

# **REPORT ON CLOSED MEETING INVESTIGATION 2021-01**

## **THE DOWNTOWN BARRIE BUSINESS ASSOCIATION (BIA)**

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## REPORT ON CLOSED MEETING INVESTIGATION – 2021-01

### INTRODUCTION

A request for a closed meeting investigation was filed with our office on February 3, 2021 (the “**Request**”) in our capacity as Closed Meeting Investigator with respect to two (2) closed meetings of the Board of Management of the Downtown Barrie Business Association (BIA) (the “**Board**” or the “**BIA**”) that took place on December 8, 2020 (the “**December 8 Closed Meeting**”) and December 15, 2020 (the “**December 15 Closed Meeting**”), respectively (together, the “**Closed Meetings**”).

### CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

Local Authority Services Inc. (“**LAS**”) was appointed as Closed Meeting Investigator for The Corporation of the City of Barrie (the “**City**”) and its local boards pursuant to subsection 239.2(1) of the *Municipal Act, 2001*.<sup>1</sup> LAS has delegated its authority to act as Closed Meeting Investigator for the City and its local boards to Aird & Berlis LLP. The BIA is a local board of the City.

Our jurisdiction as Closed Meeting Investigator is set out at subsection 239.2(1) of the *Municipal Act, 2001* whereby we are authorized to investigate, in an independent manner, a complaint made by any person to determine whether the Board has complied with section 239 of the statute or a procedure by-law enacted under subsection 238(2) in respect of a meeting or part of a meeting that was closed to the public and to report on the investigation together with any recommendations as may be applicable.

### THE REQUEST

The Request was properly filed pursuant to section 239.1 of the *Municipal Act, 2001*.

The Request alleges that the Closed Meetings were not closed for a proper purpose contrary to subsection 239(1) *Municipal Act, 2001*. Specifically, the Request alleges that the Board was not permitted to discuss the BIA’s proposed budget for the 2021 fiscal year (the “**Budget**”) in an *in camera* session.

The Request also implicitly alleges that the Board did not pass proper resolutions to convene the Closed Meetings.

Additionally, the Request raises the issue of public accessibility in respect of the public portions of the December 15, 2020 Meeting. Specifically, the Request indicates that members of the public in attendance at this meeting were, once the Board moved *in camera*, “kicked out” of the Zoom session. Attendees were not invited to rejoin the meeting once the Board had moved back into open session for the remainder of the meeting.

Finally, the Request indicates that a request to the BIA for a recording of the public portions of the December 15, 2020 Meeting was not granted.

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<sup>1</sup> S.O. 2001, c. 25.

## ISSUES

The issues raised by the Request are as follows:

1. Were the Closed Meetings, in whole or in part, closed for an improper purpose contrary to subsection 239(1) of the *Municipal Act, 2001*?
2. Did the Board fail to pass proper resolutions prior to convening *in camera* in accordance with subsection 239(4) of the *Municipal Act, 2001*?
3. Was sufficient public access provided to members of the public who sought to attend or review the public portions of the December 15, 2020 Meeting?

## INVESTIGATION

In order to assess this matter and make determinations on the above-noted issues, we have reviewed the following materials:

- the Request;
- the agendas, minutes and attachments from, and audiovisual recordings of, the public portions of the meetings in question;
- the minutes from the Closed Meetings;
- the BIA's Constitution; and
- the City's Procedure By-law 2019-100 (the "**City's Procedure By-law**").

In addition, we interviewed the Executive Director of the Board (the "**Executive Director**") who was in attendance at the meetings in question. The Executive Director cooperated fully and was, in our assessment, forthright and candid.

We have also had recourse to the applicable provisions of the *Municipal Act, 2001* and such secondary sources and applicable case law as we deemed necessary in order to make our determinations.

This is a report on the investigation into the Request made in accordance with subsection 239.2(10) of the *Municipal Act, 2001*.

