

Township of Edwardsburgh Cardinal

**Report Regarding
Code of Conduct Complaint**

**Andrew Tremayne
Integrity Commissioner
October 28, 2021**

Introduction

1. This is a report on an investigation into a complaint filed on September 7, 2021 by Pat Grant, a resident of the Township of Edwardsburgh Cardinal. Mrs. Grant has complained about how her application to sit on the Committee of Adjustment and her subsequent appointment to that Committee was handled by the Township.
2. The Township of Edwardsburgh Cardinal has adopted a *Council Code of Conduct* to establish broad guidelines and principles of ethical behaviour for Members of Council in connection with their official duties. The *Council Code of Conduct* (Schedule “A” to by-law # 2019-77) applies to all Members of Council. I was appointed Integrity Commissioner for the Township on May 25, 2015 (by-law 2015-33). The *Integrity Commissioner Complaint Protocol*, attached as Schedule “A” to by-law 2015-33, sets out the process for filing a complaint under the *Council Code of Conduct*.
3. In brief, Mrs. Grant alleges that Deputy Mayor Tory Deschamps used information about her application to sit on the Committee of Adjustment to place her in a conflict concerning a proposed zoning amendment. The proposed zoning amendment was for a property at 32 David St., and Mrs. Grant has a record of public disagreement with how the Township has dealt with applications regarding this property.
4. It is important to note at the outset of this report that the role of an Integrity Commissioner is limited. The *Council Code of Conduct* sets expectations for the behaviour (or conduct) of Members of Council. The *Code* is a by-law to which the principles of statutory interpretation apply. I must interpret the by-law as it was enacted, and I cannot add new provisions, even ones that may be in the overall public interest.
5. The *Code* does not give residents a right to a particular outcome concerning matters that come before Council. It is not my role to examine the merits of zoning by-law amendments, and the issue of whether the property at 32 David St. is in the best interests of the Township is not before me. These questions lie entirely outside the *Code*. In short, my jurisdiction as Integrity Commissioner is grounded in the *Code*, and my jurisdiction is therefore limited to determining whether the *Code* was breached.

Mandate and Process

6. I received and reviewed the complaint on September 13, 2021. I determined that the matter raised in the complaint is, on its face, a complaint with respect to the *Council Code of Conduct* and not covered by other legislation or Council policies. I interviewed Mrs. Grant by telephone on September 17, 2021. I interviewed Deputy Mayor Deschamps on

September 20, 2021. I also interviewed Rebecca Williams, Clerk of the Township, on September 22, 2021, for background and context. I have reviewed the agendas and minutes of the relevant Council meetings and meetings of Committees of Council, as well as relevant correspondence to and from Township staff.

Complaint

7. Mrs. Grant says that she expressed an interest in joining the Committee of Adjustment to the Mayor when she learned that Debra McKinstry, a member of the Committee, was retiring as CAO and Clerk and leaving the area. Mrs. Grant was told to watch the Township website for a posting, and she checked it regularly.
8. On or about July 18, 2021, Mrs. Grant received a message from a friend that an advertisement looking for volunteers to serve on the Committee had been posted on Instagram. The friend sent her a copy of, or link to, the posting. Mrs. Grant checked the Township website, but the posting was not there.
9. On Monday, July 19, 2021, Mrs. Grant called the Township and found out that the advertisement posted on Instagram was on Deputy Mayor Deschamps' Instagram account. She mentioned that the advertisement was not on the Township's website. She submitted her application to be a member of the Committee of Adjustment. The advertisement appeared on the Township's website later that day.
10. Mrs. Grant received an email confirming that her application had been received but heard nothing more until she saw the agenda for the August 23, 2021 Council meeting, which included an item about appointments to Council Committees. There was also a by-law proposing to increase the number of members on the Committee to 5 on the agenda.
11. Mrs. Grant noticed that a zoning amendment for 32 David St. was also on the agenda for the same Council meeting. She had already appealed a severance that had been approved for the same property to the Ontario Land Tribunal and had spoken against the zoning amendment at a recent public meeting.
12. Mrs. Grant says that appointing her to the Committee of Adjustment at the same time that the zoning amendment was before Council put her in a position where she would be in a conflict of interest and unable to appeal the zoning decision. Increasing the number of Committee members to 5 was done to make her ineffective, she asserts.

