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C H A M B E R S

Integrity Commissioner Office
for the Town of Georgina

December 4, 2019

Final Investigation Report

Deborah C. Anschell, LL.B., LL.M.

E-mail: danschell@adr.ca

Sent by email to:

Council of the Town of Georgina

c/o Town Clerk

Town of Georgina

16557 Civic Centre Road

Keswick, ON L4P 3G1

Re: Complaint Reference Number IC-112-0819

Dear Mayor and Members of Council:

This is my report respecting a complaint brought by Joanne Henderson (the "Complainant") against Regional Councillor and Deputy Mayor Robert Grossi ("Regional Councillor Grossi") under the *Municipal Conflict of Interest Act*, R.S.O. 1990, Chapter M.50 (the "Act").

In accordance with the Complaint Procedure of the Town of Georgina Council Code of Conduct, (the "Code"), via section 223.4(1) of the *Municipal Act, 2001*, Council, a Member of Council, an employee of the Town of Georgina (the "Town"), or a member of the public may request that the Integrity Commissioner conduct an inquiry into whether a member of Council has contravened the *Code*. Section 5 of the *Code* requires Members to avoid conflicts of interest in accordance with the *Act*.

The Complaint

In her complaint, the Complainant alleged that Regional Councillor Grossi violated sections 5(1) (a), (b), and (c) of the *Act*. Those sections provide as follows:

5(1) When present at meeting where matter considered

Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

Investigation Process

I received and reviewed the Complainant's written complaint and her sworn affidavit of August 7, 2019.

I served the Complainant's complaint and supporting material upon Regional Councillor Grossi and asked for a written response. I received the response from Regional Councillor Grossi on August 28, 2019.

I served Regional Councillor Grossi's response upon the Complainant, with a request for a written reply, if any, on August 29, 2019. I received the Complainant's reply on September 17, 2019.

I met with both the Complainant and Regional Councillor Grossi to review their positions on the subject matter of the complaint. I also met with Mayor Quirk and spoke to Councillor Neeson by telephone.

I have to determine whether Regional Councillor Grossi violated the *Act* and the *Code* in not declaring a conflict of interest at the outset of the July 24, 2019, Council Meeting (the "Council Meeting").

Complainant's Position

In her affidavit in support of the complaint, the Complainant noted that her complaint arose in relation to a Special Council Meeting agenda item discussed during the Council Meeting.

The Complainant summarized the issue faced by Council at the Council Meeting as "Who are the rightful owners of the strips of land of the individual lots on the north side of the road allowance along Lake Drive East and Lake Drive North?" (the "Lake Drive Issue").

The Complainant advised that there are approximately 400 properties with ownership issues to be resolved by the Town. The Town wants to confirm ownership and update the deeds and Land Registry Records.

According to the complaint, years ago, it was agreed that owners of the lots on the south side of the road allowance would have exclusive use of the strips of land on the north side of the road allowance while the dispute of the ownership of the strips of land was being determined. At their personal expense, the owners have maintained and improved their waterfront strips of land.

The Complainant stated that Regional Councillor Grossi did not declare a pecuniary interest at the Council Meeting. Regional Councillor Grossi and his family own an indirect waterfront property in the area that was included in the matter considered by Council at the Council Meeting. The civic address of the property is 99 Lake Drive East, Keswick, Ontario (the "Grossi Property").

The Complainant noted that Regional Councillor Grossi actively led and participated in discussions throughout the Council Meeting. He also voted throughout the Council Meeting.

Regional Councillor Grossi attempted to replace the staff recommendations on the issue of property ownership with his preferred recommendations.

Regional Councillor Grossi's Reply

In his reply, Regional Councillor Grossi acknowledged that he and his wife, Carolyn Grossi, own the Grossi Property. They purchased this home on August 27, 1985.

