper for closed session, and therefore the vote was not properly taken.

December 7, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

3.1 *Industrial Development* Sharing Agreement Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))]

Analysis

Our October 20, 2022, report discussed the fact that, despite the agenda only showing one item, at this meeting Council actually discussed a variety of discrete topics and could better be subdivided into four topics. No vote was held during the first such discussion, but votes were held in the remaining three.

During the second discussion, Council voted to provide certain instructions to the solicitor and staff within the context of ongoing negotiations. This was a subject matter that could be discussed in closed session, and the vote provided instructions. Accordingly, this vote was properly taken in closed session.

The third discussion involved a number of votes. First, Council voted to have staff provide feedback on a draft document which was to be made public. The exact contents of the document are not provided in the Minutes; however, based on the discussions held, and on a balance of probabilities, we find that the document addressed a number of items properly subject to the closed meeting exception for negotiations. Given this, along with the fact that the instructions were properly procedural, we find that this vote properly occurred in closed session.

Next, Council gave direction to hold an educational session led by a lawyer. While Council is permitted to receive education and training in closed session, we do not find that there is anything in the *Act* that would allow Council to vote in closed to determine which education to receive. Moreover, Council not only voted to receive specific training on a specific topic, but also voted to receive it from a specific provider, providing instruction and authorization for the expenditure. This was a substantive decision not properly made in closed session.

Council then voted in favour of a proposal on accountability and transparency in the processes relating to development proposals. Policies and procedures of Council are not a proper subject for in camera discussion. This vote was improperly held in closed session.

Finally, Council accepted the CAO's report for information. That report appeared to be related to ongoing negotiations. As such, we find that this was properly voted on in closed session.

December 9, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics.

4.1 IT Security Enhancements

[Security of municipal property of the municipality or local board (section 239.(2)(a));

5.1 *Industrial Development* Cost Sharing Agreement Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

4.1 In our October 20, 2022, report, we found that this agenda item was properly discussed in camera. The only vote taken during this meeting was to include an expenditure for Council's consideration in the 2021 budget. This appears to have effectively been a procedural vote, comparable to votes listing items on the public agenda. Accordingly, we find that this vote was properly held in closed session.

5.1 Two votes were held in this session. First, Council voted to deny a cost sharing agreement it had been negotiating with a third party. Although this pertained to negotiations, the decision made by Council on this motion put an end to the negotiations with the third party. It was not an instruction or direction to stop negotiating or even an instruction to staff to decline the final negotiated agreement, but rather the substantive decision on the matter, complete with a list of reasons why the City would be rejecting the agreement. Accordingly, this vote was not properly held in closed session.

The second vote instructed staff to publish a Q and A regarding the negotiations to the City website. As it pertained to negotiations, and was merely providing staff with direction, this vote was properly held in closed session.

December 12, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

3.1 *Industrial Development* Cost Sharing Agreement Update
 [Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And
 A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))]

Analysis

3.1 Our October 20, 2022, report found that the subject matter of this meeting fell within the cited exceptions. Votes were held on procedural questions to reschedule meetings and defer consideration of an offer received from another party in negotiations. A vote was also held to

ask that party to release certain confidential information. These were all of a procedural nature, and therefore properly held in closed.

December 14, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 Appointment to Festival Hydro Inc.

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

4.2 Appointment to Festival Hydro Services Inc.

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.1 *Industrial Development* Cost Sharing Agreement Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))]

Analysis

4.1 and 4.2 were both the consideration of specific candidates, identified by Festival Hydro, to be appointed to its board. Our October 20, 2022, report found that these were properly held in closed session. The votes instructed staff to list the appointments for consideration at open session. Accordingly, these votes were properly held in closed session.

5.1 Our October 20, 2022, report found that this item was properly discussed in closed session. Council voted on two motions. First, there was a vote on a motion to end negotiations with the third party, which was defeated. Second, Council approved a motion providing instructions regarding its negotiating position.

The negotiating instructions were properly within closed session. However, the proposal to end negotiations ought to have been considered in public. As noted elsewhere in this report, voting to turn down an offer or otherwise cease a negotiating process is a substantive decision just as much as accepting an offer. We have already found, elsewhere in this report, that final, binding agreements with third parties should be entered into in open session. A decision to reject a proposal also carries finality (absent further negotiations, which are never guaranteed).

December 17, 2020

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

3.1 *Industrial Development* Cost Sharing Agreement Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))].

Analysis

3.1 Our October 20, 2022, report found that this item was properly discussed in closed session. The only vote held pertained to instructions to sign an extension to a binding letter of intent, which was set to expire. As discussed elsewhere in this document, a binding letter of intent – one that imposes actual obligations on the City – cannot be approved in closed session. Similarly, if that letter of intent has expired, or is set to expire, voting to extend it is, in effect, a vote to voluntarily bind the City anew. As such, this vote was not properly held in closed session.

December 21, 2020

The agenda used in closed session reads as follows:

4.1 Request and consideration for current industrial land price per acre extension for Lot 6 in the Wright Business Park.

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

4.2 Request and consideration for current industrial land price per acre extension for Lot 20 in the Wright Business Park.

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 ADDED - OCE Grant Update

[A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))];

6.1 ADDED - COVID-19 and Municipal Operations
 [Security of municipal property of the municipality or local board (section 239.(2)(a)),
 And
 Labour relations or employee negotiations (section 239.(2)(d))].

The City has provided us a copy of minutes clearly demonstrating that the “added” sections of the agenda were contained in the open session motion to move into closed.

Analysis

4.1 and 4.2 contained votes on motions that were substantively identical: Council voted to extend an existing purchase price policy for sale of lands to two properties that would not otherwise benefit from it and attached a number of other bargaining conditions for City Staff to negotiate in a non-binding letter of intent. Both of these subjects pertain to disposal of real property, and therefore meet that part of the test. The minutes make it clear that no agreement of purchase and sale was yet before Council; as such, we consider the extension of land pricing policies to be a part of negotiations, with the final decision still to be made when an APS is brought to Council.

5.1 Our October 20, 2021, report determined that this item was not properly in closed session. The only vote taken during this meeting was to receive a report for information; however, because that report pertained to subject matter not properly in closed session, the vote was also not properly held in closed session.

6.1 No vote was held with respect to this agenda item.

January 11, 2021

In the Investigator’s opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 Transition to Dispatch Services

[Labour relations or employee negotiations (section 239.(2)(d)), And
 Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.1 Proposed Acquisition of Mornington Street Property for Sidewalk Project
 [Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.2 *Industrial Development* Project Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

6.1 Appointment to Festival Hydro Services Inc.

Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

Analysis

4.1 was a discussion of potential restructuring which had come up during contract negotiations with Unions representing City employees. Council voted on approval of a draft letter of understanding, and presentation of that letter of understanding to other boards for consideration. There was no indication in the minutes that this was a binding letter, and it appears, in our opinion, to represent a negotiating position. Accordingly, this vote was properly held in closed session.

5.1 Our October 20, 2022, report found that this item was properly discussed in closed session. Council voted to provide negotiating direction to staff, and to have an agreement of purchase and sale listed on a public session agenda for consideration. Accordingly, the votes taken during this agenda item were properly in closed session.

