



Cunningham Swan
CELEBRATING **125** YEARS

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June 12, 2019

By E-MAIL: dylinna@bellnet.ca

Council Members – Township of Wollaston
c/o Dylinna Brock, Township Administrator
Township of Wollaston
90 Wollaston Lake Road
Coe Hill, ON K0L 1P0

Dear Members of Council:

**RE: Municipal Conflict of Interest Act and Code of Conduct Complaint – Councillor Conlin
Our File No. 32797-5**

Please be advised that our inquiry under the *Municipal Conflict of Interest Act* and investigation under the Code of Conduct are now complete. Please note that the Code of Conduct posted on the Township's website at the time of the complaint was not the version that was in force at that time. This has now been corrected by the Township. This did not affect the complaint as the content of the provisions referenced within our report are essentially the same as those referenced in the complaint documents.

We attach a copy of our report for Council's review and consideration. Please note that Council is required to make this report public in accordance with section 223.6(3) of the *Municipal Act*, which may be done by posting it on the Township's website.

Please note that while we found that Councillor Conlin breached the general conflict of interest provision of the Code of Conduct, we found that he did not breach section C.2 or section C.6(f) of the Code.


CUNNINGHAM, SWAN, CARTY, LITTLE & BONHAM LLP

Finally, we found that Councillor Conlin did not breach the *Municipal Conflict of Interest Act*. The reasons for these findings are set out in the report. As such, we will not be submitting an application to a judge under section 8 of the *Municipal Conflict of Interest Act*.

This complaint is hereby closed, and no further steps will be taken by the Integrity Commissioner in this regard.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming

Tony E. Fleming, C.S.

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TEF:als



BY E-MAIL: dylinna@bellnet.ca

June 13, 2019

Council Members – Township of Wollaston
c/o Dylinna Brock, Township Administrator
Township of Wollaston
90 Wollaston Lake Road
Coe Hill, ON K0L 1P0

Attention: Council Members

Dear Council Members:

**RE: Integrity Commissioner Complaint – Councillor Tim Conlin;
Our File No: 32797-0005**

Summary of the Investigation

A complaint was submitted to the Township and received by our office on March 11, 2019. The nature of the complaint was in relation to Councillor Tim Conlin's participation in matters concerning an application for a work permit submitted by Earle Excavating (the "Applicant"). The application was for works to be completed on a municipally owned shore road allowance (the "Permit Application"). Councillor Conlin operates a business known as Tim Conlin Blasting and Construction, which is incorporated as 1447099 Ontario Inc. (the "Corporation").

The complainant alleges that Councillor Conlin:

- (1) had an indirect pecuniary interest when he attended at the property subject to the Permit Application and spoke with the property owner about why the property owner should not proceed with the work as proposed by Earle Excavating, and further, that he had an indirect pecuniary interest in the Permit Application itself and ought to have declared a conflict of interest under the *Municipal Conflict of Interest Act* ("MCIA") at the March 4, 2019 meeting of Council where Council considered the Permit Application;
- (2) had a general conflict of interest when he attended at the property subject to the Permit Application and spoke with the property owner about why the property owner should

- not proceed with the work as proposed by Earle Excavating, and in providing strong negative comments and recommendations in opposition to the Permit Application March 4, 2019 meeting of Council, contrary to section B.5 of the Code of Conduct;
- (3) used confidential information obtained as a result of his position on Council to visit the Applicant's client's home contrary to section C.2(c) of the Code of Conduct; and
 - (4) attempted to influence the decision of Council at the March 4, 2019 Council meeting regarding the Permit Application for which Councillor Conlin had a financial interest, contrary to section C.6(f) of the Code of Conduct.

After a preliminary review of the complaint and the supporting information submitted by the complainant, our office determined that there was a reasonable basis to conduct an investigation.

The Township's Code of Conduct and the *Municipal Act* provide the Integrity Commissioner with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the investigation, our process included:

- Providing a copy of the complaint and supporting materials to Councillor Conlin, with a request for a written response;
- Providing a copy of that response to the complainant and requesting that the complainant provide a written response;
- Providing a copy of the complainant's response to Councillor Conlin with a request for any final written comments;
- Interviewing both the complainant and Councillor Conlin;
- Interviewing a member of the public that we identified as potentially relevant to the complaint; and
- Reviewing various minutes of Council and reports.

For personal reasons, we were unable to interview the Applicant's client (the owner of the property subject to the Permit Application).

