



Craig Gammie
Councillor

The Corporation of the Town of South Bruce Peninsula
P.O. Box 310, 315 George Street
Wiarton, ON
N0H 2T0

Telephone: (519) 534-1400
Fax: (519) 534-4862
Toll Free 1-877-534-1400
e-mail: councillorgammie@gmail.com

Report Re: Council, December 20, 2016

Report No: Gammie 09-2016

Subject: Possible Code of Ethics breach re information June 7 2016 closed council meeting

Recommendation:

That an integrity commissioner be appointed to investigate whether there was a breach of the code of ethics section 2, regarding confidential information that may have been discussed in the June 7, 2016 closed session of council, and if so by whom.

Link to Strategic Planning: *Goal 1: Supportive and Accountable Municipal Operations and Governance ..*

Background:

Ontario Municipal Board ("OMB") case PL 160476 was heard August 12, 2016, OMB chairman Justin Duncan presiding. A decision was given December 12, 2016.

The only time the case was on a TSBP council closed session agenda was June 7, 2016, appearing as:

4.6 Litigation or potential litigation including matters before administrative tribunals affecting the municipality or local board and Advice that subject to solicitor-client privilege including communications necessary for that purpose (CLK60-2016 OMB Representation, Committee of Adjustment Decision for 600 Mallory Beach Road)

Regarding that item, the public minutes say:

**47. Direction from Closed - CLK60-2016 OMB Representation, Committee of Adjustment Decision for 600 Mallory Beach Road
R-254-2016**

It was **Moved** by A. Vukovic, **Seconded** by M. Jackson and **Carried**

That Council appoints the Town Clerk, Chief Building Official or other such staff as deemed appropriate to attend at Committee of Adjustment meetings and speak on behalf of the Town to any application, despite any other duties which may be assigned to them with respect to the Committee of Adjustment.

On the September 20, 2016 council agenda was:

8.6 Gammie06-2016 Miller Thompson Letter re OMB PL160476

Report Gammie 06 was in the agenda package. Attached to the report Gammie 06 2016 is a letter from O'Melia, which includes:

Given that your appearance involved a Town Committee, we are also concerned about the appearance of potential impropriety given that you may have, or be perceived to have, information that could assist a private participant in a legal proceeding. In order to address those concerns, we ask that you provide us with the following information:

This appears to be an oblique reference to the June 7 2016 closed meeting. There is no other reference to the June 7, 2016 closed meeting in the report or the attachment to the report.

The minutes of September 20 2016 meeting for that item indicated:

16. Gammie06-2016 Miller Thompson Letter re OMB PL 160476

On a show of hands with the majority being received, this was moved forward in the agenda.

Councillor Gammie indicated that this issue is a misuse of funds for a private agenda, that this is a vexatious attack against him and that staff and Council members made a complaint about him to the PEO and that the charges were dropped as groundless. He explained another complaint to the PEO by staff and Council. The current letter is a private matter commissioned by the Town who has no legitimate authority and that staff have no right to request such a letter to be commissioned and that this is the illegal use of Town funds. The law firm should not be paid and the staff member responsible should be reprimanded. Mayor Jackson began to explain why the letter was commissioned and the representation of a resident by Councillor Gammie at an OMB hearing.

17. Point of Order – Councillor Gammie

Councillor Gammie called appoint of order and stated that the OMB issue was not on the agenda. Mayor Jackson ruled against the point of order.

18. GAMMIE06-2016 Miller Thompson Letter re OMB PL 160476 11

Mayor Jackson explained that our solicitor wanted to explain that Councillor Gammie had stepped over the bounds and on behalf of the people if he continued to represent citizens at OMB hearings, he has been cited why he cannot represent. The ruling judge in the OMB case said that the Councillor was committing a conflict of interest. Mayor Jackson indicated that if the Councillor is challenged for his action, the Town will not want to defend him. A member of Council discussed the legal opinion received in closed session regarding the OMB case and explained how Councillor Gammie knew the Town position from Closed Session and he still consulted for a private individual and how this could be considered a conflict of interest. Councillor Gammie indicated that this item should not be brought to this kangaroo court and that if anyone thinks that he has broken a law then let them go through the proper legal channels; he challenges them. A member of Council questioned if our solicitors require a resolution or direction from Council if there is a risk to Council. It is felt that this is our solicitor's legal duty and that this would not need to come to Council for approval of a letter.

The Manager of Legislative Services/Clerk explained her legal duty as given by Council in her job description and budget and her protection of all members of Council including Councillor Gammie. She explained that she did not make a complaint to the PEO and that her involvement had been as a reluctant witness. She asked Councillor Gammie more than once to stop harassing her and other employees. Councillor Gammie challenged her to take legal action against him.

Discussion ensued.

19. Point of Order – Councillor Gammie

Councillor Gammie called a point of order citing slander. Mayor Jackson did not rule in his favour.