Regional Councillor Grossi noted that he had consistently maintained and made improvements annually to the Grossi Property. He stated that since the purchase of the Grossi Property, the Town and the Municipal Property Assessment Corporation ("MPAC") have assessed and taxed the property as one fronting on a body of water. The Grossi Property is assessed at a special rate because of its location. Regional Councillor Grossi did not challenge this property assessment because he believed that he owned the land to the water's edge.

Regional Councillor Grossi acknowledged that in 2018 and 2019, the Town and its Council have been challenged by the issue of the ownership of the land along the northern boundary of lots fronting on Lake Drive East and Lake Drive North. The Town wants to pursue a settlement agreement with the property owners. In order to achieve this objective, the Town has considered having the property owners on Lake Drive East and Lake Drive North pay for a survey of the individual lots directly in front of the adjoining properties. As well, discussions have included the owners paying for legal fees associated with the costs of registering the new ownership agreements. Finally, the Town has solicited

appraisal information for three test properties to assess their value, in anticipation of offering the properties for purchase to the adjacent landowners.

Regional Councillor Grossi expressed the view that the value of the Grossi Property would not change if he paid for a survey, paid legal fees, and paid to acquire the lakefront land abutting his land. Thus, he believes that he has no pecuniary interest in these issues.

Analysis

A reference to the Office of the Integrity Commissioner with respect to a potential conflict of interest invites me to investigate a matter with respect to the entirety of the *Code* and the *Act* considering both its rules and the spirit behind the language used when addressing the subject matter of the complaint.

Portions of the *Act* were set out earlier in this report. Those provisions are sufficient to complete my analysis of the issue before me.

Standard of Proof

The standard of proof is on the balance of probabilities in respect of this civil matter. As the Supreme Court of Canada clearly stated: "...there is one civil standard of proof at common law and that is proof on a balance of probabilities...": *F.H. v. McDougal*, [2008] S.C.J. No. 54 (S.C.C.) at para. 40.

Findings

In making a recommendation resulting from this complaint, it is necessary that I consider the relevant provisions of the *Act* in the context of the issue before Town Council.

By way of background, Regional Councillor Grossi has a lengthy tenure with the Town. He served for five terms as the Town Mayor and three years as a local Councillor. In 2018, he was elected as a Regional Councillor/Deputy Mayor.

Historically, Town Council has been wrestling with the Lake Drive Issue for decades. Some 400 properties along Lake Drive North and Lake Drive East have indirect waterfront access. The property owners have been accessing the parcels of land on the waterside for their exclusive use, and the Town has permitted this. However, in most cases, the Town has ownership of the parcels of land on the shoreline.

For several years, Town Council has struggled to determine options to satisfy all stakeholders. The Town has sought legal advice from its solicitor, Andrew Biggart. Mr. Biggart has suggested that one option is for the Town to sell the strips of properties on the north side of Lake Drive to eligible property owners at fair market value after appraisals have been conducted. Some owners of Lake

Drive properties have argued against the fair market value approach. Instead, they suggest that a charge for a portion of legal fees and survey costs be levied to the homeowners in exchange for the transfer of the shoreline properties, without any further payments being required.

The matter was dealt with at a Council meeting on January 20, 2018 (Regional Councillor Grossi was not on Council at that date). At that meeting, Mr. Biggart provided a review of recommendations and information regarding licensing, lease, and sale options. He advised Council that lease, license, and sale of the lakefront parcels were all options for consideration.

The Minutes from this meeting note that it was decided in part that staff would establish a public consultation process to receive public input related to the potential sale or lease of the lakeside lots.

The most recent Report from the Office of the Chief Administrative Officer (the "CAO") with respect to the Lake Drive Issue is Report No. CAO-2019-0033 delivered on July 24, 2019 (the "Report"). The Report recommended in part that Council approve the recommended cost recovery approach with respect to the divestiture of the lakeside lots plus a price per square meter based on appraisals as recommended by Mr. Biggart.