## APPLICABLE LAW

### (a) *Municipal Act, 2001*

The BIA is a municipal board of management established pursuant to subsection 204(1) of the *Municipal Act, 2001*. Pursuant to subsection 204(2.1) of the statute, the BIA "is a local board of the municipality for all purposes".

In accordance with subsection 239(1), all “meetings”<sup>2</sup> of a council or of a local board (or of a committee of either of them) must be open to the public unless an exception under subsections 239(2), (3) or (3.1) applies to either permit or require, as the case may be, a meeting or part of a meeting to be held *in camera*. This requirement is generally referred to as the “open meeting rule”.

The exceptions to the open meeting rule that are applicable in this matter are set out and considered below.

Pursuant to clause 239(4)(a), before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board must state by resolution the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting.

A resolution passed under clause 239(4)(a) should provide a general description of the matter to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.<sup>3</sup>

#### **(b) Procedure By-law**

In accordance with subsection 238(2) of the *Municipal Act, 2001*, every municipality and local board is required to pass a procedure by-law for governing the calling, place and proceedings of meetings.

We understand the BIA has not passed a procedure by-law under subsection 238(2). Our review of the City’s Procedure By-law demonstrates that the policies and procedures thereunder do not apply to local boards of the City, including the BIA.<sup>4</sup>

The BIA does not have a procedure by-law. Accordingly, we could neither investigate nor determine whether the BIA had contravened any provision of an applicable procedure by-law. For this reason, we have made no findings below in this regard. We have, however, addressed this issue in our conclusory remarks and in our recommendations, which are set out below.

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<sup>2</sup> Subsection 238(1) of the *Municipal Act, 2001*, defines the term “meeting” as follows:

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee”.

<sup>3</sup> *Farber v. Kingston (City)* (2007), 31 M.P.L.R. (4th) 31 (Ont. C.A.).

<sup>4</sup> While not a procedure by-law passed under subsection 238(2) of the *Municipal Act, 2001*, the BIA’s Constitution does contain provisions regarding the calling and conduct of meetings of the Board. See, for example, ss. 7(11) and 8(10), which, respectively, govern meeting procedures and the manner in which meetings are to be called. That being said, the Constitution does not contain any provisions regarding the rules in respect of the Board’s conduct of closed meetings. As such, the Constitution could not effectively act as a procedure by-law for the purposes of our investigation in this case.

## FINDINGS

### (a) December 8 Closed Meeting

#### (i) ***Parts of the December 8 Closed Meeting Were Closed for an Improper Purpose***

For the reasons that follow, it is our determination that parts of the December 8 Closed Meeting were closed for an improper purpose contrary to section 239 of the *Municipal Act, 2001*.

The audiovisual recording of, and the minutes from, the public portion of the December 8, 2020 meeting demonstrate that the Board decided to proceed *in camera* to discuss the Budget.

The closed meeting minutes from the December 8 Closed Meeting demonstrate that the Board discussed a wide range of subtopics within the broader topic of the Budget. These subtopics are categorized in the minutes as follows:

- “Budget Overview”;<sup>5</sup>
- “Organizational Management”;
- “Professional Fees”;
- “Fundraising”;
- “Community Safety”;
- “Marketing and Promotions”;
- “Events”; and
- “Capital Investments”.

We have considered each of these subtopics and whether the Board was permitted or required to consider same *in camera*. In conclusion, we have found that, for the following reasons, the Board was permitted to consider some of the subtopics *in camera*, but not others.

In terms of “Budget Overview”, the closed meeting minutes demonstrate that the Board received a high-level overview regarding the BIA’s total expenses and proposed allocation of funds under the Budget. We understand that this overview did not include in-depth details regarding any proposed budget line in particular. There is no exception under subsection 239(2), (3) or (3.1) of the *Municipal Act, 2001* that would apply to a local board’s receipt of, or discussion on, general or high-level information regarding its proposed budget. Therefore, these parts of the meeting were closed to the public for an improper purpose contrary to subsection 239(1).

