



Cunningham Swan

LAWYERS

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CONFIDENTIAL

December 27, 2023

SENT BY EMAIL TO: JConnor@ramara.ca

c/o Jennifer Conner, Clerk
Township of Ramara 2297 Hwy 12
P.O. Box 130
Breachin, ON L0K 1B0

Dear Council:

RE: Code of Conduct Complaint – Final Report
Our File No. 37629-6

This public report of our investigation is being provided to Council in accordance with Section 223.6(1) of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the

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Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

Timeline of Investigation

The key dates and events during the course of this investigation are as follows:

- Original Complaint received – March 6, 2023
- Preliminary Review conducted
- Original Complaint sent to Member – March 21, 2023
- Response received from Member – March 22, 2023
- Member's Response sent to Original Complainant – April 4, 2023
- Additional Complaint received – April 4, 2023
- Response received from Original Complainant – April 17, 2023
- Additional Complaint Preliminary Review conducted – April/May 2023
- Response from Original Complainant sent to Member – May 18, 2023
- Complaint investigations combined - June 15, 2023
- Member confirmed no further response to Original Complaint – July 4, 2023
- Interviews Conducted – August 2023
- Responses from Additional Complainants re Member's Response – September 2023
- Further requests for information and additional interviews – September - October 2023

Complaint Overview

A Complaint was received on March 6, 2023. The Complaint made a number of allegations of breaches of the Code of Conduct against Mayor Clarke (the "Member") with respect to his conduct respecting a proposed development, including that the Member mislead Council members, staff and the public about the existence of a Ministerial Zoning Order ("MZO") the complainant alleged did not exist.

Another Complaint was received on April 4, 2023 against the Member. The additional Complaint was subjected to the Preliminary Review process. The allegations which survived this process pertained to the same incident, misleading Council about the pre-existence of a non-existent MZO, as the Complaint received on March 6, 2023. As such, the investigations

were combined following the completion of the preliminary review of the additional Complaint.

Preliminary Review Process

We note that both Complaints were subject to the Preliminary Review process. In that process, we assume that the facts as set out in the Complaint are true. We do this not for the purposes of finding a breach, but to test the merit of the complaint. In other words, if the alleged behaviour in fact occurred, would that amount to a breach of the Code of Conduct? If the behaviour would constitute a breach, we undertake a full investigation to determine whether the allegations are true. If the behaviour, even if true, would not constitute a breach there is no reason to undertake a full investigation. It is important to understand that we make no finding of fact during the preliminary review and we do not determine if the allegations are in fact true – we simply assume that they are true as a method to assess the merit of the Complaint at this stage.

We note that the Complaints contained several allegations that did not survive the Preliminary Review process and, as such, were not investigated and are not referenced in this report.

Code of Conduct

The following provision of the Code of Conduct is relevant to our findings in this investigation:

5.1 Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council, staff or members of the public.

Investigation Process

In conducting the investigation, the Complaints and the responses received from both the Member and the Complainants were reviewed. Interviews with relevant witnesses were also conducted and video footage of the Council meetings where the Member is alleged to have misled Council was reviewed.

Factual Findings

Several factual findings were required in this investigation regarding the allegations.

Specifically, our offices needed to determine what statements were made by the Member to Council that formed the basis of the allegations and whether or not those statements were accurate.

Statements Made

The Council meeting videos reviewed confirm that the Member made the following statements to Council that are relevant to the Complaint:

1. December 12, 2023: “What originally happened back in 2003... approved the Destination Commercial with an MZO...”
2. December 12, 2023: “...Problem is it’s an MZO order that created this Destination Commercial, we don’t have authority to change it...”
3. January 16, 2023: “I know that entire Rama Road corridor Employment Zone was basically an MZO created it...”
4. January 30, 2023: “Unfortunately an MZO is the only way we can change the zoning...”

Accuracy of Statements

Our investigation received evidence from staff that there was no prior MZO in the Municipality for the subject site. However, our investigation received evidence that the policy regarding the development being discussed was implemented at the provincial level through the Provincial Policy Statement as well as other provincial policy.

As a result of this evidence, we find that Statements 1-3 inaccurately describe the history of the site being discussed, as there was no prior MZO.

We find that Statement 4 was not necessarily inaccurate as the evidence identified that the MZO request was made due to the provincial policy that pertained to the site that may not have permitted the Municipality to make a zoning change and therefore an MZO was the only tool available to implement zoning that did not conform with the applicable policies.

Code of Conduct Findings

While we have found that the Member made inaccurate statements to Council regarding the existence of a prior MZO, we note that a breach of Section 5.1 of the Code of Conduct requires one or more of the following findings:

- That the Member’s inaccurate statements were dishonest;
- That the Member made the inaccurate statements knowing they were false; and/or
- That the Member made the inaccurate statements with the intent to mislead.

Our investigation did not produce any evidence that would support making any of the above findings. As such, our investigation found no breach of the Code of Conduct by the Member and the Complaints are dismissed.

Our investigation found that the Member made inaccurate statements, but that he did so without the required dishonesty, knowledge or intent to mislead that is needed to support a finding of a breach of the Code of Conduct. We find that the inaccuracy in the Member's statements to Council were merely a mistake and represent an honest misunderstanding of information regarding the history of the site.

Our findings that the inaccurate statements were honestly made is supported by evidence received that the Member was corrected publicly by staff in the January 16, 2023 meeting where staff stated that it was not clear that an MZO was implemented previously. There were no allegations of the Mayor stating that a prior MZO existed after this correction.

The Code of Conduct is intended to enforce high standards of ethical behaviour for members. However, that it is not intended to penalize or sanction a Member for simply making a mistake, especially when they are publicly corrected by staff and therefore the inaccurate statements are unlikely to have caused any real harm.

As a result of the foregoing, the Complaints are dismissed.

Recommendation

As the investigation revealed no breach of the Code of Conduct, the Complaint is dismissed and no further steps will be taken with respect to the investigation.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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