The Report recommended that the following steps be taken with the corresponding timelines:

- 1) appraisals should be conducted on three to five lakeside properties to establish the cost per square meter in August 2019;
- 2) estimates should be obtained with respect to survey costs in August 2019;
- 3) a public information centre should take place in the fall of 2019;
- 4) the CAO should report back to Council in late fall 2019;
- 5) a consultant should be retained to determine the best approach. The consultant will prepare necessary reports and support public meetings.

I have watched the video from the Council Meeting and read the draft minutes. Councillor Neeson declared an interest with respect to the Lake Drive Issue, but Regional Councillor Grossi did not declare an interest.

At the Council Meeting, David Reddon, CAO, presented a summary of the Report. Mr. Biggart also presented his views. He noted that Council has an obligation to ensure that it receives a fair price for an asset. An appraisal report is helpful input for Council; Council can then determine its own value and sale price. Mr. Biggart noted that it would be best to have a value informed by an appraisal report. Council does not need to use the figure the appraisal report indicates, but Council can communicate that it has been informed of the value.

Mr. Biggart advised that the vast majority of shoreline properties are owned by the municipality. However, there are a few properties with issues or questions. Mr. Biggart advised that he was obligated to provide all options available to the Town. The objective of the exercise was to try to divest the lands and have residents assume responsibility. There are several approaches for property purchases by residents.

Mr. Biggart advised those at the meeting that the Town cannot ignore the past reports concluding that the Town does in fact own the land. Where the Town chooses to sell this asset, it must do so at a reasonable cost.

During the Council Meeting at 9:40 p.m., Regional Councillor Grossi moved as follows:

1. That Council Receive the Report prepared by the Office of the CAO dated July 24, 2019 respecting the Lake Drive Shoreline Jurisdiction Action Plan.
2. That the Town establish that it would be reasonable to charge each lakefront owner an amount equivalent to the actual legal costs and survey costs incurred in effecting a conveyance of the waterfront lots to the eligible property owners (the actual amount of such costs to be determined as they arise) plus an administration charge, the greater of \$1 per linear foot of frontage or \$200.
3. That the Town issue a notice to each eligible property owner of the town's intention to convey clear title to such eligible property owner of the lands (to be identified by later reference plan) on the lake side of Lake Drive east and north as the case may be and thereby make enquiry of such eligible property owner such owner's desire to acquire such property.
4. That the town accept offers to quiet title by conveyance thereof to accepting eligible property owners and to immediately undertake preparation of required reference plan and legal documents to effect such conveyance provided that the eligible property owner first deposit with the Town payment in the amount of \$500 together with their acceptance of the proposal and to pay the balance thereof upon conveyance of the lake side property on such terms as the town and the eligible property owner may agree.
5. Such options for payment to include payment on closing of the balance then due or payment amortized over time in similar fashion as was permitted in the case of the hookup of water and sewer.

This motion was subsequently withdrawn.

A motion was subsequently carried as follows:

1. That Council receive the Report prepared by the Office of the CAO dated July 24, 2019 respecting the Lake Drive Shoreline Jurisdiction Action Plan.
2. That Council direct staff to engage an appraiser to conduct appraisal of 3 to 5 waterfront properties, taking into consideration all potential encumbrances such as easements and zoning restrictions and the restriction of conveyance of waterfront properties to adjacent eligible property owners only, as well as obtain cost estimates and completion time for the preparation of a reference plan/survey and report back to a Special Council Meeting to be held on September 25, 2019.
3. That staff investigate options for lands not owned but currently occupied by a beach association other than incorporation as a not-for-profit organization.
4. That Council direct staff to coordinate the Lake Drive Shoreline Jurisdiction Action Plan with the Waterfront Parks Masterplan as it relates to the acquisition of divestiture of lakeside lands for any potential synergies and reciprocal support of each plan.