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<sup>5</sup> We note the term “Budget Overview” does not actually appear in the closed meeting minutes, despite the fact that it is listed as an item on the agenda for the December 8, 2020 meeting and was, as demonstrated by the closed meeting minutes, discussed by the Board *in camera*. On this basis, we have inferred that the omission of this term from the closed meeting minutes was merely a typographical error. We have considered this subtopic along with the rest accordingly.

With regard to “Organizational Management”, the closed meeting minutes demonstrate that the Board discussed whether to approve an increase in salary for the BIA’s staff. We understand the BIA’s staff is comprised of three individuals. Two of these individuals were in attendance during the December 8 Closed Meeting – they both recused themselves for this portion of the closed session.

Pursuant to clause 239(2)(b) of the *Municipal Act, 2001*, a meeting or part of a meeting may be closed to the public if the topic of discussion is “personal matters about an identifiable individual, including municipal or local board employees”.<sup>6</sup> This exception would apply to discussions regarding an individual local board employee’s salary.<sup>7</sup>

In this case, the Board discussed the salaries of the BIA’s three individual staff members. Specifically, the Board discussed whether these salaries should be increased. This constitutes a discussion regarding personal matters in respect of identifiable individuals because the discussion pertained to the finances and employment of the three BIA staff members. Therefore, clause 239(2)(b) would apply to permit this portion of the meeting to take place *in camera*.

In respect of “Professional Fees” and “Fundraising”, the closed meeting minutes indicate that the topic of discussion was whether to renew a contract between the BIA and a service provider (the “**Service Provider**”) that had assisted the BIA with its fundraising and event planning efforts. The Service Provider had provided a proposal to the Board for its consideration. The Board discussed the benefits and drawbacks of the proposal and whether it might be in the BIA’s best interests to enter into an agreement with a different service provider. We understand that, in this regard, negotiations regarding the potential contract renewal between the Board and the Service Provider were ongoing.

Pursuant to clause 239(2)(k) of the *Municipal Act, 2001*, a meeting or part of a meeting may be closed to the public if the topic of discussion is “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.”<sup>8</sup> The purpose of this exception is to protect the bargaining position of the municipality or local board, as the case may be, in the context of negotiations.<sup>9</sup>

In this instance, it is our determination that clause 239(2)(k) would apply to permit the Board’s discussions regarding whether and on what terms to renew the BIA’s contract with the Service Provider to be considered *in camera*.

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<sup>6</sup> The term “personal matters” is not defined under the *Municipal Act, 2001* and cannot be equated to “personal information” as defined in subsection 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1900, c. M.56 but can be looked to for interpretive guidance.

<sup>7</sup> See, for example: *Investigation into whether Council for the Township of Russell held an illegal closed meeting on June 1, 2015*, Ontario Ombudsman (October 2015) at para. 31; and *Investigation into whether Council for the Town of Bracebridge held illegal closed meetings on December 9 and 17, 2014*, Ontario Ombudsman (March 2015) at paras. 38, 41 and 42.

<sup>8</sup> The corollary for this exception in the *Municipal Freedom of Information and Protection of Privacy Act*, *supra* note 6, is s. 11(e).

<sup>9</sup> *Investigation into a complaint about a closed meeting held by the City of St. Catharines on June 25, 2018*, Ontario Ombudsman (February 2019) citing IPC Order M-92 (1993).

The Board's role in this situation was to ensure the BIA either continued its relationship with the Service Provider on terms favourable to the BIA or to consider whether another service provider may, for whatever reason, be of greater benefit to the BIA's fundraising and event planning efforts. In this regard, the Board was tasked with formulating a "position" or "plan" in respect of its negotiations with the Service Provider or another service provider. If the Board had publicly disclosed its position on what it really wanted or was willing to offer or accept in this context, this could have prejudiced the Board's bargaining position in the contractual negotiations.

