

EXPERTISE FOR MUNICIPALITIES (E4M)
NON-PROFIT ASSOCIATION
1894 LASALLE BLVD. SUDBURY, ON, P3A 2A4

INTEGRITY COMMISSIONER
FOR THE TOWN OF IROQUOIS FALLS



INQUIRY REPORT/DECISION

**ALLEGATION: CONTRAVENTION OF THE
TOWN OF IROQUOIS FALLS CODE OF
CONDUCT - SALE OF ARTISAN AND CRAFT
DISPLAY (“VISITOR INFORMATION”)
CENTRE**

**BY: COUNCIL FOR THE TOWN OF IROQUOIS
FALLS**

I. REQUEST FOR INQUIRY

- [1] Expertise for Municipalities (“E4m”), as Integrity Commissioner, received a request for inquiry (hereinafter the “Request”) with respect to the Town of Iroquois Falls’s handling of the sale of the Artisan and Craft Display (Visitor Information) Centre.
- [2] Specifically, the Requestor alleged that the Town of Iroquois Falls (Respondent/Council) neglected accountability and transparency, as toward not serving the “public interest” with a flawed “disposition of land policy.”
- [3] Also, the Requestor alleged that their September letter of interest never made it to Council contrary to a commitment by Council in Section 1. of the Code of Conduct that “As leader of the community we are held to a higher standard of behaviour and conduct.”
- [4] The Requestor is a member of the public and is therefore entitled to make an Application for an inquiry under sections 223.4 of the *Municipal Act*.

II. FINDINGS/CONCLUSION

- [5] Based on the evidence before us we find that the Council contravened the Code of Conduct when they failed to act in a transparent manner in the disposition of the Artisan and Craft Display (Visitor Information) Centre.

Recommendations

- [6] Finding a breach of the Code of Conduct, section 223.4(5) of the *Municipal Act*, 2001 normally permits Council to levy a penalty on the offending Member(s) of either a reprimand, or a suspension of the remuneration paid to the Member in respect of their services as a member of Council for a period of up to 90 days for each breach. In this case the offending Member is Council as a whole.
- [7] As the title of the land in question has already been transferred out of the ownership of the Town, reversing this transfer is not an option for Council. The following recommendations are being made by the Integrity Commissioner for Council’s consideration:
 - a. That Council retroactively pass a resolution/Bylaw outlining their rationale for not adhering to the tenets established in Bylaw 3501/18 (Sale and Other Disposition of Land).
 - b. That a public apology be made by the Mayor on behalf of Council.
 - c. That a municipal representative reach out to the Requestor in an honest and transparent effort to assist where possible in their attempt to find a suitable alternative property for their purposes within the Town of Iroquois Falls.

III. INQUIRY PROCESS

- [8] The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a member has contravened the Code of Conduct that is applicable to that member.
- [9] After receiving the Request, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review to determine if the allegations are within the jurisdiction of the Integrity Commissioner. Those matters not within the Integrity Commissioner's jurisdiction are referred to be considered by other appropriate parties.
- [10] We determined that the matter was properly within the jurisdiction of the Integrity Commissioner and the matter was assigned to Shawn Mahoney (the "Investigator") who is an experienced investigator with Investigative Solutions Network ("ISN"). As agents of the Integrity Commissioner, he interviewed several witnesses including the respective Requestor and three members of Council. Interviews were recorded.
- [11] The following are the bylaws and policies considered in this investigation:
- a. Bylaw 3507/18 – Code of Conduct
 - b. Bylaw 3024/08 - Accountability and Transparency Policy
 - c. Bylaw 3501/18 - Sale and Other Disposition of Land Policy; and,
 - d. Bylaw 3417/16 – Rules of Procedure
- [12] Additionally, we also reviewed Agendas and Minutes for Council Meetings surrounding the dates of the allegations, correspondence, emails, social media posts and other pertinent municipal records as they related to the matters before us.
- [13] The conclusions we arrived at, with respect to these matters, are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the municipality's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:
- Whether or not the individual has firsthand knowledge of the situation
 - Whether or not the individual had an opportunity to observe the events
 - Whether or not the individual may have bias or other motive
 - The individual's ability to clearly describe events
 - Consistency within the story
 - The attitude of the individual as they are participating

- Any admission of dishonesty¹

[14] After obtaining all of the above evidence, the Investigator reviewed it along with various Witness statements. Each material witness was assessed for their credibility. The allegations were then tested against the evidence gathered.