In our opinion, Councillor Conlin's conduct disclosed in the investigation constitutes a breach of the Code of Conduct. No breach of the MClA is found.

A member is directed by the Code to serve and be seen to serve the interests of their constituents and the Township of Wollaston in a conscientious and diligent manner and to approach decision making with an open mind. This requirement is informed by the purpose provisions of the Code which require that all members identify and resolve situations which might involve a potential misuse of position and authority. We find that the language in this provision creates an obligation for members to identify and resolve any general conflicts of interest in their decision-making processes. The test for whether or not a member has a general conflict of interest (i.e. a real or apparent conflict of interest), is whether a reasonably well-informed person could properly perceive that a conflict of interest exists.

Councillor Conlin visited the property subject to the Permit Application for the purpose of assessing the merit of the proposed work, and conversed with the property owner while on the property regarding whether or not the property owner should wait until the CVCA deals with the high water levels before doing shoreline restoration work. Further, Councillor Conlin provided strong commentary and recommendations to Council in opposition to the Permit Application at the March 4, 2019 meeting of Council. Council passed a resolution consistent with these recommendations that the Permit Application be denied.

Councillor Conlin asserts that he visited the subject property for a dual purpose: to assess the Permit Application, and in response to a petition submitted by property owners (including the property owner of the subject property) relating to high water levels in the area. We find, based on the evidence produced during the investigation, that Councillor Conlin’s main purpose for the site visit was to assess the Permit Application. No other properties were visited that were the subject of the petition.

Although Councillor Conlin asserts that the permit was not denied and that Council is merely waiting to hear from the CVCA on the high-water level issue, we find that it was in fact denied.

Relevant Provisions: Municipal Conflict of Interest Act

Indirect pecuniary interest

2 For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

- (a) the member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
 -
 - that has a pecuniary interest in the matter; or

Relevant Provisions: Code of Conduct

The Township’s Code of Conduct captures general conflicts of interest through the following provisions (we note that section A.4 is not an offence creating provision, but serves to inform other provisions of the Code):

A. PURPOSE OF THE CODE OF CONDUCT

“The Code of Conduct sets minimum standards for the behaviour of Council Members in the performance and discharge of official functions and duties. It has been developed to assist Council to:

.....

4. Identify and resolve situations which might involve a potential misuse of position and authority.

B. GENERAL INTEGRITY

.....

5. Members of Council shall at all times serve and be seen to serve the interests of their constituents and the Township of Wollaston in a conscientious and diligent manner and shall approach decision-making with an open mind.

The Code’s confidentiality and undue influence provisions are set out as follows:

C. CONDUCT

...

2. Release of Confidential Information

...

(c) Members of Council shall not misuse confidential information (information that they have knowledge of by virtue of their position as Councillors that is not in the public domain, including e-mails and correspondence from other Members of Council or third parties) such that it may cause detriment to the Corporation, Council members or others, or benefit or detriment to themselves.

6. Improper Use of Influence

Members of Council shall not:

.....

f. Influence any administrative or Council decision or decision-making process involving or affecting any person or organization in which a Member or Members of Council have a financial interest;

Background

Wollaston Township is located in an area surrounded by many lakes and water bodies. Consequently, the Township is also the owner of many shore road allowances. In order for a property owner to undertake work on municipally owned shore road allowances, they must first apply to the Township for permission.

On January 24, 2019, the Applicant, Earle Excavating, submitted the Permit Application to the Township for consideration on behalf of its client. The Township followed up by requesting more information. The Applicant submitted further information to the Township on February 26, 2019.

On March 2, 2019, Councillor Conlin attended at the property subject to the Permit Application and spoke with the property owner (the Applicant's client) about the Permit Application. The complainant alleges that Councillor Conlin did not inform the Applicant of this impending site visit, nor did he arrange to do so in advance with the property owner.

The Permit Application was considered by Council at its March 4, 2019 meeting. Councillor Colton declared a conflict under the MCIA on the matter. No other members declared conflicts.

As part of his written response to the Integrity Commissioner, Councillor Conlin provided a copy of a petition that was submitted to the Township by residents (including the subject property owner) regarding high water levels causing flooding on their properties (the "Petition"). Councillor Conlin asserts that he is a member on the Board of the Crowe Valley Conservation Authority (the "CVCA") and thus could help assess the Petition. Councillor Conlin further asserts that Reeve Shaw requested that he attend at the subject property to assess both the Petition and the Permit Application, and that she felt that he was "rightly educated to examine the Township property in question, being a beach area and within close proximity to adjoining residences and cottages."