On the topic of "Community Safety", we understand that the BIA wanted to work in collaboration with the Barrie Police Service to develop community safety projects for the City's downtown area. The closed meeting minutes demonstrate that the BIA considered the amount that was proposed to be allocated to these efforts under the Budget.

There is no exception under subsection 239(2), (3) or (3.1) of the *Municipal Act, 2001* that would apply to discussions about the development of general community safety projects. Therefore, this part of the meeting was closed for an improper purpose and is thereby contrary to subsection 239(1).

In terms of "Marketing and Promotions", the closed meeting minutes demonstrate that the Board discussed the prospect of undertaking a "rebranding" project for the BIA. The Board also discussed whether and to what extent it should allocate funds to the BIA's website and other marketing tools. Specifically, the Executive Director indicated that the BIA had received several Requests For Proposal ("**RFPs**") in respect of this work and that these would be considered at the next meeting of the Board.

Absent any additional relevant circumstances, discussions regarding the marketing and promotion of a local board is not covered by any exception under subsection 239(2), (3) or (3.1) of the *Municipal Act, 2001*. Therefore, this part of the meeting was closed for an improper purpose contrary to subsection 239(1).

In terms of "Events", we understand the Board reviewed and discussed the BIA's 2019 Event Annual Review document. This is a public document that canvasses the events that the BIA spearheaded or supported in the 2019 calendar year.

There is no exception under subsection 239(2), (3) or (3.1) of the *Municipal Act, 2001* that would apply to discussions regarding events that a local board had spearheaded or supported. Therefore, this part of the meeting was closed for an improper purpose contrary to subsection 239(1).

In terms of "Capital Investments", the Board received information about, and discussed, the various capital projects in support of which the BIA had committed funds. These projects were: the City's "Meridian Place" development; security cameras for the City's downtown in conjunction with the Barrie Police Service; the City's "Streetscape" project; the City's "Sandbox Centre"; and the City's "Tourism TODS Sign" initiative.

In respect of the Meridian Place development, the evidence demonstrates that the BIA received and considered a legal opinion from its solicitor on this topic. Similarly, during the Board's discussion about the Streetscape project, one member of the Board relayed legal advice to the other members of the Board that the BIA's Governance Committee had received from the Board's solicitor regarding the topic in question.

Clause 239(2)(f) of the *Municipal Act, 2001* provides that a meeting or part of a meeting may be closed to the public if the matter under consideration is “advice that is subject to solicitor-client privilege, including communications necessary for that purpose”. This exception is intended to protect the interests of a municipality or local board, as the case may be, as a client seeking legal advice.

In this case, the Board discussed confidential legal advice from its counsel regarding the BIA’s capital commitments in support of the Meridian Place development and the Streetscape project. Therefore, the Board was permitted to discuss these matters *in camera* pursuant to clause 239(2)(f) of the *Municipal Act, 2001*.

In respect of the security cameras, the Sandbox Centre and the tourism signage, absent additional relevant facts, such as an applicable legal opinion or the existence of active or impending contractual negotiations or renegotiations, no exception under subsection 239(2), (3) or (3.1) of the *Municipal Act, 2001* would apply to permit the Board to discuss the status of these capital commitments, or the underlying agreements, *in camera*. Therefore, these parts of the meeting were closed for an improper purpose contrary to subsection 239(1).

**(ii) The Resolution to Convene into Closed Session was Deficient**

For the following reasons, it is our determination that the Board’s resolution to convene into closed session at the meeting on December 8, 2020 was deficient and did not satisfy the requirements under clause 239(4)(a) of the *Municipal Act, 2001*, described above.

The public minutes from the meeting, under the heading “BUDGET OVERVIEW”, provide as follows in respect of the subject resolution:

The Downtown Barrie (BIA) Board of Management moves a motion to move in camera at 5:23pm.