[15] The Investigator found the Requestor, and the majority of the Witnesses to be credible. The Investigator noted that the third witness may have a bias and their opinions and responses were used guardedly.

IV. FINDINGS OF FACT

[16] The circumstances that give rise to the Request for Inquiry are that Council as a whole (representing the Town) is alleged to have contravened the Code of Conduct when Council improperly and without fair consideration disposed of a piece of property.

[17] To be clear, it was alleged that Council considered the sale of and then improperly sold the Visitor Information Centre (the “subject property”). The Requestor alleged that Council failed to follow the adopted policy on surplus land disposal.

[18] The Requestor additionally alleged that they submitted an offer within the prescribed timeframe for Council to consider related to the subject property and their offer was not addressed at the Council meeting.

[19] The findings of fact in this matter are largely based on documentary evidence and a chronology of events is as follows:

[20] Of note during the timeframe of the below chronology, the individual who was employed as the Treasurer/Deputy Clerk-Administrator was acting as the Interim Clerk-Administrator/Treasurer and then returned to the Treasurer/Deputy Clerk-Administrator position. At all times in this report the individual will be referred to as the Clerk.

[21] **Wednesday, August 26, 2020** – The Regular Council Meeting Agenda for August 31, 2020 – was posted on FilePro (the Town’s public document site). There was a staff report in the Meeting Agenda package outlining the ongoing costs of maintaining the subject property with a recommendation that Council proceed with the disposition of the land and building.

Reference: August 31, 2020, Regular Council Agenda

1 *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009), 185 LAC (4th) 176 (Alta.Arb.)

[22] **Friday, August 28, 2020** – All members of Council, the Clerk, and the Economic Development Officer (“EDO”) received an email from the Requestor’s Representative asking whether a lease/rental/rent to own proposal would be considered for the property. They had learned there was a vote coming up at Council on the August 31st and asked if a decision could be postponed until they had a chance to work out details and, possibly a plan with Council, to move forward.

Reference: Email from Requestor’s Representative
Witnesses Interviews

[23] **Monday, August 31, 2020, Regular Council Meeting** – Resolution number 2020-208 was passed stating “*That staff is directed to proceed with the disposition of the Artisan and Craft Display Centre; being the land and the building located at 7392 Highway 11, in Iroquois Falls, Ontario.*” There was no discussion of the Requestor’s interest in the property or their request to postpone the decision. To be clear, the email, while not submitted in time to be placed on the Meeting Agenda, was sent to all of Council three (3) days before the Council Meeting and not one member of Council brought it up during the debate/voting on the declaration to declare the property surplus.

Reference: August 31, 2020, Regular Council Minutes
Witnesses Interviews

[24] **Wed. September 2, 2020** – The Requestor’s representative sent an email to the EDO asking for a preliminary viewing of property for the next day and, as an alternative date, Tuesday of the next week. The EDO sent detailed property information to the Requestor’s representative which included the size of the building, that the building was uninsulated with no potable water along with some other details and noted that the intent of Council was to sell, not lease. The EDO advised that either of the proposed times could be accommodated.

Reference: Witnesses Interviews

[25] **Thursday, September 3, 2020** – The Requestor, the Requestor’s Representative and a member of Council toured the property with a Town staff person (not the EDO). They also spoke to the Mayor about Council’s interest in selling or leasing and were told to put together a proposal and bring it into the office so it could come to Council for consideration.