13. In her complaint, Mrs. Grant raises the following sections of the *Council Code of Conduct*:

5.4 Members of Council shall not misuse confidential information (information that they have knowledge of by virtue of their position as a Member of Council that is not in the public domain, including but not limited to emails and correspondence from other Members of Council, Township staff or third parties} such that it may cause detriment to the Corporation, Council or others.

....

9.3 Without limiting the generality of the forgoing, Members of Council shall not:

....

c) Use any information gained in the execution of office that is not available to the general public for any purpose other than for official duties; place themselves in a position of obligation to any person or organization which might reasonably benefit from special consideration or which may seek preferential treatment;

Evidence

Committee of Adjustment

14. By way of background, the Committee of Adjustment for the Township of Edwardsburgh Cardinal does not consider applications for severances or zoning amendments. The Committee only considers applications under Section 52 of the Planning Act (e.g., minor variance) for the Township.

15. The Community Development Committee of the Whole reviews consent applications and zoning amendments for the Township. This Committee consists of all members of Council plus several advisory members of the public. Deputy Mayor Deschamps is the Chair. The Committee has a broad mandate, acts in a Planning Advisory role, and makes recommendations relative to development in the municipality. Council makes the final decision on matters that come before the Committee.

16. The vacancy on the Committee of Adjustment arose because one member, Ms. McKinstry, resigned on or about July 5, 2021. The CEO sent an email to Members of

Council notifying them of the resignation and that a new Committee member would be recruited. Ms. Williams was directed to prepare an advertisement looking for volunteers to serve on the Committee, which she did. There was not enough time before the next meeting of Council (July 26, 2021) to deal with the matter, so the deadline for applications was set for August 11, 2021, with the expectation that the matter would be dealt with at the August 23, 2021 Council meeting.

17. The advertisement ran in two local newspapers: *The Recorder and Times*, which is published weekly, and the *South Grenville Beacon*, which is published bi-weekly. Ms. Williams contacted both papers on July 7, 2021, and asked that the advertisement run in their next edition, which in both cases was published on July 15, 2021.

18. Ms. Williams also prepared the advertisement to be posted on the Township's website. She posted it on July 16th, which was a Friday, but on Monday, July 19th, she realized that it had been "in limbo" over the weekend and was not visible to the public. The Township's website had been revamped recently, and she was very busy on Friday the 16th preparing for upcoming Council and Committee meetings. She fixed the posting on Monday and confirmed that the public could see it.

19. The Township received several applications to serve on the Committee, and 3 residents, including Mrs. Grant, were deemed eligible. The Mayor reviewed the applications and decided that all 3 should be added to the Committee, which would raise the total number of members to 5. The increased number required an amendment to the terms of reference for the Committee. Ms. Williams was directed to prepare by-laws accordingly and did so.

20. As a result, two by-laws were added to the agenda for the August 23, 2021 regular meeting of Council: a by-law to amend the terms of reference for Committees of Council (by-law 2020-69), increasing the maximum number of citizen members on the Committee of Adjustment to 5; and a by-law appointing Mrs. Grant and two other residents to the Committee of Adjustment (by-law 2020-78). Both were approved at the August 23, 2021 Council meeting.

21. Deputy Mayor Deschamps says that he was aware of the vacancy on the Committee of Adjustment. He saw the ad in the July 15, 2021 edition of *The Recorder and Times*, likely on July 17 or 18. He took a picture of the ad and posted it on his Instagram account to help publicize the request for volunteers.