The audiovisual recording of the public portion of the meeting demonstrates that members of the Board verbally indicated that the matter to be considered *in camera* was “pre-budget discussions” (i.e. the Budget). However, no additional information was provided; the aforementioned subtopics were not mentioned.

As noted above, a resolution to convene *in camera* should provide a general description of the matter to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public. In this instance, while a member of the public, either through recourse to the public minutes or by viewing the applicable recording, could glean that the general topic of discussion for the closed session was related to the Budget, this is not sufficient to satisfy the statutory requirements. Simply stating that the matter to be discussed is the Budget is not the same as providing a “general description of the matter to be discussed”.

A sufficient description for the purposes of clause 239(4)(a) of the *Municipal Act, 2001* would have included *some details* pertaining to the nature of the discussion that was to ensue. For example, in respect of “Organizational Management”, the description could have included a statement to the effect that the Board would be considering staff salaries. Such a description would provide the public with actual information on the topic of discussion while not undermining the reason for considering the matter *in camera* – i.e., to protect personal privacy.



The requirement to pass sufficient resolutions prior to convening *in camera* is designed to enhance public confidence and trust in municipal bodies such as the Board, and to permit appropriate public scrutiny in respect of matters that are discussed in closed session. In this case, the resolution to proceed into the December 8 Closed Meeting did not fulfil this purpose.

It also bears mentioning that, as set out above, several of the subtopics discussed during the closed session were not permitted to be discussed *in camera*. In this regard, the requirement under clause 239(4)(a) also serves as an important check for any municipality or local board to determine, on a topic by topic basis, whether a particular matter is or is not permitted to be discussed *in camera*.

**(b) December 15 Closed Meeting**

**(i) Parts of the December 15 Closed Meeting Were Closed for an Improper Purpose**

For the reasons that follow, it is our determination that parts of the December 15 Closed Meeting were closed for an improper purpose contrary to section 239 of the *Municipal Act, 2001*.

We understand that the December 15 Closed Meeting was used as an opportunity for the Board to review at a high-level what had occurred during the initial Budget discussions and to address any matters that required further discussion. The Board also considered two (2) new subtopics.

Specifically, as demonstrated by the closed meeting minutes, the Board discussed the following subtopics *in camera*:

- “Budget Summary”;
- “Marketing and Promotions”;
- “Capital Investments”;
- “Other Considerations – Secretary Treasurer Honorarium”; and
- “Committee Updates”.

We have considered each of these subtopics and whether the Board was permitted or required to consider *same in camera*. In conclusion, we have found that, for the following reasons, the Board was permitted to consider some of the subtopics *in camera*, but not others.

In terms of “Budget Summary”, the closed meeting minutes demonstrate that the Board received a high-level summary regarding the changes that had been made thus far to the Budget. We were advised that this summary did not include in-depth details regarding any proposed budget line in particular. As noted above, there is no exception under subsection 239(2), (3) or (3.1) of the *Municipal Act, 2001* that would apply to a local board’s receipt of high-level information regarding its proposed budget. Therefore, these parts of the meeting were closed to the public for an improper purpose contrary to subsection 239(1).

With regard to “Marketing and Promotions”, we understand that the Board continued its discussions from the December 8 Closed Meeting on the proposed rebranding project, the BIA’s website, possible marketing initiatives, and the RFPs in relation to same.

As noted above, there is no exception under subsection 239(2), (3) or (3.1) of the *Municipal Act, 2001* that would, absent additional relevant facts, apply to discussions regarding a local board's marketing and communications strategies. Therefore, this part of the meeting was closed for an improper purpose contrary to subsection 239(1).

In respect of "Capital Investments", the evidence demonstrates that the Board continued its discussions regarding the BIA's capital commitments in support of the Meridian Place development, the security cameras, the Streetscape project, the Sandbox Centre and the tourism signage.

