Committee of the Whole
REPORT 07-035
9:30 a.m.
December 7, 2007
Albion Room, Hamilton Convention Centre

Present:
Mayor F. Eisenberger

Absent with regrets:
Councillors L. Ferguson – Vacation
Councillor B. Morelli – Sick Leave
Councillor S. Merulla – Medical Appointment
Councillor T. Jackson – Personal Business

Also Present:
G. Peace, City Manager
T. Tollis, Acting General Manager, Finance and Corporate Services
S. Stewart, General Manager,
T. McCabe, General Manager, Planning and Economic Development
J. Kay, General Manager HES/Fire Chief
J. Priel, General Manager, Community Services
K. Christenson, City Clerk
M. Gallagher, Co-ordinator

COMMITTEE OF THE WHOLE PRESENTS REPORT 07-035 AND RESPECTFULLY RECOMMENDS:

1. Budget Steering Committee Report 07-001 (Item 7.1)

2008 Capital Budget

(a) That a new reserve be established to fund Council’s Strategic Capital Program funded from 2007 Budget approved $3m unallocated capital and $2m from the $10m Hydro dividends;
(b) That the Federal Gas Tax Subsidy (2008 - $15.9m) be used exclusively to fund the Tax-Supported Capital Program; (Transit not included except for specific one-time funding announcements;)

(c) That the 2008 Tax-Supported Capital Program and Financing Plan in the amount of $150,806,000 as identified in Appendix 1 – 4 of the 2008 Tax Capital Budget Book – FCS08022 (1/2% option plus $10 Hydro Dividends), be approved;

(d) That the 2008 Tax-Supported Capital Program and Financing Plan in the amount of $3m, as identified in Table 4 in Appendix 1-3, pg. 57 of the 2008 Tax Capital Budget Book - FCS08022 (additional ½%) be referred to the 2008 tax-supported Operating Budget deliberations for Council's consideration.

2. 2008 Tax Bills – Highlighting Infrastructure Funding Shortfall (added item)

That the 2008 tax bills indicate a line item highlighting the 1% capital allocation is for infrastructure due to funding shortfall from senior levels of government.

3. Accountability and Transparency Sub-Committee Report 07-001 (Item 7.2)

Services of the Ontario Ombudsman

That the City of Hamilton accept the services of the Ontario Ombudsman, as outlined in Appendix “A” to this Report, for the investigation of complaints respecting closed door meetings, and that this arrangement be reviewed by Council within two years of its inception, to consider the effectiveness and timeliness of the service and consideration of available alternatives.

4. Amendments to the Municipal Act, 2001 Respecting: Accountability and Transparency Policy (CL07010 / LS07025) (City Wide)

(a) That the Accountability and Transparency Policy attached as Appendix “B” to this report, be adopted;
(b) That the Accountability and Transparency Policy be referred to the Subcommittee on Accountability and Transparency for their review and recommendations regarding any future improvements and amendments to the Policy.

5. Capital Budget for Confederation Park and Westfield Heritage

That the Capital budget for Confederation Park and Westfield Heritage Village in the amount of 384K be approved and funded from the Unallocated Capital Reserve.

FOR THE INFORMATION OF COUNCIL:

(a) CHANGES TO THE AGENDA

Added Item 7.3 respecting Accountability and Transparency Policy

The agenda was adopted as amended.