5.2 Our October 20, 2022, report found that this item was properly discussed in closed session. The vote taken during this discussion definitively declined an agreement which Council had been negotiating with a third party. This was a substantive decision, which included a final outcome and various reasons for it. In our opinion, this was not procedural or a direction, and therefore was not properly held in closed session.

6.1 Our October 20, 2022, report found that this item was properly discussed in closed session. The only vote held during this meeting was to list a board appointment in an upcoming open session agenda. Accordingly, this vote was properly taken in closed session.

January 13, 2021

The only vote taken in closed session was to waive the Procedural By-Law requirement for 24-hour notice of a closed session meeting. Notably, this vote occurred after Council voted to move into closed.

In our opinion, this vote was not properly held in closed session. The *Municipal Act* regime concerning meetings is clearly intended to favour transparency, allowing for narrow exceptions to hold meetings and votes in the absence of the public where necessary for certain policy reasons. We do not find that a vote to suspend procedures and, in particular, to waive notice

requirements, can reasonably be understood to fall within any of the closed meeting exceptions provided for, particularly when those exceptions are viewed in light of the overarching aim of keeping decision making public except where absolutely necessary. As such, this vote was not properly held in closed session.

January 25, 2021

The agenda used in closed session more adequately meets the requirements of the *Act*. However, in the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

4.1 Sale of Lot 20, Plan 44M-38, save and except Part 1 Plan 44R-5393, City of Stratford, Wright Business Park to Royal Indevco Properties Inc.

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

4.2 Approval of terms of Agreements of Purchase & Sale and release of the City's Option to Purchase for [Lots 16, 17 and Part Lot 18 in the Wright Business Park

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 *Industrial Development* Project Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))];

6.1 Councillor Appointment to SeedCo. Board of Directors

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))]

Analysis

4.1 Our October 20, 2022, report found that this item was properly discussed in camera. The only vote held was to list by-laws for an open session. Accordingly, this vote was properly held in closed session.

4.2 Our October 20, 2022, report found that this item was properly discussed in camera. However, according to the minutes, the single motion voted on consisted of multiple components, including approving terms of an Agreement of Purchase and Sale, releasing a

party from prior obligations to the City, and authorizing signature of a Release regarding such obligations. These were substantive votes and, as such, were not properly held in camera.

5.1 Our October 20, 2022, report found that this item was properly discussed in camera. The only vote held was to provide instructions to staff on negotiations. However, those instructions included substantive decisions, in particular the decision not to offer further extensions to an existing letter of intent. Accordingly, this vote was not properly held in closed session.

6.1 We determined, in our October 20, 2022 report, that this item was not properly the subject of an in camera discussion. Although the item only consisted of listing by-laws for an open session agenda, the subject matter was not within the exemptions provided for in the Act and therefore the vote was not properly within the requirements of the Act.

February 17, 2021

In the Investigator's opinion, certain details of the agenda for this meeting should remain confidential in order to protect the purpose of matters being discussed in closed. Below, we reproduce the agenda, with certain changes made to this effect, which are indicated in italics. It reads as follows:

3.1 *Industrial Development Project Update*

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

3.1 Our October 20, 2022, report found that this item was properly discussed in camera. The only vote taken was to provide instructions to staff. Those instructions included: to hold a discussion with third parties relating to recently terminated negotiations, and to enter discussions with a Ministry to have a Ministerial Zoning Order revoked. We can find no justification for the instructions regarding the Ministerial Zoning Order being voted on in camera, as it did not pertain to closed meeting exception. Accordingly, this vote was not properly held in closed session.

February 22, 2021

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

4.1 Expropriation Hearing Update

[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

4.2 County Roads Agreement

[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

5.1 Request to purchase Part Lot 10, Plan 86 - 604 Downie Street

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.2 Appointment of SABA Alternate Representative to fill a mid-term vacancy on the Heritage Stratford Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 ADDED - Role of Council Members / Release of In-camera

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

The City has provided us a copy of minutes clearly demonstrating that the “added” sections of the agenda were contained in the open session motion to move into closed.

Analysis

4.1 Our October 20, 2022, report found that this item was properly discussed in camera. The only vote taken pertained to providing instructions to staff and legal counsel regarding the City’s position in a litigation matter. Accordingly, this vote was properly taken in closed session.

4.2 Our October 20, 2022, report found that this item was properly discussed in camera. The only vote taken pertained to providing instructions to staff and legal counsel regarding the City’s position in a legal dispute. Accordingly, this vote was properly taken in closed session.

5.1 Our October 20, 2022, report found that this item was properly discussed in camera. The only vote taken pertained to providing instructions to staff with respect to commencing the process to sell property, accordingly, this vote was properly taken in closed session.

5.2 Our October 20, 2022, report found that this item was properly discussed in camera. The only vote taken was to list a resolution on a public session agenda. Accordingly, this vote was properly taken in closed session.

6.1 No vote was taken during this item.

March 8, 2021

The agenda used in closed session reads as follows:

4.1 Proposed Acquisition of Morning Street Property for Sidewalk Project
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 Sale of Lot 20, Plan 44M-38, save and except Part 1 Plan 44R-5393, City of Stratford, Wright Business Park to Royal Indevco Properties Inc. Update
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)].

6.1 ADDED – Annexation Update Request
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

The City has provided us a copy of minutes clearly demonstrating that the “added” sections of the agenda were contained in the open session motion to move into closed.

Analysis

4.1 Pertained to the acquisition of land by the City. Council voted to provide instructions on a term requested by the owners of the land, which was over and above the purchase price. This clearly fits within the exception for the acquisition of land. It was not clear in the Minutes whether the vote by Council was considered final approval of this condition. The Minutes do refer to providing updates on negotiations. Ultimately, we find, on a balance of probabilities, that the vote provided instructions on the negotiation of terms, rather than a final approval of all terms. As such, we find that it was properly held in closed session.

5.1 Our October 20, 2022, report found that this item was properly discussed in camera. The only vote taken was to receive a report for information. Accordingly, this vote was properly taken in closed session.

6.1 No vote was taken on this matter.

March 15, 2021,

The agenda used in closed session reads as follows:

3.1 Annexation Update

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

3.1 Our October 20, 2022, report found that, while the cited exception did not apply to this agenda item, the subject matter did fall within other exceptions and was thus properly held in closed. Two votes were taken during this meeting; both provided staff with instructions regarding negotiations for the use and development of a piece of property. This properly fell within a closed meeting exception and was sufficiently procedural in nature.

March 22, 2021

The agenda used in closed session more adequately meets the requirements of the *Act*. It reads as follows:

3.1 Renewable Natural Gas Project Status Update March 2021

[Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239.(2)(h)); A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)); and, A position, plan, procedure, criteria, or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

3.2 Acting Director of Human Resources

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

4.1 Request to Purchase 51 McNab Street

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

4.2 Committee Chair Appointments – Finance and Labour Relations and Planning and Heritage

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

3.1 Our October 20, 2022, report found that portions of the subject matter of this item were properly in closed, but that much of it was not. Council voted on a lengthy resolution, which included receiving a report for information and providing a number of directions to staff. Those directions appear to all deal with either negotiations with third parties, or information supplied in confidence. For that reason, we find that this vote was properly held in closed session.