Councillor Conlin's assertion that he was asked to attend at the site by Reeve Shaw is immaterial to the issues in this investigation. If a member is required to declare a conflict either under the MCIA or the Code of Conduct, it is irrelevant if another member or a member of staff requests that they undertake a task that would place them in a conflict. It is the obligation of each member to identify and resolve conflicts prior to that conflict occurring.

The complainant alleges that Councillor Conlin talked to the property owner about his own work experience with this type of project and offered him other solutions that would not require the services of the Applicant. It is further alleged that Councillor Conlin informed the property owner of how the project "should and would" proceed regardless of the property owner's desire to proceed with the Permit Application as submitted. Councillor Conlin asserts that his only conversation with the property owner was about past work and current proposed work on the property, along with the Petition relating to concerns about the high water levels in that area. Further, he stated that at no time did he attempt to dissuade the property owner from using Earle Excavating to complete the proposed work. We were not able to verify these allegations and related responses as we were unable to interview the property owner.

The audio recorded minutes of the March 4, 2019 Council meeting reveal that Reeve Shaw asked if Councillor Conlin would like to speak to the matter. Councillor Conlin replied in the affirmative and made the following comments:

- He attended at the property subject to the Permit Application and met with the property owner, and that the Applicant's plan was to use "blasted rock and sharp edges" along the shoreline off of the beach which was also municipally owned;
- The proposal was to place the rock along the shoreline during the winter months when the ground was still frozen in order to deal with erosion issues on the property;
- He had seen this type of work occur approximately 12 years previously at Chandos Beach using blasted rock with sharp edges. He referenced that a number of years later, the waves and winter ice caused that rock to let go, affecting a nearby beach rendering it unusable;
 - He indicated that if this were to happen in this case, that the Township could be liable to remove the rock if it lets go and ends up in the water on other property owner's lot frontage;
- He did not see the Applicant's plan as viable given that the rock would be placed in the winter months when the ground was frozen. He felt the rock would be pulled out in the spring when the ice lets go and the waves affect the stability of the rock;
- He suggested another plan to the property owner - that the property owner consider waiting until the high water level issue was dealt with by the CVCA for which he was a Board member (potentially alleviating some of the erosion issues on the property) prior to going ahead with placing rock along the shoreline;
- He again indicated that the municipality could be held liable if the rock were to spread into the beach area.

Based on Councillor Conlin's feedback and recommendations, Reeve Shaw asked Councillor Conlin if the property owner would be ok with holding off on the work proposed in the Permit Application until the water levels were dealt with. Councillor Conlin indicated that the property owner still wanted to move ahead with the Permit Application, but also wanted to see the CVCA address the high-water levels. Staff indicated that the CVCA also had a work permit application from the Applicant, and it is the CVCA that signs off on the materials used to complete the work, while the municipality's only role was to approve whether the work could be done on its property. Councillor Conlin indicated that he would suggest to the CVCA that both the municipality and the CVCA hold off on granting the application until the ground thawed and they could get the water level to a more workable level.

Following these discussions, a resolution was passed by Council to deny the Permit Application.

Findings of Fact:

Based on the complaint, the responses from the complainant and the Councillor, the interviews we conducted, and our review of Council minutes and records, we make the following findings of fact:

Code of Conduct Provisions

Section A.4 of the Code of Conduct is a purpose section and creates no standard of behaviour that is capable of a breach. However, the Integrity Commissioner relies on the section A provisions as guidance for interpreting the enforceable provisions in the Code of Conduct. Section B.5 states that members shall at all times serve and be seen to serve the interest of their constituents in a conscientious and diligent manner and approach decision-making with an open mind. In our opinion, the language “be seen to serve” creates a general conflict of interest obligation to members, and members must take steps to avoid real and apparent conflicts of interest in the performance of their duties (whether financial or not).

Business Competitors

The member and the complainant dispute whether or not the member and Earle Excavating are competitors:

- the complainant states that Earle Excavating and the Corporation are direct competitors in that they do similar work and have competed for tenders in the past for the Township of Wollaston;
- Councillor Conlin states that he has never engaged in erosion work on shore road allowances. He further states that he does little business in the Township of Wollaston generally;
- The business addresses for the Corporation and Earle Excavating place them approximately 16.5 kilometres from each other;
- Earle Excavating and the Corporation’s businesses may not be identical, but they provide some services which are similar or the same. These include blasting rock and road building.