(b) DECLARATIONS OF INTEREST

None

(c) ADOPTION OF MINUTES

None

(d) PRESENTATIONS

Joe Spiler presented a power point presentation of the 2008 Capital Budget highlighting the following:

- Summary of major issues
- Capital Program Growth History
- Capital Forecast
- Debt Forecast
- Debt Charges Forecast
- The Levy Compared to Capital Levy
- Capital Levy Components
- Debt Charges
- Capital Revenue Forecast
- Gas Tax Funding Forecast
- 2008 Funding Envelope ½%
- 2008 Funding Shortfall
- Assessment Generators
- Capital Levy Increase
Following discussion on the Capital Budget, the subjoined motions for staff reports were approved:

Motion #1

Whereas the amount of new lane km continues to increase every year
Whereas the cost of building and resurfacing roads continues to increase well above the cost of inflation
And Whereas the roads infrastructure deficit is currently 44.5 million and rising
Therefore be it resolved:

That staff be directed to report back on following the 2008 budget:
a) the number of new lane km planned for 08 and project for 09
(b) sustainability strategy for funding the new roads both to build them and to maintain them over time

Motion #2

That staff be directed to schedule a strategic planning session to discuss the Brownfield Reserve.

Councillor Whitehead will raise at the Budget Steering Committee the issue of other/unused revenue sources for allocation by Council

The meeting adjourned at 10:42 a.m.

Respectfully submitted,

Mayor F. Eisenberger

M. Gallagher, Co-ordinator
December 7, 2007
October 22, 2007

Dear Clerk/Administrator/Council:

As of January 1, 2008, the provisions of the City of Toronto Act, 2006 and the Municipal Act, 2001 relating to investigation of closed meetings will come into effect. Under these new legislative provisions, the Office of the Ombudsman of Ontario will have the responsibility of investigating complaints about closed meetings if the municipality in question has not appointed an investigator.

I would like to take this opportunity to provide you with some general information regarding our Office’s processes and how it will be dealing with this new jurisdiction. Attached for your information and assistance is some additional information in the form of a “frequently asked questions” document. This information can also be found on the Ombudsman’s website at www.ombudsman.on.ca.

The Ombudsman’s Office will be maintaining information about closed meetings on its website and will be available to the public and municipalities as a resource. The Ombudsman’s services are free of charge. Our Office is independent from government and functions in an impartial and confidential manner, conducting thorough, objective and credible investigations.

The Ombudsman’s process has proven effective in resolving tens of thousands of cases on an annual basis. When we receive a complaint, our normal practice is to contact the parties involved and first attempt to resolve issues informally. If this is unsuccessful, a formal investigation may be launched. Prior to launching an investigation, notice is given in writing to the organization that is the subject of the complaint – in the case of complaints about closed meetings, notice would go to the relevant municipality or local board. Under the Ombudsman Act, the Ombudsman also has discretion to decline to investigate a complaint.

Given that the Ombudsman will have jurisdiction to investigate complaints about closed meetings in any case where a municipality has not appointed an investigator for this purpose, it is important that all Ontario municipalities provide our Office with up-to-date information regarding any investigator(s) they may appoint. This will also assist the Ombudsman’s Office in providing appropriate referral information to complainants in cases where municipalities have appointed investigators.
We would appreciate it if you could notify our Office of any investigator(s) appointed by your municipality, including name and contact information. In addition, please provide us with any Council minutes confirming the investigator’s appointment, and any relevant bylaw relating to the terms and conditions governing the investigator. This can be done by e-mail at info@ombudsman.on.ca or by mail, addressed to the attention of Sherrie Nicholson, Ombudsman Ontario, Bell Trinity Square, 483 Bay Street, 10th Floor, South Tower, Toronto, ON, M5G 2C9.

If you have any questions, please feel free to visit our website or contact us via e-mail at info@ombudsman.on.ca or by phone at 1-800-263-1830.

Yours truly,

Barbara Finlay
Deputy Ombudsman

Encl.
Investigating Closed Municipal Meetings: 
Frequently Asked Questions

Municipalities and local boards in Ontario are required to pass bylaws setting out the procedure for holding meetings. The law now requires that public notice be given that a meeting will be held. All meetings must be open to the public unless they come within limited exceptions.

As of January 1, 2008, the City of Toronto Act, 2006 and the Municipal Act, 2001 provide that any person may request an investigation into whether a municipality or local board has complied with the open meeting requirements or the procedural bylaw relating to any meeting or part of a meeting that was closed to the public.