3.2 Council voted on a motion which “confirmed” a report recommending the hiring of a particular individual. The minutes indicate that an offer letter had been extended to a specific candidate for a position, but that it was subject to Council “confirmation”. Based on this, it would appear that the vote on this matter purports to be a final decision on hiring a specific individual. This is substantive rather than procedural in nature, and therefore this vote was not properly held in closed session.

We note the existence of jurisprudence from the Ontario Ombudsman finding that instructions to hire a specific candidate are procedural. Although not binding on us, it is helpful to explain the distinction. We agree that directing staff to hire a specific candidate in an established hiring process could be procedural. However, in this case, Council was not simply asked for directions, but to provide “confirmation” of the letter of offer to the selected candidate.

4.1 Council discussed the disposition of property owned by the City. The actual vote contained a number of instructions to staff, including to initiate the sale process, how to set a price, and certain conditions of sale. These were proper instructions for a closed session vote.

4.2 Our October 20, 2022, report found that the discussions held during this item were not properly in camera, as they pertained to Council appointments to boards and committees. Although the only vote was on a procedural motion to list those appointments for a public meeting, the subject matter of that vote did not fall within a closed meeting exception. As such, the vote was improperly held in closed.

April 7, 2021

The agenda used in closed session reads as follows:

3.1 Appointment of Director of Infrastructure and Development Services
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

3.1 Our October 20, 2022, report found that this agenda item was properly discussed in closed session. Following a recruitment process, staff presented Council with a report detailing its proposed candidate. A conditional offer had already been made to the candidate, and Council was asked to “confirm” the decision.

We find that this was not an instruction to staff – in fact, it was a request from staff, to make a substantive decision. As such, this vote was not properly held in closed session.

April 12, 2021

The agenda used in closed session reads as follows:

4.1 Grand Trunk / Cooper Site Expropriation Update

[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and

Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and

A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

5.1 Appointment to Stratford City Centre Business Improvement Area

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.2 Appointment of an Energy and Environment Committee Representative to the Active Transportation Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report found that this agenda item was properly discussed in closed session. Council voted to provide instructions on the City’s position in a litigation matter. This was a proper vote in closed session.

5.1 Our October 20, 2022, report found that this agenda item was properly discussed in closed session. The only vote taken was to list a board appointment on an upcoming open session agenda. Accordingly, this vote was appropriately taken in closed session.

5.2 Our October 20, 2022, report found that this agenda item was properly discussed in closed session. The only vote taken was to list a board appointment on an upcoming open session agenda. Accordingly, this vote was appropriately taken in closed session.

May 10, 2021

The agenda used in closed session reads as follows:

4.1 Sale to South West BuildCo Limited (South West Veterinary Services) of part of Lot 4 Plan 44M-38 designated as Part 2 on Plan 44R-5305 being all of PIN 53264-0146 (LT); part of Block 31 Plan 44M-38 designated as Part 4 on Plan 44R-5305 being all of PIN 53264-0148 (LT); and all of Lot 30 Plan 44M-38 designated as Part 6 on Plan 44R- 5305 being all of PIN 53264-0123 (LT), all in the City of Stratford, County of Perth

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

4.2 Development plan update and subsequent request and consideration for industrial land price per acre extension for Lot 6 in the Wright Business Park

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

4.3 Purchase of Service Agreement with the Stratford Economic Enterprise Development Corporation

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 Our October 20, 2022, report found that this agenda item was properly discussed in closed session. The only vote taken was to list by-laws for discussion in open session. Accordingly, the vote taken on this matter was proper.

4.2 Our October 20, 2022, report found that this agenda item was properly discussed in closed session. Council provided instructions on the City's bargaining position in the sale of land. As occurred in other meetings in this report, the price of the land in question was fixed by a policy, and was set to increase. In our opinion, decisions on pricing on an individual lot basis are, essentially, negotiating instructions in the sale of land, as an agreement of purchase and sale was still to be presented. As such, this vote was properly held in closed session.

4.3 Our October 20, 2022, report found that this agenda item was properly discussed in closed session. The only vote held was to defer consideration of an agreement to a future in-camera session. This was a proper closed session vote.

May 25, 2021

The agenda used in closed session reads as follows:

4.1 Sale to 2809185 Ontario Inc. (Feltz Design Build Ltd.) of the property described as Lot 6 Plan 44M-38, City of Stratford, County of Perth being all of PIN 53264-0099 (LT), in the Wright Business Park.

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 Administrative Salary Review

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), and

Labour relations or employee negotiations (section 239.(2)(d))];

6.1 Senior of the Year and Ontario Senior Achievement Award – 2021 Nominations

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Our October 20, 2022, report found that this discussion was properly held within closed session. The only vote taken was to list by-laws for an open session of Council. This vote was properly taken in closed session.

5.1 Our October 20, 2022, report found that this item was properly discussed in closed session. However, the minutes reflect a vote which adopted a new salary grid, moved individuals on that grid, and made changes to on-call pay, call-out pay, and the Acting Pay Policy. These were substantive decisions. Accordingly, the vote on this matter was not properly held in closed session.

6.1 Our October 20, 2022, report found that this matter was not properly discussed in closed session, as it pertained to an award nomination and there was no indication that personal information was discussed. Additionally, the vote on this matter was not purely procedural, as a specific candidate was selected for nomination to two awards. Accordingly, this vote was not properly held in closed session.

June 7, 2021

The agenda used in closed session reads as follows:

3.1 SPFFA Negotiations Update

[Labour relations or employee negotiations (section 239.(2)(d)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.1 IBEW, ATU, CUPE Collective Bargaining Update of June 7, 2021

[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Closed Meeting Investigation Report 2020-01

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

All three items on the agenda for this meeting were determined, in our October 20, 2022, report, to pertain to matters properly discussed in closed session. The only votes taken on these matters were to receive reports or letters for information. Accordingly, these votes were properly held in closed session.

June 14, 2021

The agenda used in closed session reads:

4.1 Development of Future City-Owned Industrial Lands

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)].

Analysis

4.1 Our October 20, 2022, report determined that the subject matter of this agenda item was properly discussed in closed session. Council voted on a single motion, which contained a number of clauses providing directions to staff, requesting more information, and tabling topics for discussion at future in-camera session. The nature of all matters voted on was procedural. Accordingly, this vote was properly held in closed session.

June 28, 2021

Agenda

4.1 IBEW Water Division & ATU Transit Division Collective Bargaining Update

[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Stratford Professional Firefighters Association (SPFFA) Negotiations Update

[Labour relations or employee negotiations (section 239.(2)(d)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))].

Analysis

4.1 Council voted to provide instructions in ongoing negotiations. This was properly voted on in closed session.

5.1 The only vote on this agenda item was to receive an update for information. The update pertained to negotiations and arbitration with the City's firefighters. The subject matter of the vote was within exceptions provided for under the act, and the matter was procedural in nature. The vote was, therefore, appropriately held in closed session.

July 26, 2021

Agenda

4.1 IBEW Local 636 Water Division Contract Negotiations Update
[Labour relations or employee negotiations (section 239.(2)(d))];

5.1 Appointment to the Partners for Climate Protection Program
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 Council voted to ratify a Memorandum of Settlement with IBEW. The minutes indicate that the CAO advised a resolution for ratification would be placed on a public session agenda. This is not the appropriate approach; by voting to ratify in closed session, Council made a substantive, and not a procedural decision.