We find that on balance, it is clear that the Corporation and Earle Excavating operate similar businesses and have been in direct competition for work previously. Further, they operate or have the potential to operate within close proximity to each other, thereby competing for work on some level. In this sense, we find that they are business competitors.

Site Visit at Property to the Permit Application

Councillor Conlin attended at the property subject to the Permit Application for the purpose of assessing the viability of the work proposed in the Permit Application.

There is no dispute that Councillor Conlin spoke with the property owner, the client of Earle Excavating.

There is some dispute as to the nature of the conversation between the property owner and Councillor Conlin. We are unable to confirm the exact nature of that conversation (as the property owner was not interviewed due to personal reasons). However, based on the evidence before us, we find that it is more probable than not that the merit or viability of the proposed work was discussed with the property owner.

Councillor Conlin asserts that he had two separate purposes for his site visit at the subject property: 1) on behalf of CVCA to inspect the water levels being complained of in the Petition; and 2) to assess the Permit Application. Councillor Conlin did not visit any other properties/property owners that were the subject of the Petition. Had the petition been a significant reason for a site visit the Councillor should have visited other properties. On this basis, we find that Councillor Conlin was on site to primarily assess the Permit Application.

March 4, 2019 Meeting of Council – Resolution to Deny Permit Application

Councillor Conlin relied on his stated expertise in the field of the subject matter of the Permit Application, along with his role on the CVCA board, to make comments and recommendations to Council.

Councillor Conlin felt that the viability of the work proposed in the Permit Application was questionable and may eventually pose a liability to the municipality.

Councillor Conlin’s recommendation that Council not issue the permit to the Applicant until a potential later date was passed by Council by resolution. The March 4, 2019 resolution of Council was as follows:

“Be it resolved that the Council of Wollaston Township does not approve the request to perform work at [redacted] to reinforce the bank of the shore until the CVCA addresses the water level problem at [redacted].”

Councillor Conlin asserts in his written response that:

“Earl[e] Excavating’s application was not denied. Council simply decided to look into other alternatives to hopefully solve the erosion problems.”

We find that the Permit Application was in fact denied. The resolution of Council was clear: the work was not permitted to move ahead, and the decision of Council was final and not one that was adjourned. Essentially, the Applicant would need to re-submit an application in order to take steps to complete the proposed work.

Complaint to be Assessed

The complaint that must be assessed is:

- a) whether the Councillor ought not to have attended at the property subject to the Permit Application and spoken with the property owner about the Permit Application, and ought not to have participated in the related decision-making process of Council based on:
 - i. his indirect pecuniary interest in the Permit Application under the MClA as a director of the Corporation; and/or
 - ii. the public perception of a conflict of interest caused by his position with the Corporation, being that the Corporation is a direct competitor of the Applicant Earle Excavating;
- b) whether Councillor Conlin used confidential information gained from his position in office to benefit the Corporation; and
- c) whether Councillor Conlin attempted to influence the decision of Council regarding the Permit Application for which he had a financial interest.

Decision:

Conflicts of Interest

(a) *Municipal Conflict of Interest Act, 1990, as amended*

If the Corporation were found to have a pecuniary interest in the Permit Application, then Councillor Conlin, by virtue of being a director of the Corporation, would have an indirect pecuniary interest under section 2(a)(i) of the MClA, and be required to abide by the Act and declare a conflict and abstain from discussing or voting on matters pertaining to the application.

In order to have a pecuniary interest in the Permit Application, the complainant must provide evidence that the Corporation stood to gain or lose financially from the outcome of the decision regarding the granting of said application or from attending at the subject property. In *Bowers v. Delegrade*, the Court noted that the applicant has the onus of demonstrating that a pecuniary interest existed:

“If the Applicant, as is the case here, argues that the member’s pecuniary interest is an indirect one, the Applicant must demonstrate that Bell Canada had a pecuniary interest in the matter.”¹

¹ *Bowers v. Delegrade*, 2005 CarswellOnt 692, at para. 14.

The complainant alleges that Councillor Conlin attended at the home of the Applicant's client in an effort to dissuade him from moving ahead with the work plans, and that Councillor Conlin detailed his own work experience with this type of project, offering his own business solutions to the property owner's issues with shoreline erosion. Further, it is alleged that the Councillor had an indirect pecuniary interest in the outcome of the Permit Application and ought to have declared a conflict and abstained from discussions and voting at the March 4 2019 meeting of Council.