From a review of the video of the Council Meeting, I note that Regional Councillor Grossi was the most active participant of all the Council Members. He had two protracted exchanges with Mr. Biggart: the first was for ten minutes commencing at the 46-minute mark, and the second was also for ten minutes commencing at the 1:54 minute mark. Regional Councillor Grossi also voted on the motion that was subsequently carried.

With respect to the issue of ownership of the adjacent parcel of land next to the Grossi Property, I have obtained a title search of the lakeside lands across from the Grossi Property. I also reviewed a title search of the Grossi Property.

In Regional Councillor's Reply to the draft version of this report, he provided information through his counsel with respect to ownership of the lakeside lands across from the Grossi Property. His view is that when he and his wife purchased the property in 1985 the legal description included "all lands in front to the water's edge of Lake Simcoe excepting that part thereof used as a travelled road." His view is that he owns the property outright as described in the legal description.

Regional Councillor Grossi also advised in his comments that his residence location was known to all at the meeting and nobody raised an issue of conflict or questioned why he was voicing his concerns and suggestions on behalf of affected property owners.

It is beyond my purview to provide a legal opinion of the ownership of the lakeside lands across from the Grossi Property. I have obtained conflicting information with respect to the ownership issue. However, in my view the waterfront lands across from the Grossi Property may be owned by the Town.

As mentioned earlier, both the *Act* and the *Code* are relevant to the matters reviewed in this report. It is important to note that as of March 1, 2019, integrity commissioners have standing to make an application to the courts on behalf of a complainant. Integrity commissioners also have the jurisdiction to investigate complaints brought pursuant to the *Act* as breaches of a municipal code of conduct. The courts have broader powers than an integrity commissioner with respect to penalty. The courts can remove a member from office, but both the courts and the integrity commissioner can address a reprimand, or a suspension of a member's pay for up to three months.

I have to consider whether Regional Councillor Grossi violated the *Code* or the *Act* in not declaring a conflict of interest at the outset of the Council Meeting. In making this determination, I must decide whether Regional Councillor Grossi had any pecuniary interest in any matter discussed at the Council Meeting.

In my view, Regional Councillor Grossi had a palpable and apparent conflict of interest that he should have declared at the Council Meeting. For almost three hours, the Council Meeting dealt solely with the issue of how residents of Lake Drive East and Lake Drive North would be permitted to acquire title to waterfront lands adjacent to their properties. It is not disputed that Regional Councillor Grossi owns property on Lake Drive East. He may therefore be presented with an opportunity to acquire lands adjacent to his property. The proper amount that Lake Drive owners will be required to pay was the subject of the meeting.

Regional Councillor Grossi proposed a motion that would allow Lake Drive owners to acquire adjacent land in exchange for a pro-rata share of survey and legal costs. He ultimately withdrew that motion. Instead, a motion passed, as noted above, that the Town should conduct appraisals to guide it in setting the appropriate price for Lake Drive property owners to acquire adjacent lands.

The chosen method for determining the price of acquisition of adjacent lands has a direct financial impact upon Regional Councillor Grossi. In fact, given Regional Councillor Grossi's vast experience on Town Council, I find it disturbing that he did not recognize the obvious conflict that arises from his pecuniary interest as a Lake Drive property owner. It appears clear from the video of the Council Meeting that Regional Councillor Grossi was not able to impartially consider the Lake Drive Issue, as he was a very active participant in the Council Meeting. However, even without such active participation, Regional Councillor Grossi has a conflict. He may be directly impacted financially by any decisions of Council with respect to the Lake Drive Issue. A reasonable person would perceive that a councillor who owns property on Lake Drive objectively has a conflict when considering the Lake Drive Issue.

A final determination has not yet been made with respect to which property owners on Lake Drive will be eligible to purchase adjacent lands. Regional Councillor Grossi is of the view that he already owns the adjacent lands. Others

are of the view that the Town owns the adjacent land. Until this issue is finally determined, Regional Councillor Grossi has an apparent conflict.