5.1 Council voted to list a by-law on the next public session agenda. The by-law provided for the appointment of a Council member to an organization. As discussed in our October 20, 2022, Report, the appointment of Council members to boards and other organizations is not a "personal matter" within the meaning of exception (b) under the Act, and Council appointments must occur in open session. As such, this matter was not properly voted on in closed session.

August 9, 2021

Agenda

4.1 Disposition of Wright Business Park (WBP) Industrial Lands
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)].

Analysis

4.1 Council voted to list by-laws for sale of property on a public meeting agenda. This was a procedural vote, and the subject matter is provided for in the Act. Accordingly, this vote was properly held in camera.

August 23, 2021

Agenda

4.1 Expropriation LPAT Hearing and Related Litigation Matters Update
[Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

5.1 Bronze Star Presentation Nominees
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

6.1 Appointment to the Accessibility Advisory Committee
[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))].

Analysis

4.1 No vote was taken on this item.

5.1 Council voted to bestow its “Bronze Star” recognition on two individuals. Conferring an award is not, in and of itself, a matter pertaining to personal information, and the vote to confer an award is substantive and not procedural. Underlining this is the fact that three nominations were put forward, and only two of the individuals received an award.

Additionally, the City has confirmed that no personal information was discussed at this meeting. This vote was not properly held in closed session.

6.1 The only vote taken on this matter was to list a by-law for the appointment of an individual to the Accessibility Advisory Committee. The City has confirmed that personal information was discussed; based on the nature of the information described to us, we agree that this was information covered by the cited exception. Accordingly, this vote was properly held in closed session.

August 30, 2021

Agenda

3.1 ATU Local 741 Transit Division Contract Negotiations Update
[Labour relations or employee negotiations (section 239.(2)(d))];

4.1 Recruitment for Corporate Leadership Team Position
[Personal matters about an identifiable individual(s) including
municipal employees or local board employees (section 239.(2)(b))]

Analysis

3.1 Council voted to ratify a Memorandum of Settlement with a union with respect to contract negotiations. It also voted to list a by-law at an upcoming open session to provide for signature of the agreement. The decision to ratify the agreement was a substantive one which could not be made in closed session. As a result, this vote was improperly taken in closed session.

4.1 Council voted to appoint an individual as Acting Director of Corporate Services and Treasurer, and to list a by-law authorizing the appointment on an upcoming open session agenda. As with item 3.1, this is not the correct procedure. By first voting to make the appointment, Council made the substantive decision – who will be Acting Director and Treasurer – in the absence of the public. The by-laws to authorize appointment are, in this case, simply a rubber stamp of an existing decision. As such, this vote was not properly held in closed session.

September 8, 2021

Agenda

3.1 Good Governance Education and Training Session
[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.(3.1))].

Analysis

3.1 No vote was held during this session.

September 13, 2021

Agenda

4.1 Purchase of Service Agreement

[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))];

4.2 Festival Hydro Corporate Leadership Team Update [Personal matters about an identifiable individual(s) including

municipal employees or local board employees (section 239.(2)(b))];

5.1 Appointment to the Stratford Town and Gown Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))];

5.2 Appointment to the Energy & Environment Advisory Committee

[Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))]

Analysis

4.1 One vote was held, to defer consideration of an agreement with a third party. This was properly voted on in closed session.

4.2 No vote was taken on this item

5.1 The only vote taken was to list a by-law for an open session. That by-law pertained to an appointment to a Town and Gown Advisory Committee. Staff have confirmed that personal information, such as name and address, was discussed. This was a procedural vote and the subject matter was covered by the cited exception. As such, the vote was properly held in closed session.

5.2 The only vote taken was to a list a by-law for open session appointing a youth representative to the Energy and Environment Advisory Committee. Staff have confirmed that personal information, such as name and address, was discussed. This was a procedural vote and the subject matter was covered by the cited exception. As such, the vote was properly held in closed session.

September 27, 2021

Agenda

4.1 City Industrial Land Pricing Policy – Annual Review

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 CUPE Locals 1385 and 197 Inside and Outside Workers Collective Bargaining Update

[Labour relations or employee negotiations (section 239.(2)(d))];

6.1 Proposed Acquisition of Property – [Redacted]

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

6.2 Request to Purchase City Owned Land Update – Downie Street

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

6.3 Request to Purchase City Owned Land Update – McNab Street

[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)]

Analysis

4.1 Council voted to make a number of amendments to the City’s Industrial Land Pricing Policy. These amendments included setting specific prices for industrial land to be sold by the City. Although these pertained to sale of City property, they were substantive decisions. Put simply, Council cannot amend City policies and procedures in closed session. Therefore, this vote was improperly held in closed session.

5.1 Council provided instructions on the City’s position in ongoing labour negotiations. This vote was properly taken in closed session.

Items 6.1 through 6.3 each dealt with negotiations for the purchase or sale of property. The resolutions in each varied slightly.

In 6.1, Council voted to provide instructions on a negotiating position, and to have an agreement of purchase and sale prepared and presented to Council. This is the appropriate approach; it gives staff instructions on how to negotiate, but leaves the substantive decision making to an open session. This vote was properly held in closed session.

6.2 Council voted to instruct staff by setting a minimum price to accept an offer for a piece of City property, along with related instructions, subject to Council approval of the necessary by-laws at an open session. Again, this is an appropriate approach, because it gives Council the ability to make the ultimate decision in open session.

6.3 Council voted to instruct staff on offers to make for the purchase of property, with related terms, again subject to approval of by-laws at open session. This was an appropriate approach, as again the purchase was subject to decision making in open.

October 12, 2021

Agenda

4.1 Proposed Disposition of Land in the Crane West Business Park
[Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years)];

5.1 Purchase of Service Agreement
[Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))]

Analysis

4.1 The only vote held was to list by-laws for the sale of property at a public meeting. This was a procedural vote on a matter that can be discussed in camera. As such, this vote was properly held in closed session.

5.1 Council voted to receive legal advice on an agreement, and to list a by-law authorizing the agreement on an open session agenda. This was a procedural decision properly taken in closed session.

October 18, 2021

No vote was held during this session.

October 25, 2021

Agenda

4.1 ADDED - Potential Ontario Land Tribunal Settlement – 236 Britannia Street - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)) and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 Appointments to Stratford Public Library Board - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

6.1 Administrative Salary Review - Labour relations or employee negotiations (section 239.(2)(d));

7.1 Proposed Renewable Natural Gas Project Update – Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239.(2)(h));

A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)); and

A position, plan, procedure, criteria, or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)); and

ADDED - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

4.1 Council provided the City Solicitor with instructions pertaining to the settlement of an ongoing tribunal matter. This was properly voted on in closed session.

5.15 The only vote taken was to a list a by-law for open session appointing two representatives to the Stratford Public Library Board. Staff confirm that personal information, including name, address, e-mail, and phone number, were discussed at the meeting. This was a procedural vote that fell within the cited exception. As such, it was properly held in closed session.

6.1 Council voted to provide instructions for use in union negotiations. This was a vote to provide direction on a matter permitted to be held in camera, and thus was properly held in closed session.

