



# Transparency and openness – the hallmarks of a council’s practices

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Although perhaps not strictly related to this issue’s Special Report on Infrastructure, the Supreme Court of Canada’s recent decision dealing with control by-laws should still be considered by municipal councils when dealing with contentious land control issues. (*London [City] v. RSJ Holdings Inc.*)

In 2004, the City of London, Ontario, passed an interim control by-law that mandated a one-year development freeze in land along a certain city corridor. Residents had complained that there was too much student housing occurring in the area. The City asked its City Solicitor to study the problem. In the interval, RSJ Holdings bought some property with the intention of constructing four residential units.

The City Solicitor then proposed some by-law and permit solutions, albeit not an interim control by-law. The City’s Planning Committee considered the corridor in two meetings closed to the public. The agendas, which were accessible to the public, indicated that confidential matters were to be discussed, but nothing was disclosed about the nature or subject of the closed meetings.

After the second closed meeting, City Council resumed in a regular public session that lasted eight minutes. During that eight-minute session, the council passed 32 by-laws, including the interim control by-law, without any public debate or discussion.

RSJ Holdings applied for an order quashing the by-law on the basis that council had discussed, and then decided to pass the by-law at two closed meetings. RSJ argued that this was in contravention of the City’s obligation under the Ontario *Municipal Act* to hold both council and committee meetings in public.

The first level of court denied RSJ Holding’s application because there was an exception provision in the Act allowing for closed meetings if potential litigation was the subject being discussed.

However, the Court of Appeal of Ontario quashed the by-law and the City of London

appealed to the Supreme Court of Canada. The City argued that it had complied with municipal requirements to have the vote conducted in public when they approved the interim control by-law. The City’s position was that its closed meetings were authorized under both the *Municipal Act* exceptions and also because advice that was subject to solicitor/client privilege was being discussed. The City also argued that *The Municipal Act* allowed for a closed meeting where the subject matter under consideration is one in which a committee or council may hold a closed meeting under another act. Since *The Ontario Planning Act* did not require notice or public hearings before passing an interim control by-law, the matter constituted one in which a closed meeting can be held “under another act” within the meaning of one of the exceptions in *The Municipal Act*.

While the City’s reliance on the exceptions to public meetings might seem reasonable in some circumstances, the City was aware that such a by-law would be contentious, and could have profound effects on landowners. With that in mind, the Supreme Court of Canada rejected the City’s reliance on the various exceptions. It emphasized that the Ontario *Municipal Act* mandates all municipal meetings be open to the public unless the subject matter falls within one of seven exceptions set out in the Act. The use of the word “shall” in requiring open meetings demonstrates that this must be done unless the exceptions are clearly and fully met. Further, the words “committee” and “meeting” were broadly defined and included any regular, special, or committee meeting. The exception regarding a closed meeting in another act was not met merely the *Planning Act* allowed for a closed meeting. A meritorious necessity for a closed meeting under the *Planning Act* was required before the statutory requirement to hold public meetings under the *Municipal Act* could be avoided.

The court held that interim control by-laws are powerful zoning methods by which municipalities can do a number of things, including broadly freeze the development of land, buildings and structures within its boundaries. The power to enact an interim control by-law is an extraordinary one usually exercised in situations where unforeseen issues have arisen and the status quo should be preserved while the municipality studies the problem and determines the appropriate planning solution.

The court noted that the open meeting requirement was intended by the legislature to increase public confidence in the integrity of its local municipal government “by ensuring the open and transparent exercise of municipal power”. Transparency and accountability in the decision making process must be respected, particularly given the powerful and profound effect on landowners. While the quashing of the by-law is an extraordinary measure to be taken by a court, the conduct of the City in passing the by-law in those secretive conditions merited its quashing.

As a result, councils should be mindful of the public meeting requirements under the Manitoba *Municipal Act*, and be wary of holding unnecessary *in camera* meetings, particularly where contentious matters are being discussed. Transparency and openness should be the hallmarks of council’s practices. §

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