Reference: Interview with Requestor’s Representative
Witness Interviews

[26] On **Friday, September 4, 2020**, a letter of interest from the Requestor was submitted to the Clerk, as suggested by the Mayor, before the deadline of 4 p.m. in order for the matter to be on the Sept. 14th meeting Agenda. Receipt of the letter was confirmed by the Administration Assistant.

Reference: Interview with Requestor’s Representative

[27] **September 9, 2020** - The Clerk informed the Requestor that should they bring an offer, she would take it to Council. The email said, "*this correspondence will not be added to the September 14th Committee of the Whole meeting. I will address your questions in the letter. Once your organization wants to bring an offer, I will then present the offer to Council*".

Reference: Email from Clerk to Requestor

[28] A letter dated **October 8, 2020**, signed by the Clerk responded to the Requestor acknowledging their interest in the property, stating, "*If interested in the building, a proposal could incorporate all of your concerns such as lease opportunity, purchase, hydro, property taxes and permitted use for zoning.*" The letter did not provide a date by which a response had to be submitted to the Clerk's office for inclusion on the Council Meeting Agenda.

Reference: Letter from Clerk

[29] **October 26, 2020** – The property was formally declared surplus by Resolution No. 2020-256. This is the first step Council must take in accordance with the Bylaw 350/18.

Reference: October 26, 2020, Regular Council Meeting Minutes

[30] The Requestor alleged that they were not contacted by the Town to advise them that the property had been declared surplus after they had submitted a letter outlining their interest/intent in the subject property.

Reference: Interview with Requestor's Representative

[31] The October 26th Council meeting was publicly broadcast on Cable Channel 12. Another party heard that the property had been declared surplus and immediately proceeded to draft an offer to purchase which was submitted to the Town on **October 28, 2020**. The subject property was sold to this party ("Successful Purchaser").

Reference: Witness Interviews

[32] On **November 2, 2020**, in response to guidance received from the Town, the Requestor submitted their proposal which outlined an option to lease until April 1, 2021, and then with options to renew or purchase at that point. For clarity, the proposal included renting the property until March of the following year and then possibly making an offer to purchase of some form at that time. No purchase price was mentioned. A proposed rental fee of \$500 per month was suggested.

Reference: Letter from Requestor November 2, 2020

[33] The property however was not suitable for renting by the Town at that time as it had no potable water or insulation and particularly because the time frame for rental was over the winter months.

[34] **November 9, 2020, Committee of the Whole Meeting** – Council met in closed session and considered the offer to purchase dated October 28, 2020, from the Successful Purchaser and not the submission from the Requestor. After the closed session was adjourned and Council returned to the open meeting, Council passed Resolution 2020-274 giving direction regarding the disposition of the subject land to the Clerk.

Reference: Committee of the Whole Minutes - November 9, 2020,

[35] Matters discussed in closed session are highly confidential and the nature of the discussion will not be disclosed. We confirmed that during the closed session of the Council Meeting, the Requestor's letter outlining their proposal/interest in the property was not mentioned.

[36] At the **November 30, 2020**, Council meeting, Bylaw No. 3603/20 was adopted authorizing the sale of the subject property to the Successful Purchaser.

Reference – November 30, 2020, Regular Council Meeting Minutes

[37] After the sale of the subject property, the Requestor submitted a letter to the Town outlining their dissatisfaction with the result and requesting an explanation. (Letter dated **December 18, 2020**) which was responded to by the Town on **January 7, 2021**. The letter from the Town to the Requestor, explained the rationale as to why the Requestor's proposal was not entertained by Council. Staff stated that proper procedure had not been followed by the Requestor and that is why their proposal was not brought forward to Council for consideration.

[38] During the inquiry, the Investigator was advised by a Member of Council, "*Council just wanted to get rid of the building – that contributed to them not entertaining two interests; they wanted to move on the offer they had. There was a lull in the interest from the [Requestor] and Town Council just wanted to get the sale over and done with.*"

[39] The Successful Purchaser received substantial social media coverage from alleged supporters of the Requestor which was highly unflattering. During the inquiry this was brought to the attention of the Investigator who then considered the actions of the Successful Purchaser to determine if there had been unethical interactions between this individual and Council.