7.1 Council accepted reports for information and provided numerous instructions in the context of negotiations. This was properly conducted in closed session.

November 2, 2021

No votes were taken at this meeting.

November 22, 2021

4.1 Expropriation and Related Litigation Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), And Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)); – 15 minutes

5.1 Proposed Disposition of Land in the Crane West Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years); - 10 minutes

5.2 Agreement Amending Option to Purchase Agreement / Agreement of Purchase and Sale for lands in the Wright Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years); – 10 minutes

6.1 Proposed Renewable Natural Gas Project November 2021 Update – Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)), And A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)); - 20 minutes

6.2 Review of Lease Agreements with Festival Theatre - A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)), And Proposed or pending acquisition or disposal of land by the

municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years); – 30 minutes

7.1 Appointments to the Accessibility Advisory Committee - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

7.2 Appointments to the Active Transportation Advisory Committee - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

7.3 Appointments to the Communities in Bloom - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

7.4 Appointments to the Energy & Environment Advisory Committee - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

7.5 Appointments to the Heritage Stratford Committee - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

7.6 Appointments to the Stratfords of the World (Ontario) Committee - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

7.7 Appointments to the Town and Gown Advisory Committee - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

Analysis

4.1 A report was received for information, and Council provided instructions to its lawyers on an ongoing litigation matter. These were procedural decisions pertaining to matters properly discussed in closed. As such, these votes were properly held in closed.

5.1 Council voted to list by-laws for sale of City property on a public session agenda. These were procedural decisions pertaining to matters properly discussed in closed. As such, these votes were properly held in closed.

5.2 Council voted to extend an option to purchase agreement, including authorizing execution of such an agreement, and to place the by-law authorizing the agreement on an open session agenda. As has been noted elsewhere in this report, Council voted in closed to accept an

agreement and to authorize execution of that agreement; listing the by-laws for the agreement in open session merely rubber stamps a decision already made. Accordingly, this vote was not properly taken in closed session.

6.1 A motion was proposed receiving reports for information and listing a resolution for an open session agenda. The motion was then amended to provide instructions to staff to engage in non-binding discussions and exploration. Council voted on the amendment; it does not appear the motion, as amended, was voted on. The votes appear to have been entirely procedural, and related to seeking proposals from third parties, essentially commencing negotiations. We find that this was properly held in closed session.

6.2 Multiple votes were held on this item. First, Council voted to provide staff direction on pursuing a long-term lease of municipal property. The vote pertained to a matter properly discussed in closed session, and only provided direction to staff. Accordingly, this vote was properly taken in closed.

Next, Council voted on a motion which provided staff further direction. That direction included referring an option regarding a lease to staff, asking staff to conduct a review regarding paid parking and the parks system, and authorizing staff to negotiate a one-year lease with a party. This vote, too, was procedural in nature. The portions of the vote that pertained to leasing of parking lots are captured by the exceptions for negotiations. However, the portion requesting staff to look into “paid parking into the parks system” does not appear to fall under any exceptions and, accordingly, ought not have been considered in closed.

Finally, Council voted on a motion regarding a rent reduction being included as part of negotiations. This was a procedural motion on a matter which fell within the scope of an exception, and accordingly was properly conducted in closed.

7.1 Council voted to appoint three individuals to the Accessibility Advisory Committee. This was a substantive decision and, accordingly, was not properly taken in closed.

7.2 to 7.7 were all votes to list by-laws for the appointment of individuals to various committees. Staff have confirmed that personal information, such as names, addresses, and phone and e-mail contact, were discussed. These were procedural votes on matters that fit within the cited exception. As such, they were properly held in closed.

November 25, 2021

Agenda

4.1 Proposed Renewable Natural Gas Project November 2021 Update
Follow-up – Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), And

A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)), And
 A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

5.1 Britannia Phase 2 Operations - Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239. (2)(h));

5.2 Britannia Phase 2 Project - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f))

Analysis

4.1 Two votes were held. First, Council voted to receive information, and provided direction to list resolutions on an upcoming council agenda. Second, Council voted to receive a separate report for information. These were all procedural votes and all pertained to an ongoing negotiation matter. As such, they were properly held within closed session.

5.1 Council voted to receive a report for information. The report contained information supplied in confidence by a level of government. Accordingly, this vote was properly taken in closed session.

5.2 Council voted to receive legal advice, and to provide direction to “proceed with awarding the tender” for a specific project, to a specific bidder, at a future open session of council. This was not procedural, nor was it instructions to staff; the conclusion that Council would award a tender to a particular bidder was a substantive decision, and therefore should not have been voted on in closed session.

December 13, 2021

Agenda

4.1 Expropriation and Related Litigation Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)); and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

4.1 This agenda item discussed ongoing litigation matters, as well as how they may affect other decisions made by the City. In the minutes, it is clear that staff requested that Council provide direction on how to respond to certain types of inquiries being received, in relation to that ongoing matter. Although the necessity to protect the confidentiality of this meeting prevents us from wholly describing the resolution itself, it is sufficient to note that it is not, in fact, worded as providing instructions on what answer to give. Rather, the resolution reads as a final decision on hypothetical future requests, and not a response to questions. City staff, when asked, advised that the intent of the resolution was to provide staff with instructions on responses to inquiries. As this aligns with what the minutes show, we accept, on a balance of probabilities, that the resolution was not a final decision, and was therefore properly in closed session.

December 20, 2021

Agenda

4.1 CUPE 197 Outside Workers Division Contract Negotiations Update - Labour relations or employee negotiations (section 239.(2)(d));

5.1 Appointment to Festival Hydro Services Inc. Board of Directors - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

Analysis

4.1 Council voted to ratify a memorandum of settlement with a union. The discussion indicates that the memorandum of settlement includes specific wage increases. No mention is made of this matter being set for discussion in open session, or simply providing direction to staff; rather, this appears to be a substantive, final decision made by Council. Accordingly, this vote was improperly held in closed session.

5.1 Council voted to list an appointment to a Board of Directors on an upcoming Council agenda. Staff confirm that the agenda included the individual's resume, which contained personal information such as address, phone and e-mail. This was a procedural matter that fell within the cited exception. As such, this vote was properly held in closed session.

January 5, 2022

Agenda

3.1 Good Governance Education and Training Session - 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.(3.1))

Analysis

3.1 No vote was held during this meeting.

January 20 2022

Agenda

3.1 Development Charges Education and Training Session - 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.(3.1)).

Analysis

3.1 No vote was held during this meeting.

February 2, 2022

Agenda

3.1 Good Governance Education and Training Session - 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.(3.1)). Carried

Analysis

3.1 No vote was taken during this meeting.

February 9, 2022

No vote was taken during this meeting.

February 28, 2022

Agenda

4.1 Update on Negotiations with the Stratford Professional Firefighters Association (SPFFA) - Labour relations or employee negotiations (section 239.(2)(d)).

Analysis

4.1 The only vote held was to receive for information an update on labour negotiations. This was procedural and properly within a closed session exception and was, accordingly, a proper closed session vote.

March 2, 2022

No vote was held during this meeting.

