

TOWN HALL
Town of The Blue Mountains
32 Mill Street, P.O. Box 310
Thornbury, ON N0H 2P0

**OFFICE OF THE INTEGRITY
COMMISSIONER**

July 30, 2019

TO: Mayor and Members of Council of the Town of The Blue Mountains

FROM: Suzanne Craig, Integrity Commissioner

The enclosed Integrity Commissioner Memorandum responds to Town Council's July 29, 2019 direction to provide Council with recommendations for a general policy, as to whether a Council Member may submit a correspondence to Council as a member of the public. In the construct of my response, I did not conduct a substantive review of the actions of any individual Member of Council. As a general principle, Members of Council have a role to play to enhance and build the public trust in the Town's decision-making. In consideration of the Council's question contained in the July 29th Motion B.4.1, I offer the following comments. The review set out below is provided to Council as general guidance.

The Council direction to me is set out in Appendix 1 to this Memorandum.

Relevant sections of the Town Procedural By-law:

Section 12 and 13 respectively of the Town's Procedural By-law set out the rules regarding *Correspondence and Communications from the Public* and *Deputations and Public Comment Periods*. Sections 16 and 17 contain the rules governing the process by which Members of Council may bring forward questions or information for consideration and debate by Council. Finally, section 18 of the Procedural By-law set out the Rules of Debate, and in particular, the process that every Member must follow prior to speaking to any question or motion or for a matter to be recognized by the Chair.

Relevant Code Rules:

The Code is a municipal by-law. It contains a number of principles which guide the application and interpretation of its rules. The enforcement mechanism is complaint-driven. As such, each Member is master of his or her own actions and must decide whether their actions are in line with the Code key principles. While the Integrity Commissioner can give comments on a Councillor's actions outside of the Formal

Complaint process, only following the receipt of a Formal Complaint and an investigation by the Integrity Commissioner, can there be a determination that a Member has breached her or his obligations under the Code of Conduct.

Rule 1 of the Code sets out the key principles that underline the rules of the Code. In particular, this Rules states that:

A written Code of Conduct helps to ensure that the Members of Council, Committees and Local Boards of the municipality share a common basis of acceptable conduct.

These standards are designed to provide a reference guide and a supplement to the legislative parameters within which the Members must operate. These standards for Members exist to enhance public confidence that The Blue Mountain's elected and appointed representatives will serve the public with integrity, justice and courtesy.

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 Members and the public. The Town of The Blue Mountain's Code of Conduct is a general standard that augments Provincial laws and municipal policies and by-laws that govern conduct. It is not intended to replace personal ethics.

All Members to whom this Code of Conduct applies shall serve their constituents in a conscientious and diligent manner. No Member shall use the influence of office for any purpose other than the exercise of his or her official duties. Members shall seek to avoid conflicts of interest, both apparent and real. Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and will bear public scrutiny.

Rule 1 prohibits members from the improper use of the influence of their office. Careful consideration of this Rule confirms that the prohibition is broader than circumstances of pecuniary interests. It intends that Members of Council will have a common understanding that they will neither contemporaneously wear two hats nor participate in activities that grant, or appear to grant, any special consideration, treatment, or advantage to an individual which is not available to every other individual.

Role of a Councillor:

The *Municipal Act* does not set out any specific role of a municipal councillor. In a leading decision of the Ontario General Division court (*University Village (Guelph) v the*

City of Guelph)¹, the court stated that in Ontario, the decision-making authority of municipalities lies with the municipal council and that council, as a whole, exercises executive, legislative, administrative functions. Section 5 of the *Municipal Act* states, that powers of the municipality must be exercised by its council, according to approved by-law unless otherwise stated. The Province of Ontario's *Municipal Councillors Guide* sets out the role of a councillor generally, however, clarifies that the policy, fiduciary and representative role of a councillor, is carried out as a collective.

It is a generally accepted principle held by Ontario municipal accountability officers that when a Member of Council is elected, they cease to represent a particular group or matter of interest and become one part of Council which is the governing body recognized by the *Municipal Act*. Members carry out their official activities in a way that will foster and enhance respect for government. Importantly, they will not participate in activities that grant, or appear to grant, any special consideration, treatment or advantage to an individual or group which is not available to every other individual in their municipality. From time to time, Members of a municipal council wear many hats. "They are expected to represent their communities, to fully and frankly speak their minds and to take positions on issues both mundane and controversial. But to what extent, if any, are they entitled to have prejudged matters that are before them for consideration? Traditional administrative law principles, including natural justice and procedural fairness, would dictate that a decision maker cannot be biased or, indeed, be perceived in any way to be biased".² While an elected official is allowed to have personal views and perspectives, a Member of Council's comments can only be considered in their official capacity, in accordance with the rules of the Procedural By-law.