[40] Upon reviewing the evidence, the Investigator reported that he did not find any wrongdoing and that the Successful Purchaser's actions were conducted in an ethical manner.

[41] The *Municipal Act* requires that municipalities adopt a policy on how they intend to dispose of surplus lands. The Town has enacted such a policy.

[42] Some of the procedural requirements outlined in the Bylaw 3501/18, that was in effect at the time, were not followed. More specifically:

- There is no indication in the direction given to the Clerk by Council that the subject property would be sold using a fair market value assessment or by the assessed value assigned by the Municipal Property Assessment Corporation (“MPAC”), or that the property fell into one of the exceptions identified;
- There is no evidence that steps were taken to notify the Requestor in accordance with section 4 which states: *Before disposition of any lands, the Town shall identify any Person(s) of Interest, if any, and notify them of the intended disposition of the land. The Town may work with the Person(s) of Interest in order to facilitate the sale of the land.*
- There was no report to Council acknowledging compliance with the public notice provisions of section 5.
- The offer from the Successful Purchaser, received two (2) days after the property was declared surplus, would have been considered an unsolicited offer in accordance with the bylaw. *“Unsolicited offers to purchase land may be submitted to the Clerk for consideration by Council. However, the process outlined in this policy still needs to be followed prior to any disposition of land.”*

V. ANALYSIS

- [43] The Requestor was dissatisfied with the approach that Council took in dealing with the disposal of the subject land and alleged that the Town was not acting in a manner that was accountable and transparent.
- [44] Of concern to the Requestor is that their initial correspondence and their subsequent proposal were not considered by Council. For matters to be considered by Council they must be provided to the Clerk in accordance with the established timeframe set out in the Procedure Bylaw. It is clear, that the Clerk has the discretion to determine if an item will be placed on the Council Meeting Agenda.
- [45] The Integrity Commissioner has no jurisdiction to adjudicate matters related to the actions of officers and employees of the Town. The actions of the Clerk have been recorded in this report to document the chronology of events only and we will not comment on whether these actions were proper procedure.

Accountability and Transparency

- [46] Section 2 (e) of the Code of Conduct requires that Members of Council ***“must recognize and act upon the principle that democracy is best achieved when the operation of government is as transparent and accountable to the Public as possible”***.
- [47] The Code of Conduct does not define the terms accountability and transparency.

- [48] There often is a misunderstanding of what these terms mean. Simply put, to be accountable, one must be willing to accept responsibility for the choices they make and to be transparent means that one offers clear and honest information about why the choice has been made.
- [49] In the matter before us, Council received a staff report and determined it was in the best interest of the Town to declare the subject property surplus in compliance with Bylaw 3501/18. This decision was made by resolution at a regular council meeting open to the public.
- [50] Two (2) days after the Agenda for the September 4, 2020 meeting is published, the Requestor emails Council to advise them of their interest in the subject property and requesting Council delay the decision to sell the subject property.
- [51] A month later, the subject property is declared surplus as per Bylaw 3501/18.
- [52] Two (2) days later, an offer is made by the Successful Purchaser.
- [53] Council accepts the offer, and the subject property is sold.
- [54] It is clear, that the only provision of Bylaw 3501/18 that was complied with was declaring the land surplus. There is no evidence that the other parts of the Bylaw were complied with.
- [55] As a law-making body, Council can choose to not follow an established Bylaw. Should they choose to do so they ought to advise the public that they are not going to follow all or some of the Bylaw and the reasons for this decision.
- [56] In this circumstance, Council did not clearly communicate why they chose not to follow the Bylaw. As such, they were not acting in a transparent manner contrary to the Code of Conduct.

DATED: November 14, 2021