March 7, 2022

Agenda

3.1 Policy Grievance Update - Labour relations or employee negotiations (section 239.(2)(d));

4.1 Consideration of Appointment - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

Analysis

3.1 The only vote was to receive an update on a grievance matter. This was properly held in closed session, as it was procedural in nature and pertained to the labour relations exception.

4.1 Council voted to appoint an individual as Director of Corporate Services and Treasurer, and to list a by-law for their appointment on an upcoming open session agenda. As with previous votes where this format was followed, it was improper for Council to make a substantive decision in closed, even if they also vote to list the by-law enacting this decision in open session. Accordingly, this vote was not properly held in closed session.

March 14, 2022

Agenda

4.1 Update – Development for Future City-Owned Industrial Lands - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

5.1 Senior of the Year and Ontario Senior Achievement Award – 2022 Nominations - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)). Carried

Analysis

4.1 Council voted to accept a report for information and provide instructions to staff regarding certain steps to be taken with respect to land acquisition. The vote was properly held in closed, as it was procedural and provided staff direction, and as it pertained to an exception enumerated in the act.

5.1 Council provided staff with direction to prepare a report regarding nominees for 2022 Senior of the Year. The nominations appear to have come from the floor, being made by Council members. The only personal information discussed was related to volunteer

experience. In our opinion, this did not qualify for the cited exception, and the vote was, therefore, not properly held in closed session.

March 28, 2022

Agenda

4.1 Expropriation and Related Litigation March 2022 Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.2 Review of Lease Agreements with Festival Theatre - A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)), and Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

5.1 Senior of the Year and Ontario Senior Achievement Award – 2022 Nominations Follow-up - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

Analysis

4.1 Council voted to provide the City solicitors with instructions in an ongoing legal matter. This was a proper vote, as it provided instruction and pertained to a matter covered by an exception under the Act.

4.2 Council voted to provide direction to enter into a one-year lease with respect to City property. This was properly voted on in closed session.

5.1 Council voted to nominate an individual for 2022 Senior of the Year and 2022 Ontario Senior Achievement awards. This was a substantive decision and does not appear to fall under any exceptions. Indeed, the City has confirmed that no personal information was discussed. Accordingly, this vote was improperly held in closed session.

April 6, 2022

No vote was taken during this meeting.

April 11, 2022

Agenda

4.1 Arbitration Award with the Stratford Professional Fire Fighters Association (SPFFA) - Labour relations or employee negotiations (section 239.(2)(d)); and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.1 Employment Services Transformation – Service System Manager - Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them (section 239. (2)(h)); And A trade secret or scientific, technical, commercial, financial, or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position, or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (section 239.(2)(i)).

Analysis

4.1 Council voted to receive for information a report on a labour arbitration award. This was a procedural vote on a matter covered under an exception, and therefore was properly held in closed session.

5.1 Council voted to receive a report for information. The report pertained to information explicitly provided in confidence. Accordingly, this was properly voted on in closed session.

April 25, 2022

Agenda

4.1 Appointment of a Director to the Stratford Economic Enterprise Development Corporation - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

5.1 Proposed Development on Municipally Owned Parcel of Land - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and A position, plan,

procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)). Carried

Analysis

4.1 Council voted to list for public session a resolution and by-law appointing a Director of a municipal corporation. Staff have confirmed that personal information, including address, e-mail, and phone number, were appended to the agenda. Accordingly, this matter was properly in closed session.

5.1 Council voted on a lengthy motion containing a number of directions to staff and the City solicitor regarding potential negotiations for the use of City property. All of these directions were procedural in nature, and involved positions in bargaining, information gathering, etc. This vote was properly held in closed session.

May 9 2022

Agenda

4.1 Insurance Claim Update - Security of the property of the municipality or local board (section 239.(2)(a)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.2 Update – Development for Future City-Owned Industrial Lands - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and
A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

4.1 Council voted to receive a report for information. The report pertained to legal advice regarding a security issue. This was a procedural vote pertaining to matters that could be discussed in closed session. Accordingly, the vote was properly held in closed.

4.2 Council voted to receive for information an update on negotiations relating to City-owned lands. This was a procedural vote regarding matters covered under exceptions, and therefore was properly held in closed session.

May 16 2022

Agenda

3.1 Canadian Union of Public Employees (CUPE) Local 1385 Inside Workers Negotiations Update - Labour relations or employee negotiations (section 239.(2)(d)).

Analysis

3.1 Council voted to ratify a memorandum of settlement with one of the unions representing City employees. It then provided direction that the City Clerk list a by-law authorizing acceptance of the Memorandum at a public meeting. As has been canvassed above, this is not the correct procedure; by voting in camera to ratify the agreement and then to list a by-law, Council was taking a substantive decision in closed and merely rubber stamping it in open. Accordingly, this vote was not properly taken in closed.

May 24 2022

Agenda

4.1 Future Festival Hydro Water and Sewage Billing Service Agreements - A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

5.1 Update - Development of Future City-Owned Industrial Lands - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

6.1 Mediation Arbitration Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

7.1 City of Stratford's Mandatory Vaccination Policy Status Update - Labour relations or employee negotiations (section 239.(2)(d)).

Analysis

4.1 Council voted to provide instructions to staff to enter into negotiations. This was a procedural decision regarding matters covered by a closed meeting exception and was therefore properly held in closed.

5.1 Council provided staff with a number of directions, contained in a single motion. Some of these were procedural in nature, providing direction for negotiations being held regarding land acquisition or sale, and therefore were properly held in camera. However, one of the matters voted on purported to provide the CAO with delegated authority to issue an RFP and then actually enter into a contract for specified services, in an amount up to \$300,000. This was not a procedural motion but rather a substantive decision, and accordingly was not properly held in closed session.

6.1 Council voted to receive a report providing updates on ongoing mediation and potential arbitration and provided direction to continue with these processes. These were procedural votes on matters covered by a number of exceptions, and therefore were properly held in closed session.

7.1 Council voted to receive a report on a matter pertaining to one of the City's employment policies. The matter related to labour relations, including to termination of employment. Accordingly, this matter was properly voted on in closed session.

June 13 2022

Agenda

4.1 Mediation Service - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

4.2 Land Negotiation Update - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

5.1 Appointment to Festival Hydro Inc. and Festival Hydro Services Inc. Board of Directors - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

Analysis

4.1 Council held multiple votes during this agenda item. Each will be analyzed separately.

First, Council voted on a motion to refer changes to the Code of Conduct to the CAO for review. While this was administrative in nature, we can identify no basis upon which such a matter could be discussed in closed session. Changes to Council's Code of Conduct are a matter for public discussion and debate. While certain aspects could be addressed in closed – for example, obtaining legal advice on a proposed change – the general decision to explore such an amendment must occur in open session. Therefore, this vote was improperly held in closed session.

The next motion pertained to receiving and actioning an implementation plan. Based on descriptions provided to us, the plan was to implement recommendations provided by legal counsel. A report on recommendations from a lawyer can properly be considered in closed session.

The third motion called for a review of mechanisms for informal discussions and escalation of complaints to be referred to the CAO. The minutes mention employment obligations, and the staff response also mentioned employer-employee relations. Based on this, we conclude that this fell within the employment exception, and was therefore properly in closed.

Finally, Council voted to receive the CAO's report on the mediation for information. This was properly conducted in closed session.