As outlined above, regarding the Meridian Place development and the Streetscape project, the Board discussed legal advice from its counsel in respect of these capital commitments. As such, the Board was permitted to conduct these discussions *in camera* pursuant to clause 239(2)(f) of the *Municipal Act, 2001*.

Also as outlined above, regarding the security cameras, the Sandbox Centre and the tourism signage, absent additional relevant facts, no exception under subsection 239(2), (3) or (3.1) of the *Municipal Act, 2001* would apply to permit the Board to discuss the status of these capital commitments, or the underlying agreements, *in camera*. Therefore, these parts of the meeting were closed for an improper purpose contrary to subsection 239(1).

In terms of "Other Considerations – Secretary Treasurer Honorarium", the closed meeting minutes also demonstrate that the Board discussed whether to provide an honorarium to the Secretary-Treasurer of the Board (the "**Secretary Treasurer**") for hours worked above and beyond what was generally expected of a volunteer member of the BIA. The Secretary-Treasurer left for this part of the meeting.

As set out above, pursuant to clause 239(2)(b) of the *Municipal Act, 2001*, a meeting or part of a meeting may be closed to the public if the topic of discussion is "personal matters about an identifiable individual, including municipal or local board employees". In this instance, we find that clause 239(2)(b) would apply to permit this part of the meeting to be conducted *in camera* because the discussion pertained to the financial situation of an identifiable individual and that individual's performance in their volunteer role.

Lastly, in respect of "Committee Updates", the evidence demonstrates that the Board received an update regarding an ongoing confidential investigation that was being conducted by Human Resources. This update included information of a personal, confidential and sensitive nature in respect of an identifiable individual. For this reason, it is our determination that this portion of the meeting was properly held *in camera* as permitted by clause 239(2)(b) of the *Municipal Act, 2001*.

**(ii) The Resolution to Convene into Closed Session was Deficient**

Similar to the resolution passed prior to the December 8 Closed Meeting, the public minutes from the meeting on December 15, 2020, under the heading "BUDGET OVERVIEW", provide as follows in respect of the subject resolution:

The Downtown Barrie (BIA) Board of Management moves a motion to move in camera at 5:30pm.

Again, the audiovisual recording of the public portion of the meeting evidences a verbal indication from the Board that the general nature of the matter to be considered in closed session was the Budget. However, no additional information was provided and the aforementioned subtopics were not mentioned.

In all material respects, the resolution passed by the Board at the December 15, 2020 meeting to convene *in camera* is substantially similar to the resolution passed at the earlier meeting on December 8, 2020. For this reason, we would adopt the above reasoning with respect to the resolution from the meeting on December 8, 2020 to find that the resolution passed on December 15, 2020 to convene *in camera* was also deficient and did not satisfy the requirement of clause 239(4)(a) of the *Municipal Act, 2001*.

### **(c) Public Accessibility to the December 15, 2020 Meeting**

As noted above, the Request raises the issue of public accessibility in respect of the public portions of the December 15, 2020 meeting. Specifically, the Request indicates that members of the public in attendance at this meeting were, once the Board moved *in camera*, “kicked out” of the Zoom session. The attendees were not then invited to rejoin the meeting once the Board had moved back into open session for the remainder of the meeting. In addition, the Request indicates that a request to the BIA for a recording of the public portions of the meeting was not granted.

In terms of the public’s ability to attend the public portions of the meeting on December 15, 2020 by Zoom, we accept that any members of the public who were in attendance at the meeting were denied access to the *in camera* portions of the meeting and were not reinvited to join the meeting once the Board had moved back into open session. However, we cannot find that such members of the public could not have, on their own initiative, rejoined the meeting once it had reconvened into open session by simply following the Zoom meeting link to access the session in question. There is no conclusive evidence on this point.

For this reason, we are unable to conclude, due to a lack of substantive proof, that the second half of the public portion of the meeting on December 15, 2020 was effectively closed to the public, such that the open meeting rule was contravened. However, it is clear that sufficient access was not granted to those members of the public who may have wished to witness the remainder of the meeting. We have addressed this concern below.

