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INTEGRITY COMMISSIONER'S REPORT

October 20, 2014

Submitted to: Mayor and Council

Submitted by: Robert J. Swayze

Subject: Code of Conduct Complaint against Deputy Mayor Rick Lloyd

PURPOSE

- The purpose of this report is to advise Council of the findings of the Integrity Commissioner after conducting an investigation of a complaint under the *Code of Conduct for Members of Council* and the *Complaint Protocol*. (the "Code")

RECOMMENDATION:

THAT Council receive the report dated October 20, 2014 from the Integrity Commissioner;

1. BACKGROUND

I received a complaint from Mr. Ulli Rath, a resident of Collingwood, against Deputy Mayor Rick Lloyd stating that he should have declared a conflict and refrained from voting in a Council meeting held on May 26, 2014 and on other occasions, in favour of a development corporation by the name of Admiral Collingwood Development Corporation ("ACDC"). ACDC is owned by Mr. Steve Assaff, who is also the fundraising chair of the Deputy Mayor's 2014 election campaign.

ACDC had commenced construction of a five story building in 2007 but discontinued it after excavating for the foundation. To date the excavation has not been filled in and the hoarding surrounding it was in need of repair. The Town commenced proceedings under the Property Standards By-law and pursuant to an agreement executed by the developer, for site remediation. The developer requested a two year extension. This matter came before Council on May 26, 2014 and the extension was granted on a 5-4 vote. The Deputy Mayor voted in favour of the motion.

In accordance with the *Complaint Protocol*, I served the Deputy Mayor with the complaint and asked certain questions of him. He responded to me by telephone and in writing, immediately and with candour. The complainant was also served with his written response.

Mr. Rath referred me to the preamble of the Code which provides: “Members of Council fundamentally understand that as leaders of the community, they are held to a higher standard of behavior and conduct” and further to Section 7, which states “Members of Council will recognize their obligation to follow and respect both the **letter and spirit** of the provisions of the Municipal Act and the Municipal Conflict of Interest Act (the “MCIA”).” He argues that the Deputy Mayor has contravened both sections.

Mr. Lloyd advised me in his response to the complaint that Mr. Assaff is a “lifelong friend” and has worked on all of his election campaigns. He argues that he has no conflict under the MCIA by participating in Council proceedings affecting persons working on his campaign. However, he advised me that “if Mr. Assaff had any dealings with Council currently then I would out of respect declare a conflict, however there are no such current proposals before Council.”

2. ANALYSIS

I serve as Integrity Commissioner in another municipality, smaller than Collingwood and was asked a question by one of its Council members. He said, we know almost everyone in Town and most of them are our friends. Do you expect us all to declare a personal (non-pecuniary) conflict every time one of our friends appears before Council? My answer was “no” but I told him that there may be occasions when you need to look at the degree of friendship and/or the controversy surrounding the matter to be voted on.

I am of the opinion that the Deputy Mayor should have declared a conflict at the meeting on the ACDC matter before Council on May 26th and not voted for his “lifelong friend” for the following two reasons:

1. It is possible that refusing to vote would not be found to be contrary to the MCIA which requires a pecuniary interest. A case decided in British Columbia found that campaign fundraising did not constitute a pecuniary interest. However, there is no guarantee that an Ontario court would make the same finding under different circumstances and different legislation.
2. The Deputy Mayor’s participation in a vote relating to a controversial proceeding aimed by staff at his friend’s company to improve the community, was inappropriate and he should have bowed out. The Code requires him to abide by the “spirit” of the MCIA and he has risked the public perception that Mr. Assaff served as his fundraising chair as a *quid pro quo*.

The procedural by-law of the Town would deem the Deputy Mayor’s refusal to vote as a negative vote unless such refusal was a conflict pursuant to the MCIA. Since there is doubt in Ontario whether the conflict is pecuniary, the Clerk could have found the


declaration of a conflict to comply and not recorded it as a negative vote. If the Clerk ruled otherwise, he could have left the Council chamber during the debate and vote to avoid voting against his friend.

I am not recommending that Council impose any sanctions against the Deputy Mayor. I believe that his participation in the debate and vote was an error in judgment and he has indicated that he will not vote in future matters involving Mr. Assaff.

3. EFFECT ON TOWN FINANCES

Not applicable

SIGNATURE

Prepared by: Integrity Commissioner	
	
<i>Robert Swayze</i>	
<i>Integrity Commissioner</i>	
Town of Collingwood	