4.2 Council voted to receive a report for information, and to list a by-law for open session. Both pertained to negotiations relating to a construction project. This was properly voted on in closed session.

5.1 Council provided staff directions to list by-laws for appointment to boards on the next public session agenda. Staff confirm that personal information, including address, e-mail, and phone number, were circulated. This matter was, properly discussed in closed session.

June 20, 2022

Agenda

3.1 Proposed Development on Municipally Owned Parcels of Lands - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be

carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

3.1 Council voted on a variety of matters in a single motion. All but one of these were to provide directions and instruction to staff on various issues regarding negotiating development on City-owned lands. These votes were properly held in closed session.

However, one matter contained in the resolution was authorization for the CAO to retain a specific engineer to provide project management services.

We have been provided a copy of the relevant Procurement by-law for the City. Based on that by-law, it appears that there are some circumstances where the CAO could have retained the firm without Council approval, and others where approval would be necessary. With respect to consultants, such as engineers, the by-law specifies that retaining them either has to be approved in the budget, or directly by Council. The minutes do not indicate to us whether Council was asked to approve the choice of engineer, or whether it acted on its own initiative. In our opinion, either way, Council made a substantive decision – to proceed with a specific consultant – which should have occurred in open session.

June 27, 2022

Agenda

4.1 Proposed Disposition of Land in the Crane West Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years).

Analysis

4.1 Council voted to list, at a public meeting, by-laws for the sale of certain City properties. This is the correct process to follow in selling City properties. The votes were procedural in nature and addressed a matter that fell within a closed session exception. Accordingly, they were properly held in closed.

July 11, 2022

Agenda

4.1 Proposed Disposition of Land in the Wright Business Park - Proposed or pending acquisition or disposal of land by the municipality or local

board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

5.1 Arbitration Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

4.1 Council voted to instruct the CAO to execute an option agreement for the purchase and sale of property owned by the City. This was a substantive decision, and accordingly the vote was not permitted to be held in closed session.

5.1 Council provided directions to prepare a framework for settlement of an ongoing matter, to be brought to Council at a future in-camera session. This was a procedural motion, only providing direction and not a substantive decision, and dealt with a matter covered by one of the closed session exceptions. Accordingly, the vote was properly held in closed session.

August 8, 2022

Agenda

4.1 Arbitration Update with the Stratford Professional Fire Fighters Association (SPFFA) - Labour relations or employee negotiations (section 239.(2)(d)); Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)); and Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e));

4.2 Draft Accommodation Licensing By-law - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.3 Draft Site Alteration By-law - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

4.1 Council voted to receive a report for information and provided instructions regarding the legal process to be followed. These were procedural motions regarding a matter that could be discussed in closed session, and accordingly were properly held in closed session.

4.2 Council voted to receive legal advice. This was properly conducted in closed session.

4.3 Council voted to receive legal advice. This was properly conducted in closed session.

August 10, 2022

Agenda

3.1 Unsolicited Request to Purchase [Redacted] - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

4.1 Adjustment to Staff Remuneration - Labour relations or employee negotiations (section 239.(2)(d)).

Analysis

3.1 Council voted on a single motion containing a number of procedural decisions, most of which were directions to staff to begin the steps needed to sell municipal property. These votes were properly held in closed session.

4.1 Council voted to provide an economic adjustment to the CAO's salary. A specific percentage increase was provided for. This was a substantive decision and was not properly held in camera.

August 15, 2022

Agenda

3.1 Arbitration Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), Advice that is subject to solicitor client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

3.2 Proposed Development on Municipally Owned Parcels of Land - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

3.1 Council received legal advice from the City Solicitor. Council also voted to provide instructions to the solicitor in the context of ongoing legal matters. This was properly in closed session.

3.2 Council voted on a motion which accepted a report for information and provided staff with a number of directions relating to ongoing negotiations. This vote was properly held in closed session.

September 12, 2022

Agenda

4.1 Arbitration Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

4.2 Human Resources Matter - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), and Labour relations or employee negotiations (section 239.(2)(d))

Analysis

4.1 Council voted to receive for information a report containing updates and legal advice regarding a dispute. This vote was properly taken in closed session.

4.2 Council received for information a report regarding ongoing human resources matters. This vote was properly taken in closed session.

September 26, 2022

Agenda

4.1 Draft Lease Agreements with the Stratford Festival Theatre for the Discovery Center and the Municipal Parking Lot - A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

4.2 Appointment to Corporate Leadership Team - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)), and Labour relations or employee negotiations (section 239.(2)(d));

4.3 Code of Conduct Legal Matter – Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

4.1 Council provided staff with instructions to be used in ongoing negotiations with a third party. This matter was properly voted on in closed session.

4.2 Council voted to receive for information a report relating to hiring matters. This vote was properly held in closed session.

4.3 Council voted to receive a report for information; that report contained legal advice with respect to the City's Code of Conduct. Council also voted that the amended Code be placed on a future agenda for consideration. In our opinion, this was essentially instructions to staff to put a version of the code, amended to include the recommended changes, before Council in open session. Council did not vote that it approved the changes. Accordingly, this vote was properly in closed session.

October 11, 2022

Agenda

3.1 City Industrial Land Pricing Policy – 2022 Annual Review - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years);

4.1 Billing Services Negotiations with Festival Hydro - A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k));

5.1 Proposed Development on Municipally Owned Parcels of Land - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years); and, Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)); and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

3.1 Council provided staff instructions to prepare a policy amendment for consideration at the next regular council meeting. This was an administrative decision, providing direction to staff, and pertained to a matter – sale prices of City land – that could be discussed in closed session. Accordingly, the vote was properly held in closed session.

4.1 Council voted to provide staff instructions on the City’s position in negotiations. This vote was properly held in closed session.

5.1 Council voted to receive a report and provide instructions relating to ongoing negotiations. While the general instructions – to continue to negotiate – were procedural in nature, Council also provided the CAO authorization to retain a specific third-party firm to conduct due diligence in this matter. As noted earlier in our report, hiring a specific third party was a substantive decision which should not have been made in closed session.

November 28, 2022

Agenda

3.1 Collective Bargaining Update - IBEW 636 (Parallel Transit) - Labour relations or employee negotiations (section 239.(2)(d))

Analysis

3.1 Council voted to provide staff with direction on the City’s negotiating position in ongoing labour negotiations. This vote was properly held in closed session.

December 19, 2022

Agenda

4.1 Contract Negotiations Update - IBEW Local 636 (Parallel Transit) - Labour relations or employee negotiations (section 239.(2)(d));

5.1 Code of Conduct Responsibilities and Obligations - Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

5.2 Appointment to Corporate Leadership Team - Personal matters about an identifiable individual, including municipal or local board employees (section 239.(2)(b)).

Analysis

4.1 Council voted to provide staff with instructions to prepare by-laws allowing for the ratification of a memorandum of settlement in the labour negotiations context, and to list those by-laws for public session. This vote was properly held in closed session.

5.1 Council voted to receive a legal opinion for information and provided staff instructions to work with the City solicitor to develop guidance for Council members on the City's Code of Conduct. In our opinion, guidance on complying with the Code of Conduct properly falls within the closed meeting exception for legal advice because it was to be developed in conjunction with the City solicitor. As such, this item was properly discussed and voted on in closed session.