If a municipality has not appointed an investigator, the Ombudsman of Ontario has authority to investigate complaints about closed meetings. The Ombudsman’s investigations are conducted at no cost to those who complain or to municipalities or local boards. The Ombudsman’s process respects the values of independence, impartiality, confidentiality and a credible investigative process and has been proven effective in resolving tens of thousands of cases per year in a timely manner.

Who must hold an open meeting?
All municipal and local boards – except conservation authorities, police services boards, school boards, and public library boards – are required to hold meetings that are open to the public, subject to some exemptions.

When can a meeting be closed to the public?
A municipal or local board meeting, or part of a meeting, may be closed if the subject matter being considered concerns:

- the security of the property of the municipality or local board;
- personal matters about an identifiable individual, including municipal or local board employees;
- a proposed or pending acquisition or disposition of land by the municipality or local board;
- labour relations or employee negotiations;
- litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.

A meeting may also be closed if it is held for the purpose of educating or training the members, so long as no member discusses or otherwise deals with any matter during the closed meeting in a way that materially advances the business or decision-making of the council, local board or committee.

In addition, meetings must be closed if the subject matter relates to the consideration of a request under the Municipal Freedom of Information and Protection of Privacy Act if the council, board, commission or other body is the head of an institution for the purposes of that Act.

**Can members vote during a closed meeting?**
Generally, meetings are not supposed to be closed to the public during the taking of a vote. However, voting in a closed meeting is permitted if the closed meeting is otherwise authorized and the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the City; to officers, employees or agents of a local board or of a committee of either of them; or to persons retained by or under a contract with the municipality or local board.

**Does a municipal council or local board have to follow a specific procedure to close a meeting?**
Yes, in order to close a meeting a specific process must be followed:
The municipality, local board, or committee must state by resolution that a closed meeting will be held and state the general nature of the matter to be considered at the closed meeting. Public notice of a meeting is required even if the meeting is closed. In the case of meetings for the purpose of educating or training members, the subsection of the Municipal Act authorizing meeting closure for this purpose must also be cited.

**Does a municipal body have to keep a record of a closed meeting?**
A municipal council, local board or committee, must record without comment all resolutions, decisions and other proceedings, whether the meeting is open or closed.

**Who can ask for an investigation relating to a closed meeting?**
Any person or corporation may ask for an investigation relating to a closed meeting.

**What municipal bodies can be investigated for failing to hold an open meeting?**
The investigation provisions cover municipalities and local boards, which include:
- municipal councils;
- municipal boards, including boards of health or planning boards;
- transportation commissions;
any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities.

Who investigates closed meeting complaints?
If a municipality has appointed an investigator, he or she will investigate complaints about closed meetings. If the municipality has not appointed an investigator, the Ontario Ombudsman may investigate. Once the Ontario Ombudsman has received a complaint, the Ombudsman will retain jurisdiction over a complaint even if an investigator is subsequently appointed by the municipality.

Complaints may be made to a municipality or local board or to the Ontario Ombudsman. If the Ombudsman receives a complaint about a municipality where an investigator has been appointed, the complaint will be referred to that investigator. Similarly, it is expected that municipalities and local boards will refer complaints to the Ontario Ombudsman when no investigator has been appointed.

How will the Ombudsman know if a local investigator has been appointed?
The Ontario Ombudsman is encouraging municipalities to notify his office if an investigator has been appointed, and to provide the investigator’s contact information. The Ombudsman’s Office will contact a municipality in cases where no notification has been received.

Does the Ombudsman have the ability to conduct investigations in both English and French?
Yes, the Ombudsman’s office can conduct investigations in either English or French.

Does the Ombudsman charge a fee to either the municipality or the person bringing the complaint?
No, there is no fee charged by the Ombudsman to either the municipality or the person bringing the complaint to our Office. In keeping with the tradition of ombudsman offices around the world, the Ombudsman’s services are free of charge in order to ensure they are fully accessible to everyone.