Regarding the request for a copy of a recording of the public portions of the meeting on December 15, 2020 that was not granted, there is no requirement in the *Municipal Act, 2001* that meetings, whether open or closed, be audio or video recorded. Furthermore, there is no requirement that, if a meeting is recorded, a member of the public is entitled to a copy of such recording by way of direct request.<sup>10</sup> While it is the practice of some councils and local boards to record, and publish recordings of, their meetings, this is not a requirement.

While the BIA may decide to record or provide copies of recordings of meetings of the Board, it is not required to do so. On this basis, we find the BIA did not contravene any provision of the *Municipal Act, 2001* in this regard.

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<sup>10</sup> Any person may request records, including recordings, that are within the custody or control of a municipality or a local board by filing a formal request for information pursuant to s. 17 of the *Municipal Freedom of Information and Protection of Privacy*, *supra* note 6.

## CONCLUSIONS

Based on the foregoing, we conclude that the Board, in its conduct of the December 8 Closed Meeting and the December 15 Closed Meeting, contravened subsections 239(1) and 239(4) of the *Municipal Act, 2001* on the basis that the Board was not permitted to discuss the above detailed matters *in camera* and failed to pass sufficient resolutions.

In addition, while not within our express jurisdiction as Closed Meeting Investigator pursuant to subsection 239.2(1) of the *Municipal Act, 2001*, we note that the BIA is in contravention of subsection 238(2) of the statute by not having enacted (or adopted) a procedure by-law, as outlined above.

## ADDITIONAL CONSIDERATIONS

The following contextual factors in respect of this matter warrant mention.

We understand the membership and composition of the Board changed drastically in 2019. As a result, the Board is now almost entirely comprised of “new” volunteer members, many of whom have never served on a local board. We appreciate that, as a result of the transition that occurred in 2019, much of the institutional knowledge that may have been held by previous iterations of the Board could have been lost.

Based on the totality of the record, it is our belief that the contraventions that occurred in this case, as outlined above, were not perpetrated with any nefarious intent; rather, these contraventions appear to have resulted through inadvertence combined with a lack of understanding of the rules applicable to open and closed municipal meetings. With this in mind, we have crafted our recommendations with the aim of seeking to assist the Board in its conduct of future meetings, both open and closed.

## RECOMMENDATIONS

In light of the above, we recommend that the Board take the following actions:

1. Receive formal education and training on the legal requirements under section 239 of the *Municipal Act, 2001* and the proper conduct of open and closed meetings;
2. Draft and enact a procedure by-law pursuant to subsection 238(2) of the *Municipal Act 2001* that includes a requirement to “report out”<sup>11</sup> following any closed session;
3. Publish redacted (to exclude any information that was properly discussed *in camera*) copies of the minutes of the December 8 Closed Meeting and December 15 Closed Meeting on the BIA’s website; and

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<sup>11</sup> This is a practice that is common among municipalities in Ontario. It has been recommended as a “best practice” by the Ontario Ombudsman. A “reporting out” following a closed session should, like the resolution to proceed *in camera*, provide a general description regarding what was discussed without divulging any confidential information. A municipality’s practice of reporting back should be codified in the municipality’s procedure by-law or closed meeting policy.

4. Publish or otherwise make available recordings of the public portions of the Board meetings on December 8 and 15, 2020 on the BIA's website.

This Report has been prepared for and is forwarded to the Board for its consideration. Subsection 239.2(11) of the *Municipal Act, 2001* provides that this Report be made public. Subsection 239.2(12) provides that the Board shall pass a resolution stating how it intends to address this Report.

AIRD & BERLIS LLP

A handwritten signature in dark ink, appearing to be 'RH' or similar, written in a cursive style.

Rebecca Hines

Dated this 4th day of June, 2021