I find that Regional Councillor Grossi's participation in the Council Meeting caused him to be in a conflict of interest in contravention of the *Act* and the *Code*.

The final matter I must determine is whether I, acting as the Integrity Commissioner, should bring an application to court, where a judge may impose sanctions.

The Integrity Commissioner is empowered by section 223.4.1(15) of the *Municipal Act, 2001*, to refer a conflict of interest matter to the courts. The following is the relevant provision:

Completion

(15) Upon completion of the inquiry, the Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the Municipal Conflict of Interest Act for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act. 2017, c. 10, Sched. 1, s. 21.

Notice to applicant re decision not to apply to judge

(16) The Commissioner shall advise the applicant if the Commissioner will not be making an application to a judge. 2017, c. 10, Sched. 1, s. 21.

Reasons after inquiry

(17) After deciding whether or not to apply to a judge, the Commissioner shall publish written reasons for the decision. 2017, c. 10, Sched. 1, s. 21.

In a previous Integrity Commission Report ¹, the following was stated with respect to factors to consider when determining whether a matter should be remitted to the Courts:

As statutory officers carrying out an administration of justice function we are charged with the responsibility to choose which route to follow. Are the circumstances such that court time and legal expense should be incurred to seek a remedy only the courts can impose, or is it a case where the Integrity Commissioner should review the matter and if it is in the public

¹ Belanger (Re) 2019 ONMIC

interest to do so, make recommendations to Council for the imposition of a recommended sanction, if any?

It is apparent that, unless removal from office is sought, or unless a member who has benefited financially is refusing to voluntarily disgorge such profits, it is not in the public interest for the Integrity Commissioner to pursue additional sanctions by way of application to a judge.

Similarly, I am not recommending removal from office. The Town is still at an early stage with respect to its divestiture of the Lake Drive parcels of land. Appraisals are being sought, and the Town has not yet agreed on a formula to establish pricing for the lakefront parcels. Thus, Regional Councillor Grossi has not yet benefited financially, and there are no profits to disgorge. On this basis, I do not believe that it is in the public interest to pursue additional sanctions by way of application to a judge.

However, the conflict of interest is a serious matter. Further conflict can be avoided by Regional Councillor Grossi complying with section 5(1) of the *Act*. For clarity, Regional Councillor Grossi should immediately do the following:

- (a) Prior to any consideration of the Lake Drive Issue at further Council meetings, he should disclose his interest as a property owner on Lake Drive;
- (b) He shall not take part in the discussion of, or vote on any question relating to the Lake Drive Issue; and
- (c) He shall not attempt in any way, whether before, during, or after the meeting, to influence the voting on any such question.

Summary of Findings

I find that the Regional Councillor Grossi had a conflict of interest when he failed to declare an interest and participated in a vote with respect to the Lake Drive Issue at the Council Meeting. This contravened both the *Act* and the *Code*.

While these contraventions do not warrant an application to a judge, they do warrant a sanction. Regional Councillor Grossi has had years of experience on Council, both as mayor and as a member of Council.

Recommendations

I recommend that having found that Regional Councillor Grossi was in a conflict of interest, contrary to both the *Act* and the *Code*, he shall receive a 10-day suspension of pay. Regional Councillor Grossi should objectively have recognized the obvious conflict in this instance. If he had any doubt, he should have sought advice and guidance from the Integrity Commissioner. Given his years of experience with Town Council, it strains credibility to think that he would not recognize a potential conflict as a property owner on Lake Drive. His failure

to do so demonstrates a certain hubris and disrespect for both the *Code* and the *Act*.

Should Regional Councillor Grossi fail to follow the recommendations contained in this report, further sanctions shall be considered.

Dated at Toronto, this 4th day of December, 2019.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "D Anschell". The signature is written in a cursive, flowing style.

Deborah C. Anschell Integrity Commissioner of the Town of Georgina

c/o ADR Chambers Inc.

Office of the Integrity Commissioner