There is no doubt that an elected member of The Blue Mountains Council could champion a community cause: for example, to advocate for the municipal support of community preservation of parkland. However, promoting or championing the position of one site over another for the location of attainable housing development, may result in violations of the Code of Conduct, as this action may be perceived as prejudgment or bias. Members of Council are required to attend duly constituted meetings which are statutorily required to be open to the public, except in the circumstances set out in section 239 of the *Municipal Act* and the By-law governing Council procedure. Where a Member cannot or does not attend a meeting of Committee or Council, neither the *Municipal Act* nor the Procedural By-law contemplates a circumstance in which the Member may participate in a Council debate as a private citizen.

While a Member of Council who cannot attend a Committee or Council meeting, may wish to nonetheless have their views on the matter considered by Council in their

¹ University Village (Guelph) Ltd. v. Guelph (City), 1995 CarswellOnt 3434, [1995] O.J. No. 1839, 56 A.C.W.S. (3d) 202

² Municipal and Planning Law, *A Quarter Century of Municipal Law*, John Mascarin, Cited 7 D.M.P.L. (2d) (2015) 7 D.M.P.L. (2d), October 2015, Issue 10

absence, in order to conscientiously carry out their statutory and official role to collectively make decisions and uphold the oath of office, a Member of Council is required to obey the rules contained in all of the governing legislation of the municipality and cannot arbitrarily remove their official status for the purposes of consideration of a matter. Generally speaking, at the municipal level of government in Ontario, the remedy for a Member of Council who will not or cannot be in attendance at a Council meeting, is to submit their comments in the form of a motion at the next meeting when they attend Council or have an attending Council Member bring forward their motion. It will be through the approved process of the Town, that Council, in accordance with the Procedural By-law, can vote on whether to receive the motion and debate on the same. Each municipality may differ in the rules regarding receipt of a motion or Member's resolution. A Member of Council cannot circumvent the rules of the Procedural By-law by, with the effect of wearing both the hat of a member of the public to make submissions for Council consideration and the official decision-making hat of a Member of Council.

Integrity Commissioner's Conclusions:

Based on my review of the question as to whether a member of Council may submit correspondence to Council as a member of the public, it is my position that generally:

It is not permissible under the Code for a Member of Council to participate in a matter before Council, through the submission of correspondence as a member of the public. To do so, would be tantamount to the Member participating in the debate at Council in the capacity of a private citizen. A Member of Council cannot wear two hats contemporaneously. In other words, a Member of Council cannot participate as a decision-maker in their official capacity and contemporaneously submit correspondence as a member of the public. This participation will create a perceived conflict with the Member's role as a Town councillor.

A Member of Council cannot wear two hats in the decision-making process of Council. To be clear, the *Municipal Act* sets out the statutory role of Council and the Town's Procedural By-law sets out the rules for Committee and Council meeting management, including how information will be received from members of the public. The rules that govern the process of how the Town receives public communications are distinct and separate from the rules that govern a Councillor's participation and her or his comment at meetings. Generally, a Member of Council will be afforded an opportunity to comment on a matter at a Council meeting during the comment portion of the debate, by way of motion or by way of a Member's resolution. Outside of these processes, which would require Council approval according the rules of the Procedural By-law, generally municipal rules do not contemplate a Councillor commenting on a matter before Council by way of public correspondence to the Town Clerk. It is a basic premise of decision-making at the municipal level that Council decisions be fair and that

they appear to be fair to the informed and reasonable observer. Impartiality is a statement of mind in which the Councillor is personally disinterested in the outcome and is open to persuasion by the staff reports and public submissions and all information that comes before Committees and Council. The *Municipal Act* and the Procedural By-law, in their wording and purpose, do not contemplate that a Member of Council will participate both in their personal/private capacity as a member of the public who makes submissions to be considered by Council, and also in their official capacity as a Member of Council and decision-maker.

The above is not a ruling or a finding of compliance or contravention under the Town's Code of Conduct, but rather is submitted as general guidance to Council in respect of the question posed at the July 29th meeting. As Integrity Commissioner, I cannot state whether a Member is in compliance or contravention of a Code rule except or unless I have received a Code of Conduct complaint and conducted a complaint investigation.

Sincerely,



Suzanne Craig
Integrity Commissioner

Appendix 1 – Motion

B.4.1 Odette Bartnicki, Resident

Re: Response to Attainable Housing Options

Moved by: Rob Sampson

Seconded by: Andrea Matrosovs

THAT Council defers consideration of the July 26, 2019 correspondence from Odette Bartnicki to the August 1, 2019 Special Meeting of Council pending receipt of an opinion from the Integrity Commissioner as to whether a member of Council may submit correspondence to Council as a member of the public, Carried.