20. GAMMIE06-2016 Miller Thompson Letter re OMB PL 160476

Mayor Jackson thanked the Manager of Legislative Services/Clerk for her service. Discussion ensued.

21. Point of Order – Deputy Mayor Kirkland

Deputy Mayor Kirkland called a point of order for disrespectful comments from Councillor Gammie. Mayor Jackson ruled in his favour and asked for an apology from Councillor Gammie. An apology is not required by the Procedural By-Law.

22. Point of Order – Councillor Gammie

Councillor Gammie declared a point of order. Mayor Jackson ruled against him.

23. GAMMIE06-2016 Miller Thompson Letter re OMB PL 160476 12

Deputy Mayor Kirkland began to ask of Councillor Gammie the questions in the letter from the solicitor. Councillor Gammie indicated that the Deputy Mayor has no authority to ask and if he were to answer he might be giving rise to the allegations. Deputy Mayor Kirkland asked why the Councillor put this forward. Councillor Gammie explained that this was to discuss a reprimand.

R-414-2016

It was Moved by C. Gammie, Seconded by J. Kirkland and Carried

That Council address.

Recorded vote requested – Councillor Gammie

Gammie Yes

Jackson M Yes

Kirkland Yes

Vukovic Yes

Jackson J Yes

Members of Council discussed harassment, complaints under the Upper Canada Law Society and conflict of interest. The Manager of Legislative Services/Clerk explained why she has not made a formal harassment complaint. Discussion ensued.

Councillor Gammie declared a conflict of interest and moved back from the table.

Time 8:39 pm

R-415-2016

It was Moved by A. Vukovic, Seconded by M. Jackson and Carried

That Council directs the solicitor to make a complaint with the Upper Canada Law Society on behalf of the Council with respect to the matter discussed in the letter sent to Councillor Gammie and dated August 31, 2016 regarding the OMB Case No. PL160476.

Recorded Vote Requested – Deputy Mayor Kirkland

Gammie Pec Int

Jackson M Yes

Kirkland Yes

Vukovic Yes

Jackson J Yes

Councillor Gammie returned to the table. Time 8:43 pm

In his decision regarding OMB case PL 160476 heard August 12, 2016, OMB chairman Justin Duncan said:

[34] It was only during the course of the evidence of the last witness to be heard, Ms. Waimel, that it became known to the Board that Mr. Gammie is a Town Councillor who participated in an in-camera session of Town Council where it was decided that legal counsel would not be sent to this hearing to represent the Town.

Nowhere in any of the documentation available to the public is there any indication whatsoever that (per Duncan decision) “in [a June 7] in-camera session of Town Council it was decided that legal counsel would not be sent to this hearing to represent the Town.”

I take Duncan Paragraph 34 to mean that Barbara Waimel testified that a decision was made in the council meeting of June 7 that the town would not participate.

Regardless of whether Ms. Waimel made the statement or Mr. Duncan got it from somewhere else, the point remains that it has never been stated in an agenda or in public minutes that council decided in the June 7 closed meeting or in any other closed meeting not to participate in the OMB PL 160476 hearing.

There are only two possibilities:

- 1) Ms. Waimel concocted the notion that council had decided in the June 7 closed meeting not to participate in the OMB PL 160476 hearing, or,
- 2) Someone told Ms. Waimel that council decided in the June 7 closed meeting not to participate.

I do not believe (1) is at all plausible.

Without any indication on my part that Ms. Waimel's statement was true or false, I note that if it were true then someone who was present in the June 7 closed session would have had to have told Ms. Waimel that council decided in the June 7 closed meeting not to participate in the OMB hearing.

That would have been a clear violation of the TSBP code of ethics for council members in place between June 7 and August 12, especially section 2.

2. Use of Information

In their decision making process, Members of Council are sometimes privy to information which may be confidential or controversial such as, but not limited to "Closed" meetings. It is expected that they will;

-
- ...
- Respect the status of Confidential (personnel, legal, property acquisition) information, or closed meeting information, until the matter ceases to be confidential as determined by Council
-

Municipal Act Section 223.(1) provides for the appointment of an integrity commissioner

Integrity Commissioner

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

- (a)
- (b) the application of any procedures, rules and **policies** of the municipality and local boards **governing the ethical behaviour of members of council** and of local boards or of either of them; or
- (c) both of clauses (a) and (b). [emphasis added by Gammie]

It is recommended that an integrity commissioner be appointed by the town to investigate whether there was a breach of the TSBP council code of ethics section 2, regarding whether confidential information from the June 7, 2016 closed session of council was improperly disseminated, and if so by whom.

Options: 1) follow the report recommendations

2) not follow the recommendations in report

Inter-departmental Impact:

Budget Implications: Cost of hiring an integrity commissioner is not in the budget.

Confirmation of Manager of Financial Services

Expected Date of Completion: na

Respectfully submitted,



Craig Gammie
Councillor

Department Head

Date: ___December 14, 2016___

Date: _____

Administrator's Comments

Concurrence: Yes: No

Comments: (See attached)