Will the Ombudsman notify the municipality or local board when a complaint is received?
The Ombudsman’s usual process is to document and confirm the details of a complaint, and then to contact the municipality or local board to advise them of the complaint and obtain information. If the complaint cannot be resolved informally, a formal investigation may be commenced. In the case of a formal investigation, the head of the municipality or local board will be notified.
Can closed meetings prior to January 1, 2008 be investigated?
The investigation provisions apply to meetings held on or after January 1, 2008. As a
general rule, legislative provisions only apply on or after their commencement date.

What powers of investigation does the Ombudsman have with respect to closed
meeting complaints?
The investigative powers set out in the Ombudsman Act – including the power to issue
summons, inspect premises and compel municipal officials and staff to provide
information and documents – apply to investigations of closed meeting complaints.

Will the Ombudsman investigate every complaint received?
The Ombudsman’s Office will conduct an initial review of each complaint regarding
open meetings. Not all complaints will necessarily result in a formal investigation. Some
cases will be resolved informally, and there may also be circumstances when an
investigation is otherwise considered unnecessary.

Will the Ombudsman establish time frames for the municipality or local board to
respond to a complaint?
The time frame for responding to a complaint will depend on the nature of the
circumstances. As a general rule, the Ombudsman expects timely responses so that
complaints may be resolved without undue delay.

What happens to municipal documents after an Ombudsman investigation?
The Ombudsman’s practice is to return original documents. Copies of documents
retained in the Ombudsman’s file are kept confidential. The Ombudsman is not subject
to the Municipal Freedom of Information and Protection of Privacy Act or the Freedom
of Information and Protection of Privacy Act.

What can the Ombudsman do if he finds a meeting was improperly closed or
procedural requirements were contravened?
If the Ombudsman concludes, after an investigation, that there was a contravention of the
procedural bylaw relating to a closed meeting, or that the closed meeting provisions were
contravened, he may report his opinion and reasons to the municipality or local board,
and make recommendations to address his concerns.

Will the Ombudsman’s reports about closed meetings be made public?
Yes, once an Ombudsman report is provided to the municipality or local board, that body
is required to make it public. Copies of the reports may also be found on the
Ombudsman’s website, www.ombudsman.on.ca.

Investigating Closed Municipal Meetings: FAQ
ACCOUNTABILITY AND TRANSPARENCY POLICY

POLICY STATEMENT:
A policy to establish the manner in which the City of Hamilton will try to ensure that it is accountable to the public for its actions, and the manner in which the City of Hamilton will try to ensure that its actions are transparent to the public, as required by the Municipal Act, 2001.

APPLICATION:
This policy applies to City Council, Standing Committees, and Subcommittees of Council and City staff.

PURPOSE:
The Municipal Act, 2001 requires that all municipalities adopt and maintain a policy with respect to the manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public. The purpose of this policy is to provide guidance in achieving these objectives.

DEFINITIONS:
In this policy, the terms “accountability” and “transparency” shall have the following meanings:

**Accountability** – The principle that the City will be responsible to its constituents for the decisions it makes and policies it implements, as well as its actions or inactions.

**Constituents** – The individuals who reside in the City of Hamilton and businesses, institutions, and other entities which have premises in the City of Hamilton.

**Transparency** – The principle that the City’s decision making process should be open and accessible to the public. Also, that the City ought to actively encourage and foster public access to and participation in its decision making process.
DESCRIPTION:

The City of Hamilton acknowledges that it is responsible for providing good government with respect to matters within its jurisdiction in an accountable and transparent manner by:

- facilitating public access to information about the City’s services and programs, and encouraging public participation to ensure that the City’s decision making process is conducted openly and in a manner that is responsive to the needs of constituents and receptive to their opinions

- delivering high quality services to constituents and actively seeking input for enhancing service delivery and achieving best practices

- promoting the efficient and effective use of public resources in a manner that permits constituents the opportunity to evaluate the City’s performance in this regard

The City of Hamilton has enacted policies and implemented practices that contribute to creating an accountable and transparent municipal organization. Specific policies and practices are identified below. The City will continue to support accountability and transparency in its future initiatives.