5.2 Council voted to receive a report for information. The report provided an update on a hiring matter and included personal information about the individual hired. This vote was properly held in closed session.

January 9, 2023

Agenda

3.1 2022 Accessibility Advisory Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.2 2022 Active Transportation Advisory Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.3 2022 Board of Park Management Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.4 2022 Committee of Adjustment Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.5 2022 Communities in Bloom Advisory Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.6 2022 Energy and Environment Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.7 2022 Heritage Stratford Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.8 2022 Stratfords of the World (Ontario) Committee Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.9 2022 Stratford Police Services Board Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b));

3.10 2022 Stratford Public Library Board Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

Analysis

Our office received a complaint pertaining to this specific meeting at the same time as the complaint dealt with in this report. A report on the January 9, 2023, meeting was released on June 28, 2023. In it, we found that each of the agenda items addressed at this meeting was properly addressed in closed session.

No votes were held at this meeting.

February 6, 2023

The only matter dealt with at this meeting was Council training, and no votes were held.

February 13, 2023Agenda

3.1 2022 Downtown Stratford Business Improvement Area Board of Management Applications - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b))

Analysis

No vote was held in closed session.

March 27, 2023Agenda

3.1 Proposed Lease of Municipal Property – 17 George Street West - A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k))

3.2 Proposed Disposition of Land (Long-Term Care Home) - A proposed or pending acquisition or disposition of land by the municipality or local board (239.(2)(c) and Advice that is subject to solicitor-client privilege, including communications necessary for that purpose (section 239.(2)(f)).

3.3 Legal Opinion Regarding 31T21-003 and Z13-21 (Cachet Development) - Advice that is subject to solicitor-client privilege, including communications necessary for that purpose (239.(2)(f)).

3.4 Legal Opinion regarding Notice of Intent to Designate under the Ontario Heritage Act (Avon Crest) - Advice that is subject to solicitor client privilege, including communications necessary for that purpose (239.(2)(f)).

Analysis

3.1 Council voted to give staff directions regarding negotiations. This vote was properly held in closed session.

3.2 Council voted to receive a report for information and provide instructions regarding ongoing negotiations. This vote was properly held in closed session.

3.3 No vote was held on this agenda item.

3.4 No vote was held on this agenda item.

April 11, 2023

Agenda

4.1 Expropriation and Related Litigation April 2023 Update - Litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board (section 239.(2)(e)), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f));

4.2 Legal Opinion regarding Notice of Intent to Designate under the Ontario Heritage Act (Avon Crest) - Advice that is subject to solicitor client privilege, including communications necessary for that purpose (239.(2)(f)).

Analysis

4.1 Council voted on direction to provide to its solicitor in an ongoing litigation matter. This was properly voted on in closed session.

4.2 Council voted to receive legal advice from the City Solicitor. This vote was properly held in closed session.

April 24, 2023

Agenda

4.1 Proposed Disposition and Transfer of Land in the Wright Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

4.2 Appointment of Directors to the Stratford Economic Enterprise Development Corporation (SEEDCo./investStratford) - Personal matters about an identifiable individual(s) including municipal employees or local board employees (section 239.(2)(b)).

4.3 Proposed Disposition of Land in the Wright Business Park - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years) and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)).

Analysis

4.1 Council voted to provide a number of instructions to staff. These included directions to communicate positions to other parties, transfer legal rights and obligations, and execute an agreement. The votes stemmed out of the transfer of property from one party to another, and the impact on certain contractual rights held by the City. This was not the proper way to approach this issue; Council was within its rights to discuss and debate in closed, but should have instructed staff to prepare a by-law for open session authorizing execution of the necessary documents, and other substantive measures. The votes, as they were taken, were not properly conducted in closed session.

4.2 No vote was held on this matter.

4.3 Council provided staff direction to execute an agreement providing for an extension to an option agreement regarding property. The decision to execute an agreement was substantive in nature, and not merely providing direction to staff. Accordingly, this vote was not properly held in closed session.

May 8, 2023

No votes were taken during this session.

May 23, 2023

Agenda

4.1 Collective Bargaining Update – SPFFA Local 534 - Labour relations or employee negotiations (section 239.(2)(d)).

5.1 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for

more than 21 years); Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)); and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

Analysis

4.1 Council voted to provide direction on the City's position in collective bargaining. This vote was properly held in closed session.

5.1 Council voted on a single resolution providing a number of instructions to staff with respect to negotiating the lease of City owned land. Those instructions were all procedural and all fell within an exception. As such, this vote was properly held in closed session.

Conclusion and Recommendations

Before providing our conclusions and recommendation, we wish to first remind the reader that the scope of the complaint in this matter was significant. Over 140 meetings spanning nearly five years were reviewed. Over that period, there have been a number of changes, not least of all being two municipal elections, with the period of this report starting just before the 2018 elections, and ending some months after the 2022 elections. That period also saw other closed meeting reports, including two from our office and at least one from another investigator. We highlight these changes in order to acknowledge that the manner in which City Council has conducted its closed session votes at various times in the past, and thus the improper votes identified in this report, may not be reflective of the practices today, given both changeover in Council membership, and various reports identifying shortcomings. We note, for example, that we only found three improper votes which occurred after our October, 2022, report was released.

It is also important to acknowledge that the improper votes we identified can be viewed on a spectrum. On the one end, some votes were clearly improper, and constitute concerning breaches of the *Act*. On the other end, however, were a number of situations where the question of whether a vote was held improperly was less clear, and the breaches we identified more technical or minor in nature. Although all improper votes must be avoided, and all of the improper votes we identified represent opportunities to learn and improve, we encourage Council to pay closest attention to the more flagrant or egregious breaches.

As always, we recommend that Council and staff obtain training to ensure that they are properly following the processes as required under the *Act*.

Consistency is key. We noted that topics which were repeatedly frequently did not always follow the same procedure. The result is that sometimes Council conducted its votes properly, while other times it did not. As a general recommendation, Council should work towards creating procedures for topics that arise often, like contracts, land sale or employment decisions. Similarly, Council should have a clear process for moving substantive decision making into the open.

Some specific problems occurred frequently, and warrant their own recommendations:

- Council should ensure that resolutions are clearly worded, and that, where possible, they clearly provide instructions to staff rather than making substantive decisions
- Council should have clear procedures for moving into open session, including in cases where members are concerned that a vote or discussion is no longer properly in closed;
- Decisions should not be bundled together, particularly where they are unrelated. We identified numerous occasions where Council had voted on a single lengthy motion, some of which was appropriate in closed and some of which was not.

In providing our analysis and conclusions, it is important to note that many of the meetings we analyzed were on the line between permissible and impermissible votes. In some of these cases, our conclusion that Council's vote was allowed in closed session is based off narrow and specific reasoning. In moving forward, the City should not view any of our conclusions as an endorsement of a specific practice or procedure, or as an indication that a specific subject matter can always be voted on in closed. The fact that the specific circumstances of a vote or meeting rendered the vote permissible does not mean that the same vote would be permissible under different circumstances. Rather, Council and staff should holistically review and consider their approach to in camera votes, in the goal of avoiding such situations in the future.

Sincerely,

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