22. The applications for membership on the Committee of Adjustment were never discussed with him, says Deputy Mayor Deschamps, nor was the increase in the number of

Committee members. He had nothing to do with the decision to propose that Mrs. Grant be appointed to the Committee of Adjustment, and he has no role on that Committee.

32 David St.

23. The Township received an application for a zoning amendment at 32 David St. on May 19, 2021. There were discussions between the applicant and Township staff, and a revised application was received on June 3, 2021. The application was forwarded to Novatech, the Township's planner of record. Novatech sent a preliminary report to the Township on June 24, 2021. There were discussions between Novatech and Township staff, and a revised preliminary report was received on June 29, 2021. The preliminary report was reviewed by the Community Development Committee of the Whole on July 5, 2021, and the Committee granted permission to schedule a public meeting, which was held on July 29, 2021.

24. Novatech prepared and submitted a final report to the Township on August 13, 2021. The final report updates the preliminary report and considers any comments received from the public on the application, particularly comments made at the public meeting. The proposed zoning by-law amendment for 32 David St. and the accompanying report was put on the agenda for the August 23, 2021 regular meeting of Council.

Analysis and Decision

25. I have two main difficulties with Mrs. Grant's complaint. First, I note that all matters relating to 32 David St. have been before the Community Development Committee of the Whole and not the Committee of Adjustment. Mrs. Grant applied to be a member of the Committee of Adjustment, and Council approved her appointment. It is far from clear why her membership on that Committee, which has never dealt with any matter relating to 32 David St., would pose a problem. Second, the evidence before me, which is uncontradicted, is that Deputy Mayor Deschamps had nothing to do with the decision to propose that Mrs. Grant be appointed to the Committee of Adjustment or the recommendation that the number of members on that Committee be increased.

26. Turning briefly to the proposed zoning amendment for 32 David St., it began with an application that the Township received on May 19, 2021, and the process unfolded from there. The uncontradicted evidence before me is that Deputy Mayor Deschamps had no role in the timing of events that led to the matter coming before Council at its August 23, 2021 meeting.

27. As to Mrs. Grant's interest in serving on the Committee of Adjustment, Township staff prepared an advertisement inviting applications for membership on the Committee. The advertisement ran in two local newspapers on July 15, 2021. Deputy Mayor Deschamps saw the advertisement in *The Recorder and Times* soon after it appeared. He took a picture of it and posted it on his Instagram account to help publicize the request for volunteers. The posting is clearly a photograph of the printed advertisement because other text from the newspaper is visible at its outer edges.

28. The information in the advertisement was not confidential when Deputy Mayor Deschamps posted it on his Instagram account. The invitation to apply for membership on the Committee of Adjustments was already available to the general public because it appeared in two newspapers on July 15, 2021. He posted a photograph of the advertisement to help publicize the request for volunteers. As a means of attracting further attention to the advertisement and promoting the Township's aim of generating interest and enhancing residents' participation in local affairs, this was perfectly acceptable.

29. The advertisement was also supposed to appear on the Township's website on Friday, July 16, 2021, although it did not. The problem was identified and rectified the following Monday, the same day that Mrs. Grant submitted her application. The period for applications for membership on the Committee was open until August 11, 2021. There is no evidence before me that anyone was prejudiced or disadvantaged by the very brief delay in posting the advertisement on the Townships website.

30. Regarding the review of the applications for membership on the Committee of Adjustment and the decision to propose to Council an increase to the maximum number of members on that Committee, the uncontradicted evidence before me is that Deputy Mayor Deschamps was not involved in either matter.

31. For all of these reasons, I find no contravention of the *Council Code of Conduct* as alleged in Mrs. Grant's September 7, 2021 complaint. The complaint is dismissed.



Andrew Tremayne
Integrity Commissioner, Township of Edwardsburgh Cardinal
October 28, 2021