1. **Financial Matters**

   The City will be accountable and transparent to its constituents and other affected parties in its financial dealings. Practices and procedures supporting this principle include the following:

   a) **internal audits**: The City’s Internal Auditor conducts independent assessments to evaluate risk and monitors compliance with purchasing and other procedures. The Auditor reports directly to the Audit and Administration Committee in public session, except where the matters touched upon require consideration in a closed meeting.

   b) **external audits**: The City complies with the statutory requirement to appoint an auditor who conducts an annual independent audit and reports on financial statements. The auditor’s report is available to the public.

   c) **budget process**: The City has adopted a budget process that provides opportunities for public consultation and input prior to approval of the annual budget. The City provides public quarterly reporting on budget variances. The City publishes an Annual Report, including its financial statements.
d) **procurement policy**: The City’s purchasing policy and procedures establish a mandatory process for the purchase of goods and services in order to ensure transparency and competitive procurement. Delegated authority to staff is subject to clear limits and is monitored through regular reporting to Council and internal audits.

e) **sale of land**: The City’s sale of land policy requires that property be declared surplus to the City’s needs and be subject to a market value appraisal prior to being offered for sale.

2. **Members of Council**

   a) **code of conduct**: Members of Council are subject to a code of conduct contained within the Procedural By-law and the City has established a Subcommittee to make recommendations regarding the content and enforcement of this Code of Conduct.

   b) **integrity commissioner**: The City of Hamilton has approved, in principle, the establishment of an Integrity Commissioner pursuant to the *Municipal Act, 2001* and has established a Subcommittee to make recommendations regarding the creation of that office.

3. **Administrative Management**

   The City’s administrative practices work to ensure accountability on the part of its employees through the following initiatives:

   a) **code of conduct**: City staff are subject to a code of conduct governing financial responsibilities and ethical behaviour. Managers are responsible for ensuring compliance with the code of conduct.

   b) **hiring policy**: The City has adopted a hiring policy under the *Municipal Act, 2001* which provides for a fair and transparent process and includes provisions governing hiring of relatives.

   c) **delegated authority**: Where matters have been delegated to staff, such authority is given within clear limits and Council retains the right to hold its delegates responsible for their actions. This ensures that decisions affecting interested parties will not be made without accountability.
d) **operational reviews:** The City conducts operational reviews of City Departments or Divisions to ensure that it is attaining operational efficiency and effectiveness and in pursuit of best practices in service delivery.

e) **human resource policies:** The City has adopted a series of Human Resource Policies governing its employees, designed and intended to promote accountability of City employees in their workplace conduct. Managers are responsible for ensuring compliance with these policies.

4. **Public Participation**

The goal of the City of Hamilton is to ensure that as much as possible meetings of its Council, Standing Committees, and Subcommittees of Council are conducted in open and public session. There will, however, be occasions when it is necessary and/or prudent to conduct part or all of a meeting in closed session, and on those occasions the City will comply with the requirements of the Procedural By-law, the *Municipal Act, 2001*, and such other legislation as may be applicable.

The City facilitates public involvement in its activities by ensuring adequate notice and relevant information are provided to the public of all meetings and public information sessions. The City has adopted the Public Notice Policy under the *Municipal Act, 2001*, which demonstrates this commitment to transparency.

The City facilitates public involvement in its activities by providing in its Procedural By-law for public delegations to appear before Standing Committees of Council.

The City facilitates public involvement in its activities by providing for and hosting a variety of public meetings, open houses, public workshops and public presentations to inform constituents of initiatives being considered by the City.