In considering the responses from the complainant and the Councillor, along with the audio minutes of the March 4, 2019 Council meeting, we have no evidence to indicate any pecuniary advantage to Councillor Conlin arising out of his meeting with the Property Owner. When interviewing an additional witness who had some knowledge pertaining to that meeting, the witness indicated that the meeting between the Councillor and the property owner was brief, and what they considered to be "highly irregular." While Councillor Conlin's site visit to the subject property is troubling to the Integrity Commissioner due to the fact that the Corporation and the Applicant are business competitors, we have insufficient evidence before us that the Corporation had a financial stake in the outcome of this site visit and meeting.

Further, we have been presented with no evidence that the Corporation (and therefore Councillor Conlin, by virtue of his role as director of the Corporation) had a financial stake in the outcome of the Permit Application. As such, the Councillor had no indirect pecuniary interest under section 2(a)(i) of the MCI, and no breach is found under the MCI.

(b) Code of Conduct – Real or Apparent Conflicts of Interest (section B.5)

It is common that outside of the conflicts set out in the MCI (which are strictly financial in nature), municipalities establish what are commonly referred to as "general" conflicts of interest provisions through their Codes of Conduct. These interests are captured at the common law and are broader and capture non-financial 'real and apparent' conflicts of interest. As referenced above, we find that this broad obligation is captured through section B.5 of the Code of Conduct and as such, a member must identify and resolve such conflicts.

For an interest to be 'real or apparent' in nature, the courts have applied the "reasonably informed person" test when analyzing whether a member has an apparent conflict of interest:

"An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists."²

² Stevens v. Canada (Commission Inquiry) 2004 FC 1746, 2004 CarswellNat4714, at para. 30.

In addition, members must not be biased or approach council decision making with a closed mind. The test for bias in this sense is whether a member is capable of being persuaded to a different view:

In my opinion, the test that is consistent with the functions of a municipal councillor and enables him or her to carry out the political and legislative duties entrusted to the councillor is one which requires that the objectors and supporters be heard by members of council we are capable of being persuaded. The legislature could not have intended to have a hearing before a body who has already made a decision which is irreversible. The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been adopted, would be futile. Statements by individual members of council, while they may very well give rise to an appearance of bias, will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged. In this regard it is important to keep in mind that support in favour of a measure before a committee and a vote in favour will not constitute disqualifying bias in the absence of some indication that the position taken is incapable of change. The contrary conclusion would result in the disqualification of a majority of council in respect of all matters that are decided at public meetings at which objectors are entitled to be heard.³

For Councillor Conlin to have violated section B.5 of the Code of Conduct, he does not need to be in an actual conflict of interest, he need only be 'seen' or 'perceived' to be in conflict in accordance with the above referenced test to trigger his duty to resolve this conflict in keeping with the purposes of the Code as set out in section A.4.

A reasonable person, well informed of the facts relating to the Permit Application, Councillor Conlin's role as director of the Corporation (a competitor of the Applicant), and the Councillor's site visit at the subject property, could conclude that there was a conflict. Councillor Conlin and Earle Excavating each operate construction companies within the same general area of each other and perform some services which are the same or similar. This has presented opportunities for work for which they have directly competed in the past. Further, given the size of the Township of Wollaston and the limited number of construction companies, there is a higher likelihood that people would perceive them to be competitors.

Every member of Council and of local boards and committees subject to the Code of Conduct must approach decisions with an open mind, without bias and free from undue influence. Members must be open to considering both sides of any decision. Members must resolve conflicts between their personal/professional lives and the impartial performance of their public duties. If a conflict of interest cannot be properly resolved, the member must declare a conflict and refuse to participate in any discussions or voting in relation to the matter.

³ Old St. Boniface Residents Assn. Inc. v. Winnipeg (City) 1990, 75 D.L.R. (S.C.C.) at para. 94.

Councillor Conlin, knowing that the Corporation has competed for jobs in the past with Earle Excavating and that the Corporation and Earle Excavating are competitors, ought to have known that this could be perceived by the public as a conflict of interest and taken steps to resolve that conflict (i.e. by not attending at the site, and by not taking part in the Council debate relating to the Application). It is clear from the minutes of the March 4, 2019 Council meeting that Councillor Conlin did not identify his conflict of interest as a competitor of the Applicant. Moreover, the Councillor made comments and recommendations in strong opposition to the Permit Application.

As a business competitor of the Applicant, Councillor Conlin could be perceived as serving two masters – an obvious conflict of interest. The visit to the subject property, discussion with the property owner about Permit Application and his comments to Council about the merits of his competitors work can all reasonably be perceived as an attempt to undermine his competitor. As such, Councillor Conlin violated the conflict of interest provision at section B.5 of the Code of Conduct.

(c) Code of Conduct – Release of Confidential Information (sections C.2(c))

The complainant alleges that Councillor Conlin used confidential information submitted as part of the Permit Application to visit the Applicant's client's property.

Section C.2(c) states that:

Members of Council shall not misuse confidential information (information that they have knowledge of by virtue of their position as Councillors that is not in the public domain, including e-mails and correspondence from other Members of Council or third parties) such that it may cause detriment to the Corporation, Council Members or others, or benefit or detriment to themselves.

We find that there is no evidence that Councillor Conlin used confidential information for this purpose. Permit applications are not treated as confidential and in fact are accessible to the public. Any decisions regarding such applications are made during public Council meetings. As such, we find that the Permit Application was not a confidential document and therefore would not constitute "confidential information" under section C.2 of the Code of Conduct.

We find no breach of this section

(d) Code of Conduct – Use of Influence (section C.6(f))

Section C.6(f) states that members shall not influence an administrative or Council decision-making process involving or affecting any person or organization in which a Member or Members of Council have a financial interest. The complainant alleges that Councillor Conlin used his position to influence Council into deciding against the Permit Application for which he had a financial interest. As stated in our findings above, we have no evidence before us to conclude that Councillor Conlin had any financial stake in the outcome of the decision regarding the Permit Application. As such, there can be no breach of section C.6(f), which requires that the member must have a financial interest in the outcome of the decision they are attempting to influence.

Findings

Overall, of the four violations alleged by the complainant, I have reached the following conclusions:

1. There is insufficient evidence to support a finding that the Corporation had a pecuniary interest in Councillor Conlin's visit to the property subject to the Permit Application and subsequent conversation with the property owner, and therefore Councillor Conlin cannot be found to have violated the MCIA in this instance. Further, the Corporation had no pecuniary interest in the Permit Application and thus, Councillor Conlin, by virtue of his position as director of the Corporation, had no indirect pecuniary interest. As such, no breach of the MCIA is found in this instance;
2. Councillor Conlin had an apparent conflict of interest when he visited the home of the Applicant's client, which was the property subject to the Permit Application, and when he voiced strong commentary and recommendations in opposition to the Permit Application at the March 4, 2019 Council meeting, which conflict he failed to identify and resolve. As such, he breached section B.5 of the Code of Conduct;
3. The Permit Application does not qualify as "Confidential Information" under the Code of Conduct as the application itself was not a confidential document, and a decision on that application was made in a public forum. As such, no breach of section C.2(c) is found;
4. Councillor Conlin did not have a financial interest in the outcome of the Permit Application and as such, did not breach section C.6(f) of the Code of Conduct.

Recommendations:

The Integrity Commissioner does not recommend a penalty in this instance. Although inappropriate, there is no evidence that the Councillor's conduct was deliberately intended to interfere with Earle Excavating's financial or contractual relationship with its client. While intention is not a requirement to finding a breach, we find it to be a mitigating factor to be considered.

The Integrity Commissioner is recommending that the Councillor be cautioned by the findings of this Report and that going forward he seek the advice of the Integrity Commissioner where his business may create potential conflicts of interest. Further, we recommend that Councillor Conlin undertake any additional training Council may deem necessary to ensure that he understands the role of a Councillor while also operating a business in a small community.

Please note that both the inquiry under the *Municipal Conflict of Interest Act*, and the investigation under the Code of Conduct are now complete. For the reasons as set out in this report regarding our finding that Councillor Conlin did not breach the *Municipal Conflict of Interest Act*, the Integrity Commissioner will not be making an application to a judge under section 8 of the *Municipal Conflict of Interest Act*. Notice has been provided to the complainant of this decision in accordance with the requirements of the *Municipal Act*.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.

LSO Certified Specialist in Municipal Law

(Local Government / Land Use Planning)

Anthony Fleming Professional Corporation

TEF:als